

COUNTY OF HAWAII

STATE OF HAWAII

BILL NO. 373
(Draft 5)

ORDINANCE NO. 97 36

AN ORDINANCE AMENDING SECTION 25-88 (SOUTH KONA ZONE MAP), ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-1a) TO RESORT (V-6.0) AT KEEKEE 2nd, ILIKAHI, KANAKAU 1st and 2nd, and KALUKALU 1st, 2nd and 3rd, SOUTH KONA, HAWAII, COVERED BY TAX MAP KEY 8-1-04:PORTION OF 3.

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

SECTION 1. Section 25-88, Article 3, Chapter 25 (Zoning Code) of the Hawaii County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following subject area situated at Keekee 2nd, Ilikahi, Kanakau 1st and 2nd, and Kalukalu 1st, 2nd and 3rd, South Kona, Hawaii, shall be Resort (V-6.0):

Beginning at the Northwesterly corner of this parcel of land at a point bearing 300° 33' 20" 399.34 feet from an angle point on the Easterly boundary of the State Land Use Conservation District, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OHAU" being 1,636.53 feet South and 1,386.52 feet East and running by azimuths measured clockwise from True South:

Thence, for the next fifteen (15) courses following along the remainder of Grant 1745 to John Cavanah:

- 1. 226° 00' 604.00 feet to a point;
- 2. 316° 00' 319.00 feet to a point;
- 3. 353° 00' 80.00 feet to a point;
- 4. 16° 00' 290.00 feet to a point;
- 5. 67° 00' 275.79 feet to a point;
- 6. 157° 00' 50.27 feet to a point;

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|-----|--------------|--------|--|
| 7. | 67° 00' | 144.00 | feet to a point; |
| 8. | 337° 00' | 174.00 | feet to a point; |
| 9. | 247° 00' | 105.36 | feet to a point; |
| 10. | 337° 00' | 725.39 | feet to a point; |
| 11. | 89° 00' | 447.00 | feet to a point; |
| 12. | 157° 00' | 238.00 | feet to a point; |
| 13. | 146° 00' | 303.00 | feet to a point; |
| 14. | 191° 00' | 362.00 | feet to a point; |
| 15. | 182° 42' 30" | 255.00 | feet to the point of beginning and containing an area of 14.854 Acres. |

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

SECTION 2. This change in district classification is 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 effectuation of the water commitment rights in the Kealakekua Source Agreement to the current landowners of the subject area with acceptance of the prevailing facilities charge by the Department of Water Supply of the required water commitment payment shall be in accordance with its "Water Commitment Policy" prior to the issuance of Final Plan Approval.
- C. Subdivision plans for any portion of the subject area shall be submitted to the Planning Director and Final Subdivision Approval secured within five (5) years from the effective date of this ordinance.

- D. Final Plan Approval for the proposed development within the subject area shall be secured within five (5) years from the effective date of this ordinance.
- E. A wastewater disposal system for the subject area shall be constructed in a manner meeting with the approval of the State Department of Health and/or the Department of Public Works, whichever is applicable.
- F. All electrical and communication lines within the subject area shall be placed underground.
- G. A Flood Study of the subject area shall be submitted to the Planning Director in conjunction with plans submitted for subdivision or plan approval review, whichever occurs first, for any portion of the 14.8 acre area. Drainage improvements shall be constructed meeting with the approval of the Department of Public Works, prior to the issuance of Final Subdivision or Plan Approval for the subject area.
- H. An archaeological mitigation and interpretation plan shall be prepared and submitted for approval by the Planning Director in consultation with the Department of Land and Natural Resources-Historic Preservation Division and Hawaiian community organizations, prior to submitting plans for subdivision or plan approval review, whichever occurs first. The Plan shall consist of three subplans:
 - (1) an archaeological data recovery plan for the sites to undergo data recovery;
 - (2) a detailed interim protection/preservation plan for the sites to undergo preservation; and

(3) an interpretation plan which shall include buffer zones, signage and long-range preservation concerns which may be submitted at a later date. Approved mitigation measures shall be implemented prior to or in conjunction with any land alterations within the subject area.

