

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 25 (Draft 2)

ORDINANCE NO. 95 45

AN ORDINANCE AMENDING SECTION 25-86 (NORTH AND SOUTH KONA DISTRICTS ZONE MAP), ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO AGRICULTURAL (A-3a) AT KALOKO, NORTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-3-24:6.

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

SECTION 1. Section 25-86, Article 3, Chapter 25 (Zoning Code) of the Hawaii County Code, is amended to change the district classification of properties described hereinafter as follows:

The district classification of the following area situated at Kaloko, North Kona, Hawaii, shall be

Agricultural (A-3a):

Beginning at the Southwest corner of this parcel of land, being also the Southeast corner of Lot 4 and on the Northerly boundary of R.P. 7587, L.C. Aw. 11216 Ap. 36 to Kekauonohi at Honokahau 1, the coordinates of which referred to Government Survey Triangulation Station "MOANUIAHEA" being 16,444.79 feet South and 3,918.16 feet West and running by azimuths measured clockwise from true South:

- 1. 162° 00' 307.56 feet along Lot 4, along the remainder of R.P. 8214, L.C. Aw. 7715: 11 to Lota Kamehameha;
2. 194° 20' 1,514.72 feet along Lot 1 of the Kaloko Mauka Subdivision, Increment 1 (File Plan 994);
3. 315° 10' 127.80 feet along the west side of Road "B" of the Kaloko Mauka Subdivision, Increment 1 (File Plan 994);

Thence along same, on a curve to the left with a radius of 530.00 feet, the chord azimuth and distance being:

4. 293° 52' 30" 384.90 feet;
5. 2° 35' 1,296.15 along Lot 3 of the Kaloko Mauka Subdivision, Increment 1 (File Plan 994);
6. 71° 45' 698.75 feet along a portion of the northerly boundary of R.P. 7587 L.C. Aw. 11216 Ap. 36 to Kekauonohi, to the point of beginning and containing an area of 21.879 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, its successors or assigns hereafter jointly referred to as "applicant", 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 ninety days from the effective date of this change of zone.
- C. Final Subdivision Approval of the proposed subdivision shall be secured from the Planning Director within five (5) years from the effective date of this ordinance. The applicant shall reserve in perpetuity for purposes of protecting and maintaining naturally forested areas, a 60-foot wide "forest reserve easement" and a 30-foot wide "forest

reserve easement" along all other lot lines, exclusive of access points. Such easements, including a 100-foot structural setback along the subject property's public street frontage(s) to provide an additional buffer, shall be delineated on plans submitted for subdivision review.

D. As agreed to by the applicant, restrictive covenant(s) in the deeds of all proposed lots shall specify a 60-foot wide "forest reserve easement", a 100-foot wide structural setback along the entire Hao Street frontage, and a 30-foot wide "forest reserve easement" along other lot lines, exclusive of access point(s). The restrictive covenant(s) shall also specify that no less than fifty percent (50%) of the total lot area shall be retained in forest, except that horticultural activities may occupy any of the land not encumbered by the "forest reserve easements." A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicants and the County and recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.

E. As agreed to by the applicant, restrictive covenant(s) 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 covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the

Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicants and the County and recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.

- F. Restrictive covenant(s) in the deeds of all the proposed lots shall require the individual owners of the proposed lots to file a conservation plan with the Kona Soil and Water Conservation District, with a copy of the approved plan to be submitted to the Planning Department, prior to any land alteration activities within any of the respective lots. A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicants and the County and recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.
  
- G. A drainage study of the project site, if required, shall be prepared for the review and approval of the Department of Public Works, prior to the submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed in a manner meeting with the approval of the Department of Public Works, prior to the issuance of Final Subdivision Approval of the subdivision.
  
- H. Wastewater shall be disposed of in a manner meeting with the requirements of the Department of Health.

