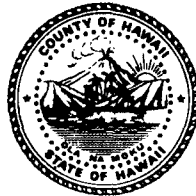


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 13 28 BILL NO. 20
(DRAFT 2)

AN ORDINANCE AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – FIVE ACRES (A-5a) TO VILLAGE COMMERCIAL – 20,000 SQUARE FEET (CV-20) AT WAIKOLOA, SOUTH KOHALA, HAWAI'I, COVERED BY TAX MAP KEY 6-8-002:021 (POR).

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

SECTION 1. Section 25-8-7, 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 Waikoloa, South Kohala, Hawai'i, shall be Village Commercial – 20,000 square feet (CV-20):

Beginning at the southeast corner of this parcel of land, being also along the north side of Waikoloa Road and the southwest corner of Lot 8, Waikoloa Development, File Plan 1172, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,393.08 feet North and 1,531.27 feet West and running by azimuths measured clockwise from True South:

- 1. 111° 44' 07" 1280.73 feet along the north side of Waikoloa Road;
- 2. 113° 41' 56" 352.57 feet along the same;

Thence along the intersection of Waikoloa Road and Paniolo Avenue on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:

- 3. 157° 32' 49" 27.71 feet;

- | | | | | | |
|-----|------|-----|-----|--------|--|
| 4. | 201° | 23' | 42" | 304.78 | feet along Paniolo Avenue; |
| | | | | | Thence, along the same on a curve to the left with a radius of 540.00 feet, the chord azimuth and distance being; |
| 5. | 192° | 03' | 09" | 175.29 | feet; |
| 6. | 266° | 19' | 57" | 24.17 | feet along Lot 9-B; |
| | | | | | Thence, along the same on a curve to the left with a radius of 265.00 feet, the chord azimuth and distance being; |
| 7. | 254° | 55' | 34" | 104.81 | feet; |
| 8. | 243° | 31' | 12" | 102.13 | feet along the same; |
| | | | | | Thence, along the same on a curve to the right with a radius of 191.00 feet, the chord azimuth and distance being; |
| 9. | 267° | 37' | 40" | 156.03 | feet; |
| 10. | 291° | 44' | 07" | 164.63 | feet along the same; |
| 11. | 21° | 44' | 07" | 279.00 | feet along the same; |
| 12. | 291° | 44' | 07" | 447.84 | feet along the same; |
| 13. | 21° | 44' | 07" | 263.57 | feet along Lot 8, Waikoloa Development, File Plan 1172; |
| 14. | 291° | 44' | 07" | 755.00 | feet along the same; |
| 15. | 21° | 44' | 07" | 180.00 | feet along the same to the point of beginning and containing an area of 14.622 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. Construction of the proposed development shall be completed within five (5) years from the effective date of 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 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) and Chapter 25 (Zoning Code), Hawai'i County Code.

- C. The applicant, along with the landowner of TMK: 6-8-002:016 and TMK: 6-8-003: 032 shall construct the required roundabout improvements to the intersection of Waikoloa Road and Paniolo Avenue, meeting with the approval of the

Department of Public Works. Any additional right-of-way for such improvements shall be subdivided from the subject property and dedicated at no cost to the County, upon request. The required improvements shall be completed, prior to the issuance of any Certificate of Occupancy for the subject property.

- D. Access to the property from Waikoloa Road and Paniolo Avenue, including the provision of sight distances, channelization within the County right-of-way, and where applicable, left turn lanes and right turn/deceleration lanes and left turn refuge lanes and traffic control measures, shall meet with the approval of the Department of Public Works. The location of the easternmost (mauka) access shall take into consideration the existing access easement located on a property identified by TMK: 6-8-002: 016 and situated on the south side of Waikoloa Road and, to the extent feasible, adjusted so that both accesses utilize the same channelized intersection.
- E. The applicant shall provide full improvements to the entire frontage along Waikoloa Road, consisting of, but not limited to, the continuation of the typical boulevard section and template of Waikoloa Road, including medians, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, signs and markings, streetlights, and any relocation of utilities, meeting with the approval of the Department of Public Works, at no cost to the County, prior to the issuance of a Certificate of Occupancy.
- F. The applicant shall improve Easement AE-1 to dedicable standards with concrete curb, gutter and sidewalk, drainage improvements, street lights, signs, and markings and utilities, meeting with the approval of the Department of Public Works, prior to the issuance of a Certificate of Occupancy for any second commercial development.

- G. The applicant shall submit a detailed traffic analysis to comply with sight distances and related requirements for Waikoloa Road and Paniolo Avenue as recommended in the Department of Public Works' memo dated October 4, 2012, prior to the issuance of Final Plan Approval.