- I. 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 Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when the DLNR-HPD finds that sufficient mitigative measures have been taken.
- J. A Solid Waste Management Plan shall be prepared meeting with the approval of the Department of Public Works prior to submitting plans for subdivision or plan approval review, whichever occurs first. The Plan shall include, but not be limited to, the management of construction solid waste as well as operating and domestic solid waste generated by the proposed development within the subject area. Approved recommendations and mitigation measures shall be implemented meeting with the approval of the Department of Public Works.
- K. Access(es) to the subject area shall be constructed meeting with the approval of the Department of Public Works. The following roadway improvements between Haleki'i Street and the 14.8-acre subject area shall be completed in conjunction with the issuance of a certificate of occupancy for any development within the subject area:
 - (1) the channelization and signalization of the project site's Manaloha Highway-Haleki'i Street intersection;

- (2) the extension of Haleki'i Street shall be constructed as an arterial along its general mauka-makai alignment, as shown on Exhibit "B", which phasing of improvements shall be approved by the Department of Public Works. If, before the completion and opening of the entire Mamalahoa Highway Bypass, a portion of said bypass is completed and opened, and said portion provides a connection to Haleki'i Street, a barricade or breakaway gate meeting with the requirements of the Department of Public Works, shall be installed by the applicant as part of the required Haleki'i Street improvements. The purpose of this condition is to prevent the use of Haleki'i Street as a vehicular thoroughfare between the existing Mamalahoa Highway and a portion of the Mamalahoa Highway Bypass until the entire proposed Mamalahoa Highway Bypass between the approximate vicinity of Keauhou and Captain Cook has been completed and opened for general public use;
- (3) the roadway segment from the Haleki'i Street extension to the subject area shall be constructed prior to the certificate of occupancy for any development within the 14.8 acre subject area.

Also, the Mamalahoa Highway Bypass shall be constructed in its entirety between the approximate vicinity of Keauhou and Captain Cook, consisting of two lanes with sufficient right-of-way for a total of four lanes, provided further, that the section of the Mamalahoa Highway Bypass between Keauhou and Haleki'i Street shall be completed and available for public use prior to the issuance of a certificate of occupancy of the proposed development within the subject area.

- L. Infrastructural improvements as required under Conditions C, E, F, G, J, and K shall not prohibit the applicant from participating in a Development Agreement or any other agreement together with the appropriate bond, surety or other security deemed acceptable by the Planning Director, appropriate agencies or the County

Council, whichever is applicable, to ensure the provision of necessary infrastructural improvements to support the proposed development in a timely manner.

- M. The applicant shall establish a program for employee housing which shall be submitted for the review and approval of the Planning Director and Housing Agency together with the submittal of plans for Plan Approval for the proposed lodge. The program shall include provisions for on-site or off-site housing for the employees of the lodge in an amount to be determined by a study of surrounding housing opportunities and employee needs. The program may also include consideration for other alternatives such as rental housing subsidies or housing allowances. The approval of the program shall be secured prior to the issuance of a certificate of occupancy of the lodge within the subject area.

- N. The applicant shall make its fair share contribution to mitigate the potential impacts of the proposed development within the subject area with respect to parks and recreation, fire, 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 units proposed to be developed by the amounts allocated hereinbelow for each such unit, and shall become due and payable prior to final plan approval or final subdivision approval, whichever occurs first, for any portion of the subject area or its increments. If the subject area is developed in two or more increments, the amount of the fair share contribution due and payable prior to final plan approval of each increment shall be a sum calculated in the same manner according to the number of proposed 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 **\$7,965.90 per resort unit**. Based upon the applicant's representation of intent to develop up to 80 units, the indicated

total fair share contribution is **\$637,272.00**. 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 N. The fair share contribution shall be allocated as follows:

1. \$1,942.74 per resort unit for an indicated total of **\$155,419.20** to the County to support park and recreational improvements and facilities;
2. \$87.99 per resort unit or an indicated total of **\$7,039.20** to the County to support fire facilities;
3. \$43.02 per resort unit for an indicated total of **\$3,441.60** to the County to support solid waste facilities;
4. \$5,892.15 per resort unit for an indicated total of **\$471,372.00** 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, 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 K shall be credited against the sum specified in Condition N(4) for road and traffic improvements. For purposes of administering Condition N, 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.

- O. Comply with all applicable laws, rules, regulations and requirements, including those of the Department of Health, Fire Department and the Department of Water Supply.
- P. 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 toward the requirements of the Unified Impact Fees Ordinance.
- Q. An annual progress report shall be submitted to the Planning Director prior to each anniversary date of the approval of this change of zone. The report shall address in detail 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.
- R. An initial extension of time for the performance of conditions within the ordinance, with the exception of Condition B, 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 is 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.

