

ORDINANCE NO. 03 93

AN ORDINANCE AMENDING SECTION 25-8-4 (SOUTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL (RS-15) AND AGRICULTURAL (A-1a) TO VILLAGE COMMERCIAL (CV-10) AT KALUKALU 1ST, SOUTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 8-1-2:PORTION OF 40.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Section 25-8-4, Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kalukalu 1st, South Kona, Hawai'i, shall be Village Commercial (CV-10):

Beginning at the Northwest corner of this parcel of land, being on the East side of Hawaii Belt Road (Mamalahoa Highway), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O HAU" being 650.60 feet South and 11,395.25 feet East and running by azimuths measured clockwise from True South:

- | | | | | | |
|----|------|-----|-----|-------------|--|
| 1. | 262° | 56' | 00" | 541.06 feet | along Lot 1 (TMK: (3) 8-1-02:58) to a point; |
| 2. | 309° | 00' | 52" | 69.87 feet | along the remainder of Lot 1 (Parcel 40) to a point; |
| 3. | 344° | 05' | 00" | 51.14 feet | along TMK: ((3) 8-1-02:67 (County of Hawaii) to a point; |
| 4. | 81° | 16' | 23" | 100.90 feet | along TMK: (3) 8-1-02:38 (Konawaena High School) to a point; |
| 5. | 343° | 15' | 05" | 170.39 feet | along TMK: (3) 8-01-02:38 |

(Konawaena High School) to a point;

6. 73° 11' 01" 104.42 feet along TMK: (3) 8-1-02:39 to a point;

7. 334° 51' 07" 187.01 feet along TMK: (3) 8-1-02:39 to a point;

Thence, along the Northerly side of Konawaena High School Road for the following seven (7) courses:

8. 75° 34' 20" 115.59 feet to a point;

9. 84° 13' 20" 183.28 feet to a point;

10. 88° 07' 55" 36.60 feet to a point;

11. 96° 37' 26" 20.06 feet to a point;

12. 187° 10' 51" 4.19 feet to a point;

13. 95° 36' 37" 63.54 feet to a point;

14. 94° 12' 20" 64.95 feet to a point;

Thence, along the junction of Konawaena High School Road and Mamalahoa Highway, along a curve to the right having a radius of 42.00 feet, the chord azimuth and distance being:

15. 135° 13' 55" 56.25 feet to a point;

Thence, along the Easterly side of Mamalahoa Highway for the following three (3) feet to a point;

16. 178° 15' 57" 73.39 feet to a point;

17. 93° 51' 39" 1.63 feet to a point;

18. 177° 47' 48" 322.39 feet to the point of beginning and containing an area of 5.595 acres.

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

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code, the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
 - (2) Reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to:
 - (A) Protection of the public from the potentially deleterious effects of the proposed use, or
 - (B) Fulfillment of the need for public service demands created by the proposed use.
- A. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. All uses and structures within the project site shall not exceed the maximum daily water usage as determined and established by the Department of Water Supply.
- C. Establishment of the proposed development shall be completed within five (5) years from the effective date of this ordinance. Prior to commencing renovation and/or construction activities, Final Plan Approval for any structure or use within the project site and its related improvements shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-71 (c)(3), 25-2-72, 25-2-74 and 25-4-12 within five (5) years from the effective date of this ordinance. Plans shall identify proposed structures, fire protection measures, access roadway(s) and driveway(s), parking area(s) and landscaping associated with the proposed development. Landscaping shall also be indicated on the plans

for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

- D. Prior to the issuance of Final Plan Approval, the applicant shall obtain a letter from the State Historic Preservation Division (SHPD) confirming that proposed activities within the project site will have "no adverse effect" upon historic properties. If SHPD will not issue a "no adverse effect" letter prior to Final Plan Approval, the applicant shall prepare an archaeological inventory report and mitigation and preservation plan for approval by the Planning Director, in consultation with SHPD.

- E. Should development of the project site ever be altered to not constitute a visitors' center that is substantially similar to representations made within the change of zone application, a revised Traffic Impact Analysis Report (TIAR) for the proposed development shall be prepared and submitted for the review and approval of the Department of Public Works, prior to the submittal of plans for Plan Approval Review. The revised TIAR shall consider the nature and extent of the proposed uses of the property as provided for by the Zoning Code and as determined by the Planning Director. The TIAR shall include recommended improvements to maintain existing levels of service and not worsen the existing traffic conditions. All improvements as established by the approved revised TIAR shall be completed and accepted by the Department of Public Works prior to the issuance of a Certificate of Occupancy for any commercial use on the project site.

