

ORDINANCE NO. 09 131 BILL NO. 136
(Draft 2)

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM PROJECT DISTRICT (PD) TO INDUSTRIAL-COMMERCIAL MIXED – 20,000 SQUARE FEET (MCX-20) AT KAU, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY: 7-2-005:001.

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 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kau, North Kona, Hawai'i, shall be Industrial-Commercial Mixed – 20,000 square feet (MCX-20):

Beginning at a point, being the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU", being 109.49 feet South and 18,804.22 feet West, and running by azimuths measured from true South:

- 1. 291° 46' 30" 1149.40 feet along Kukio – 'O'oma Government Tracts;
- 2. 9° 19' 55" 282.64 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
- 3. 279° 19' 55" 9.06 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

Thence along a curve to the right with a radius of 239.00 feet, the chord azimuth and distance being:

- 4. 324° 19' 55" 338.00 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B

					to Paalua, Certificate of Boundaries 191;
5.	9°	19'	55"	446.09	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
6.	279°	19'	55"	485.02	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
7.	9°	32'	52"	500.00	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
8.	99°	19'	55"	421.14	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
9.	189°	19'	55"	301.00	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
10.	99°	19'	55"	62.00	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
					Thence along a curve to the right with a radius of 20.00 feet, the chord and distance being:
11.	54°	19'	55"	28.28	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
12.	99°	19'	55"	197.96	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

Thence along a curve to the left with a radius of 301.00 feet, the chord azimuth and distance being:

13. 75° 03' 55" 247.41 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

14. 50° 47' 55" 103.47 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

Thence along a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:

15. 95° 47' 55" 28.28 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

16. 140° 47' 55" 199.00 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

17. 230° 47' 55" 357.90 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

18. 140° 47' 55" 218.83 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

Thence along a curve to the right with a radius of 239.00 feet, the chord azimuth and distance being:

19. 240° 48' 29" 65.26 feet along the remainder of Royal Patent 8265 and Mahele Award 13-B

					to Paalua, Certificate of Boundaries 191;
20.	158°	39'	19"	269.52	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
21.	190°	57'	06"	40.03	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
22.	103°	12'	19"	39.52	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
23.	102°	46'	39"	49.05	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
24.	116°	09'	35"	45.79	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
25.	112°	02'	29"	43.66	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
26.	189°	19'	55"	199.24	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
27.	99°	19'	55"	114.00	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

Thence along a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

28.	54°	19'	55"	28.28	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
29.	99°	19'	55"	62.00	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
30.	189°	19'	55"	13.00	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
31.	99°	19'	55"	297.97	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;
32.	189°	19'	55"	537.31	feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paulua, Certificate of Boundaries 191 to the point of beginning, containing an area of 29.92 acres, more or less.

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 1983 (2005 Edition), the County Council finds the following conditions are:

Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or

- (1) 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 applicant shall comply with all conditions of approval of the State Land Use Commission's Decision and Order (Docket No. A03-744) dated May 19, 2005.
- C. The applicant shall comply with the applicable conditions of Ordinance No. 06 105 effective July 17, 2006, and any applicable amendments thereof.
- D. The applicant shall submit a water system master plan for review and approval by the Department of Water Supply prior to the issuance of Final Subdivision Approval.
- E. Final Subdivision Approval shall be secured within five (5) years from the effective date of this ordinance.
- F. Prior to construction on each of the lots, the applicants, 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), Chapter 25 (Zoning Code), Hawai'i County Code.
- G. Access to the property shall meet with the Department of Transportation and the Department of Public Works.

- H. 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 receipt of Final Subdivision Approval. Drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to the receipt of issuance of a certificate of occupancy for any buildings, or final subdivision approval for any subdivision creating single-family residential lots.
- I. The existing Solid Waste Management Plan with the Department of Environmental Management shall be followed. Approved recommendations and mitigation measures shall be implemented in a manner meeting with the approval of the Department of Environmental Management.
- J. A wastewater treatment system shall be constructed, meeting the approval of the State Department of Health and/or Department of Environmental Management, whichever is applicable. All wastewater shall be treated at an approved wastewater treatment plant, to a minimum of secondary treatment, with R-1 effluent, unless a greater level of treatment is required by the Department of Health. Wastewater shall be used for irrigation of landscaping or other beneficial reuse to the maximum extent feasible.
- K. An Emergency Response Plan shall be submitted to the Civil Defense Agency for review and approval, prior to the issuance of a certificate of occupancy.
- L. 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 be approved by the Administrator of the Office of Housing and Community Development prior to receipt of Final Subdivision Approval; in addition, any affordable housing credits earned from this industrial-commercial mixed zone shall be applied to the original and remaining project district from

which this zoning was removed and shall be constructed on-site in the original project district defined in Ordinance No. _____.

- M. 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 it is found that sufficient mitigation measures have been taken.
- N. 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.
- O. Total retail space (not including restaurants) shall not exceed 75,000 square feet under roof until the construction of the Queen Ka'ahumanu Highway, Phase II widening improvements to four lanes from Kealakehe Parkway to the Kona International Airport at Keahole has been secured by the state entering into a construction contract for the improvements. The square footage of improvements leased to the University of Hawai'i shall not count against this limit.
- P. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements.
- Q. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this Project District Ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the

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.