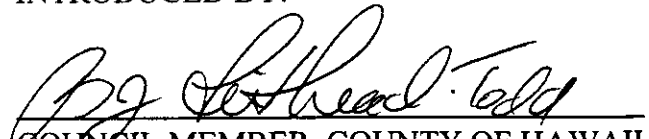
- (3) Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.
- (4) The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

S. Should any of the conditions not be met or substantially complied within a timely fashion, the Director may initiate rezoning of the subject 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

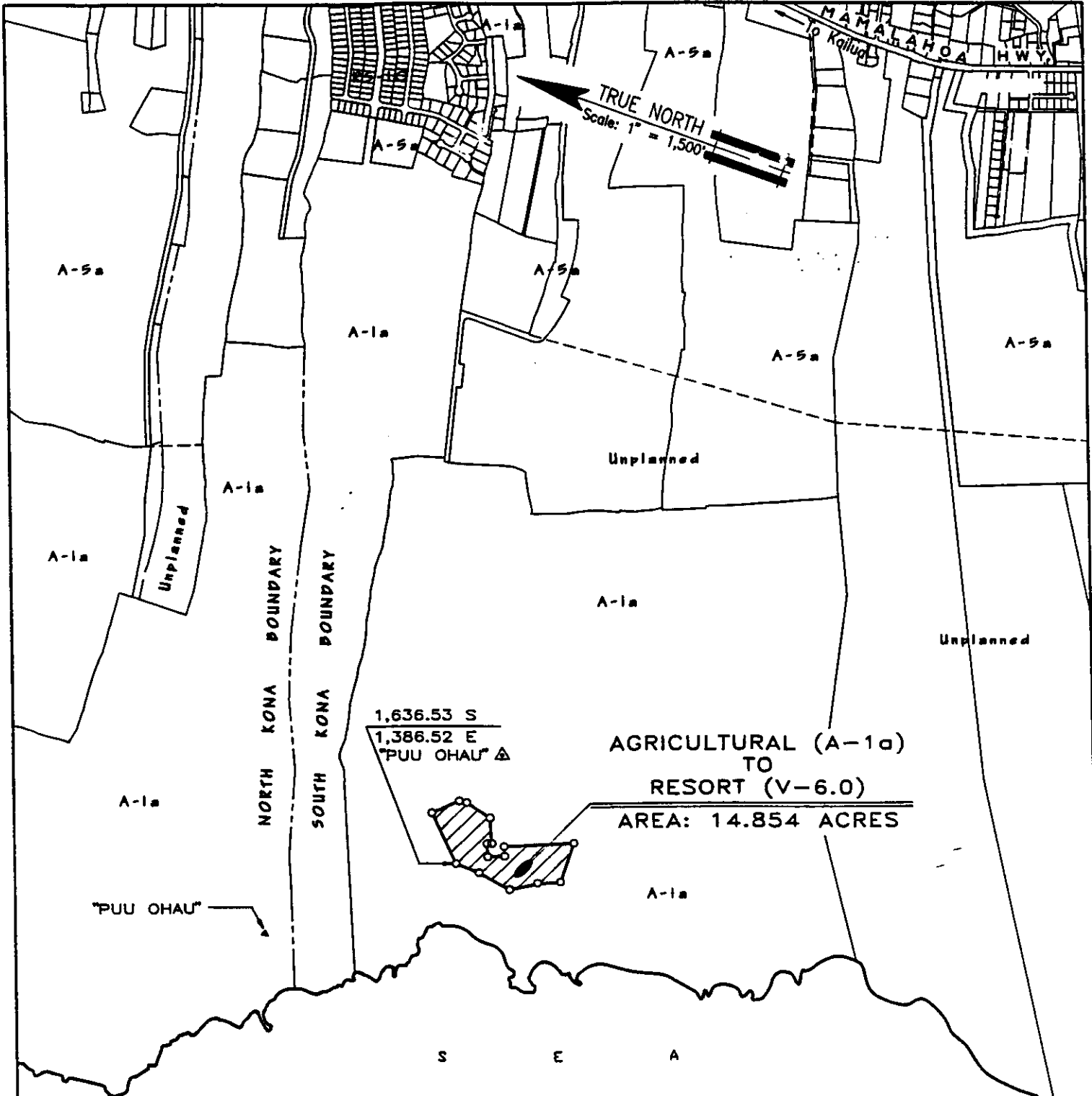
Date of Introduction: February 19, 1997
Date of 1st Reading: February 19, 1997
Date of 2nd Reading: March 7, 1997
Effective Date: March 13, 1997

