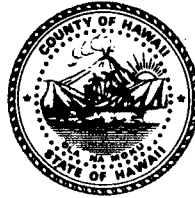


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. **12 128** BILL NO. 168  
(DRAFT 2)

AN ORDINANCE AMENDING SECTION 25-8-23 (MOUNTAIN VIEW ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE-FAMILY RESIDENTIAL – 10,000 SQUARE FEET (RS-10) TO VILLAGE COMMERCIAL – 10,000 SQUARE FEET (CV-10) AT 'ŌLA'A, PUNA, HAWAI'I, COVERED BY TAX MAP KEY: 1-8-002:064.

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

SECTION 1. Section 25-8-23, 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 'Ōla'a, Puna, Hawai'i, shall be Village Commercial – 10,000 square feet (CV-10):

Beginning at the northeast corner of this parcel of land and on the southwesterly side of Old Volcano Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA", being 18,195.43 feet South and 18,479.17 feet West, thence running by azimuths measured clockwise from true South:

1. Along Old Volcano Road on a curve to the left with a radius of 102.00 feet, the chord azimuth and distance being:  
309° 30' 12" 33.75 feet;
2. 1° 59' 30" 12.70 feet along the remainder of Grant 4053 to W. Wolters;
3. 37° 11' 57.43 feet along same;
4. 51° 39' 18.48 feet along same;
5. 320° 35' 97.14 feet along same;

6. Thence along Volcano Road, F.A.P. No. F-2(4) on a curve to the right with a radius of 1,869.86 feet, the chord azimuth and distance being:  
51° 49' 71.31 feet;
7. Thence along Nichols Road on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:  
99° 17' 17" 28.96 feet;
8. 145° 40' 124.59 feet along Nichols Road;
9. 275° 01' 30" 20.50 feet along the remainder of Grant 4053 to W. Wolters;
10. 237° 42' 30" 44.61 feet along same;
11. 231° 39' 35.71 feet along same;
12. 217° 11' 44.11 feet along same;
13. 181° 59' 30" 20.76 feet along same;
14. 228° 56' 4.38 feet along same to the point of beginning and containing an area of 13,785 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 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(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant(s) shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the “Water Commitment Guidelines Policy” to the Department of Water Supply within one hundred and eighty (180) days from the effective date of this ordinance.
- C. The applicant(s) shall install a reduced pressure type backflow prevention assembly within five (5) feet of the water meter on private property, which shall be inspected and approved by the Department of Water Supply prior to the issuance of a Certificate of Occupancy for any commercial use of the building.
- D. Construction of the proposed development shall be completed with five (5) years from the effective date of this ordinance. Prior to construction, 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. Any large bay door openings must face Highway 11. 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. In addition, a solid noise-buffering fence shall be erected around the subject property. Parking associated with any activities located on the subject property shall be maintained on-site and

not within nearby road rights-of-way. The applicants shall restrict customers from off-site parking and provide ample signage to deter off-site parking. The triangular area of Nichols Road fronting Highway 11 shall include landscaping to prevent parking in that area.

- E. No direct access shall be allowed to the subject property from Highway 11. The applicant shall provide proper written documentation that the applicant owns Nichols Road and has obtained business insurance to cover the commercial use of Nichols Road prior to the submittal of plans for Plan Approval Review. All improvements to Nichols Road required by this ordinance must be constructed and maintained by the applicant at the applicant's expense and the applicant must maintain appropriate liability insurance to cover the commercial use of Nichols Road.
- F. Prior to the issuance of a Certificate of Occupancy for any commercial use on the subject property, the applicant(s) shall improve Nichols Road up to and including the driveway access to the subject property to a minimum commercial-standard pavement width of 18 feet with shoulder and drainage improvements within a proposed 50-foot wide right-of-way, which the applicants shall provide by a road widening within the subject property equal to half the distance between the existing right-of-way and the proposed 50-foot wide right-of-way. Incorporation of the additional right-of-way and required roadway improvements as part of Nichols Road shall be accomplished prior to the issuance of a certificate of occupancy for any commercial use. Along that side of Nichols Road right-of-way directly adjacent to the subject property and commensurate with the required pavement improvements, the applicant(s) shall also provide a 5-foot wide paved shoulder with a 7-foot wide paved drainage swale. All improvements to Nichols Road shall comply with Department of Public Works (DPW) Standard Detail R-33 and be constructed in a manner meeting with the approval of the DPW.

Concurrent with road improvement required by this condition, the applicant(s) shall also provide any improvements to Highway 11 as may be required by the State Department of Transportation to accommodate these required improvements to Nichols Road and its intersection with Highway 11.

