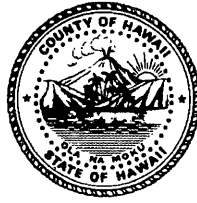


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 20 21 BILL NO. 137

AN ORDINANCE AMENDING SECTION 25-8-23 (VOLCANO-MT. VIEW), ARTICLE 8, CHAPTER 25 (ZONING) OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL – 20,000 SQUARE FEET (RS-20) TO VILLAGE COMMERCIAL – 10,000 SQUARE FEET (CV-10) AT 'OLA'A SUMMER LOTS, 'OLA'A, PUNA, HAWAI'I, COVERED BY TAX MAP KEY: 1-9-004:004.

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

SECTION 1. Section 25-8-23, Article 8, Chapter 25 (Zoning) of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at 'Ola'a Summer Lots, 'Ola'a, Hawai'i, shall be Village Commercial – 10,000 square feet (CV-10):

Beginning at a point at the Southeast corner of this parcel of land and on the Northwest side of the new Volcano Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KULANI" being 32,536.43 feet South and 23,676.47 feet East, and running by azimuths measured clockwise from True South:

- | | | | |
|----|----------|--------|--|
| 1. | 54° 05' | 154.85 | feet along the northwest side of the new Volcano Road; |
| 2. | 149° 31' | 339.66 | feet along a portion of Lot 10, Block "B", 'Ola'a Summer Lots; |
| 3. | 239° 31' | 154.15 | feet; |

4. 329° 31' 325.00 feet along a portion of Lot 12, Block "B", 'Ōla'a Summer Lots, to the point of beginning and containing an area of 51,229 square feet, or 1.1760 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 (2016 Edition, as amended), 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 applicant, successors or assigns shall meet all requirements of the Department of Health for a Public Water System for potable and sanitation water and shall comply with Fire Department requirements for firefighting water purposes for the proposed development. The on-site water system improvements, including the

development of sufficient water storage capacity, shall be completed prior to Certificate of Occupancy and storage tanks shall remain filled with sufficient water to meet all applicable Department of Health and Fire Department requirements.

- C. Construction of the proposed development, as substantially represented by the applicant, or as permitted by the zoning district classification, 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 proposed structure(s), 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.
- D. The applicant, successors or assigns shall not block or impede the twelve (12)-foot wide perpetual easement for a road right-of-way that is situated along the entirety of the eastern property line as designated in the deeds of the subject parcel and TMK (3) 1-9-004:040, adjacent to the north of the subject parcel.
- E. Prior to issuance of Final Plan Approval, the applicant, successors or assigns shall obtain Final Consolidation Approval for TMK (3) 1-9-004:004 and TMK (3) 1-9-004:055.
- F. The applicant, successors or assigns shall provide their pro-rata share for the construction of full improvements to the entire property frontage along Old

Volcano Road consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements and any required utility relocation meeting with the approval of the Department of Public Works (DPW). This pro-rata share for roadway improvements specified in this condition shall be determined by the DPW and shall become due and payable to the County of Hawai'i within six (6) months from the date that formal notice is served upon the applicant, its successors or assigns by the DPW regarding a program for the installation of curb, gutter and sidewalk improvements along the frontage of Old Volcano Road between Wright Road and Haunani Road.

- G. Driveway connection(s) to Old Volcano Road shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
- H. The applicant shall be responsible for the design, purchase, and installation of streetlights and traffic control devices as may be required by the Traffic Division, Department of Public Works.
- I. Should the applicant, successors or assigns develop a land use which the Planning Department, in consultation with the Department of Public Works, determines will generate over 50 peak hour trips, a Traffic Impact Analysis Report (TIAR) shall be submitted for review and approval by the Department of Public Works prior to Final Plan Approval. The applicant shall implement, when required by the Department of Public Works, at no cost to the County, any transportation system improvements to Old Volcano Road that may be deemed necessary by the Department of Public Works.
- J. 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 by a licensed civil engineer and submitted to the Planning Department prior to Final

Plan Approval. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

- K. The method of sewage disposal shall meet with the requirements of the Department of Health.

- L. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

- M. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the permit area and woody vegetation over 15 feet in height shall not be removed during bat breeding season of June 1st to September 15th without first conducting surveys for bat nests and coordinating with US Fish and Wildlife Service if nests are found. Surveys shall be conducted by a qualified biologist.

