

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
BACKGROUND AND RECOMMENDATION

COUNTY COUNCIL INITIATED BILL NO. 134, DRAFT 2
(PL-CCI-2024-000007)

AMENDMENT TO CHAPTER 25, ARTICLE 2, SECTION 25-2-42, OF THE
HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED),
RELATED TO AMENDMENTS INITIATED BY PROPERTY OWNERS AND
OTHER PERSONS

The County Council has referred a bill to amend Chapter 25 (Zoning), Article 2, Section 25-2-42 of the Hawai‘i County Code 1983 (2016 Edition, as Amended), relating to amendments initiated by Property Owners and Other Persons.

PURPOSE OF BILL 134

1. The Hawai‘i County Council has introduced Bill No. 134 (**Planning Department Exhibit 1**), which seeks to amend Chapter 25 (Zoning), Article 2, Section 25-2-42 of the Hawai‘i County Code 1983 (2016 Edition, as Amended) (hereinafter HCC). This bill addresses amendments initiated by property owners and other individuals by adding language to HCC Section 25-2-42, Subsection (c), which specifies conditions for the Planning Director to complete recommendations for change of zone applications:

(c) “In considering an amendment initiated by a property owner or other person which proposes to change the district classification of any property, the director shall consider the purposes of the existing and proposed district and the purposes of this chapter and shall recommend a change in a district boundary only where it would result in a more appropriate land use pattern that will further the public necessity and convenience and the general welfare, and be consistent with the goals, policies and standards of the general plan.

(1) The director shall recommend either the approval or denial of the proposed amendment to the commission subject to conditions which would further the intent of this chapter and the general plan and other related ordinances.

(2) The director shall make the recommendation within one hundred twenty days after an application has been accepted by the director.

(3) If the director fails to make a recommendation on the proposed amendment within the one-hundred-twenty-day period, the application shall be forwarded to the commission without any recommendation from the director, and the director's failure to act shall be considered a favorable recommendation on the application.

"(4) The director shall prepare a report identifying all buildings, excluding existing buildings, that are legally permitted to be constructed on surrounding properties of which any portion is within one-quarter mile of the perimeter boundary of the subject property. The director shall transmit the report to the commission and the council prior to their respective consideration of the change of zone sought by the application."

According to the bill's introducer's, Bill 134 mandates that the Planning Director transmit a report as part of their recommendation to the Windward and Leeward Planning Commissions, which would then be forwarded to the County Council for all change of zone applications initiated by property owners or other persons. The report should identify all buildings, excluding existing buildings, that are legally permitted to be constructed on all surrounding properties within a one-quarter mile radius of the property subject to the change of zone application.

AGENCIES COMMENTS PROVIDED

2. State Department of Transportation (**Planning Department Exhibit 2 – May 16, 2024, Memo**)

AGENCIES – NO COMMENTS/CONCERNS

3. State Office of Planning and Sustainable Development

AGENCIES- NO RESPONSE PROVIDED

4. Department of Public Works-Engineering Division, Department of Public Works-Traffic Division, Department of Public Works-Building Division, Department of Water Supply, Department of Environmental Management, Department of Parks and Recreation, Police Department, Fire Department, Office of Housing and Community Development, State Department of Health and State Land Use Commission.

PUBLIC COMMENTS PROVIDED

5. None as of the date of this writing.

PLANNING ANALYSIS OF THE IMPACTS OF BILL 134

The intent of the Zoning Code is to ensure appropriate land patterns, maintain order, prevent conflicts, and promote harmony by regulating the density and intensity of land use. However, experience has shown that even the best zoning ordinances can become outdated. Over time, land uses that do not conform to typical patterns, zoning regulations, or designated purposes for an area may emerge. This leads landowners to request zoning changes from the Planning Department.

For each application initiated by a landowner or other person with an interest in the property, the Planning Department creates a background and recommendation report that provides a comprehensive analysis of each change of zone request, including a summary of the request, site analysis, policy and plan compliance, impact assessments, agency and community input, historical context, regulatory considerations, alternatives, recommendations, and supporting data and documentation. By preparing these reports, the Planning Department ensures that decision-makers have all the necessary information to make informed and balanced decisions that uphold planning principles and serve the best interests of the community.