- G. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. If required, a drainage study shall be prepared and submitted to the Department of Public Works prior to the issuance of Final Plan Approval. Any drainage improvements, if required, shall be constructed, meeting the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
- H. Prior to the issuance of a Certificate of Occupancy for any commercial use on the subject property, the applicant(s) shall provide documentation that any compressor used on the property is the quietest compressor available and will not exceed allowable noise levels as established by the State Department of Health. Such compressor(s) must be located in a special insulated room located within a proposed structure.
- I. Commercial activity on the subject property shall be restricted to the hours of 8:00 a.m. to 5:00 p.m., Monday through Saturday. Auto body repair and auto body painting shall not be conducted on the subject property.
- J. The method of sewage disposal shall meet with the requirements of the Department of Health.
- K. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.

- L. 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 DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- M. Should the applicant(s), successors or assigns develop residential units on the subject property, the applicant(s) 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 become due and payable prior to receipt of Final Plan Approval. The fair share contribution for each lot shall be based on the actual number of residential units developed. 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 combined value of **\$7,903.35** per multiple family residential unit (**\$12,316.47** per single family residential unit). The total amount shall be determined with the actual number of units according to the calculation and payment provisions set forth in this condition.

The fair share contribution per multiple family residential unit (single family residential unit) shall be allocated as follows:

1. **\$3,898.50** per multiple family residential unit (**\$5,939.22** per single family residential unit) to the County to support park and recreational improvements and facilities;
2. **\$123.21** per multiple family residential unit (**\$286.51** per single family residential unit) to the County to support police facilities;
3. **\$379.01** per multiple family residential unit (**\$565.89** per single family residential unit) to the County to support fire facilities;
4. **\$168.93** per multiple family residential unit (**\$247.75** per single family residential unit) to the County to support solid waste facilities; and
5. **\$3,333.69** per multiple family residential unit (**\$5,277.10** 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.

- 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. 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 Final Plan Approval.
- P. The applicants shall comply with all County, State and Federal laws, rules, regulations and requirements.
- Q. 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, 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(s) should require an additional extension of time, the Planning Department shall submit the applicants’ request to the County Council for appropriate action.

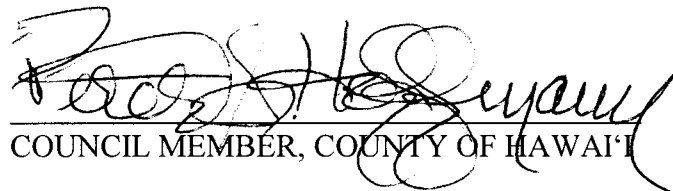


Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.

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.

