ORDINANCE NO. ~~66~~ **44**BILL NO. 123  
(Draft 2)

AN ORDINANCE AMENDING SECTION 25-8-5 (KAILUA URBAN ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM MULTIPLE FAMILY RESIDENTIAL (RM-1) TO RESORT-HOTEL (V-75) AT PUAA 1<sup>ST</sup>, NORTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-5-9:23.

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

SECTION 1. Section 25-8-5, Article 8, 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 area situated at Puaa 1<sup>st</sup>, North Kona, Hawaii shall be Resort-Hotel (V-75):

Beginning at a found pipe in concrete on the Westerly edge of a stonewall on the Easterly side of Alii Drive, being also the Northwest corner of Lot 3-A and Road Easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHELO" being 4,615.28 feet North and 1,369.05 feet West and running by azimuths measured clockwise from True South:

- |    |              |             |   |
|----|--------------|-------------|---|
| 1. | 160° 21' 00" | 317.75 feet | along the Easterly side of Alii Drive to found pipe in concrete;  |
| 2. | 263° 03' 00" | 182.81 feet | along Lot 3 to a found pipe in concrete;  |
| 3. | 347° 09' 00" | 315.34 feet | along Lot 3-A to a found pipe in concrete;  |
| 4. | 84° 30' 00"  | 145.41 feet | along Lot 3-A and a 12-foot wide road easement to the point of beginning and containing an area of 1.172 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 applicants, its 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 days from the effective date of this ordinance. Further, for the additional units of water, the applicant shall construct the necessary improvements as required by the Department of Water Supply prior to the issuance of a Certificate of Occupancy.
- 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), Hawaii 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 construct that portion of the proposed County road connecting Alii Drive with Kuakini Highway ("Village Bypass") that extends along the southern portion of the property, in accordance with plans approved by the Department of Public Works. The applicant shall complete the site preparation and grading for the portion of the Village Bypass which runs through the property in conjunction with the site preparation work for the development, and shall complete the paving and striping in conjunction with the pavement of the parking for the development. A Certificate of Occupancy for the development shall not be issued until completion of construction of the portion of the Village Bypass which runs through the property. If required by the Department of Public Works, the completed roadway shall be dedicated to the County at no cost to the County.
- E. The vehicular access to Alii Drive shall be limited to one approach. Five (5) feet of additional right-of-way width (exclusive of the driveway approach) along the frontage of Alii Drive in conformance with collector street standards shall be dedicated at no cost to the County.
- F. The driveway connection to Alii Drive shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
- G. The applicant shall improve, at no cost to the County, the property frontage along Alii drive consisting of, but not limited to, concrete curb, gutter and sidewalk, drainage improvements, street lights, signs, markings and any relocation of utilities, meeting with the approval of the Department of Public Works. Install street lights, signs and markings

meeting with the approval of the Department of Public Works, Traffic Division.

- H. All traffic control devices requested in the future for the proposed development, shall be designed and installed by the applicant at no cost to the County. The devices include, but are not limited to, crosswalks and other lane and pavement marking adjustments, warning and regulatory signs, ADA compliance items, flashing lights, street lights and traffic signals.
- I. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to issuance of a construction permit. The recommended drainage improvements shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
- J. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- K. Sewer lines shall be installed within the development to connect with the County's sewer system, meeting with the approval of the Department of Environmental Management, and prior to the issuance of a Certificate of Occupancy.
- L. 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.
- M. 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 Resource – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation

measures have been taken.

- N. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. The fair share contribution shall be initially based on the representations contained within the change of zone application and may be increased or reduced proportionally if the unit counts are adjusted. The fair share contribution shall become due and payable prior to receipt of Final Plan Approval or within five (5) years from the effective date of this change of zone ordinance, whichever occurs first. The fair share contribution for each lot shall be based on a maximum density for each lot as determined by the zoning resulting from this change of zone. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of **\$6,411.25** per multiple-family residential unit (**\$9,991.20** per single-family residential unit). Based upon the applicant's representation of intent to develop a total of nineteen (19) multiple-family residential units (calculated as a difference between the current 67-unit request and 48 units approved under SMA Use Permit No. 276), the indicated total of fair share contribution is **\$121,813.75** for the 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.

- **\$3,162.49** per multiple-family residential unit (**\$4,817.93** per single-family residential unit) to the County to support park and recreational improvements and facilities;

- **\$99.95** per multiple-family residential unit (**\$232.42** per single-family residential unit) to the County to support police facilities;
- **\$307.46** per multiple-family residential unit (**\$459.06** per single-family residential unit) to the County to support fire facilities;
- **\$137.04** per multiple-family residential unit (**\$200.98** per single-family residential unit) to support solid waste facilities; and
- **\$2,704.31** per multiple-family residential unit (**\$4,280.82** per single-family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicant may contribute land and/or construct 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 review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council. The value of the road reserve required by Condition D shall be credited against the fair share contribution for roads.

- O. 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.
- P. 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, Hawaii County Code relating to Affordable Housing Policy. This requirement shall be approved by the County Housing Agency prior to receipt of Final Plan Approval. The

affordable housing requirement shall apply to units in excess of the 48 allowed under current zoning.

- Q. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- R. 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.
- S. 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 applicants, 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).

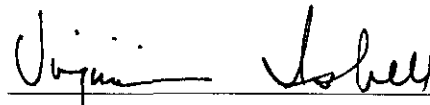
5. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the County Council for appropriate action.