- F. Should development of the project site ever be altered to not constitute a visitors' center that is substantially similar to representations made within the change of zone application, including the establishment of additional or new uses and structures, the applicant shall submit plans and water demand calculations to the

Department of Water Supply for review and its approval, prior to the submittal of plans for Plan Approval Review.

- G. A flood study of the project site shall be prepared and submitted for review and approval to the Department of Public Works prior to submittal of plans for Plan Approval review. If required by the Department of Public Works, the applicant shall submit to the Federal Emergency Management Agency (FEMA) a Letter of Map Change prior to the issuance of a Certificate of Occupancy for any portion of the proposed commercial development. The applicant shall comply with applicable flood zone regulations for structures in flood zones.
- H. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study of the subject property shall be prepared and submitted for review and approval to the Department of Public Works prior to the submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed or bonded meeting with the approval of the Department of Public Works prior to the issuance of Final Plan Approval.
- I. Driveway connections from the project site to the Mamalahoa Highway and Konawaena School Road shall meet with the approval of the Department of Public Works. Access to or from the Mamalahoa Highway shall be limited to right-turn movements only unless modified with the approval of the Department of Public Works. The applicant shall also provide any traffic improvements that may be deemed necessary by the Department of Public Works after review of a revised Traffic Impact Analysis Report (TIAR) that is required under Condition E, prior to the issuance of a Certificate of Occupancy for any commercial use on the project site.

- J. The project site's frontage with Mamalahoa Highway and Konawaena School Road shall be improved with pavement widening and transitions with curb, gutter, sidewalk, drainage improvements and any relocation of utilities in a manner meeting with the approval of the Department of Public Works. These roadway improvements shall be completed pursuant to a schedule meeting with the approval of the Department of Public Works and the Planning Department.
- K. Should subdivision of the 5.595-acre project site be contemplated, direct access from the proposed individual lots to the Mamalahoa Highway shall be prohibited.
- L. The applicant shall submit a Solid Waste Management Plan for the development to the Department of Environmental Management for its review and approval. A copy of the approved Plan shall be submitted to the Planning Department prior to the issuance of Final Plan Approval.
- M. Residential uses established within the 5.595-acre project site shall not exceed a maximum permitted density of 16 residential units.
- N. Should any remains of historic sites such as rock walls, terraces, platforms, marine shell concentrations or human burials 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 it finds that sufficient mitigative measures have been taken.
- O. Comply with all applicable laws, rules, regulations and requirements of the affected agencies for approval of the proposed development within the subject property.

- P. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- Q. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the ordinance. 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.
- R. 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 applicant, its 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).

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.

S. Should any of the conditions not be met or substantially complied with in 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.

