

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 47
(Draft 3)

ORDINANCE NO. 93 45

AN ORDINANCE AMENDING SECTION 25-87 (NORTH KONA ZONE MAP), ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, RELATING TO MODIFICATIONS OF CONDITIONS OF ORDINANCE NO. 850, AND FURTHER AMENDED BY ORDINANCE NO. 88-23, WHICH RECLASSIFIED 727.8 ACRES OF LAND FROM UNPLANNED (U) TO AGRICULTURAL (A-3a) AT KAU, NORTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-2-05:PORTION OF 1.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1. Ordinance NO. 88-23 is amended as follows:

"SECTION 1. Section 25-87, Article 3, Chapter 25 (Zoning Code) of the Hawaii County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kau, North Kona, Hawaii, shall be Agricultural (A-3a):

Beginning at the Northeast corner of this parcel of land, on the westerly side of Hawaii Belt Road, F. A. P. No. F-10 (5), the coordinates of which referred to Government Survey Triangulation Station "AKAHIPUU" BEING 5,574.46 feet South and 2,650.51 feet West and running by azimuths measured clockwise from True South:

1. 11° 08' 1,630.12 feet along the westerly side of Hawaii Belt Road, F. A. P. No. F-10 (5);
2. 91° 30' 25.16 feet along Government Land;
3. 103° 19' 117.11 feet along Lot 1 of Makaula Subdivision, Unit 1;

4. 105° 29' 45" 154.26 feet along Lot 3 of Makaula Subdivision, Unit 1;
5. 97° 42' 38" 190.95 feet along Lots 3 and 7-A of Makaula Subdivision, Unit 1;
6. 2° 00' 65.18 feet along Lot 7-A of Makaula Subdivision, Unit 1;
7. 93° 42' 20" 2,828.95 feet along Grant 3741 to W. H. Kailiino to a "+" cut on ahu;
8. 98° 06' 2,069.50 feet along Government Land of Makaula to a "+" cut on ahu;
9. 100° 15' 30" 2,018.50 feet along Government Land of Makaula to a " " cut on stone;
10. 115° 04' 5,166.71 feet along Government Land of Makaula;
11. 198° 10' 2,312.70 feet along remainder of L. P. 8265, Mahele Award 13-B to Paalua (Certificate of Boundaries No. 191);
12. 291° 46' 30" 800.00 feet along Government Land of Puukala to a "+" cut on rock with ahu named "Kekuakakawahie";
13. 280° 26' 30" 2,814.00 feet along Government Land of Puukala to a " " cut on rock on ahu;
14. 290° 58' 30" 5,603.00 feet along Government Land of Puukala to a "+" cut in Pahoehoe;

15. 286° 08' 20" 844.61 feet along Grant 3968 to P. M. Pahukula to a pipe in concrete;
16. 286° 19' 30" 1,522.38 feet along Lots 78, 73, 69, 65, 61, 57, 53, 49, 45, 39, 31 and 25 of Kona Ocean View Properties (File Plan 637) to a pipe in concrete;
17. 286° 21' 621.96 feet along Grant 3968 to P. M. Pahukula to the point of beginning and containing an area of 727.8 Acres.

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

"SECTION 2. This change in district classification is conditioned upon the following: (A) that the [petitioners, or their authorized representative, applicant, successor or assigns] shall be responsible for complying with all of the stated conditions of approval; (B) that a drainage system in accordance with the standards of the Department of Public Works shall be installed; (C) that the property shall be developed on an incremental basis. There shall be no more than [five (5)] three (3) increments of which the first [three (3)] two (2) shall consist of [49] no more than 100 lots each; (D) that the zoning for Increment I shall not become effective unless and until there are legal and financial assurances satisfactory to the Department of Water Supply that water for domestic and

