

COUNTY OF HAWAI'I PLANNING DEPARTMENT RECOMMENDATION

**KRISTIN FROST ALBRECHT (FORMERLY MATSUNO ENTERPRISES, LTD.)
AMENDMENT TO CHANGE OF ZONE ORDINANCE NO. 06 28
(PL-REZ-2024-000064/ AMEND REZ 2005-000019)**

Upon review of the request, the Planning Director recommends that a **favorable recommendation** for the requested amendment to Change of Zone Ordinance No. 06 28 be forwarded to the County Council. Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this position based on additional information presented at the public hearing. This favorable recommendation is based on the following findings:

The applicant is requesting a 10-year time extension to Condition D (complete construction) from the effective date of this amendment to Change of Zone Ordinance No. 06 28, which rezoned an 8-acre portion of a larger 24.495-acre parcel of land from Agricultural-1 acre (A-1a) to Neighborhood Commercial-20,000 square feet (CN-20).

The applicant requested the following specific language for the amendment request (material to be deleted is bracketed/struck through, material to be added is underscored):

Amend Condition D:

Construction of the proposed improvements shall be completed within [~~five (5)~~]ten (10) years from the effective date of this amended ordinance. This time period shall include securing Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify proposed structure(s), fire protection measures, access roadway, driveway and parking stalls. Landscaping shall be indicated on the plans for the purpose of mitigating any potential adverse noise or visual impacts to adjoining parcels. Landscaping shall be provided in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

The non-performance on timed conditions 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. The Food Basket,

Inc., (TFB) acquired the subject property in April 2022 (6 years after the timed conditions in the ordinance lapsed), with the intention of constructing the Hawai'i Island Agricultural Innovation Park and Food Systems Campus (AIPFSC), to serve community partner organizations and the economy of Hawai'i Island. TFB proposes two phases to establish the AIPFSC, with development beginning in 2024, the final phase of infrastructure development projected for completion in 2029, and costs estimated at \$134,038,716. Phase A includes design and construction of a Hawai'i Island Community Food Center and Food Bank, to be located on the CN-20-zoned area. Additionally, Phase A consists of development for the A-1a-zoned area, including an Agricultural Innovation Center, a shade house, agricultural crops, and completion of waterline, electrical and communication infrastructure improvements. Phase B consists of design and construction of an Agricultural Support Office Center, a Community Center, and a Farmer's Market Pavilion, all of which will be located on the CN-20-zoned area. Given the change in project scope from the previous landowners and the lack of progress on construction of improvements, TFB is requesting a longer, 10-year time frame to comply with Condition D, in order to complete the full scope of planned projects. Additionally, as the ordinance has been stale since 2016, this amendment is required to allow any development of the CN-20 zoned lands.

Based on the reasons provided and given the recent acquisition of the property by TFB for a different development than was previously envisioned by the previous owner, it is determined that the non-performance on timed conditions was not the result of the current applicant's fault or negligence.

Granting of the proposed amendment would not be contrary to the General Plan, Community Development Plan or Zoning Code. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County.

The proposed request continues to conform to the LUPAG Map, which designates the property as Medium Density Urban (mdu) and allows for village and neighborhood

commercial and single family and multiple family residential and related functions (multiple family residential up to 35 units per acre). The time extension request will continue to support establishment of a commercial zoning and use that is consistent with the Medium Density Urban form depicted on the LUPAG Map. Therefore, it is determined that the request is consistent with the LUPAG Map for this area of Hilo.

Further, the time extension request conforms to the following goals and policies of the General Plan Land Use Element:

- *Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.*
- *Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.*
- *Zoning requests shall be reviewed with respect to General Plan designation, district goals, regional plans, State Land Use District, compatibility with adjacent zoned uses, availability of public services and utilities, access, and public need.*

The Hilo CDP, adopted by Resolution No. 1 on May 21, 1975, identified the area as targeted for residential expansion, in the categories of RS, RM and PUD; however, this area is transitioning to commercial uses, with several properties along Ponahawai Street and Komohana Street having been rezoned to commercial zoning designations over the past four decades.

