

BILL NO. 367
(Draft 5)

ORDINANCE NO. 05 74

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-1a) AND RESORT-HOTEL (V-1.25) TO MULTIPLE FAMILY RESIDENTIAL (RM-2.5) AT AUHAUKEAE 1ST, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-5-9:67 AND PORTION OF 54.

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

SECTION 1. Section 25-8-3, 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 areas situated at Auhauekeae 1st, North Kona, Hawai'i shall be Multiple Family Residential (RM-2.5):

PARCEL A:

Beginning at the northeast corner of this parcel of land, being also the southeast corner of Lot B and in the middle of the Great Wall of Kuakini, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHELO", being 5,800.51 feet North and 298.26 feet West, thence running by azimuths measured clockwise from true South:

Along the remainder of R.P. 7580, I.C. Aw. 11,216, Ap. 37 to M. Kekauonohi and along the middle of the Great Wall of Kuakini for the next eight (8) courses, the direct azimuths and distances being:

- 1. 342° 04' 35" 68.96 feet;
- 2. 352° 45' 34.35 feet;
- 3. 344° 54' 21.23 feet;
- 4. 350° 34' 20.64 feet;
- 5. 344° 15' 31.24 feet;

- | | | | | | |
|-----|------|-----|-----|-------------|---|
| 6. | 347° | 59' | | 81.25 feet; | |
| 7. | 355° | 56' | | 32.99 feet; | |
| 8. | 352° | 13' | | 44.81 feet; | |
| 9. | 82° | 07' | 30" | 491.00 feet | along Lot 3-A, Land Grant Application 1874 (Map 5); |
| 10. | 168° | 35' | | 180.00 feet | along the remainder of R.P. 7580, L.C. Aw. 11,216, Ap. 37 to M. Kekauohoni (remainder of Lot 1); |
| 11. | 87° | 59' | | 47.40 feet | along same; |
| 12. | 164° | 20' | | 138.25 feet | along same; |
| 13. | 260° | 50' | 40" | 545.38 feet | along Grant 12,013 to William J. Hooper, Jr. (Lot B) to the point of beginning and containing an area of 169,792 Square Feet. |

PARCEL B:

Beginning at the southeast corner of this parcel of land, being also the northeast corner of Lot 1 and in the middle of the Great Wall of Kuakini, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHELO", being 5,800.51 feet North and 298.26 feet West, thence running by azimuths measured clockwise from true South:

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|----|------|-----|-----|-------------|---|
| 1. | 80° | 50' | 40" | 612.61 feet | along R. P. 7580, L.C. Aw. 11,216, Ap. 37 to M. Kekauonohi (Lot 1); |
| 2. | 159° | 09' | 43" | 252.72 feet | along the remainder of Grant 12,013 to William J. Hooper, Jr. (Lot A); |
| 3. | 249° | 09' | 40" | 50.24 feet | along L. C. Aw. 8524-B, Part 3 to Peke (Lot 4); |
| 4. | 314° | 31' | 40" | 46.00 feet | along Hualalai Road; |
| 5. | 303° | 01' | 40" | 50.00 feet | along same; |
| 6. | 282° | 31' | 40" | 50.00 feet | along same; |
| 7. | 270° | 01' | 40" | 200.00 feet | along same; |
| 8. | 252° | 02' | 40" | 270.25 feet | along same; |
| 9. | 339° | 39' | 40" | 149.55 feet | along Grant 1752 to Kawelo and along the middle of the Great Wall of Kuakini; |

10. 332° 34' 40" 32.92 feet along same to the point of beginning and containing an area of 103,751 Square Feet.

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, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this ordinance.
- C. Construction of the proposed development shall be completed within five (5) years from the effective date this ordinance. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls 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. The applicant shall realign and provide full improvements to the entire frontage along Hualalai Road consisting of, but not limited to, right-of-way and pavement widening with

concrete curb, gutter and sidewalk, drainage improvements, and any relocation of utilities meeting with the approval of the Department of Public Works. Pavement transitions, streetlights, signs and markings, drainage improvements, and relocation of utilities may be required. The applicant shall construct and dedicate to the County upon request, the widened street with improvements, at no cost to the County. An approach for the commercial zoned property fronting the opposite side of Hualalai Road (TMK: 7-5-10:13) is required under Ordinance 95 118, to include turning lanes on Hualalai Road. The widened area to be dedicated to the County shall, if required by DPW, allow for realignment and improvements required by Ordinance 95 118 or successor ordinances. The required widening area shall not exceed the equivalent of a five foot width along the entire frontage, which is approximately one-half the difference between the existing right-of way width and 60 feet.