- N. To protect any Hawaiian hawk in the vicinity of the property, clearing, grubbing and construction activities shall not occur in the permit area during hawk breeding season of March 1 to September 30 without first having qualified biologist conduct surveys for hawk nests in the project footprint and surrounding areas and coordinating with US Fish and Wildlife Service if nests are found. Additionally, no clearing or construction activities shall occur within 1,600 feet of any active

Hawaiian hawk nest during the breeding season until the young have fledged. Finally, regardless of the time of year, no trimming or cutting trees containing a hawk nest shall occur, as nests may be re-used during consecutive breeding seasons.

- O. To protect any seabirds (Hawaiian petrels and Newell's shearwaters) in the vicinity of the property, the applicant shall install shielded outdoor lights to direct light downwards. Additionally, the applicant shall install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area. Finally, the applicant shall avoid nighttime construction during the seabird fledging period, September 15 through December 15.

- P. To avoid and minimize potential project impacts to the endangered Hawaiian goose (Nēnē) the applicant shall implement the following applicable measures: Do not approach, feed, or disturb Nēnē. If Nēnē are observed loafing or foraging within the project area during the Nēnē breeding season (September through April), have a biologist familiar with the nesting behavior of Nēnē survey for nests in and around the project area prior to the resumption of any work. Repeat surveys after any subsequent delay of work of three or more days (during which the birds may attempt to nest). Cease all work immediately and contact the US Fish and Wildlife Service for further guidance if a nest is discovered within a radius of 150 feet of proposed work, or a previously undiscovered nest is found within said radius after work begins. In areas where Nēnē are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site.

- Q. To protect the 'I'iwi, the applicant shall avoid conducting activities within the forest bird habitat that: 1) Promote the spread or survival of invasive species; 2) Increase mosquito populations or stagnant water habitat; 3) Increase wildfire threat to montane forest habitats; and 4) Remove tree cover during the peak breeding season between January 1 and June 30.
- R. Should the applicant, successors, or assigns develop residential units on the subject 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 for each unit shall be based on the actual number of residential units developed and shall become due and payable prior to receipt of Final Plan Approval. 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 \$9,366.52 per multiple family residential unit (\$14,596.67 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. \$4,620.24 per multiple family residential unit (\$7,038.77 per single family residential unit) to the County to support park and recreational improvements and facilities;
 2. \$146.02 per multiple family residential unit (\$339.55 per single family residential unit) to the County to support police facilities;

3. \$449.18 per multiple family residential unit (\$670.66 per single family residential unit) to the County to support fire facilities;
4. \$200.20 per multiple family residential unit (\$293.62 per single family residential unit) to the County to support solid waste facilities; and
5. \$3,950.87 per multiple family residential unit (\$6,254.07 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.

- 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. 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.
- U. The applicant, successors or assigns shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

- V. An initial extension of time for the performance of conditions within the ordinance may be granted by the 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 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.
- W. 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. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

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

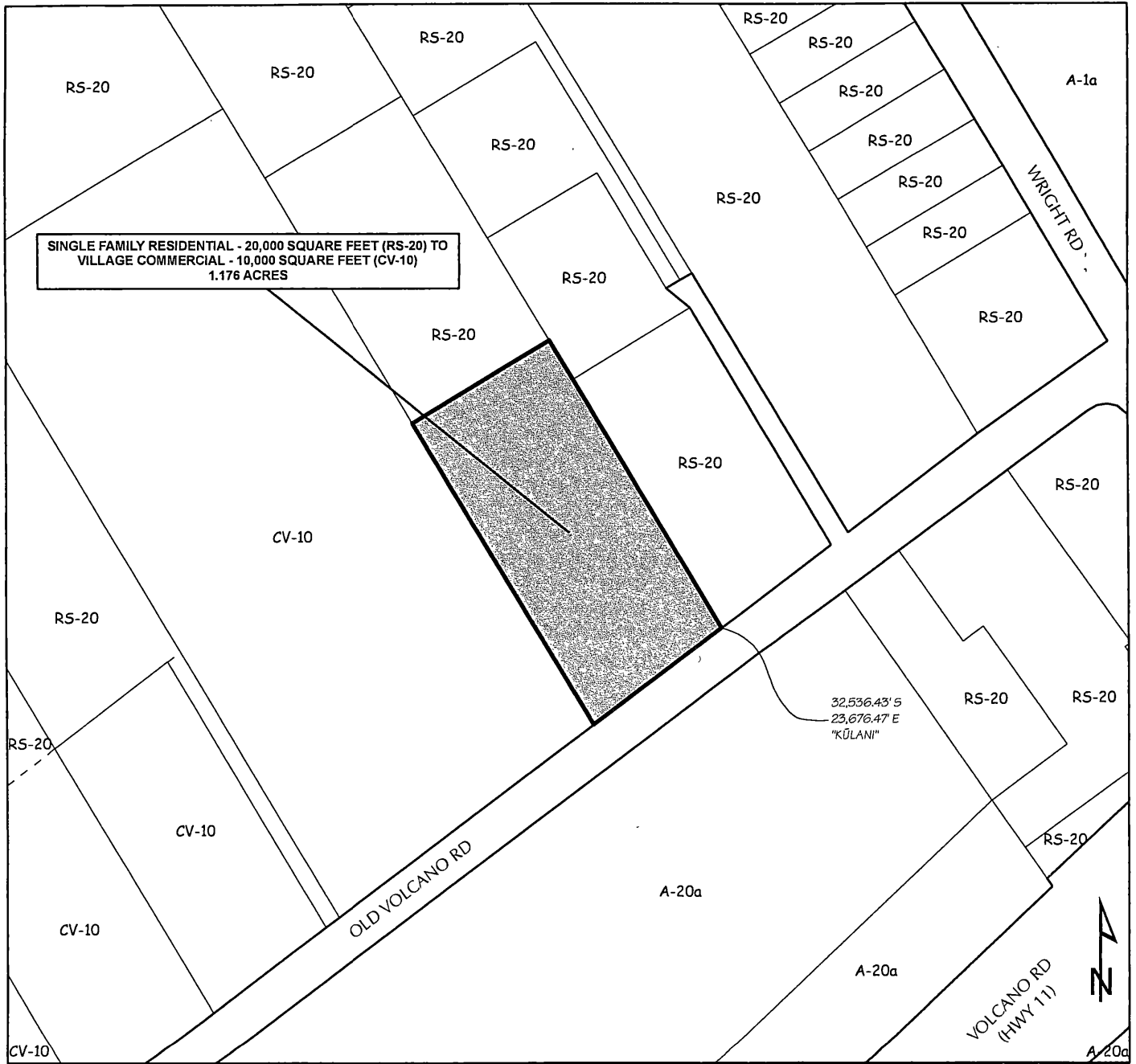
INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'B. P.', written over a horizontal line.

COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i
Date of Introduction: March 11, 2020
Date of 1st Reading: March 11, 2020
Date of 2nd Reading: March 25, 2020
Effective Date: April 6, 2020

REFERENCE Comm. 728



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-23 (VOLCANO-MT. VIEW) ARTICLE 8,
 CHAPTER 25 (ZONING) OF THE HAWAII COUNTY CODE 1983 (2016 EDITION, AS AMENDED),
 BY CHANGING THE DISTRICT CLASSIFICATION FROM
 SINGLE FAMILY RESIDENTIAL - 20,000 SQUARE FEET (RS-20) TO
 VILLAGE COMMERCIAL - 10,000 SQUARE FEET (CV-10)
 AT 'ŌLA'A SUMMER LOTS, 'ŌLA'A, PUNA, HAWAII'

MAP PREPARED BY:
 COUNTY OF HAWAII, PLANNING DEPARTMENT

TMK. (3) 1-9-004:004

DATE: June 3, 2019

EXHIBIT "A"

RTA Kilauea Lodge LLC
 Map: 1409

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

COUNTY CLERK
 COUNTY OF HAWAI'I
 RECEIVED

Time 11:17 am By JR
 Date 4/6/2020

Introduced By: Ashley L. Kierkiewicz (B/R)
 Date Introduced: March 11, 2020
 First Reading: March 11, 2020
 Published: March 21, 2020

REMARKS: _____

Second Reading: March 25, 2020
 To Mayor: April 2, 2020
 Returned: April 6, 2020
 Effective: April 6, 2020
 Published: April 18, 2020

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kaneali'i-Kleinfelder	X			
Kierkiewicz	X			
Lee Loy	X			
Poindexter	X			
Richards	X			
Villegas	X			
	9	0	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kaneali'i-Kleinfelder	X			
Kierkiewicz	X			
Lee Loy	X			
Poindexter	X			
Richards	X			
Villegas	X			
	9	0	0	0

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

Approved/Disapproved this 6th day
 of April, 2020

Harry Kim
 MAYOR, COUNTY OF HAWAI'I

[Signature]
 COUNCIL CHAIRPERSON

[Signature]
 COUNTY CLERK

Bill No.: 137
 Reference: C-728/PC-46
 Ord No.: 20 21