

ORDINANCE NO. **03 169**

AN ORDINANCE AMENDING ORDINANCE NO. 97-49, WHICH RECLASSIFIED LANDS FROM OPEN (O) TO RESORT – HOTEL (V-2a) AT ANAEHOOMALU, SOUTH KOHALA, HAWAI'I, COVERED BY TAX MAP KEY 6-9-7:15.

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

SECTION 1. Ordinance No. 97-49 is amended as follows:

"SECTION 1. Section [25-95G] 25-8-13, Article [3] 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 Anaehoomalu, South Kohala, Hawai'i, shall be Resort – Hotel (V-2a):

Beginning at a spike (found) at the Northeasterly corner of this parcel of land, being also the Northwesterly corner of Lot 3 of Waikoloa Beach Resort, Phase I (Amended) (File Plan 1562) and being a point on the Southerly side of an existing 60-Ft. Wide Road right-of-way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 4,081.71 feet North and 37,137.53 feet West and running by azimuths measured clockwise from True South:

- 1. 31° 19' 40" 610.40 feet along Lot 3 of Waikoloa Beach Resort, Phase I (Amended) (File Plan 1562) and along the remainder of Royal Patent 7523, Land Commission Award 4452, Apana 4 to H. Kalama to a point;
- 2. 121° 19' 40" 871.11 feet along Grant 13,586 to E. J. White to a ½ inch pipe (set);

Thence, for the next nine (9) courses following along the upper reaches of the wash of waves as evidenced by the debris line or the edge of vegetation as located on

November 13, 1995 and certified by the Department of Land and Natural Resources on January 29, 1996, the direct azimuths and distances being;

3.	245°	27'		104.47	feet to a spike (set);
4.	258°	39'		73.87	feet to a P.K. nail (set);
5.	236°	58'		65.32	feet to ½ inch pipe (set);
6.	222°	06'		79.60	feet to ½ inch pipe (set);
7.	197°	55'		50.90	feet to a ½ inch pipe (set);
8.	221°	06'		16.43	feet to a ½ inch pipe (set);
9.	239°	03'		84.54	feet to a spike (set);
10.	239°	00'		17.88	feet to a spike (set);
11.	223°	07'		15.19	feet to a ½ inch pipe (set);
12.	272°	26'	30"	342.63	feet along Lot 11 of Waikoloa Beach Resort, Phase I (Amended) (File Plan 1562) and along the remainder of Royal Patent 7523, Land Commission Award 4452, Apana 4 to H. Kalama to a P.K. nail (found);
13.	301°	19'	40"	373.34	feet along the Southerly side of a 60-Ft. Wide Road right-of-way to the point of beginning and containing an area of 9.643 Acres, more or less.

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:] 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. Final Subdivision and/or Plan Approval for the subject property shall be secured within five (5) years from the effective date of this [change of zone]amendment.
- C. Access(es) to the subject property shall be constructed meeting with the approval of the Department of Public Works.
- D. A Solid Waste Management Plan for the proposed development within the subject property 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.
- E. A Flood Study of the subject property shall be submitted to the Planning Director in conjunction with plans submitted for subdivision or plan approval review, for any portion of the subject property, whichever occurs first. Drainage improvements shall be constructed meeting with the approval of the Department

of Public Works, prior to the issuance of Final Subdivision Approval or certificate of occupancy for the subject property, whichever occurs first.

- F. A wastewater disposal system shall be constructed meeting with the approval of the State Department of Health and/or the Department of Public Works, whichever is applicable.
- G. An archaeological preservation plan shall be prepared and submitted for review and approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD). Approved mitigation measures shall be implemented prior to or in conjunction with any land alterations within the subject property.
- H. An anchialine pond research report and preservation plan shall be prepared and submitted for approval with the DLNR-HPD. Approved mitigation measures shall be implemented prior to or in conjunction with any land alterations within the subject property.
- 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 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. 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 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 4 units, the indicated total fair share contribution is **\$31,863.60**. 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 J. The fair share contribution shall be allocated as follows:

1. \$1,942.74 per resort unit for an indicated total of **\$7,770.96** to the County to support park and recreational improvements and facilities;
2. \$87.99 per resort unit or an indicated total of **\$351.96** to the County to support fire facilities;
3. \$43.02 per resort unit for an indicated total of **\$172.08** to the County to support solid waste facilities;
4. \$5,892.25 per resort unit for an indicated total of **\$23,568.60** 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] County Council. For purposes of administering Condition J, 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] recommendation of the Planning Director, upon consultation with appropriate agencies and approval of the County Council.

- K. 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 Final Subdivision or Plan Approval for the proposed development, whichever occurs first. The program shall include provisions for on-site or off-site housing for the employees of the proposed development 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 proposed development within the subject property.

- L. No seawall that artificially fixes or hardens the shoreline shall be constructed within the 40-foot shoreline setback.

[L.] M. Comply with all applicable laws, rules, regulations and requirements, including those of the Department of Health, Fire Department and the Department of Water Supply.

[M.] N. 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.

[N.] O. [An 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).]

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.

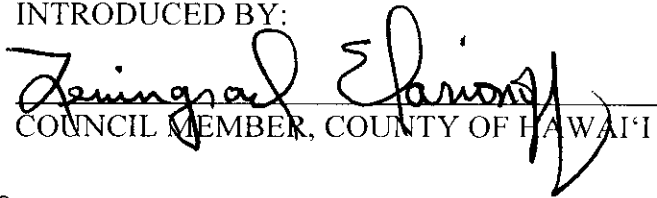
[O.] P. Should any of the conditions not be met or substantially complied within a timely fashion, the Director may initiate rezoning of the subject property to its original or more appropriate designation."