- E. As represented by the applicant, a non-gated access to Hualalai Road shall be limited to one approach and may include an additional access which shall be barricaded and used for emergency purposes only. The approaches shall conform to Chapter 22, Streets and Sidewalks, of the Hawai'i County Code. A licensed civil engineer shall evaluate the proposed active approach to the subject property for safe ingress and egress, sight distance and conflicts with the proposed turn lane and entry in TMK: 7-5-10:13. The evaluation shall be submitted for approval by the DPW prior to plan approval. If recommended, the applicant shall provide a left storage lane on Hualalai Road to the subject property prior to the issuance of a certificate of occupancy. All sight distances to the approach shall meet with the requirements of the Hawai'i Statewide Uniform Design Manual or AASHTO.
- F. Any emergency vehicular security gate shall be located in a location approved by the Department of Public Works.
- G. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and submitted to the Department of Public Works prior to issuance of any construction permit. Recommended drainage improvements shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a certificate of occupancy.

- H. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
- I. The applicant shall connect to the County sewer system according to the requirements of the Department of Environmental Management.
- J. An Archaeological Preservation and Burial Treatment Plan shall be submitted for the review and approval of the Planning Director, in consultation with the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD). The Preservation Plan shall incorporate appropriate mitigation measures resulting from the impact of any fence and/or wall constructed along the boundaries of the subject site subject to the archaeological and cultural features of the adjoining properties identified by TMK: 7-5-9:55 and portion of 54. Proposed mitigation treatment for the burial sites within the subject property shall be approved by the SHPD’s Hawai‘i Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Archaeological Preservation and Burial Treatment Plan shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval review or prior to the issuance of any land alteration permits, whichever occurs first. Appropriate interim preservation buffers and measures acceptable to the Planning Director shall be installed between any historic sites in the zoned areas before any land disturbance occurs on the property. A separate Preservation Plan for that portion of TMK: 7-5-9:54 that is zoned A-1a shall be submitted to SHPD prior to any mechanical disturbance or issuance of any land disturbance permit of that area.
- K. Prior to submittal of plans for a building permit or within 6 months of the effective date of this ordinance, whichever is sooner, the applicant or its successors and assigns, shall submit a proposed covenant to be recorded with the State of Hawai‘i Bureau of Conveyances to the Planning Director for review and approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances. Said restrictive covenant, recorded against TMK: 7-5-09: 54 that is zoned A-1a, shall acknowledge that the applicant or its successors or assigns has consented to a County-initiated rezoning of the A-1a zoned area into the Open district and the prohibition of any development or improvement of that area in such a way as to interfere with or negatively affect the archaeological and historic features of such area, as determined by the State

Historic Preservation Office. Furthermore, no mechanical disturbance or land disturbance permit for the parcel shall occur or be issued until the covenant has been duly recorded.

- L. The applicant shall identify an entity that would be responsible for the management and care of the archaeological/cultural features on that portion of TMK: 7-5-09:54 that is not covered by this ordinance. Prior to its designation, the applicant shall solicit the input of the native Hawaiian community and the County Council. Within 60 days of the identification of this entity, this area, with the concurrence of the County Council, shall be conveyed via lease or fee to the identified entity for \$1.00.
- M. The applicant shall prepare and submit a landscaping plan for the subject site in conjunction with the Plan Approval process. Said plan shall reflect, where feasible, the use of native and water-conserving plants to comply with the guidelines outlined in Planning Department Rule No. 17 relating to landscaping.
- 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 – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
- O. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code relating to Affordable Housing Policy. This requirement shall apply to, as represented by the applicant, 40% of all residential units in excess of the entitled eighty (80) units on TMK: 7-5-9:67.
- P. The project shall be developed in a minimum of two phases. The first phase shall consist of no more than forty-five (45) units, which shall include all of the required affordable housing units approved in accordance with Condition O above. Final occupancy permit for the first phase shall be issued no earlier than June 30, 2006, which is the scheduled completion of the

on-going Kuakini Highway improvements. Occupancy permit for the remaining units shall be issued only upon completion of the aforementioned Highway improvements.

- Q. As represented by the applicant, the applicant shall include appropriate restrictive covenants in the deeds of all proposed units within the subject property so as to minimize enforcement by public agencies of any violation of any applicable State and County ordinances or rules and regulations relating to land use and noise.
- R. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- S. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject project with respect to parks and recreation, fire, police and 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 additional multiple family residential units proposed to be developed by the amounts allocated herein below for each such unit, and shall become, with the exception of the parks and recreation fees, due and payable prior to the issuance of the Certificate of Occupancy for any unit on the subject property. The parks and recreation fees shall be due and payable prior to the issuance of a building permit. The fair share contribution, in a form of cash, land, facilities or any combination thereof, acceptable to the director in consultation with the affected agencies, shall be determined by the County Council. The fair share contribution shall have a maximum combined value of \$6,206.06 per multiple-family residential unit. Based upon the applicant's representation of intent to develop a total of twelve (12) additional multiple-family residential units, the indicated total of fair share contribution is \$74,472.72 for the additional multiple-family residential units. However, the total amount shall be increased or reduced in proportion with the actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution shall be allocated as follows:
1. **\$3,061.27** per multiple family residential unit for an indicated total of **\$36,735.24** to the County or, if the County Council so agrees, directly to the entity so designated under Condition L to further the objectives of Condition L and to support park, cultural, and recreational improvements and facilities;

2. **\$96.75** per multiple family residential for an indicated total of **\$1,161.00** to the County to support police facilities;
3. **\$297.62** per multiple family residential unit for an indicated total of **\$3,571.44** to the County to support fire facilities;
4. **\$132.65** per multiple family residential unit for an indicated total of **\$1,591.80** to the County to support solid waste facilities;
5. **\$2,617.77** per multiple family residential unit for an indicated total of **\$31,413.24** 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 such facilities related to park, fire, police and solid waste disposal facilities subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the Hawai'i County Council.

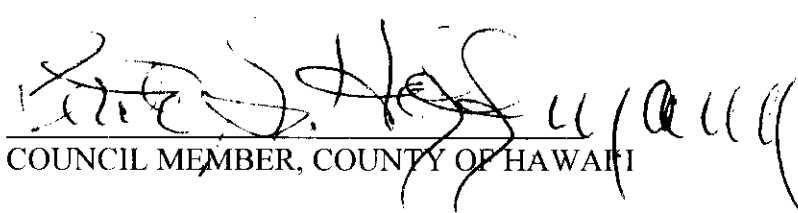
- T. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- U. An initial extension of time for the performance 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, 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).
- V. 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:

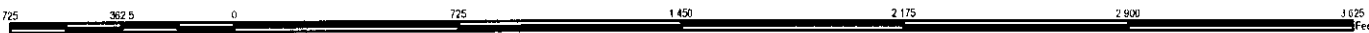
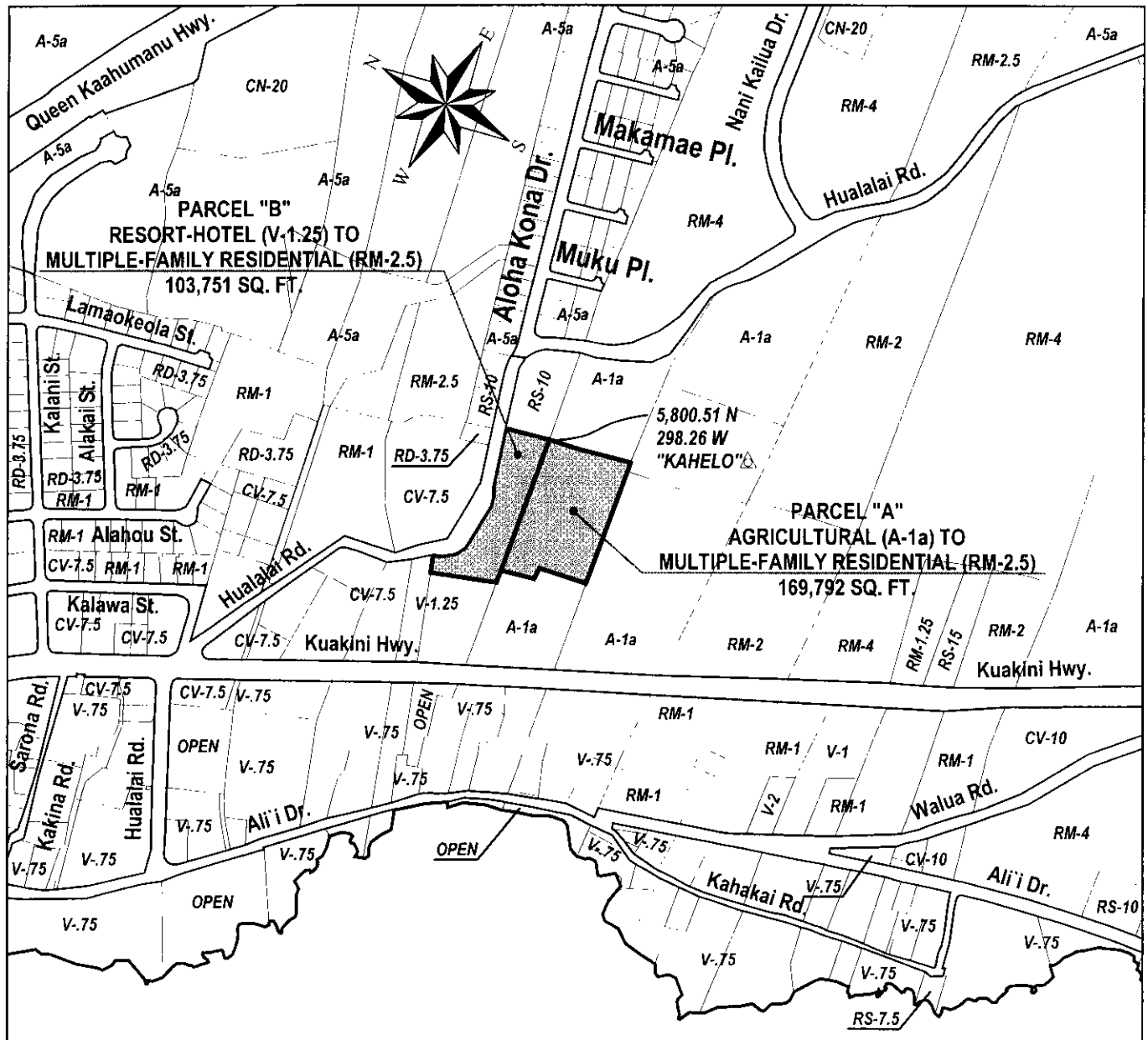

COUNCIL MEMBER, COUNTY OF HAWAII

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i
Date of Introduction: April 20, 2005
Date of 1st Reading: April 20, 2005
Date of 2nd Reading: May 4, 2005
Effective Date: May 18, 2005

REFERENCE: Comm. 100.4



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP)
 AND 25-8-5 (KAILUA URBAN ZONE MAP) ARTICLE 8,
 CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE,
 BY CHANGING THE DISTRICT CLASSIFICATION
 FROM RESORT-HOTEL (V-1.25) AND AGRICULTURAL (A-1a)
 TO MULTIPLE-FAMILY RESIDENTIAL (RM-2.5)
 AT AUHAUKEAE 1st, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK
County of Hawai'i
Hilo, Hawai'i

Introduced By: Pete Hoffmann/K. Angel Pilago
Date Introduced: April 20, 2005
First Reading: April 20, 2005
Published: May 1, 2005

REMARKS: _____
December 21, 2004 - Deferred

Second Reading: May 4, 2005
To Mayor: May 11, 2005
Returned: May 18, 2005
Effective: May 18, 2005
Published: May 24, 2005

REMARKS: _____

(Draft 4)

| ROLL CALL VOTE | | | | |
|----------------|------|------|-----|----|
| | AYES | NOES | ABS | EX |
| Arakaki | X | | | |
| Higa | X | | | |
| Hoffmann | X | | | |
| Holschuh | X | | | |
| Ikeda | X | | | |
| Isbell | X | | | |
| Jacobson | X | | | |
| Pilago | X | | | |
| Safarik | | | X | |
| | 8 | 0 | 1 | 0 |

(Draft 5)

| ROLL CALL VOTE | | | | |
|----------------|------|------|-----|----|
| | AYES | NOES | ABS | EX |
| Arakaki | X | | | |
| Higa | X | | | |
| Hoffmann | X | | | |
| Holschuh | X | | | |
| Ikeda | X | | | |
| Isbell | X | | | |
| Jacobson | X | | | |
| Pilago | X | | | |
| Safarik | 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:

Pepi L. Hood
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date May 17, 2005

Approved/Disapproved this 18th day

of May, 2005
Harry L. ...
MAYOR, COUNTY OF HAWAII

Angela ...
COUNCIL CHAIRMAN

Constance K. ...
COUNTY CLERK

Bill No.: 367 (Draft 5)
Reference: C-100.4/PC-124
Ord No.: 05 74