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the 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:



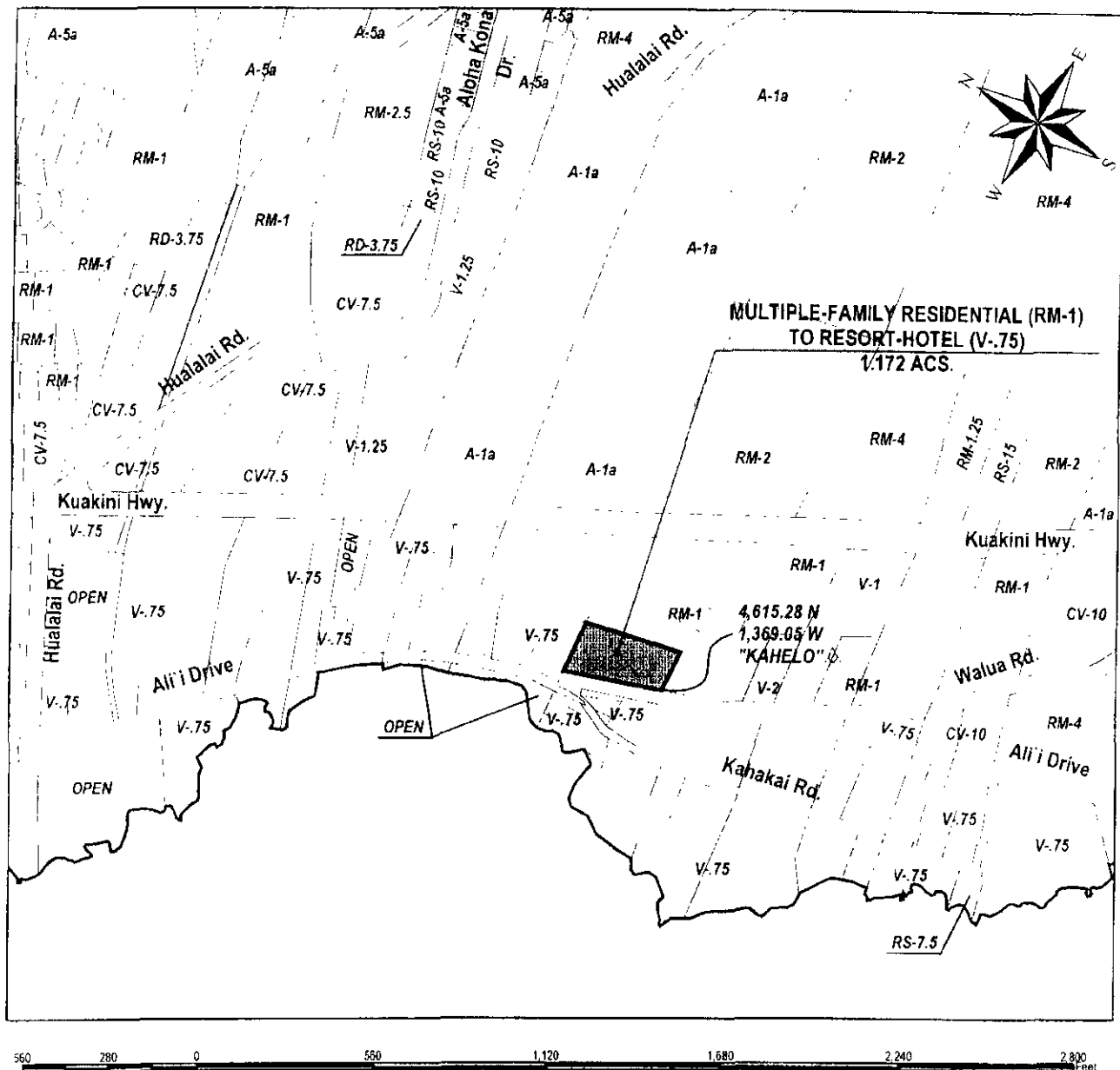
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: March 1, 2006  
Date of 1st Reading: March 1, 2006  
Date of 2nd Reading: March 22, 2006  
Effective Date: April 12, 2006

REFERENCE: Comm. 362.41





# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-5 (KAILUA URBAN ZONE MAP)  
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE,  
 BY CHANGING THE DISTRICT CLASSIFICATION  
 FROM MULTIPLE-FAMILY RESIDENTIAL (RM-1)  
 TO RESORT-HOTEL (V-75)  
 AT PUA 1st, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT  
 COUNTY OF HAWAII

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

Introduced By: Virginia Isbell  
Date Introduced: March 1, 2006  
First Reading: March 1, 2006  
Published: March 12, 2006

REMARKS: \_\_\_\_\_  
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Second Reading: March 22, 2006  
To Mayor: April 6, 2006  
Returned: April 12, 2006  
Effective: April 12, 2006  
Published: April 21, 2006

REMARKS: \_\_\_\_\_  
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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		
	5	4	0	0

(Draft 2)

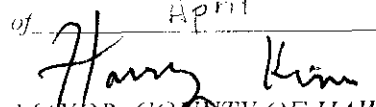
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann		X		
Holschuh	X			
Ikeda	X			
Isbell	X			
Jacobson		X		
Pilago		X		
Safarik		X		
	5	4	0	0

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

APPROVED AS TO  
FORM AND LEGALITY:

  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date April 12, 2006

Approved/Disapproved this 12<sup>th</sup> day  
of April, 2006  
  
MAYOR, COUNTY OF HAWAII

  
COUNCIL CHAIRMAN

  
COUNTY CLERK

Bill No.: 123 (Draft 2)  
Reference: C-362.41/PC-54  
Ord No.: 06 44