Based on the preceding, and with recognition of the fact that the Hilo CDP has not been updated since 1975, the CN-20 zoning continues to be consistent with the General Plan.

The uses proposed for the 8-acre portion of the subject property currently zoned CN-20 are consistent with permitted uses as defined in the zoning code. Likewise, the applicant's proposed uses for the remainder of the property, zoned agricultural (A-1a), are consistent with permitted uses for agricultural zoning.

Based on the preceding, the granting of the requested amendment would not be contrary to the General Plan, Community Development Plan or Zoning Code.

Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone. The proposed request will not unreasonably burden public agencies to provide infrastructure and utilities to the property.

Access to the subject property is from Ponahawai Street, a County-owned and maintained, 24-foot-wide paved roadway with 4-foot-wide grass shoulders, within a 60-foot-wide right-of-way. The existing ordinance has several conditions related to required roadway improvements that are still applicable, and the Department of Public Works (DPW) has no objections to the current amendment request.

In addition, at the time of the original rezone application, Hawai'i County Civil Defense stated that the proposed project should have a second exit onto Ponahawai Street to serve as an emergency exit should the other become blocked; however, the original rezone was approved with deferral to DPW's request for one access point. As such the applicant continues to propose one access point, situated at the northwest, or mauka, corner of the rezone area.

A Traffic Impact Analysis Report (TIAR), included as part of the amendment application, analyzes traffic impacts of the commercial portion of the proposed project. Based on the findings of the TIAR, levels of service are not expected to degrade any more than would be expected without the proposed project. Despite this, traffic improvements were recommended, primarily to establish a dedicated left-turn lane from Ponahawai Street into the subject property, a requirement that continues to be addressed by the original conditions of approval for the rezone.

County water is available from an existing 8-inch waterline fronting the property along Ponahawai Street, as well as from an existing 12-inch line along Komohana Street. The applicant notes that Department of Water Supply (DWS) standards estimate the average daily demand for the commercially zoned portion of the property at 24,000 gallons per day (gpd) and the required fire flow as 2,000 gallons per minute (gpm), with a fire hydrant spacing of 300 feet along the roadway. DWS water system standards do not give a factor for estimating agriculturally zoned properties, therefore the project assumes 1,000 gpd per acre for the remaining portion of the property, for a total of 16,495 gpd. By letter dated June 4, 2024, DWS granted a water commitment time extension for the proposed development in the amount of 23,600 gpd, or 59 additional units of water at an average of 400 gpd, until May 31, 2025, with conditions requiring construction of water system improvements.

The applicant has maintained valid water commitments with DWS and proposes

installation of a water meter and backflow preventer to provide potable water to the site, as well as a 785-foot-long fire line with a detector check meter and two fire hydrants, to provide water for fire protection purposes. In addition, to address agricultural water needs, the applicant notes that they intend to develop alternative sources for non-potable, agricultural water needs, such as rainwater catchment systems and an agricultural well, to decrease the project's demand on the County water supply.

The Planning Director is recommending amending Conditions B and C to specify that the applicant is responsible for maintaining valid water commitments and to address necessary water system improvements as noted by DWS.

There is no County sewer in the immediate area, thus the applicant is proposing the use of multiple individual wastewater systems (IWS), meeting with the approval of the Department of Health (DOH) to handle wastewater related to the project. The preceding will be added as a condition of approval

There are no municipal solid waste collection services in the County. Solid waste will be disposed of at an authorized landfill by commercial haulers.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. The project site is located approximately 0.6 miles from the nearest shoreline and is not situated within the SMA. Thus, the property will not be affected by coastal hazards and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, or marine resources on the subject property.

In view of the Hawai'i State Supreme Court's PASH and "Ka Pa'akai O Ka'aina" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: The applicant notes they have engaged ASM Affiliates to conduct an Archeological Inventory Survey (AIS) to comply with NEPA Environmental Assessment requirements for federal funding awarded for the project. As part of the original rezone application, the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), by letter dated September 9,

2008, determined that no historic properties will be affected since the land has been altered by intensive cultivation.

