

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 353
(Draft 3)

ORDINANCE NO. 96 153

AN ORDINANCE AMENDING ORDINANCE NO. 93-1 WHICH CHANGED THE DISTRICT CLASSIFICATION FROM UNPLANNED (U) TO RESIDENTIAL AND AGRICULTURAL (RA-1a); MULTIPLE-FAMILY RESIDENTIAL (RM-4), (RM-7) AND (RM-14.5) AND VILLAGE COMMERCIAL (CV-10) AT WAIKOLOA, WAIMEA, SOUTH KOHALA, HAWAII, COVERED BY TAX MAP KEY 6-8-01:PORTIONS OF 25, 36, 37, 38, 39 AND 40.

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

SECTION 1. Ordinance No. 93-1 is amended as follows:

"SECTION 2. These changes in district classification are conditioned upon the following:

- (A) the applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval;
- (B) within three years from the enactment of this amendment [the effective date of the rezoning shall be (1) when] the applicant shall provide [provides] assurance satisfactory to the Department[s] of Water Supply and the Planning Director, upon consultation with the State Department of Health and 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(s) 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;] The effective date of the changes in district classification(s) shall be the date on which the Planning Director has certified such assurance 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; provided that the water source shall be drilled and tested prior to final subdivision approval. Notwithstanding the provisions of Condition R, final inspection of the residential or commercial structures shall not be issued until the approved water source to the subject property and its transmission and distribution system for such source to the subject property has been constructed;

- [(C) upon compliance with Condition B(1) and (2), each village shall be developed in two increments. The first increment of each village shall consist of a maximum of sixty percent (60%) of the total number of lots and units proposed within each village. The second increment shall consist of the remaining forty percent (40%) of the lots/units proposed. Subdivision plans or plans for plan approval may be submitted for the second increment only after development has occurred in the first increment as determined by the Planning Director. "Development" means that building permits have been issued for dwelling units/lots and construction has been partially completed to the extent that roofs have been constructed on a minimum of twenty-five percent (25%) of the number of RA-1a lots and fifteen percent (15%) of the number of RM lots/units proposed for the first increment in each village. In lieu of actual construction, the applicant may enter into an

agreement with the Planning Department to assure the County that the dwellings will be constructed by way of a surety bond, certified check or other security acceptable to Corporation Counsel and the Planning Department. Upon final execution of such agreement and filing of the security with the County, subdivision plans or plans for plan approval for the second increment may be submitted prior to the actual construction of the dwellings in the first increment;]

[(D)](C) [upon compliance with Conditions (B)(1) and (2), subdivision plans or plans for plan approval for the first zoned increment or portions thereof of the first village, 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 one year thereafter. Final Subdivision approval or final plan approval shall be secured within two years from the date of submitting final subdivision plans or plans for plan approval;]

Subdivision plans for any portion of the subject property shall be submitted to the Planning Director and final subdivision approval for the first residential subdivision shall be secured within five (5) years from the effective date of the rezoning as determined in Condition B of this ordinance. A master plan of the subject property shall be submitted with plans for subdivision review.

[(E)](D) the applicant shall obtain plan approval from the Planning Director for all uses within 1,200 feet of Queen Kaahumanu Highway right-of-way;

[(F)](E) [a] the wastewater treatment system(s) shall be constructed to service the residential and commercial developments meeting with the approval of the Department of Health;

[(G)](F) a drainage system meeting with the approval of the Department of Public Works shall be installed;

[(H)](G) to ensure that the Goals and Policies of the Recreation Element of the General Plan are implemented, the applicant shall;

- (1) construct a 10-acre park site within the [project site] subject property for active park and recreational uses available for public use in perpetuity. [The park shall be developed and available for public use in conjunction with the completion of the first golf course or the first residential subdivision.] The [active recreational uses which may include] configuration and construction of improvements, including but not limited to grading, grassing, the construction of soccer fields, baseball fields, basketball and volleyball courts and football fields, fencing and parking, shall be approved by the Planning [Department] Director in consultation with the Parks and Recreation Department;
- (2) [set aside] provide an additional 16-acre park site within the subject property for primarily passive recreational uses available for public use in perpetuity. The configuration and construction of improvements shall include but not limited to grading and grassing, and parking [park shall be developed and available for public use in conjunction with final subdivision approval of the third village and established no later by the year 2000];
- (3) construct a five-mile bicycle and pedestrian path adjacent to the loop road and frontage road system which shall be improved upon the completion of the loop road and frontage system.