Bill 134, in its current form, would necessitate the Planning Director to compile an additional report to assess the potential construction of new buildings within a quarter-mile radius of any proposed change of zone. This report will entail identifying and describing all neighboring properties within the specified radius, including their existing zoning classifications. Additionally, it would entail providing a comprehensive inventory of permissible building types under the current zoning regulations for each surrounding property, accompanied by detailed descriptions encompassing use types, densities, and other pertinent zoning standards. While generating such a report might be relatively straightforward for Residential zoning districts, it presents significant challenges for more complex districts like Commercial and Industrial zoning districts, given their extensive list of permissible uses. For example, staff can determine that for a 40,000-square foot parcel with RS-10 zoning, 4 lots with up to two dwelling units per lot could be created. However, for the same 40,000-square foot lot in the CV-10 zoning district, any of the

uses listed in the permitted uses table in HCC Section 25-5-122 can be established on the property. The Planning Department can calculate and provide the maximum zoning density that can be developed for a property but has no way of predicting what use or buildings will be developed.

PLANNING DIRECTOR'S RECOMMENDATION

Since the introduction of Bill 134, the Planning Department has tried to gain an understanding of the intent and purpose of Bill 134. The Planning Director convened with the initiators of the bill to discuss its purpose. During the meeting, the Director conveyed that meeting the information requirements outlined in Bill 134 would be unfeasible as described in the example above. Based on the preceding, Bill 134, as currently written, is too general, leading to varying interpretations and implementations.

However, in response, the Director proposed alternative approaches to furnish the Council with as much pertinent information as feasible.

In considering alternative approaches, the Planning Director recommends that the bill be re-written to strike a balance between the necessity for comprehensive evaluation of surrounding properties and the practical constraints and resource limitations. Some suggested strategies include:

1. Targeted Analysis:

Concentrate on properties within a smaller radius or those most likely to undergo development, thereby streamlining the report's scope and complexity. Preparing such detailed reports for such a large radius for each change of zone application would require significant time and labor and is redundant with the existing planning process. As an example, staff compiled a list of surrounding properties for TMK: (3) 8-1-008:004 and (3) 2-2-035:096 that are within a 500-foot radius and focused on zoning districts that are more complex than the Residential District. This type of analysis took staff approximately 4 hours to complete. **(Planning Department – Exhibit 3)**

2. **Summary Reports:**

Accurate data on all potential legally permitted buildings is not readily available and predicting all possible legally permitted buildings involves numerous variables and assumptions, which may reduce the reliability of the report. Offer a summary report that emphasizes crucial zoning regulations and potential developments, avoiding exhaustive detail on every permitted building. For instance, staff provided examples from past background reports to illustrate how additional details could be incorporated into the surrounding property description section within all change of zone background reports. This type of analysis took staff approximately 1 hour to complete. **(Planning Department – Exhibit 4)**

3. **Use Existing Tools:**

Employ existing zoning maps, comprehensive plans, and GIS tools to deliver visual and data-driven insights without the need for extensive manual reporting. Staff routinely generate maps for presentations for each change of zone application, and these zoning maps can offer valuable insights into surrounding properties. **(Planning Department – Exhibit 5)**

4. **Agency and Community Engagement:**

Engage with community stakeholders, developers, and other agencies to gather input and address concerns through collaborative planning efforts. For example, the Department of Water Supply currently assesses water availability for each parcel requesting a zoning district change. The County Council may consider requesting the Department of Water Supply to furnish water availability information or other information for the broader rezone area (not just the subject property) to aid in planning processes. Additionally, specific infrastructure information could be requested from other agencies such as the Department of Environmental Management or Department of Public Works for the broader rezone area.

Addressing the challenges of reaching a consensus on the implementation and utilization of Bill 134 is essential in having a successful code amendment. The Planning Director acknowledges the County Council's efforts in drafting the legislation but taking into consideration, the lack of agreement and lack of clarity, the Planning Director **recommends that the Planning Commissions issue an unfavorable recommendation to the County Council regarding the bill.** Nonetheless, the Planning Director expresses willingness to collaborate with the bill's initiators to address their concerns and ensure that change of zone ordinances incorporate appropriate surrounding property evaluations to uphold the Zoning Code's intent.

PLANNING COMMISSION ACTION

The Windward and Leeward Planning Commissions are required to take action on Bill 144 as described in Section 25-2-43(b) of the zoning code **(Planning Department Exhibit 6)**. This bill was transmitted by the County Council to the Department on April 2, 2024, which means the commissions are required to transmit their recommendations to the council by July 31, 2024. The commissions may recommend approval of all, some, or none of the Director's suggestions. The commissions may also recommend their own revisions to the bill. The Windward and Leeward Planning Commission's recommendations will be forwarded separately, but at the same time, to the County Council for their consideration and decision. In the event the commission fails to act on the proposed bill by this date, such inaction shall be considered as an unfavorable recommendation by the commissions.

Ashley L. Kierkiewicz
County Council District IV

*Policy Committee on Planning
Land Use and Development – Chair*



(808) 961-8265
ashley.kierkiewicz@hawaiicounty.gov

*Policy Committee on Infrastructure
and Assets – Vice Chair*

HAWAI'I COUNTY COUNCIL

Hawai'i County Building
25 Aupuni Street • Hilo, Hawai'i 96720

TO: Zendo Kern, Director
Planning Department

FROM: Ashley L. Kierkiewicz, Council Member 

DATE: April 2, 2024

SUBJECT: Referral of Bill 134, Draft 2; an Ordinance amending Chapter 25, Articles 2, Section 25-2-42, of the Hawai'i County Code 1983 (2016 Edition, As Amended), related to amendments initiated by Property Owners and Other Persons.

Pursuant to Section 25-2-43(b) of the Hawai'i County Code, I am forwarding a legislative item for your comment and recommendation.

On April 2, 2024, the Committee on Planning, Land Use, and Development voted to forward Bill 134, Draft 2 to the Planning Director and the Windward and Leeward Planning Commissions.

Upon completion of your and the Commissions review, please transmit your comments and recommendations to Council Chairperson Heather Kimball. This will facilitate further deliberation and action on the proposed measure by the Committee.

Thank you for your attention to this matter.

Enc.
AK/kj

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 134

(DRAFT 2)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 25, ARTICLE 2, SECTION 25-2-42 OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO AMENDMENTS INITIATED BY PROPERTY OWNERS AND OTHER PERSONS.

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

SECTION 1. Chapter 25, article 2, section 25-2-42, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by amending subsection (c) to read as follows:

- “(c) In considering an amendment initiated by a property owner or other person which proposes to change the district classification of any property, the director shall consider the purposes of the existing and proposed district and the purposes of this chapter and shall recommend a change in a district boundary only where it would result in a more appropriate land use pattern that will further the public necessity and convenience and the general welfare, and be consistent with the goals, policies and standards of the general plan.
- (1) The director shall recommend either the approval or denial of the proposed amendment to the commission subject to conditions which would further the intent of this chapter and the general plan and other related ordinances.
 - (2) The director shall make the recommendation within one hundred twenty days after an application has been accepted by the director.
 - (3) If the director fails to make a recommendation on the proposed amendment within the one-hundred-twenty-day period, the application shall be forwarded to the commission without any recommendation from the director, and the director's failure to act shall be considered a favorable recommendation on the application.
 - (4) The director shall prepare a report identifying all buildings, excluding existing buildings, that are legally permitted to be constructed on surrounding properties of which any portion is within one-quarter mile of the perimeter boundary of the subject property. The director shall transmit the report to the commission and the council prior to their respective consideration of the change of zone sought by the application.”

SECTION 2. New material is underscored. In printing this ordinance, the underscoring need not be included.

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


COUNCIL MEMBER, COUNTY OF HAWAI'I

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

REFERENCE Comm. 741.4

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

May 16, 2024

EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO

IN REPLY REFER TO:

STP 00470.24
STP 8.3749

VIA EMAIL: planning@hawaiiicounty.gov

Mr. Zendo Kern
Planning Director
County of Hawaii
Planning Department
East Hawaii Office
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Dear Mr. Kern:

Subject: County Council Initiated Bill No. 134. Draft 2 (PL-CCI-2024-000008) Amendment to Chapter 25, Articles 2, Section 25-2-42 of the Hawaii County Code 1983 Relating to Amendments Initiated by Property Owners and Other Persons

Thank you for your Memorandum, dated April 16, 2024, requesting the Hawaii Department of Transportation's (HDOT) review and comments on this draft bill.

HDOT has reviewed Bill 134 and has the following comments:

Pursuant to Hawaii Revised Statutes § 266-2(b), HDOT-Harbors are exempt from county approval for any improvement, such as buildings and other projects including tenant projects that help fulfill HDOT-Harbors' government function. Therefore, HDOT-Harbors are seeking clarification on whether the proposed report will exclude such buildings when the commission and/or council considers the applicant's proposal to change a district classification.

Please submit any subsequent land use entitlement-related requests for review or correspondence to the HDOT Land Use Intake email address at DOT.LandUse@hawaii.gov.

If there are any questions, please contact Mr. Blayne Nikaido, Planner, Land Use Section of the HDOT Statewide Transportation Planning Office at (808) 831-7979 or via email at blayne.h.nikaido@hawaii.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Edwin H. Sniffen".

EDWIN H. SNIFFEN
Director of Transportation

Planning Dept.
Exhibit 2

Targeted Analysis for TMK: (3) 8-1-008:004						
Parcel	Zoning	Parcel Size	Pre-Existing Zoning	Ordinance Number	Ordinance Status	Land Description
810060440000	CV-7.5	16,392 sf	No	ORD 88-073	Developed	Service Station
810080040000	RS-10	299,475 sf	No	ORD 22-108	Active Ordinance	Vacant
810080050000	CV-10	100,497 sf	Yes			Commercial Structure with Parking
810080200000	CV-10	184,302 sf	Yes			Commercial Structure with Parking
810090070000	CV-10	44,675 sf	Yes			Dwelling
810090080000	CV-10	23,087 sf	Yes			Vacant
810090100000	CV-10	54,450 sf	Yes			Dwelling
810090110000	CV-10	91,171 sf	Yes			Commercial Structure with Parking
810090120000	CV-10	21,344 sf	Yes			Parking Lot with Vacant Area
810090130000	CV-10	16,440 sf	Yes			Service Station
810090140000	A-2a	88,601 sf	No	ORD 87-10	Developed	Dwelling

Targeted Analysis for TMK: (3) 2-2-035:096						
Parcel	Zoning	Parcel Size	Pre-Existing Zone	Ordinance #	Ordinance Status	Land Description
210120090000	ML-20	858.743 acres	No	ORD 72-539	Developed	Hilo Airport and other Industrial uses
220350010000	MCX-20	22,820 sf	No	ORD 09-089A	Developed	
220350030000	MCX-20	12,294 sf	No	ORD 12-113	Developed	
220350060000	MCX-20	22,900 sf	No	ORD 09-091A	Developed	
220350590000	ML-10	11,050 sf	No	ORD 98-080	Developed	
220350600000	MCX-20	21,050 sf	No	ORD 16-049	Developed	
220350610000	MCX-20	21,050 sf	No	ORD 03-082	Developed	
220350620000	ML-20	21,050 sf	No	ORD 85-010	Developed	
220350630000	MCX-20	21,050 sf	No	ORD 06-145	State	Vacant
220350640000	ML-20	18,752 sf	No	ORD 83-857	Developed	
220350680000	Open	13,250 sf	Yes	N/A	N/A	Developed with a Residential Structure and Garage
220350690000	ML-20	22,812 sf	No	ORD 72-533	Developed	Developed with Commercial Structures
220350960000	MCX-20	22,300 sf	No	ORD 22-001	Active Ordinance	Residential Structure
220351010000	ML-10	10,000 sf	No	ORD 98-080	Developed	Commercial Structure
220361230000	CN-10	16,000 sf	No	ORD 02-011	State Ordinance	Residential Structure
220370160000	CN-10	12,900 sf	No	ORD 97-122	State Ordinance	Residential Structure
220370410000	MCX-20	124,015 sf	No	ORD 04-005	State Ordinance	Vacant