The valued cultural, historical, and natural resources found in the rezoning area:

As mentioned above, SHPD determined that no historic properties would be affected and the property has been cleared and impacted by agricultural activity.

There are no known features of cultural importance, there is no known history of traditional practices associated with the property, nor is there any record of a designated public access to the shoreline or mountain areas that traverses the property.

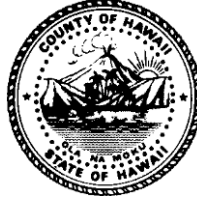
Possible adverse effect or impairment of valued resources: There is no evidence of any possible adverse effects or impairments will occur to any valued resources.

Feasible actions to protect native Hawaiian rights: There is no evidence of any valued cultural, historical, and/or natural resources found on the site, thus to the extent which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights. A condition of approval has been updated to address requirements for inadvertent historic site finds during the development process.

Lastly, this recommendation is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the preceding findings, **the Planning Director recommends a favorable recommendation for a 10-year time extension to Condition D (complete construction) be forwarded to the County Council.** The accompanying draft bill to amend Ordinance No. 06 28 is provided for your consideration. Please note the proposed conditions of approval attached to the draft bill, including updates to conditions to reflect current standard condition language. Material to be deleted is bracketed and struck through; new material is underscored.

COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. _____ BILL NO. _____
(Planning Dept.)

AN ORDINANCE AMENDING ORDINANCE NO. 06 28, WHICH AMENDED SECTION 25-8-33 (CITY OF HILO ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED) BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-1a) TO NEIGHBORHOOD COMMERCIAL (CN-20) AT PONOHAUAI, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY: 2-3-036:018.

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

SECTION 1. Section 2 of Ordinance No. 06 28 is amended as follows:

“SECTION 2. In accordance with Section 25-8-33, 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.

INSERT CONDITIONS ”

SECTION 2. Material to be deleted is bracketed and stricken. New material is underscored.

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:

COUNCIL MEMBER, COUNTY OF HAWAI'I

_____, Hawai'i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date:

KRISTIN FROST ALBRECHT (FORMERLY MATSUNO ENTERPRISES, LTD.)
AMENDMENT TO CHANGE OF ZONE ORDINANCE NO. 06 28
(PL-REZ-2024-000064/AMEND REZ 2005-000019)
CONDITIONS OF APPROVAL

- A. The applicant, successors or assigns ("Applicant") 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 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 90 days from the effective date of this ordinance~~]The Applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
- C. [~~In accordance with the Department of Water Supply's 2002 Water System Standards, the existing 8-inch waterline in Ponahawai Street shall be upgraded to obtain the 2,000-gallons per minute fire flow requirement for the proposed uses.~~] The Applicant shall construct, or cause to be constructed, necessary water system improvements meeting with the approval of the Department of Water Supply.
- D. Construction of the proposed improvements shall be completed within [~~five (5)~~]ten (10) years from the effective date of this amended ordinance. The time during which required plans, reports, studies, or relevant permit applications are under review for approvals by government agencies shall not count towards the deadline established in the ordinance. To justify this tolling, the applicant shall provide evidence of the excluded time period to the planning department for its review and approval, which shall consist of dates obtained from a government agency website, permitting program, or office indicating when the required plans, reports, studies, or permit applications were submitted, approved, denied, or returned by the government agency. Any request for tolling shall be verified and approved in writing by the director prior to the deadline established by the ordinance. The director shall notify the council of any approval of a request for tolling within thirty days of such approval. If any conditions have not been completed by the deadline, or if a time extension request has not been submitted in accordance with section 25-2-44(c), the

planning department shall inform the applicant that the ordinance is null and void without further action by the County. In that event, the zoning designation of the property(s) affected by the ordinance shall automatically revert to its immediate prior zoning designation.~~[This time period shall include securing Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify proposed structure(s), fire protection measures, access roadway, driveway and parking stalls. Landscaping shall be indicated on the plans for the purpose of mitigating any potential adverse noise or visual impacts to adjoining parcels. Landscaping shall be provided in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).]~~