[Development of] The value of the land and the cost of improvements for the
[parks] 10-acre park and 16-acre park sites [beyond the minimum grading and
grassing] shall be credited against the [total park area requirement] the applicant's
fair share contribution park set forth in Condition G, herein. [The parks shall
remain in private ownership and be privately maintained except as may be
developed by others. A development, maintenance, and operating plan] A park
plan including the location of the park sites, configuration, phasing of the park site
developments and bicycle/pedestrian path, ownership, control and maintenance of
the sites, conditions and limitations regarding the terms of use and hours of
operation of the sites, and improvements, shall be submitted [when appropriate for
each park] prior to receipt of final subdivision approval or final plan approval of
any subdivision or residential units within the subject property and shall be
[reviewed and] approved by the Planning [Department] Director in consultation
with the Department of Parks and Recreation. The park areas and
bicycle/pedestrian path shall be developed and available for public use in
accordance with the approved park plan. Prior to the opening of each park
required 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 sites in perpetuity, or
until the park sites and improvements are dedicated to and accepted by the
County;

[(I)](H) access to the commercial area, golf academy, pedestrian/bike loop trail, 10-acre
and 16-acre parks shall be available for public use;

[(J) the satisfaction of Condition No. 5 of Use Permit No. 90 shall be complied with
by providing Big Island residents 168 rounds of golf daily on reasonably

maintained golf courses, and shall be consistent with other terms of the agreement contained as herein attached;]

[(K)](L) a revised archaeological inventory survey report and a detailed preservation plan for Site 15,033 shall be prepared and submitted for approval by the Planning [Department] Director, in consultation with the Department of Land and Natural Resources, prior to submitting plans for preliminary subdivision or plan approval review. The plan shall consist of an archaeological data recovery plan and preservation plan. Approved mitigation measures shall be implemented prior to or in conjunction with any land alterations in the [project area] subject property;

[(L)](J) 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] Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning [Department] Director in consultation with the Department of Land and Natural Resources-
Historic Preservation Division, when it finds that sufficient mitigative measures have been taken;

[(M)](K) to ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall [work with] secure the concurrence of 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 housing policy of the Hawaii County Housing Agency. This housing plan shall be approved by the County Housing Agency prior to final subdivision approval of any portion of the residential 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] that the applicant's affordable housing requirements for the residential development of the subject property, if any, have been mutually agreed to prior to final subdivision approval for any portion of the subject property;

[(N)](L) restrictive covenants in the deeds of all the proposed Residential and Agricultural zoned lots shall prohibit the construction of a second dwelling unit on each lot within the subject property. A copy of the [proposed] covenant(s) with this requirement [to be recorded with the Bureau of Conveyances] shall be submitted to the Planning [Department] Director for review and approval and a copy of the approved covenant shall be recited in an instrument executed by the applicant and the County [prior to] in conjunction with final subdivision approval for any portion of the subject property. A copy of [a typically] the recorded [covenant] document shall be filed with the Planning [Department within one year from the date of final subdivision approval] Director upon its receipt from the Bureau of Conveyances;

[(O)](M) a solid waste management plan for the subject property shall be prepared meeting with the approval of the Department of Public Works prior to submitting plans for subdivision approval. Approved recommendations and mitigation measures shall be implemented [in a manner] meeting with the approval of the Department of Public Works;

[(P)](N) a botanical preservation and mitigation plan of the Ophioglossum fern and Abutilon menziesii (red 'ilima) shall be submitted to the Department of Land and Natural Resources and the Department of Interior, as appropriate, for review and approval prior to any land alterations on the [project site subject property;

[(Q)](Q)

access(es) to the [project site] subject property shall meet with the approval of the Departments of Transportation-Highways Division and Public Works as follows:

- (1) Interim intersection improvements, including full channelization of the northern and southern access road intersections with Queen Kaahumanu Highway, shall be constructed meeting with the approval of the Department of Transportation prior to final subdivision approval of any increment gaining access from the respective intersection. The cost of such improvements shall be borne by the applicant and shall [not] be credited to or deducted from the applicant's fair share contribution for road and traffic improvements, as required under Condition [S]Q;
- (2) future long-term transportation improvements attributed to the project as identified by the State Department of Transportation, including a grade-separated interchange and frontage road system shall be constructed as required by the Department of Transportation. The applicant's share of the cost of such improvements shall be credited to or deducted from the applicant's fair share contribution for road and traffic improvements as required under Condition [S]Q;
- (3) the applicant shall participate in the funding and construction of any regional roadway improvements pursuant to an adopted plan, provided that any costs borne by the applicant shall be credited and limited to the amount of its fair share contribution for regional road and traffic impacts, as required in Condition [S]Q;

[(R)](P)

the applicant shall designate an 80-foot wide mauka-makai easement from the eastern property boundary to the Queen Kaahumanu Highway at a location meeting with the approval of the Departments of Public Works and

Transportation. This easement may be needed in the future for the development of a connector road between Queen Kaahumanu Highway and Waikoloa Village and shall be delineated on plans submitted for plan approval review or subdivision. A final determination as to whether the road is needed and as to its location will be based on regional studies to be completed by the Department of Public Works and/or the Department of Transportation. The applicant's share of the cost of this regional road, interchange, roadway improvements, and the cost of the easement shall be credited and limited to the amount of its fair share contribution for regional road and traffic impacts, as required in Condition [S]Q. The credit shall be based on the value and land use of the property prior to enactment of this ordinance, and shall be adjusted annually based on the percentage change in the Honolulu Consumer Price Index. This connector road will be a public right-of-way maintained by appropriate governmental agencies;

[(S)](Q)

[the applicant shall make its fair share contribution to address potential regional impacts of the project with respect to fire, police, solid waste disposal facilities, and roads. The fair share contribution shall initially based on the representations contained within the change of zone application and may be increased or reduced proportionally if unit counts or commercial areas are adjusted. The fair share contribution described below shall be adjusted annually based on the percentage change in the Honolulu Consumer Price Index (HCPI). A pro rata portion of the contribution, based upon the density and commercial area of the land affected, shall become due and payable, at the discretion of the County Council, in the event the applicant conveys an ownership, leasehold, or controlling subdivision approval or final plan approval in the proposed project. Subsequent to the initial subdivision approval or final plan approval, a pro rata portion of the contribution shall be paid by the applicant upon conveyance of an ownership, leasehold, or controlling development interest of any residential lot or unit or, in the case of commercial development, upon conveyance of an ownership, leasehold, or

controlling development interest of any commercial lot or on or before the issuance of a building permit for any commercial structure, which occurs first. The fair share contribution for each residential lot shall be based on a maximum density for each lot as determined by the Planning Department, with the concurrence of the applicant. The Fair Share contributions shall be as follows: (1) \$749,050 to the County to support the fire protection functions in the Kohala region; (2) \$324,678 to the County to support police functions within the Kohala region; (3) \$6,291,197 to the State or County to support road and traffic improvements within the Kohala region; (4) \$366,914 to the County to support solid waste disposal functions within the West Hawaii region. In lieu of paying the fair share contribution, the applicant may construct such improvements/facilities meeting with the approval of the appropriate agency;]

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 such 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 2,658 residential units, the indicated total fair share contribution for 1,795 multiple family residential units is \$8,338,295.50 and for 863 single family residential units is \$6,247,395.00 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 O. The fair share contribution shall be allocated as follows:

1. \$2,291.39 per multiple-family residential unit for an indicated total of \$4,113,045.00 and \$3,490.85 per single-family residential unit for an indicated total of \$3,012,603.50 to the County to support park and recreational improvements and facilities;
2. \$72.42 per multiple-family residential unit for an indicated total of \$129,993.90 and \$168.40 per single-family residential unit for an indicated total of \$145,329.20 to the County to support police facilities;
3. \$222.77 per multiple-family residential unit for an indicated total of \$399,872.15 and \$332.61 per single-family residential unit for an indicated total of \$287,042.43 to the County to support fire facilities;
4. \$99.29 per multiple-family residential unit for an indicated total of \$178,225.55 and \$145.62 per single-family residential unit for an indicated total of \$125,670.06 to the County to support solid waste facilities;
5. \$1,959.42 per multiple-family residential unit for an indicated total of \$3,517,158.90 and \$3,101.68 per single-family residential unit for an

indicated total of \$2,676,749.80 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 set forth in Conditions G, O, and P, shall be credited against the sum specified in Condition Q(1) for parks and recreation and in Condition Q(5) for road and traffic improvements. For purposes of administering Condition O, 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;

- (R) 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;

- [(T)](S) the applicant shall work with the State Department of Education and the Planning [Department] Director to provide its pro rata share for school facilities. The pro rata share determination and its implementation shall be approved by the Planning [Department] Director, in consultation with the Department of Education, in conjunction with final subdivision approval or final plan approval of any residential area [of the development] within the subject property;
- [(U)](T) the applicant shall disclose to all potential buyers of lots or units within the [proposed project at] subject property that internal infrastructure and community facilities shall be developed and maintained privately and that the County is not obligated to construct any public facilities with the project area;
- [(V)](U) a fire emergency preparedness and response plan shall be submitted for review by the Planning [Department Director in consultation with the Fire Department and the Civil Defense Agency prior to the issuance of a Certificate of Occupancy for any residential unit within the subject property. The plan shall be limited to a review of the emergency roadway network and emergency contact people or association;
- [(W)](V) comply with the conditions of the State Land Use Commission's Decision and Order;
- [(X)](W) No application for real property tax relief shall be made for agricultural use on any lands within this development and a provision shall be recited within the CCR's, covenants, and deed of the respective properties;
- [(Y)](X) comply with all applicable laws, rules, regulations and requirements;

~~[(Z)](Y)~~ 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;

~~[(AA)](Z)~~ an annual progress report shall be submitted to the Planning Department 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 and the number of units constructed) 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 Department acknowledges that further reports are not required; and

~~[(BB)](AA)~~ an extension of time for the performance of conditions, except Condition B, within the ordinance may be granted by the Planning Department 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 Department 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 shall initiate rezoning of the area to its original or more appropriate designation."

SECTION 2. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

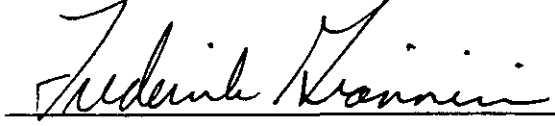


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii

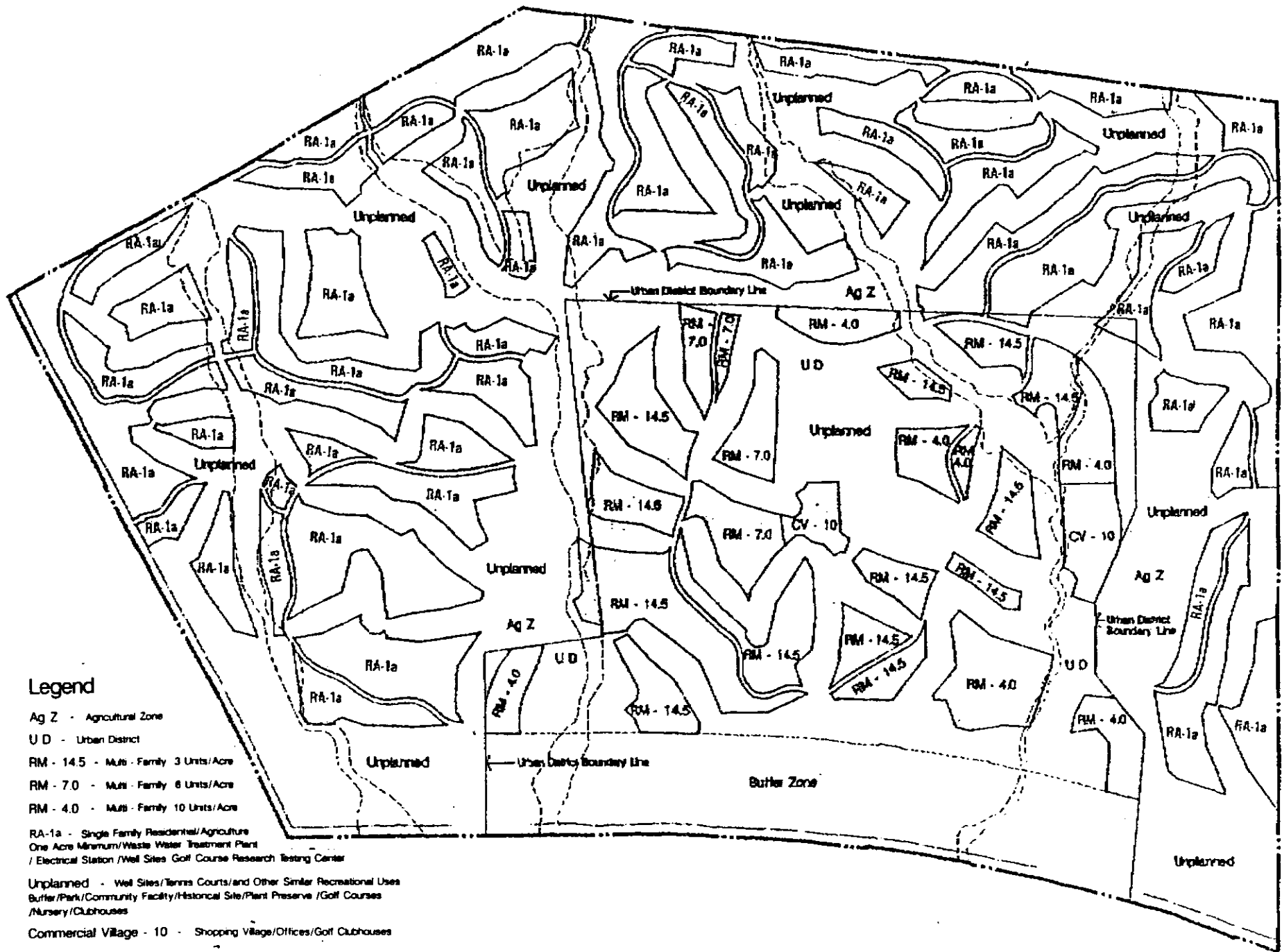
Date of Introduction: November 6, 1996
Date of 1st Reading: November 6, 1996
Date of 2nd Reading: November 21, 1996
Effective Date: December 5, 1996

APPROVED AS TO FORM AND LEGALITY



CORPORATION COUNSEL
DATED: 11/26/96

DEPUTY



Puako

Residential Golf Community
South Kohala, Hawaii

ZONING MAP ORDINANCE NO. 93-01



Scale 1" = 400'



Figure: 6

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

NOV 15 5 11 8 96
(DRAFT 2)

Introduced By: Takashi Domingo
 Date Introduced: November 6, 1996
 First Reading: November 6, 1996
 Published: November 15, 1996

REMARKS:

OFFICE OF THE COUNTY CLERK ROLL CALL VOTE				
MEMBER	AYES	NOES	ABS	EX
Arakaki	X			
Easley	X			
Childs	X			
De Lima	X			
Domingo	X			
Osorio	X			
Van De Car	X			
Ray	X			
Smith	X			
	9	0	0	0


Second Reading: November 21, 1996
 To Mayor: November 25, 1996
 Returned: December 5, 1996
 Effective: December 5, 1996
 Published: December 13, 1996


REMARKS:

(DRAFT 3)

ROLL CALL VOTE				
MEMBER	AYES	NOES	ABS	EX
Arakaki	X			
Easley	X			
Childs	X			
De Lima	X			
Domingo	X			
Osorio	X			
Van De Car		X		
Ray	X			
Smith	X			
	8	1	0	0

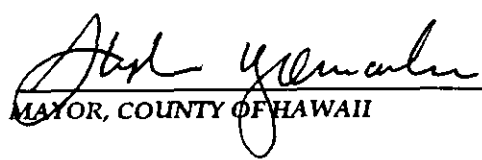
I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council and published as indicated above.



 COUNCIL CHAIRMAN


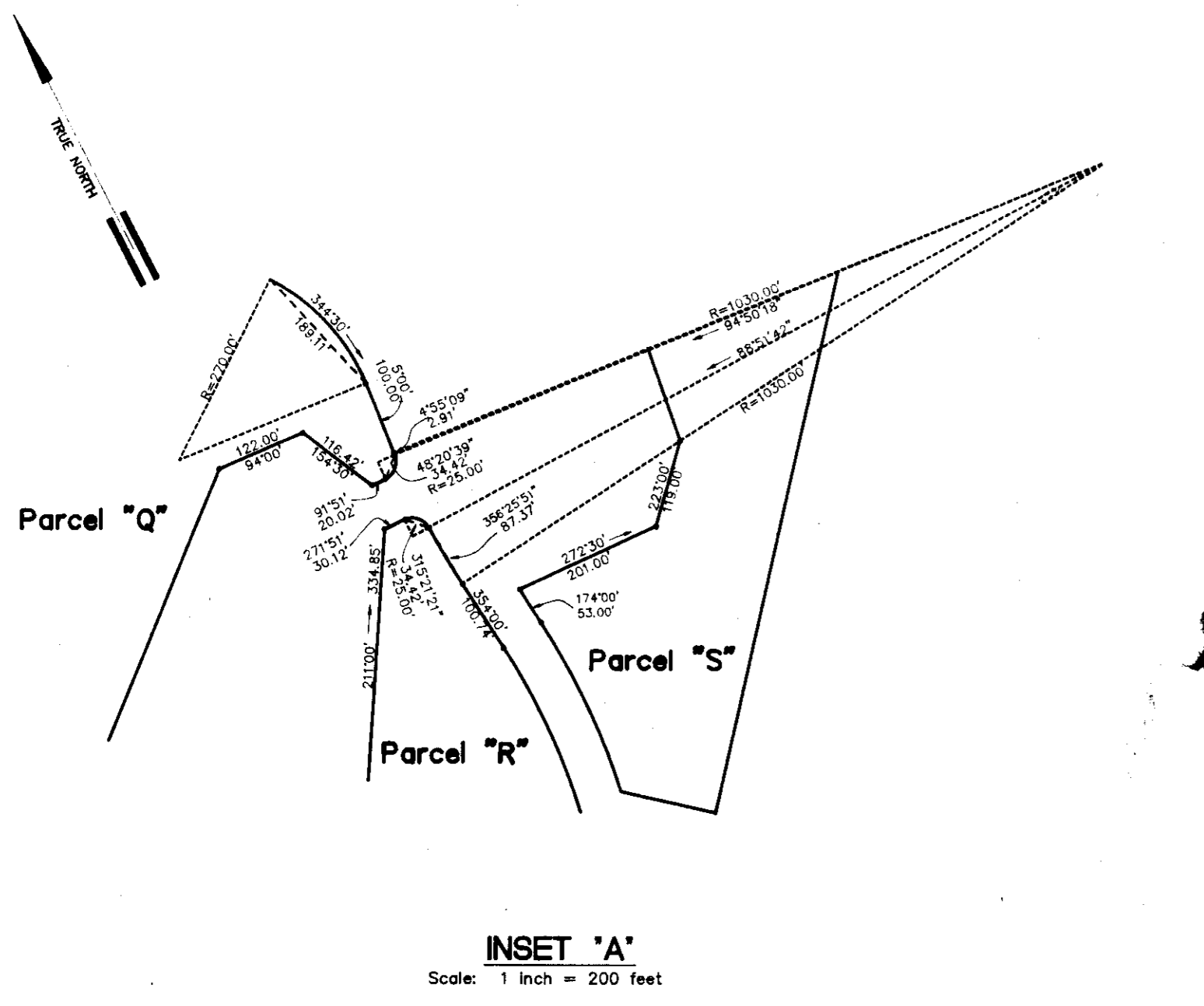
 COUNTY CLERK

Approved/Disapproved this 5 day
 of December, 1996.

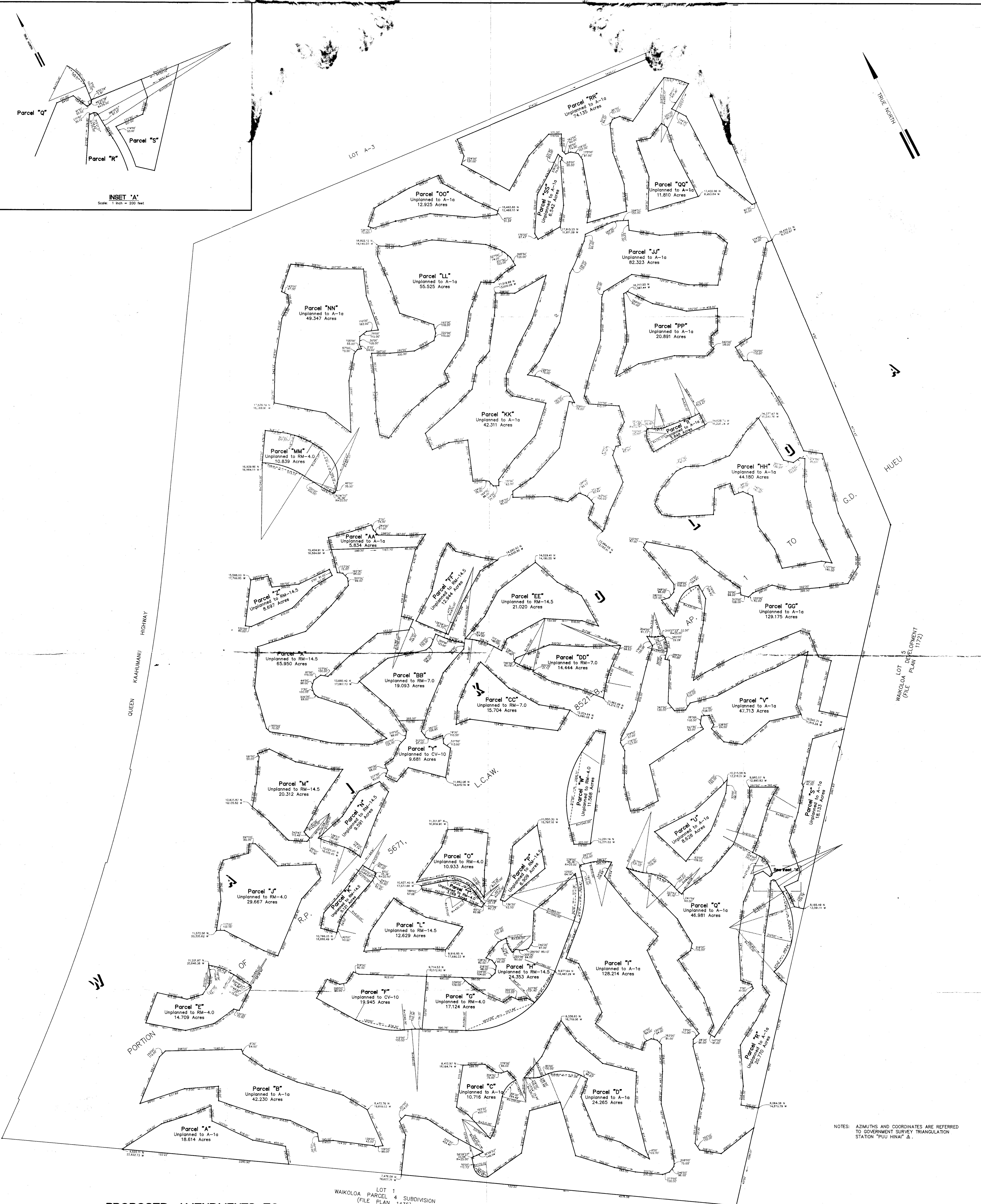


 MAYOR, COUNTY OF HAWAII

Bill No.: 353 (DRAFT 3)
 Reference: C-1409/PC-166
 Ord. No.: 96 153



INSET "A"
Scale: 1 inch = 200 feet



PROPOSED AMENDMENTS TO ZONING DISTRICT BOUNDARIES BEING A PORTION OF ROYAL PATENT 5671, LAND COMMISSION AWARD 8521-B, APANA 1 TO G.D. HUEU AT WAIKOLOA, WAIMEA, SOUTH KOHALA, ISLAND OF HAWAII, HAWAII

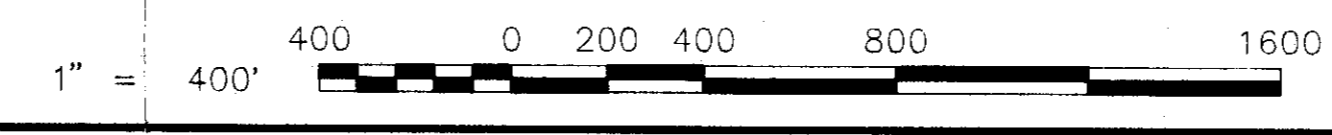
LOT 1
WAIKOLOA PARCEL 4 SUBDIVISION
(FILE PLAN 1435)

OWNER: NANSAY HAWAII, INC.
P. O. BOX 111222, SUITE 727
KAMUELA, HAWAII 96743-0020

DATE OF PUBLIC HEARING:
EFFECTIVE DATE:
ORDINANCE NUMBER:
REVISIONS BY: PLANNING DEPARTMENT
COUNTY OF HAWAII
TAX MAP KEY: 6-8-01: 25, 36, 37, 38, 39 & 40 (3RD DIVISION) (PORTIONS)

R. M. TOWELL CORPORATION
73-5574 MAUI STREET, #118
KAILUA-KONA, HAWAII 96740

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION
Russell Figueroa
RUSSELL FIGUEROA
REGISTERED PROFESSIONAL SURVEYOR
CERTIFICATE NUMBER 4729



NOTES: AZIMUTHS AND COORDINATES ARE REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "PUU HINAI" & A.