agricultural use for Increment I will be available; [provided, however, that the zoning for Increments II through V shall not become effective until adequate water for domestic and agricultural use meeting with the approval of the Department of Water Supply is available at the property line of that increment. Should the legal and financial assurance described above fail, the Council shall take action to rezone the property back to its original zoning; (E) that the zoning for the second and successive increments shall be effective upon the establishment of agricultural use on fifty (50) percent of the lots in the preceding increment. Agricultural use is defined as the planting of crops on minimum of two (2) acres of the respective lot; (F) that the zoning for the second and successive increments shall be effective upon the Council approval of performance reports containing information on the status of compliance of conditions (D) and (E). The performance reports shall be submitted by the petitioner to the County Council;] (E) that the zoning for the second and third increments shall be effective upon the establishment of adequate water for domestic and agricultural use meeting with the approval of the Department of Water Supply at the property line of that increment, provided however that the final subdivision approval shall not be granted until it is demonstrated to the satisfaction of the Planning Director that substantial agricultural activity is being conducted on fifty (50) percent of the lots in the first increment and on at least

two-thirds of the land of each lot, comprising that minimum of fifty (50) percent. For the purpose of this condition, "agricultural" shall be defined as the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber; game propagation; raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use. An agricultural activity will be considered substantial: (1) if it provides a major source of income to the person(s) who resides on the property; or (2) if the property is dedicated for agriculture uses in accordance with applicable Department of Finance, Real Property Tax Division's procedures. This condition shall be incorporated in each of the deeds for the proposed lots and shall be duly recorded with the State Bureau of Conveyances and a copy shall be filed with the Planning Department within one year of the date of final subdivision approval of the lots; [(H)](F) that the final subdivision approval of the first increment shall be secured [within one year from the effective date of this amendment] by January 31, 1994 and that subdivision plans for the subsequent increments shall be submitted within one (1) year from the date of receipt of final subdivision approval of the previous increment(s); (G) that [the] a proposed 80-foot wide right-of-way and its improvements shall be extended to the Queen Kaahumanu Highway if and when any development occurs

within the existing Conservation District portion of the parcel identified as TMK: 7-2-5:1; (H) that to insure proper regional road system development, the applicant shall participate in the implementation of the County's Keahole to Kailua Sub-Regional Plan. All portions of Kau Drive, University Drive, Kealakaa Street, Waena Drive and the mid-level arterial that traverse the subject parcel, shall be constructed and dedicated incrementally with the subdivision buildout. Roadway and intersection plans shall be reviewed and approved by the Department of Public Works and Department of Transportation. [(I) that restrictive deed covenants for each lot shall be recorded with the Bureau of Conveyances together with any recordation of the final subdivision plat maps. The covenants shall include mandatory participation by each lot owner in the agricultural co-op; and that the co-op shall have the authority and responsibility for the cultivation, harvesting and marketing of all crops planted in conjunction with the development of the subdivision. Other documentation as deemed necessary by the Corporation Counsel shall be recorded or filed to meet the intent of establishing an agricultural cooperative with the full responsibility and control over the proposed agricultural park; and] (I) that a Solid Waste Management Plan meeting with the approval of the Department of Public Works shall be submitted prior to final subdivision approval of the first increment; (J) that the applicant shall install a

wastewater treatment system meeting with the requirements of the Department of Health and Department of Public Works;

(K) that all construction wastes shall be prohibited from the Kailua landfill and all transfer stations island-wide until the new West Hawaii Landfill is complete and in operation.

Construction wastes may be brought to the Hilo Landfill, however, the contractor will be responsible to provide all necessary labor, equipment, materials, and supplies to properly landfill any waste; (L) restrictive covenants in the deeds of all the proposed lots shall prohibit the construction of a second dwelling unit on each lot. A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Department for review and approval prior to final subdivision approval. A copy of the approved covenant shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances likewise prior to final subdivision approval; (M) should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken;

[(J)](N) that all other applicable rules, regulations and

requirements shall be complied with[, and]; (O) should the Council adopt a Unified Impact Fees ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance; (P) that an annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the amended ordinance. The report shall address the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required; and [(K)](O) that an initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances: a) 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; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original reasons for the granting of the change of zone; d) 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); and e) 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. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director [may]shall initiate rezoning of the area to its original or more appropriate designation."

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

SECTION 3. In the event that any portion of the ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

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

INTRODUCED BY:

Tabachi Dunning
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii

Date of Introduction: April 21, 1993
Date of 1st Reading: April 21, 1993
Date of 2nd Reading: May 5, 1993
Effective Date: May 12, 1993

APPROVED AS TO FORM AND LEGALITY:

Paul Wilson
DEPUTY CORPORATION COUNSEL

DATED: _____