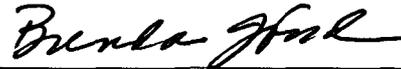
1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
3. Granting of the time extension would not be contrary to the original reasons for the granting of the Project District.
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 Planning 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:

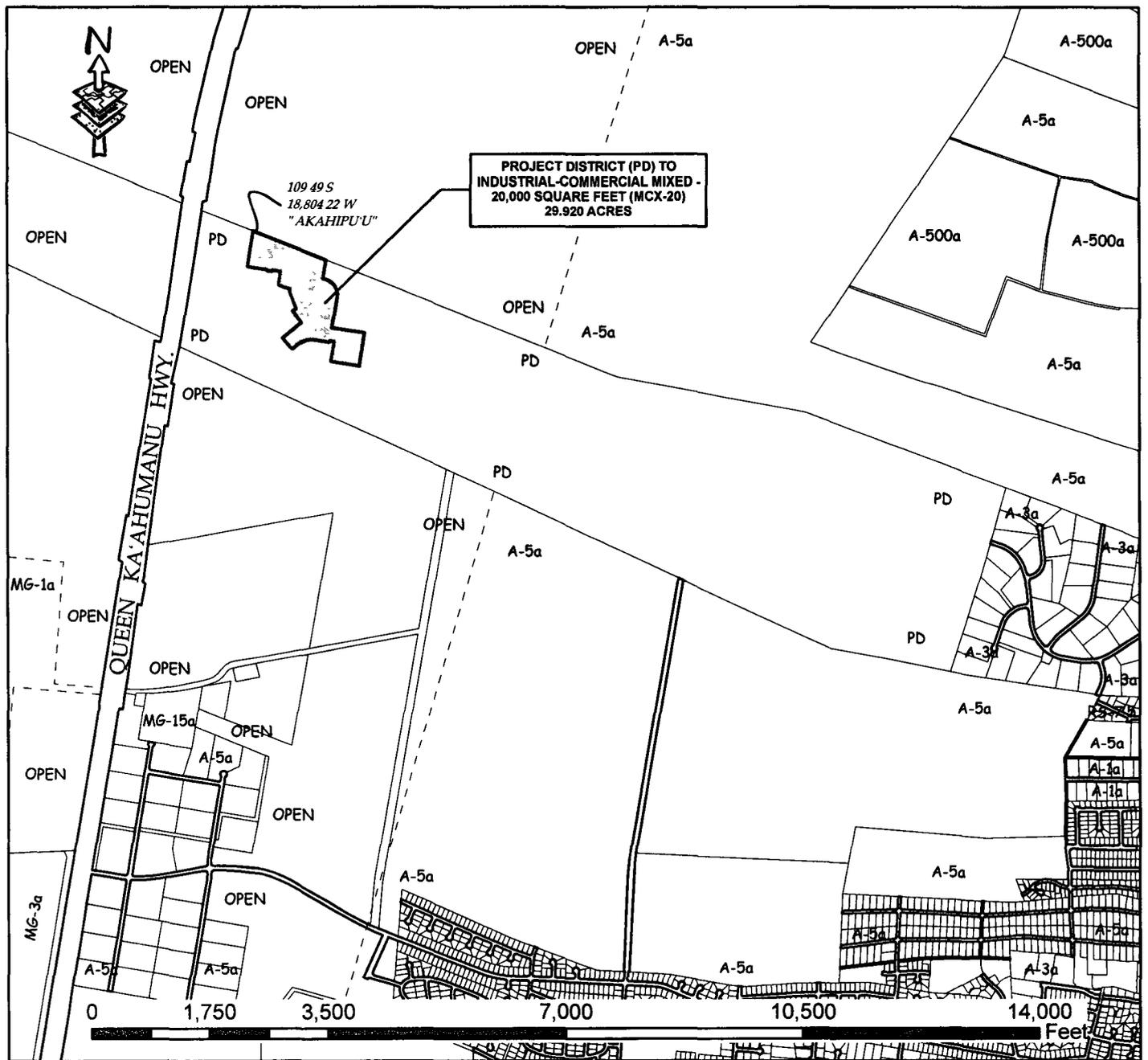


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii

Date of Introduction: September 16, 2009
Date of 1st Reading: October 7, 2009
Date of 2nd Reading: October 21, 2009
Effective Date: November 4, 2009

REFERENCE: Comm. 494.14



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP) ARTICLE 8,
CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE 1983 (2005 EDITION),
BY CHANGING THE DISTRICT CLASSIFICATION FROM PROJECT DISTRICT (PD) TO
INDUSTRIAL-COMMERCIAL MIXED - 20,000 SQUARE FEET (MCX-20) AT
KAU, NORTH KONA, HAWAII

MAP PREPARED BY:
COUNTY OF HAWAII, PLANNING DEPARTMENT

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

(Draft 2)

Introduced By: Brenda Ford
Date Introduced: September 16, 2009
First Reading: October 7, 2009
Published: N/A

REMARKS _____
September 16, 2009 - Postponed

Second Reading: October 21, 2009
To Mayor: October 29, 2009
Returned: November 4, 2009
Effective: November 4, 2009
Published: November 12, 2009

REMARKS _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann			X	
Ikeda	X			
Naeole	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques			X	
Ford	X			
Greenwell			X	
Hoffmann	X			
Ikeda	X			
Naeole	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	7	0	2	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:

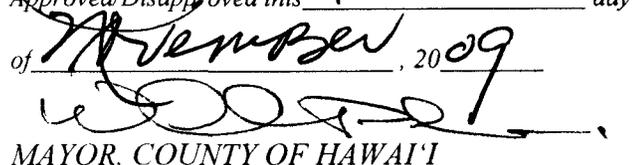

DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAI'I

Date NOV 2 2009


COUNCIL CHAIRMAN


COUNTY CLERK

Bill No.: 136 (Draft 2)
Reference: C-494.14/PC-44
Ord No.: 09 131

Approved/Disapproved this  day
of November, 2009

MAYOR, COUNTY OF HAWAI'I