E. The time period specified in Condition D shall include securing Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify proposed structure(s), fire protection measures, access roadway, driveway and parking stalls. Landscaping shall be indicated on the plans for the purpose of mitigating any potential adverse noise or visual impacts to adjoining parcels. Landscaping shall be provided in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

~~[E.]~~F. The [a]Applicant shall provide full improvements to the project's frontage along Ponahawai Street 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.

~~[F.]~~G. Access to the property shall be limited to a single location along Ponahawai Street. The access connection to Ponahawai Street shall conform to Chapter 22 (Streets) of the Hawai'i County Code. A dedicated left turn lane into the property from Ponahawai Street, and any other access improvements required by the Department of Public Works, shall be provided prior to the issuance of an occupancy permit.

~~[G.]~~H. The access road(s) within the project site shall be constructed to dedicable standards with concrete curb, gutters, and sidewalks within a minimum 60-foot right-of-way.

~~[H.]~~I. Install street lights and traffic control devices as required by the Traffic Division, Department of Public Works.

- [~~F~~].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 and the recommended drainage system shall be constructed, meeting the approval of the Department of Public Works.
- [~~F~~].K. 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.
- [~~K~~].L. All earthwork activity including grading, grubbing, and stockpiling shall conform to Chapter 10, Erosion and Sedimentation Control, of the [~~Hawaii~~]Hawai'i County Code.
- M. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- [~~L~~].N. In the 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, the Applicant shall 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. [~~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 the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- [~~M~~].O. Should the Council adopt a [~~n~~] 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.
- [~~N~~].P. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the [~~a~~]Applicant shall comply with the requirements of Chapter 11, Article 1, [~~Hawaii~~]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 or final subdivision approval for any new residential structures.

[Ø.]Q. If the [~~applicant, successors, or assigns develop~~] Applicant develops residential units on the subject property, the [~~a~~]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 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~~]\$11,018.76 per multiple family residential unit ([~~\$9,991.20~~]\$17,171.49 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 units) shall be allocated as follows:

1. [~~\$3,162.49~~]\$5,435.24 per multiple family residential unit ([~~\$4,817.93~~]\$8,280.39 per single family residential unit) to the County to support park and recreational improvements and facilities;
2. [~~\$99.95~~]\$171.78 per multiple family residential unit ([~~\$232.42~~]\$399.45 per single family residential unit) to the County to support police facilities;
3. [~~\$307.46~~]\$528.42 per multiple family residential unit ([~~\$459.06~~]\$788.96 per single family residential unit) to the County to support fire facilities;
4. [~~\$137.04~~]\$235.52 per multiple family residential unit ([~~\$200.98~~]\$345.41 per single family residential unit) to the County to support solid waste facilities; and
5. [~~\$2,704.31~~]\$4,647.80 per multiple family residential unit ([~~\$4,280.82~~]\$7,357.27 per single family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the [~~a~~]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 pursuant to Section 2-162.1(a) of Hawai'i County Code.

[P.]R. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

[Q.]S. 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 the extent to which the conditions of approval have been satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.