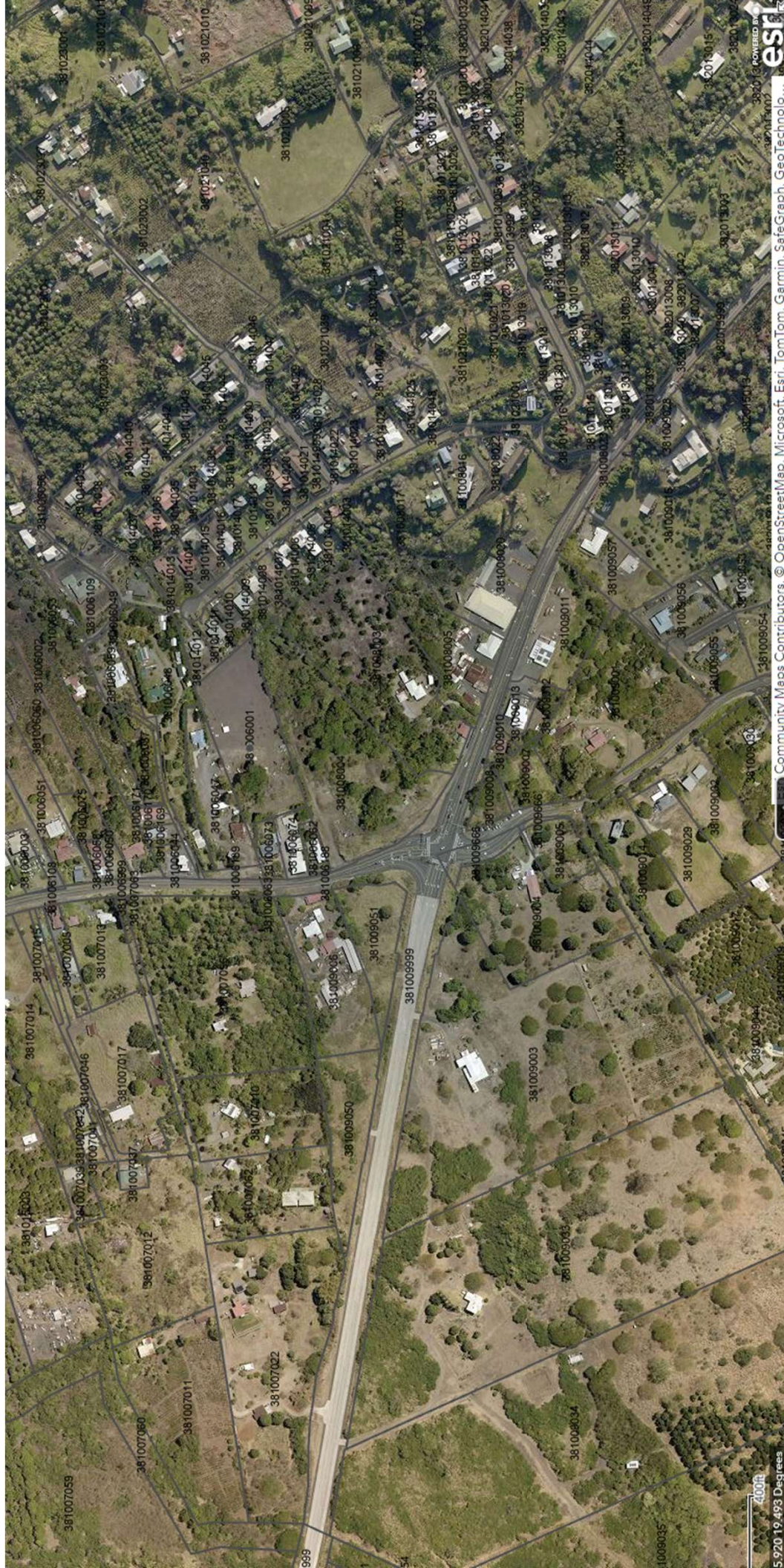
Summary Report for Surrounding Zoning/Land Uses for TMK: (3) 8-1-008:004 (PL-REZ-2022-019)