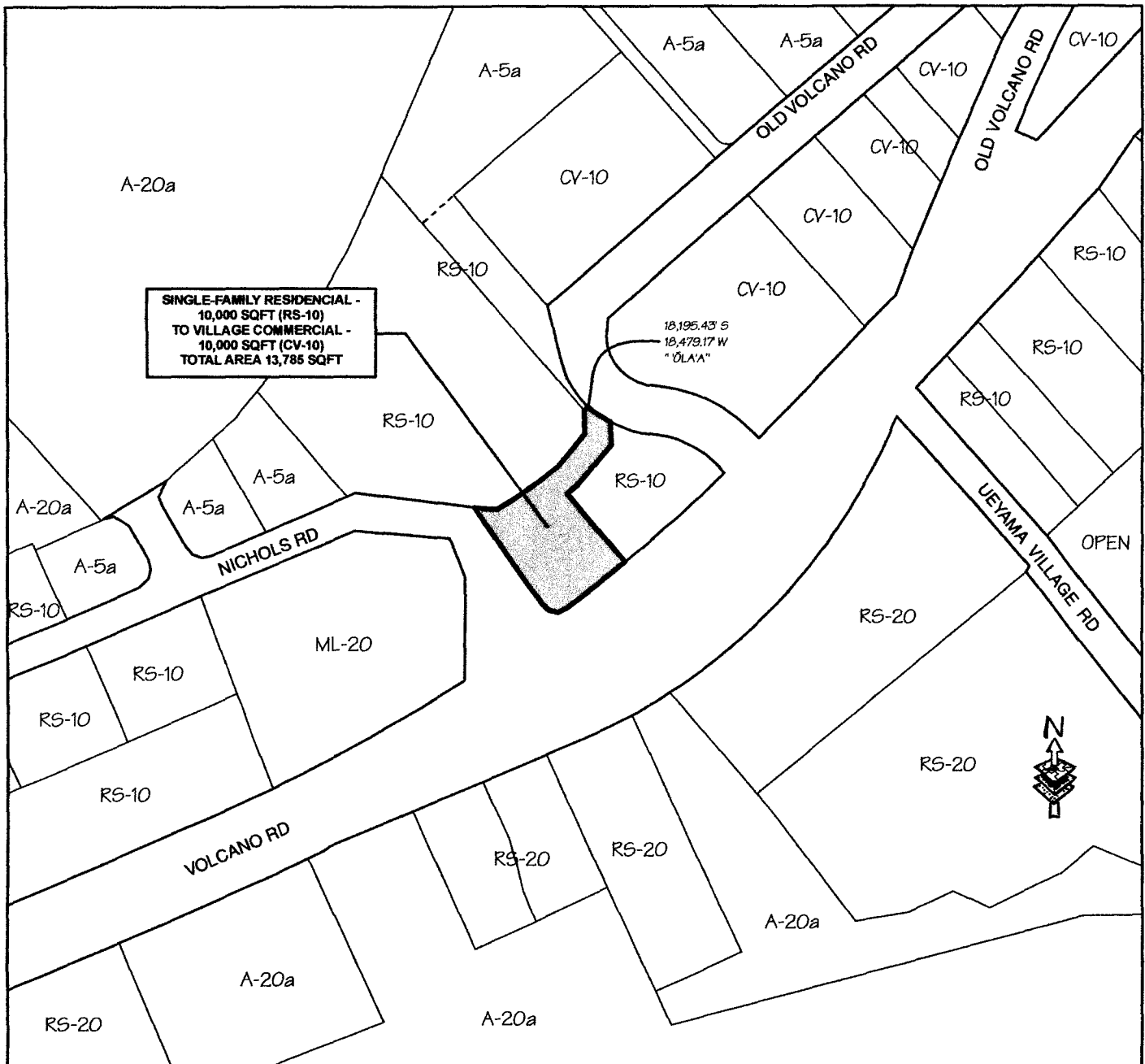
SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i  
Date of Introduction: August 15, 2012  
Date of 1st Reading: August 15, 2012  
Date of 2nd Reading: September 6, 2012  
Effective Date: September 27, 2012

REFERENCE Comm. 526.23



# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-23 (MTN VIEW ZONE MAP) ARTICLE 8,  
CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION),  
BY CHANGING THE DISTRICT CLASSIFICATION FROM  
SINGLE-FAMILY RESIDENTIAL - 10,000 SQFT (RS-10) TO  
VILLAGE COMMERCIAL - 10,000 SQFT (CV-10),  
AT 'ŌLA'A, PUNA, HAWAI'I

MAP PREPARED BY:  
COUNTY OF HAWAI'I, PLANNING DEPARTMENT

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

2012 OCT -1 AM 7:51

Introduced By: Pete Hoffmann  
Date Introduced: August 15, 2012  
First Reading: August 15, 2012  
Published: August 25, 2012

REMARKS: \_\_\_\_\_  
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\_\_\_\_\_  
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Second Reading: September 6, 2012  
To Mayor: September 17, 2012  
Returned: October 1, 2012  
Effective: September 27, 2012  
Published: October 16, 2012

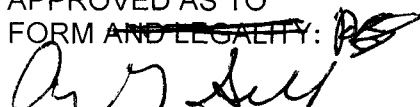
REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Blas	X			
Ford		X		
Hoffmann		X		
Ikeda	X			
Onishi	X			
Pilago		X		
Smart		X		
Yagong	X			
Yoshimoto	X			
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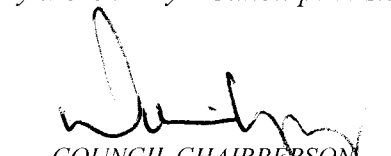
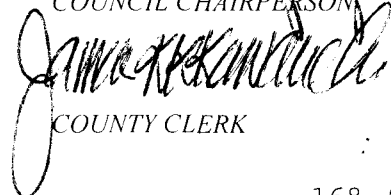
(Draft 2)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Blas	X			
Ford		X		
Hoffmann		X		
Ikeda	X			
Onishi	X			
Pilago	X			
Smart		X		
Yagong	X			
Yoshimoto	X			
	6	3	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 SEP 21 2012

  
COUNCIL CHAIRPERSON  
  
COUNTY CLERK

Bill No.: 168 (Draft 2)

Reference: C-526.23/PC-63

Ord No.: 12 128

Approved/Disapproved this 27th day  
of SEPTEMBER 20 12  
  
MAYOR, COUNTY OF HAWAII