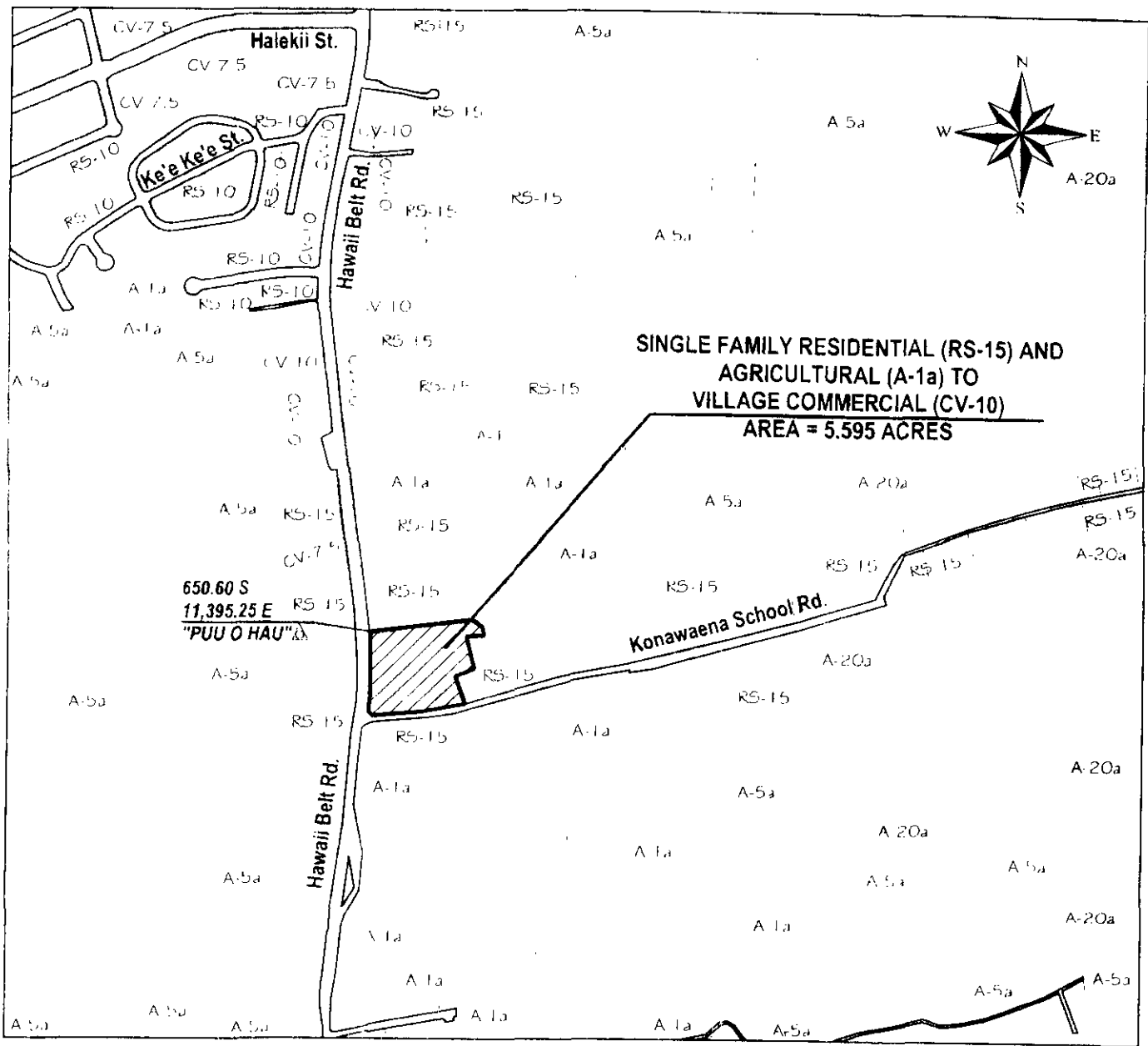
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: May 21, 2003
Date of 1st Reading: May 21, 2003
Date of 2nd Reading: June 4, 2003
Effective Date: June 18, 2003

REFERENCE: Comm. 210.5



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-4 (SOUTH KONA ZONE MAP)
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE,
 BY CHANGING THE DISTRICT CLASSIFICATION
 FROM SINGLE FAMILY RESIDENTIAL (RS-15) AND AGRICULTURAL (A-1a)
 TO VILLAGE COMMERCIAL (CV-10)
 AT KALUKALU 1st, SOUTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

(DRAFT 3)

Introduced By: Bobby Jean Leithead-Todd
 Date Introduced: May 21, 2003
 First Reading: May 21, 2003
 Published: N/A

REMARKS:

RECEIVED
 '03 JUN 19 PM 2 16
 COUNTY CLERK
 COUNTY OF HAWAII

Second Reading: June 4, 2003
 To Mayor: June 12, 2003
 Returned: June 19, 2003
 Effective: June 18, 2003
 Published: July 8, 2003

REMARKS:

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson		X		
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler		X		
	6	2	1	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson		X		
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler		X		
	6	2	1	0

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

APPROVED AS TO
FORM AND LEGALITY:

Patricia Atala
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 6/16/03



COUNCIL CHAIRMAN



COUNTY CLERK

Bill No.: 93 (Draft 3)

Reference: C-210.5/PC-37

Ord No.: 03 93

Approved/Disapproved this 18th day
 of June, 2003

Harry Li
 MAYOR, COUNTY OF HAWAII