Lands to the north are zoned A-1a and RS-10. Lands to the northeast are zoned RS-15. Lands to the east are zoned A-1a and CV-10. Lands across the Hawai'i Belt Road Highway intersection with Ali'i Drive extension and Nāpō'opo'o Road and to the the wesr are zoned A-5a and lands to the sourth are zoned CV-10. Surrounding land uses include a mixture of small farms, residential subdivisions, and commercial uses[.], which include commercial structures with parking lots and two service stations. Most of the zoning within a 500 foot radius of the subject property has been in place since the enactment of the zoning code. There has only been a total of three (3) zoning ordinances that have occurred within the 500 foot radius of the subject property with two of them being constructed and completed while one (1) is active and being constructed.

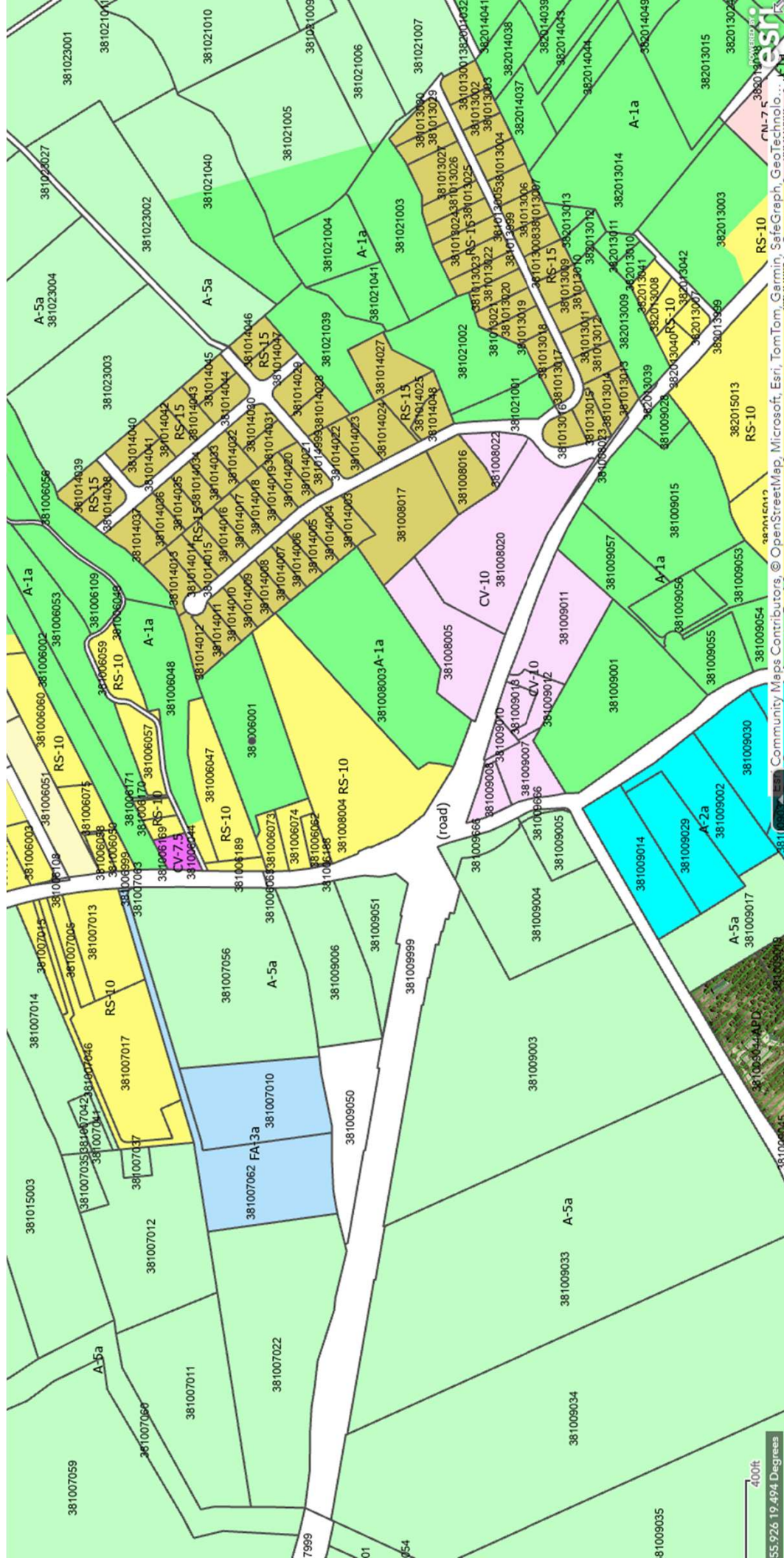
Summary Report for Surrounding Zoning/Land Uses for TMK: (3) 2-2-035:096 (PL-REZ-2021-247)