- H. The applicant shall submit a multi-modal Roadway and Traffic Circulation Plan prepared by a licensed civil engineer prior to Final Plan Approval, meeting with the approval of the Department of Public Works, as recommended in the Department of Public Works' memo dated October 4, 2012. The plan shall incorporate a landscaped vehicular and pedestrian system within the project that connects Paniolo Avenue to the easternmost (mauka) access on Waikoloa Road. If the project is developed in increments, the vehicular and pedestrian system shall be completed no later than the issuance of a second Certificate of Occupancy for any commercial development if deemed necessary by the Department of Public Works.

- I. Access to the property for construction traffic shall be limited to Waikoloa Road. For non-construction traffic, access shall be restricted to right-in/right-out movements on Paniolo Avenue until the required improvements are made to Paniolo Avenue for left-turning traffic.

- J. The applicants, successors, or assigns shall implement any improvements required by the Department of Water Supply and the Fire Department to ensure that water availability and fire protection requirements can be met for commercial zoning, prior to the issuance of a Certificate of Occupancy for any portion of the proposed project. This may include, but not be limited to, the following:
 - 1. Provide a water system designed to deliver water at adequate pressure and volume under peak-flow and fire-flow conditions in accordance with the

Water System Standards 2002, State of Hawai‘i, and the Rules and Regulations of the Department of Water Supply. The water system shall include, but not be limited to, the installation of the necessary distribution pipelines, fire hydrants, and service laterals.

2. Submit construction plans to the Department for review and approval.
 3. Pay a fee of four-tenths of one percent of the estimated cost for the construction of the water system, but not less than \$50.00, to cover the costs for plan review, testing, and inspection.
- K. A Flood Study shall be submitted, meeting with the approval of the Department of Public Works, prior to receipt of Final Plan Approval, as recommended in the Department of Public Works’ memo dated October 4, 2012, prior to the issuance of Final Plan Approval.
- L. The applicants, successors, or assigns shall implement any improvements required by the Fire Department and/or Department of Water Supply to ensure that fire protection requirements can be met for commercial zoning.
- M. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai‘i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
- N. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- O. All earthwork activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai‘i County Code.

- P. 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 - Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.
- Q. If the applicant, successors or assigns develop residential units on the property, 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 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 the 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 **\$8,196.06** per multiple family residential unit (**\$12,772.64** 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. **\$4,042.89** per multiple family residential unit (**\$6,159.19** per single family residential unit) to the County to support park and recreational improvements and facilities;

2. **\$127.78** per multiple family residential unit (**\$297.12** per single family residential unit) to the County to support police facilities;
3. **\$393.05** per multiple family residential unit (**\$586.85** per single family residential unit) to the County to support fire facilities;
4. **\$175.19** per multiple family residential unit (**\$256.93** per single family residential unit) to the County to support solid waste facilities; and
5. **\$3,457.16** per multiple family residential unit (**\$5,472.55** 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.

- R. To ensure that the goals and policies of the Housing Element of the General Plan are implemented, if required, 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.
- S. 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.

T. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

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).
5. 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.

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.

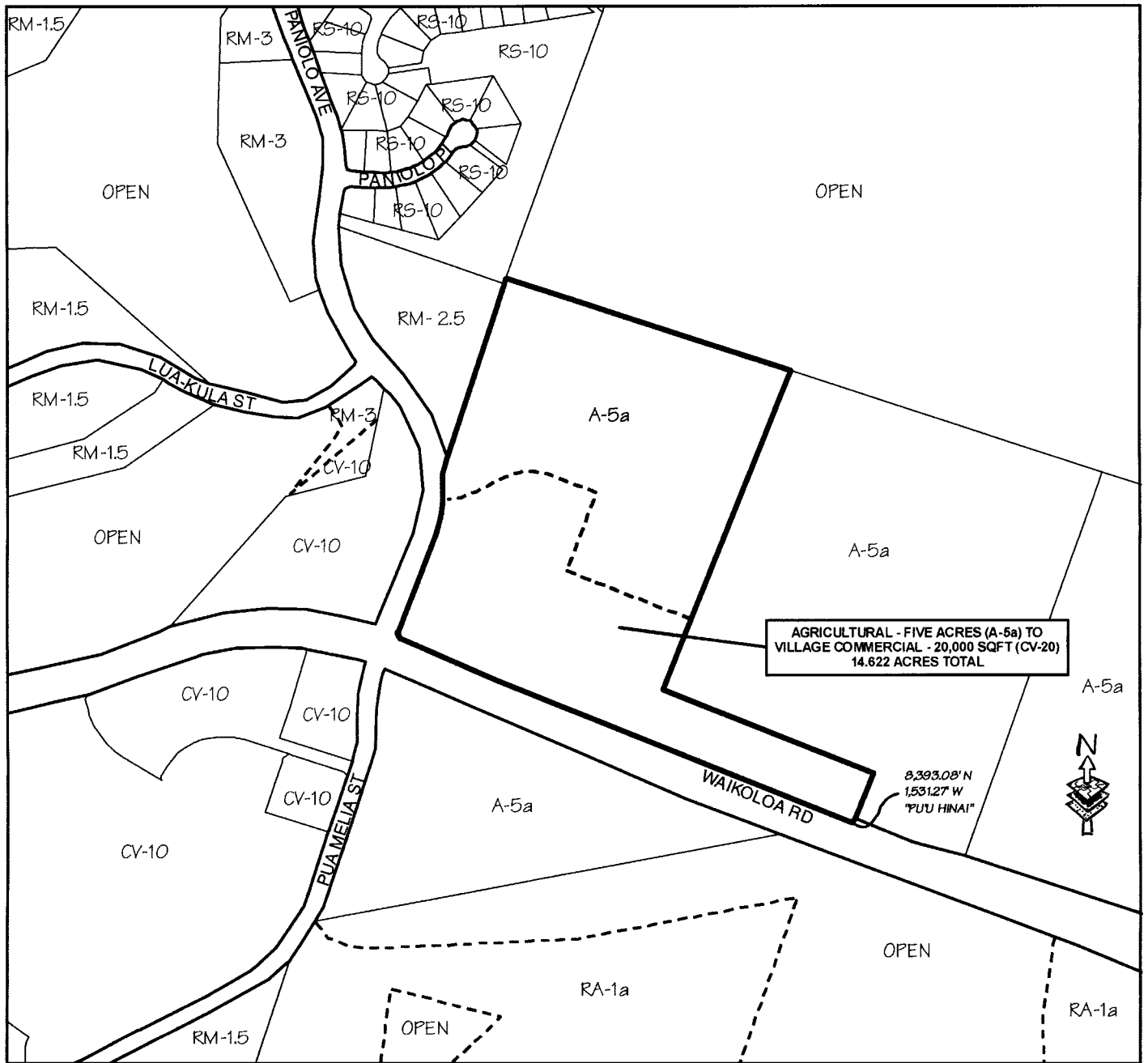
SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona _____, Hawai'i
Date of Introduction: February 6, 2013
Date of 1st Reading: February 6, 2013
Date of 2nd Reading: February 20, 2013
Effective Date: March 13, 2013

REFERENCE **Comm.** 66.6



AGRICULTURAL - FIVE ACRES (A-5a) TO
 VILLAGE COMMERCIAL - 20,000 SQFT (CV-20)
 14.622 ACRES TOTAL

8,393.08' N
 1,531.27' W
 "PUU HINAI"

AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA DISTRICT ZONE MAP) ARTICLE 8,
 CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE 1983 (2005 EDITION),
 BY CHANGING THE DISTRICT CLASSIFICATION FROM
 AGRICULTURAL - FIVE ACRES (A-5a) TO
 VILLAGE COMMERCIAL - 20,000 SQFT (CV-20),
 AT WAIKOLOA, SOUTH KOHALA, HAWAII

MAP PREPARED BY:
 COUNTY OF HAWAII, PLANNING DEPARTMENT

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

2013 MAR 11 10:57

Introduced By: Zendo Kern
Date Introduced: February 6, 2013
First Reading: February 6, 2013
Published: February 16, 2013

REMARKS: _____

Second Reading: February 20, 2013
To Mayor: February 28, 2013
Returned: March 14, 2013
Effective: March 13, 2013
Published: March 21, 2013

REMARKS: _____

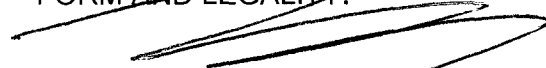
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Eoff	X			
Ford		X		
Ilagan	X			
Kanuha	X			
Kern	X			
Onishi	X			
Poindexter	X			
Wille	X			
Yoshimoto	X			
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(Draft 2)

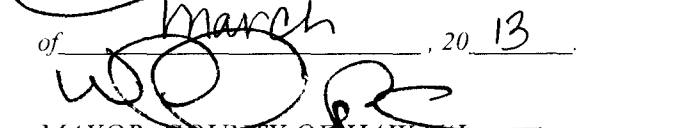
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Ilagan	X			
Kanuha	X			
Kern	X			
Onishi	X			
Poindexter	X			
Wille	X			
Yoshimoto	X			
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I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
FORM AND LEGALITY:


DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date MAR 11 2013

Approved/Disapproved this 13th day
of March, 2013

MAYOR, COUNTY OF HAWAII


COUNCIL CHAIRPERSON

COUNTY CLERK

Bill No.: 20 (Draft 2)
Reference: C-66.6/PC-11
Ord No.: 13 28