SECTION 2. Material to be deleted is bracketed and material to be added is underscored.

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.

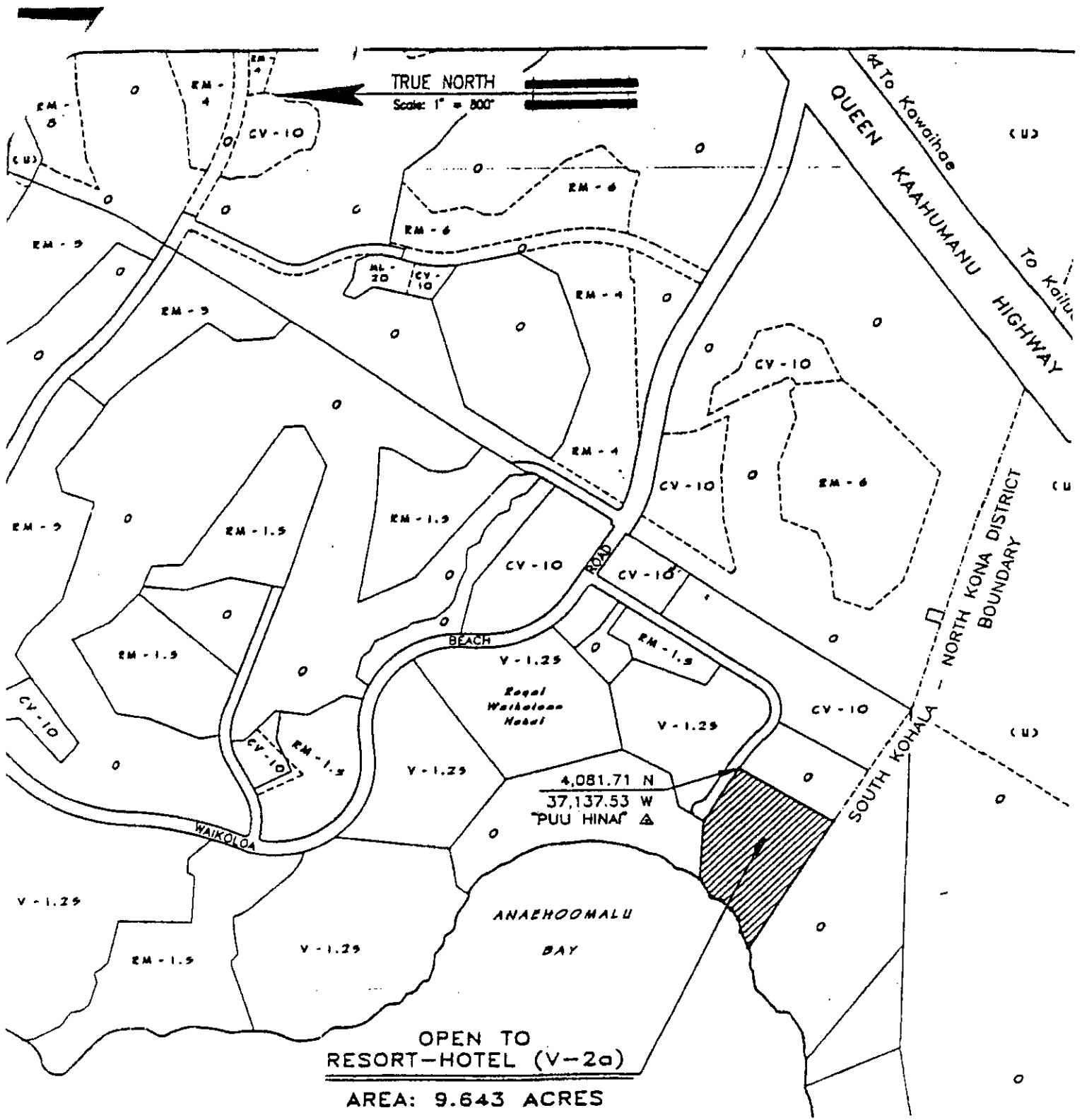
SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Kona, Hawai'i
Date of Introduction: November 19, 2003
Date of 1st Reading: November 19, 2003
Date of 2nd Reading: December 3, 2003
Effective Date: December 19, 2003

REFERENCE: Comm. 391.2



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-95G (PUAKO - ANAEHOOMALU ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM OPEN TO RESORT - HOTEL (V-2a) AT ANAEHOOMALU, SOUTH KOHALA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT
COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK

County of Hawaii

Kona, Hawaii

(DRAFT 3)

Introduced By: Leningrad Elarionoff
 Date Introduced: November 19, 2003
 First Reading: November 19, 2003
 Published: November 30, 2003

REMARKS: _____

Second Reading: December 3, 2003
 To Mayor: December 9, 2003
 Returned: December 19, 2003
 Effective: December 19, 2003
 Published: January 4, 2004

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Reynolds	X			
Safarik	X			
Tulang	X			
Tyler	X			
	8	0	1	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Reynolds	X			
Safarik	X			
Tulang	X			
Tyler	X			
	9	0	0	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:

[Signature]
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 12/16/03

[Signature]
 COUNCIL CHAIRMAN
[Signature]
 COUNTY CLERK

Bill No.: 173 (Draft 3)
 Reference: C-391.2/PC-64
 Ord. No.: **03 169**

Approved/Disapproved this 19th day
 of December, 2003

[Signature]
 MAYOR, COUNTY OF HAWAII