The property is surrounded by a mix of commercial, industrial and residential uses. The property is bordered to the north and west by residential properties zoned RS-10. The area fronting Kekūanāo‘a Street is a mix of residential, commercial, and limited industrial. There is a gas station immediately adjacent and east of the subject site on land zoned ML-20. There are other types of commercial and industrial uses within the vicinity of the subject site[-], most of which have been created through various change of zone ordinances. Of the total industrial and commercial ordinances within a 500 foot radius of the subject property, 11 ordinances have been developed and constructed, four (4) are considered stale ordinances and one (1) is active. Most of the zoning in the area is primarily residential and the industrial and commercial uses are located within the main highway.

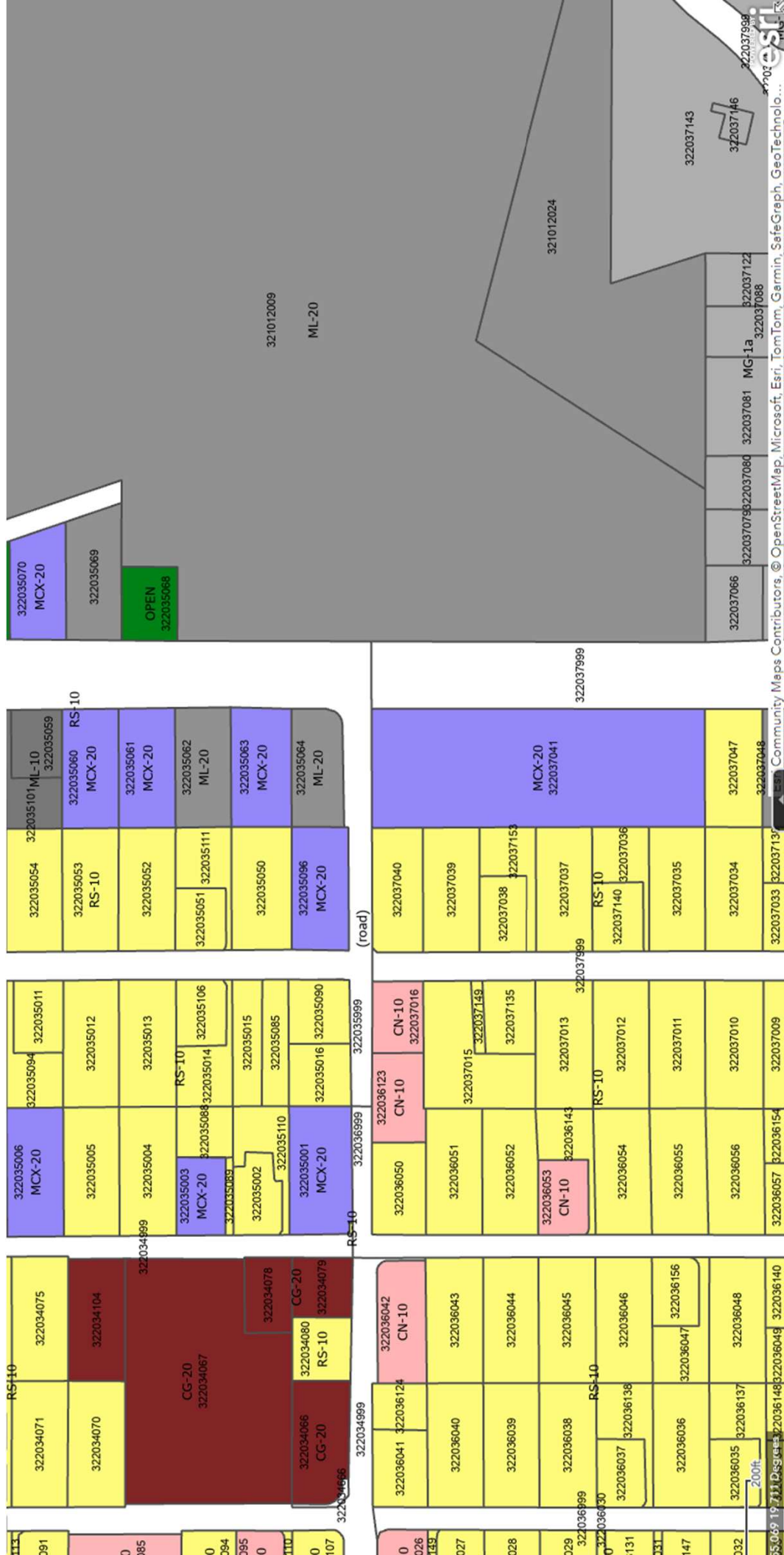
Existing Tools Analysis: Aerial Imagery for TMK: (3) 8-1-008:004