- I. An archaeological study/survey of the subject property shall be prepared and submitted for approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD), prior to submittal of plans for subdivision review or any land alteration activity, whichever occurs first. The scope of work for the archaeological study shall be determined by the DLNR-HPD. Should significant historical sites be found within the project site which merit preservation or the implementation of mitigative measures, the applicants shall submit an archaeological mitigation/preservation plan for the review and approval of the Planning Director, in consultation with the DLNR-HPD, prior to the issuance of Final Subdivision Approval of the proposed subdivision or any land alteration activity, whichever occurs first.
- J. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.
- K. Access(es) to the subject property from Hao Street shall be constructed in a manner meeting with the approval of the Department of Public Works.

- L. Interior subdivision road(s) shall be constructed in a manner meeting with the approval of the Department of Public Works.
- M. The applicant shall pay its fair share contribution to address potential regional impacts of the project with respect to roads, park, fire, police and solid waste disposal facilities. The fair share contribution shall be initially based on the representations contained within the change of zone application and may be increased or reduced proportionally if the lot counts are adjusted. The fair share contribution shall become due and payable prior to final subdivision approval of any portion of the subject property or within five (5) years from the effective date of this change of zone ordinance, whichever occurs first. The fair share contribution for each lot shall be based on a maximum density for each lot as determined by the zoning resulting from this change of zone. The fair share contribution in a form of cash, land, facilities, or any combination thereof acceptable to the director, in consultation with the affected agencies shall have a maximum combined value of \$50,674.12, provided that the fair share contribution to address the potential road impacts shall only be in the form of cash and shall be applied to improving the Kaloko Drive/Hawaii Belt Road intersection. The fair share contribution described above shall 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). In lieu of paying the fair share contribution for other

facility impacts, the applicant may construct such facilities related to park, fire, police, and solid waste disposal facilities with the approval of the appropriate agency(ies).

- N. The applicant shall comply with all applicable laws, rules, regulations and requirements of the affected agencies.
- 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. 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 applicants, its 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); and
5. Should the applicants request an additional extension of time, the Planning Director shall submit the applicants' request to the County Council for appropriate action.

Q. 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 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 approval.

INTRODUCED BY:

  
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COUNCIL MEMBER, COUNTY OF HAWAII