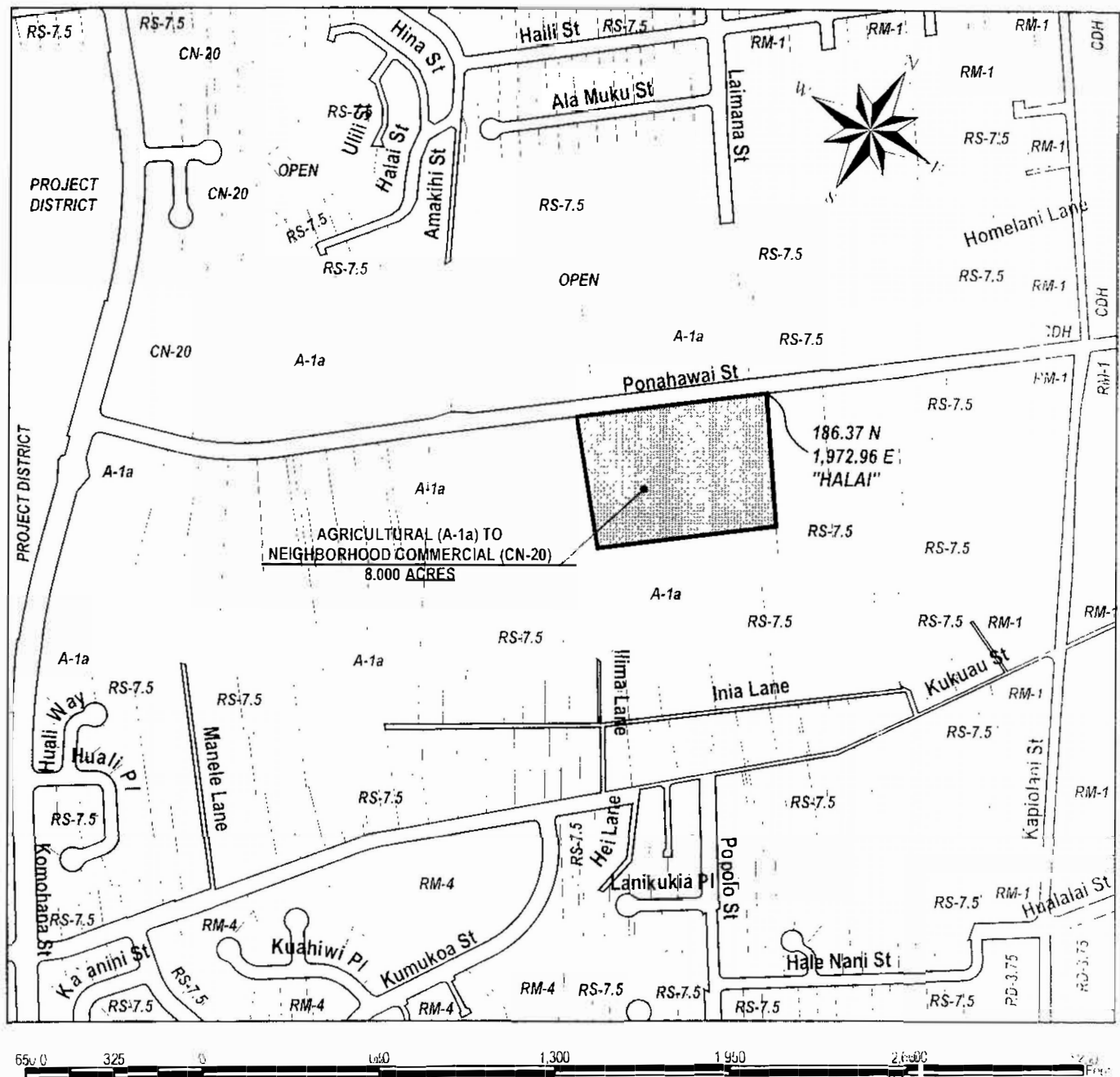
[R.]T. An initial extension of time for the performance of conditions within this amended ordinance may be requested in accordance with Section 25-2-44, subsections (c) and (d), of the Hawai'i County Code.~~[An initial extension of time for the performance of conditions within the ordinance may be granted 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.]~~

- U. If the Applicant fails to fulfill any conditions of the zone change within the specified time limitations, the Planning Director or County Council may initiate the process for enactment of an ordinance reverting the affected property back to its original zoning designation or a more appropriate zoning designation in accordance with Section 25-2-43 of the Hawai‘i County Code.



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP)
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION
 FROM AGRICULTURAL (A-1a)
 TO NEIGHBORHOOD COMMERCIAL (CN-20)
 AT PONAHAWAI, SOUTH HILO, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII