

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 645  
(Draft 4)

ORDINANCE NO. 94.100

AN ORDINANCE AMENDING SECTION 25-95B (UPOLU POINT-KAAUHUUHOMESTEADS ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO AGRICULTURAL (1a) AT KAHEI, NORTH KOHALA, HAWAII, COVERED BY TAX MAP KEY 5-5-01:53.

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

SECTION 1. Section 25-95B, 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 Kahei, North Kona, Hawaii, shall be

Agricultural (A-1a):

Beginning at a pipe in concrete marked "601" (found) at the Southeast corner of this parcel of land, on the Westerly side of Homestead Road, being also the Northeast corner of Lot 5 of Land Court Application 1122, the coordinates of which referred to Government Survey Triangulation Station "PUU O NALE" being 2,506.39 feet North and 1,401.61 feet East and running by azimuths measured clockwise from true South:

1. 83° 55' 657.00 feet along Lot 5 of Land Court Application 1122 to a 1-1/4" pipe (found) passing over a pipe in concrete marked "604" (found) at 632.50 feet;
2. 173° 21' 10" 341.90 feet along Government Land;

3. 263° 55' 766.17 feet along remainder of Grant 6233 to Mary Lesser;
4. 29° 28' 78.85 feet along the Westerly side of Homestead Road;
5. 6° 06' 284.13 feet along the Westerly side of Homestead Road to the point of beginning and containing an area of 5.483 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. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within one-hundred-eighty (180) days from the effective date of this ordinance.
- C. Final Subdivision Approval shall be secured within three (3) years from the effective date of this ordinance. Subdivision plans shall delineate a 10-foot future road widening setback along the Homestead Road (Beers Road) frontage of the subject property and shall be dedicated to the County of Hawaii upon its request.
- D. Access to the subject properties from Homestead Road (Beers Road) shall be improved in accordance with the minimum requirements of the Department of Public Works to serve the subject property. The portion of the Homestead Road fronting the subject property shall be widened to a

20-foot wide pavement with 5-foot shoulders meeting with the approval of the Department of Public Works prior to Final Subdivision Approval.

- E. Drainage system easements and improvements, if required, shall be established and constructed in a manner meeting with the approval of the Department of Public Works, prior to the issuance of Final Subdivision Approval.
- F. Wastewater shall be disposed of in a manner meeting with the requirements of the Department of Health.
- G. Restrictive covenants in the deeds of all the proposed lots shall prohibit the construction of an ohana dwelling or a second dwelling unit on each lot. A copy of the proposed covenants to be recorded with the Bureau of Conveyances shall be submitted to the Planning Director for review and approval. Prior to securing final subdivision approval, a copy of the approved covenant as executed by the applicant and recorded with the Bureau of Conveyances, likewise, shall be submitted to the Planning Director.
- H. It shall be demonstrated to the satisfaction of the Planning Director that agricultural activity is being conducted on the subdivided lots within three years from the date of Final Subdivision Approval. For the purpose of this condition, "agriculture" shall be defined as the cultivation of crops, including but not limited to flowers, vegetable, 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 satisfactory:

- (1) if such activity is implementing a conservation program for the affected property(ies), as approved by the applicable soil and water conservation district directors and filed with the Soil Conservation Service;
- (2) if it provides a source of income to the person(s) who reside on the property; or
- (3) if the property is dedicated for agriculture uses in accordance with applicable Tax Department procedures and that such agriculture dedication shall be made a deed covenant and duly recorded with the State Bureau of Conveyances and a copy of the recorded deeds shall be filed with the Planning Department within one year from the date of Final Subdivision Approval.

Each approved lot must comply with at least one of the above requirements to satisfy the conditions of approval of this ordinance;

- I. The applicant shall comply with all other applicable laws, rules, regulations and requirements of the affected agencies, including those of the Fire Department, and the Departments of Water Supply and Public Works.
- J. Should any unidentified sites or remains, such as lava tubes, artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or wall be encountered, work in the affected area shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

- K. 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.
- L. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the change of zone. 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 and the Planning Director acknowledges that further reports are not required.
- M. An 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 the 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).

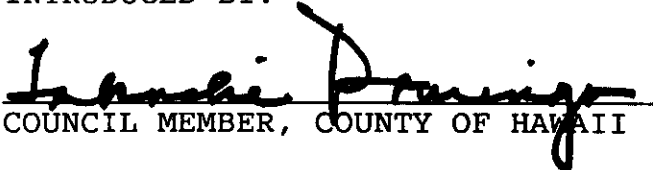
5. If the applicant should request an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.

Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate rezoning of the 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.

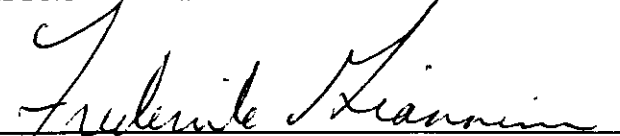
INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAII

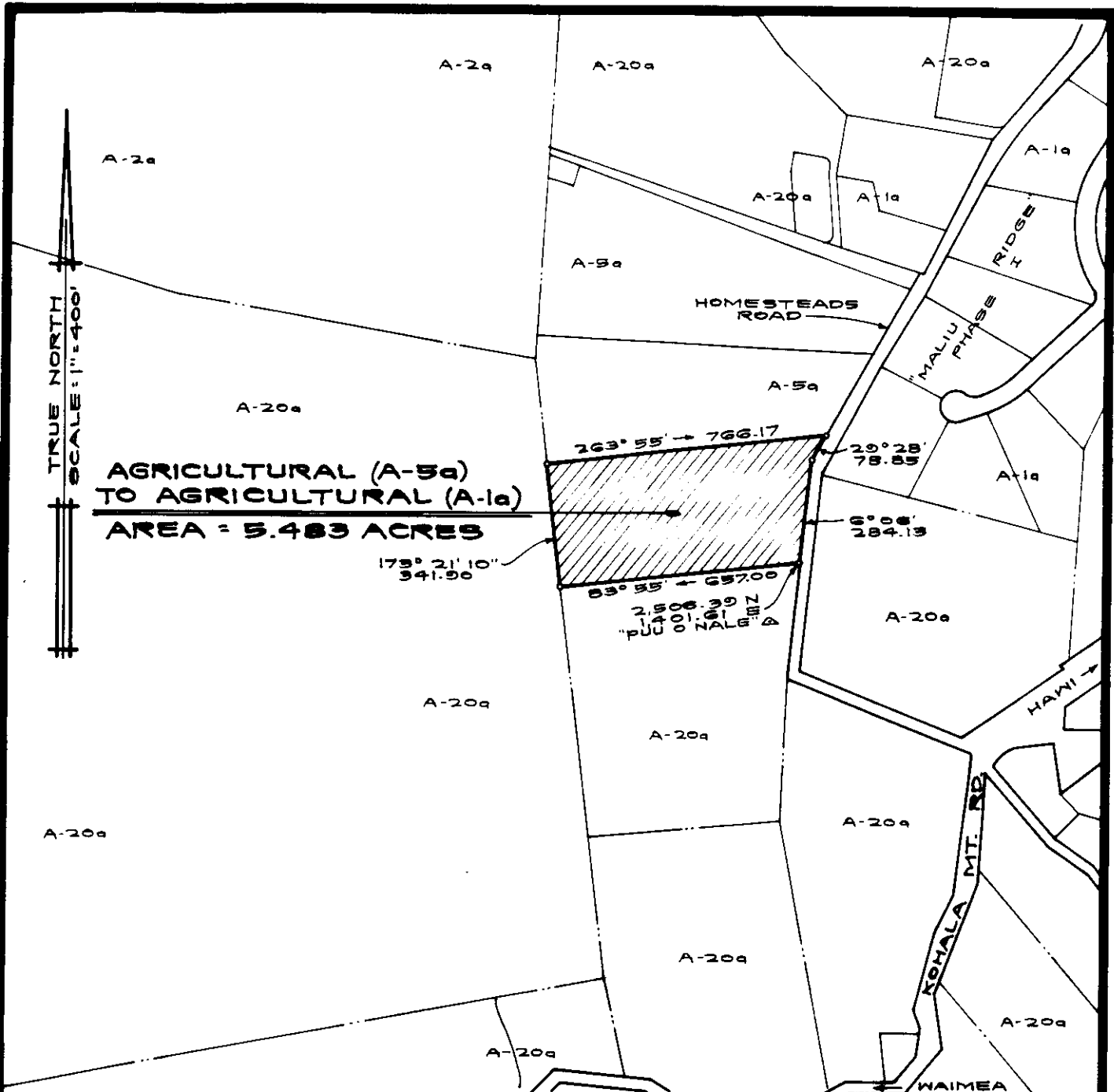
Hilo, Hawaii

Date of Introduction: August 24, 1994  
Date of 1st Reading: August 24, 1994  
Date of 2nd Reading: September 7, 1994  
Effective Date: September 13, 1994

APPROVED AS TO FORM AND LEGALITY:

  
CORPORATION COUNSEL

DATE: 9/9/94



**AGRICULTURAL (A-5a)  
TO AGRICULTURAL (A-1a)  
AREA = 5.483 ACRES**

## AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-95B (UPOLU POINT-KAAHUHUU HOMESTEADS ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO AGRICULTURAL (A-1a) AT KAHEI, NORTH KOHALA, HAWAII.

PREPARED BY: PLANNING DEPARTMENT  
COUNTY OF HAWAII

TMK: 5-5-01:53

JAN. 16, 1991

EXHIBIT "A"

(RICHARD & CAROL SILVA)

OFFICE OF THE COUNTY CLERK  
 County of Hawaii  
 Hilo, Hawaii

RECEIVED

'94 SEP 13 AM 10 13

(DRAFT 3) OFFICE OF COUNTY CLERK

Introduced By: Takashi Domingo  
 Date Introduced: August 24, 1994  
 First Reading: August 24, 1994  
 Published: N/A

REMARKS:

COUNTY OF HAWAII ROLL CALL VOTE				
	AYES	NOES	ABS	EX
ARAKAKI	X			
BONK-ABRAMSON		X		
CHILDS	X			
DE LIMA	X			
DOMINGO	X			
HALE		X		
RATH	X			
ROSEHILL	X			
SCHUTTE	X			
	7	2	0	0

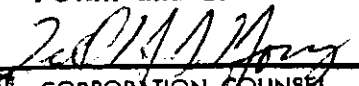
Second Reading: September 7, 1994  
 To Mayor: September 7, 1994  
 Returned: September 13, 1994  
 Effective: September 13, 1994  
 Published: September 19, 1994


REMARKS:

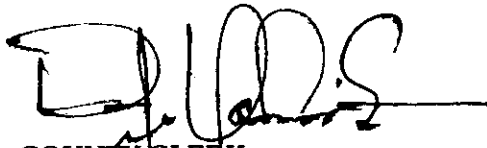
(DRAFT 4)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
ARAKAKI	X			
BONK-ABRAMSON		X		
CHILDS	X			
DE LIMA	X			
DOMINGO	X			
HALE		X		
RATH	X			
ROSEHILL	X			
SCHUTTE	X			
	7	2	0	0

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

APPROVED as to  
 FORM and LEGALITY  
  
 ASSISTANT CORPORATION COUNSEL  
 COUNTY OF HAWAII  
 Date 9/12/94

  
 COUNCIL CHAIRMAN

  
 COUNTY CLERK

Approved/Disapproved this 13 day  
 of September, 1994

  
 MAYOR, COUNTY OF HAWAII

Bill No.: 645 (Dr. 4)  
 Reference: C-3923/1992/PC-129  
 Ord. No.: 94 100