Existing Tools Analysis: GIS Zoning Map for TMK: (3) 8-1-008:004



Existing Tools Analysis: GIS Zoning Map for TMK: (3) 2-2-035:096



Section 25-2-43. Amendments initiated by the council and director.

- (a) Any amendment initiated by the director shall be reviewed by the commission.
 - (1) The amendment shall be submitted to the commission with the director's justification and recommendation on the amendment.
 - (2) Upon receipt of a proposed amendment from the director, the commission shall hold at least one public hearing. Notice of the hearing by the publication shall be provided by the commission in accordance with section 25-2-5, except that when a proposed amendment involves a specific parcel of land, notice shall be provided by the commission in accordance with subsections (c) and (d).
 - (3) Within sixty days after receipt of the amendment from the director, the commission shall transmit the proposed amendment together with its recommendations thereon through the mayor to the council. The commission shall recommend approval in whole or in part, with or without modifications, or rejection of such amendment. In the event that the commission fails to act on the amendment within the sixty-day period, such inaction shall be considered as unfavorable recommendation by the commission, and the amendment shall then be submitted through the mayor to the council with such recommendation.
- (b) The council shall refer any proposed council-initiated amendment to this chapter to the director and the commission with requests for their respective comments and recommendations thereon, prior to the first reading of any such amendment. The director and the commission shall each submit comments and recommendations on the proposed amendment to the council within one hundred twenty days from the date that the amendment is transmitted by the council to the director and the commission.
 - (1) The director shall submit comments and any recommendations to both the commission and the council within the one-hundred-twenty-day review period.
 - (2) The commission shall hold at least one public hearing on the proposed amendment. Notice of the hearing by publication shall be provided by the commission in accordance with section 25-2-5, except that when a proposed amendment involves a specific parcel of land, notice shall be provided by the commission in accordance with subsections (c) and (d).
 - (3) The commission shall transmit the amendment together with its recommendations thereon through the mayor to the council. The commission shall recommend approval in whole or in part, with or without modifications, or rejection of such amendment. In the event that the commission fails to act on the amendment within the one-hundred-twenty-day review period, such inaction shall be considered as an unfavorable recommendation by the commission.
 - (4) After the one-hundred-twenty-day review period has expired, the council may proceed to act on the proposed amendment as it deems appropriate.