APPROVED AS TO FORM AND LEGALITY



DEPUTY CORPORATION COUNSEL

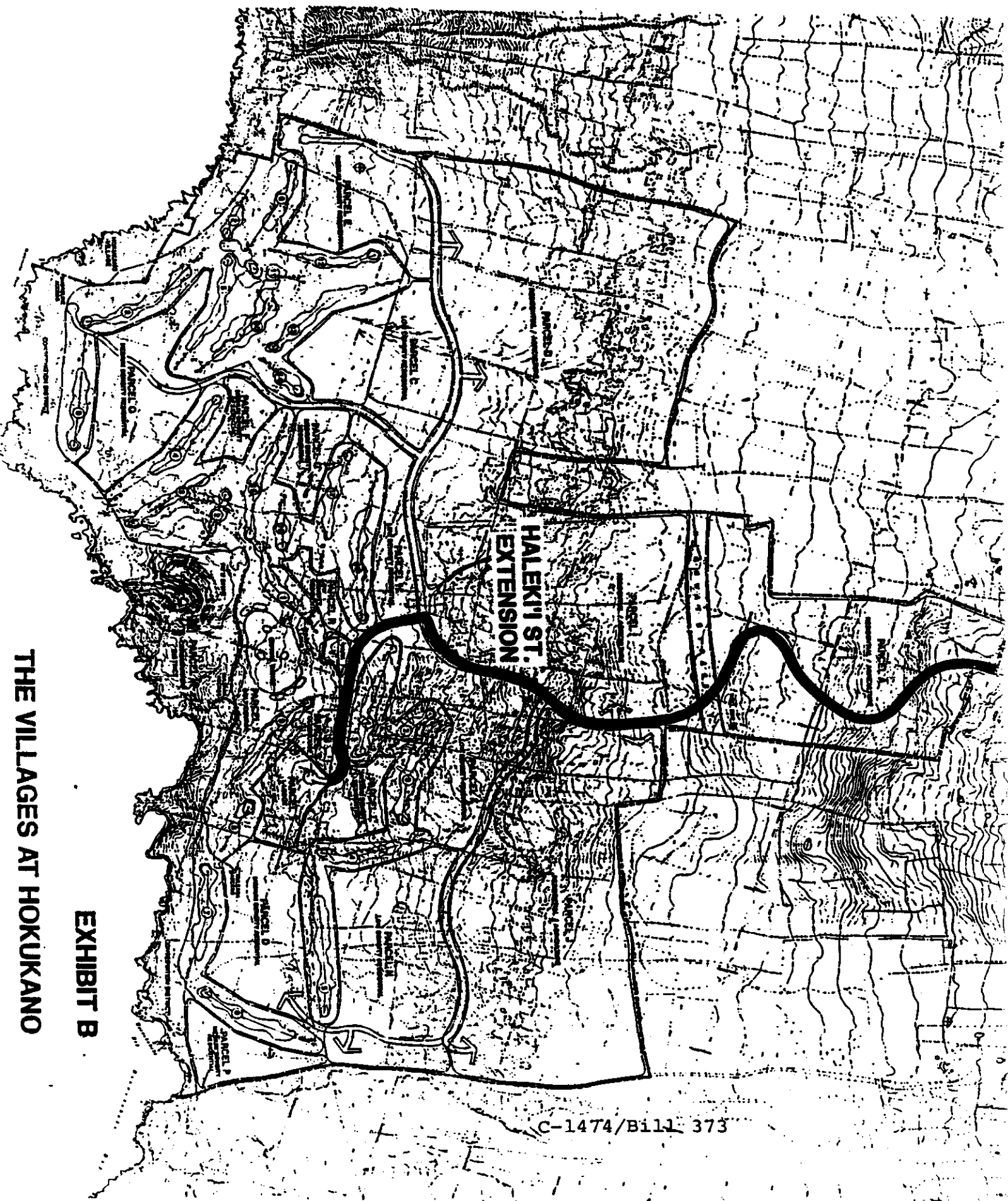
DATED: 3/10/97



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-88 (SOUTH KONA ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-1a) TO RESORT (V-6.0) AT KEEKEE 2ND, ILIKAHI, KANAKAU 1ST AND 2ND AND KALUKALU 1ST, 2ND AND 3RD, SOUTH KONA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT
COUNTY OF HAWAII



THE VILLAGES AT HOKUKANO

EXHIBIT B

C-1474/BILL 373

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

RECEIVED

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(DRAFT 5)

Introduced By: Bobby Jean Liethead-Todd
 Date Introduced: February 19, 1997
 First Reading: February 19, 1997
 Published: February 28, 1997

REMARKS:

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Leithead-Todd	X			
Ray	X			
Reynolds	X			
Santangelo	X			
Smith	X			
Tyler	X			
Yagong	X			
	9	0	0	0

Second Reading: March 7, 1997
 To Mayor: March 7, 1997
 Returned: March 13, 1997
 Effective: March 13, 1997
 Published: March 21, 1997

REMARKS:

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Leithead-Todd	X			
Ray	X			
Reynolds	X			
Santangelo	X			
Smith	X			
Tyler		X		
Yagong	X			
	8	1	0	0

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

APPROVED AS TO
FORM AND LEGALITY:

Fredrick Hann
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 3/10/97

John A. ...
 COUNCIL CHAIRMAN

Donald ...
 COUNTY CLERK

Approved / Disapproved this 13 day
 of March, 19 97.

Steve Yamashiro
 MAYOR, COUNTY OF HAWAII

Bill No.: 373 (Draft 5)
 Reference: C-1474/1996/PC-27
 Ord. No.: 97 36