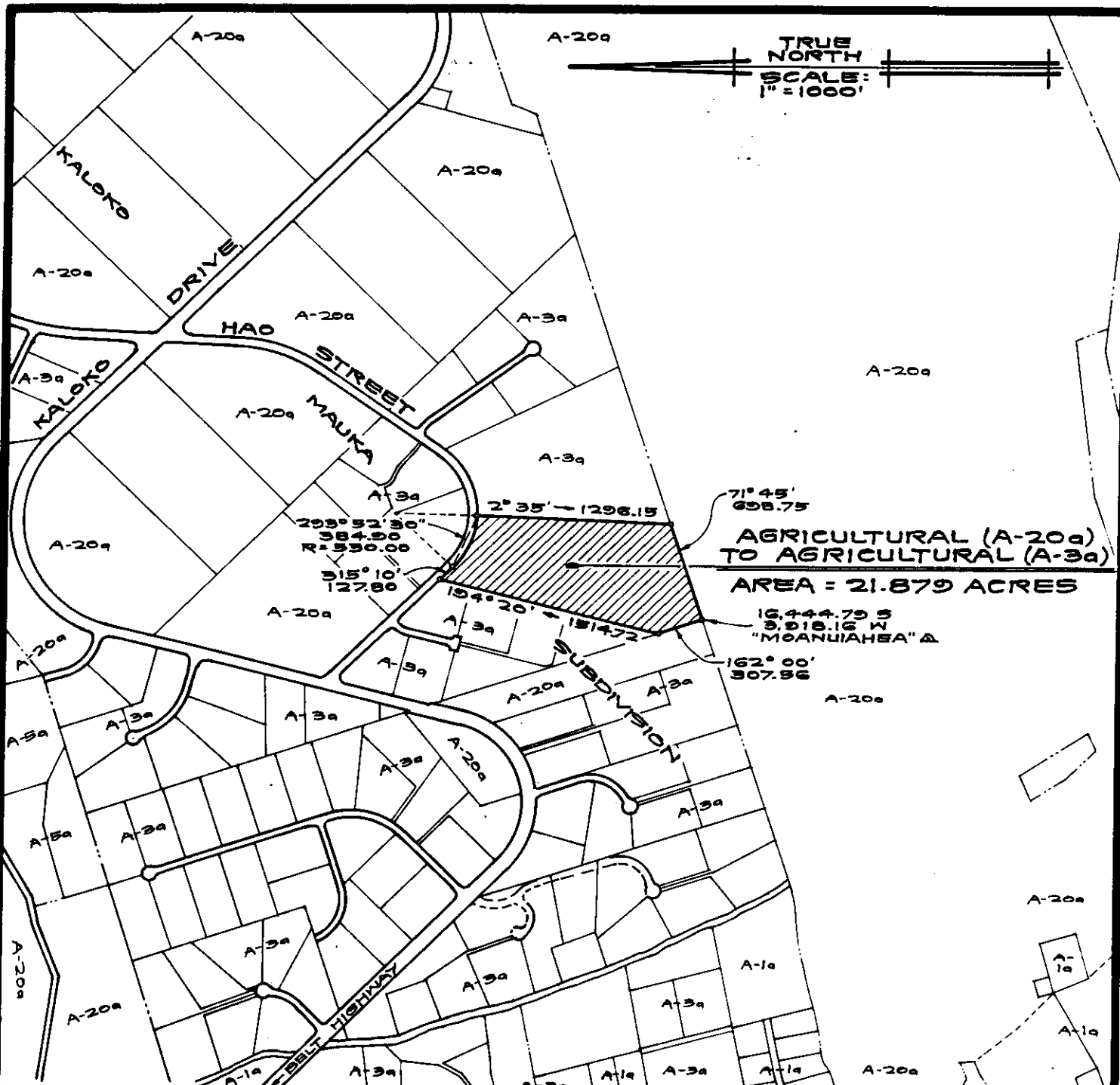
Hilo, Hawaii

Date of Introduction: March 1, 1995  
Date of 1st Reading: March 1, 1995  
Date of 2nd Reading: March 15, 1995  
Effective Date: March 21, 1995

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
DEPUTY CORPORATION COUNSEL

DATED: 3/18/95



# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-86 (NORTH AND SOUTH KONA DISTRICTS ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO AGRICULTURAL (A-3a) AT KALO KO, NORTH KONA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT  
COUNTY OF HAWAII

TMK = 7-3-24-6

NOV. 25, 1994

EXHIBIT "A"

(REVOCABLE TRUST OF JAMES W. CHERRY, ET.AL.)

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

21/2

(DRAFT 2)

Introduced By: Keola Childs  
 Date Introduced: March 1, 1995  
 First Reading: March 1, 1995  
 Published: N/A

REMARKS:


ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Bonk-Abramson		X		
Childs	X			
De Lima	X			
Domingo			X	
Osorio	X			
Rath	X			
Ray	X			
Smith	X			
	7	1	1	0

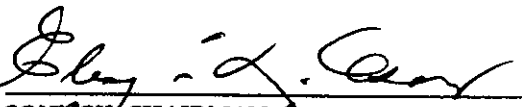

Second Reading: March 15, 1995  
 To Mayor: March 16, 1995  
 Returned: March 21, 1995  
 Effective: March 21, 1995  
 Published: March 28, 1995

REMARKS:

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Bonk-Abramson		X		
Childs	X			
De Lima	X			
Domingo	X			
Osorio	X			
Rath	X			
Ray	X			
Smith	X			
	8	1	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  
  
 CORPORATION COUNSEL  
 COUNTY OF HAWAII  
 MAR 20 1995

  
 COUNCIL CHAIRMAN  
  
 COUNTY CLERK

Approved/Disapproved this 21 day  
 of March, 1995.

  
 MAYOR, COUNTY OF HAWAII

Bill No.: 25 (Draft 2)  
 Reference: C-149/PC-28  
 Ord. No.: 95 45