

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 244
(Draft 4)

ORDINANCE NO. 96 100

AN ORDINANCE AMENDING SECTION 25-86 (NORTH AND SOUTH KONA DISTRICT 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-10a) AT KALOKO, NORTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-3-27:11.

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 property described hereinafter as follows:

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

Hawaii, shall be Agricultural (A-10a):

Beginning at the Southwesterly corner of this parcel of land, being also the Northwesterly corner of Lot 2 of Block 11 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) and being a point on the Northeasterly side of Kaloko Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 9,577.38 feet South and 7,614.06 feet East and running by azimuths measured clockwise from True South:

1. 124° 30' 474.11 feet along the Northeasterly side of Kaloko Drive to a point;

Thence, for the next three (3) courses following along the Easterly side of Kapehe Street:

Thence, following on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:

2. 169° 30' 70.71 feet to a point;

Thence, following on a curve to the left with a radius of 214.34 feet, the chord azimuth and distance being:

3. 182° 15' 228.75 feet to a point;
4. 150° 00' 931.22 feet to a point;
5. 260° 56' 25" 665.86 feet along Royal Patent 7843, Land Commission Award 7715, Apana 10 to Lota Kamehameha to a point;
6. 329° 30' 1,376.31 feet along Lot 1 of Block 11 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) and along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha to a point;
7. 59° 30' 575.47 feet along Lot 2 of Block 11 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) and along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha to the point of beginning and containing an area of 22.379 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 applicants, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The applicants, successors or assigns shall be responsible for complying with all requirements of Chapter 205, Hawaii Revised Statutes, relating to permissible uses within the State Land Use Agricultural District.

- C. 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 (90) days from the effective date of this change of zone.
- D. Final Subdivision Approval of the proposed agricultural subdivision shall be secured from the Planning Director within five (5) years from the effective date of this ordinance. The applicant shall reserve the following easements and special setbacks in perpetuity for purposes of protecting and maintaining naturally forested areas and shall delineate such easements and setbacks on plans submitted for subdivision review:
1. A 100-foot wide "forest reserve easement" along the existing public street frontage of the subject property, exclusive of access points permitted by the Department of Public Works;
 2. A 30-foot "forest reserve easement" along all lot lines not covered by the 100-foot easement; and
 3. A 100-foot wide structural setback in lieu of the required 30-foot setback along the existing property's public street frontage to provide an additional buffer.
- E. Restrictive covenant(s) in the deeds of all the proposed agricultural lots fronting existing roads shall specify and uphold the easements and setbacks set forth in Condition D. The restrictive covenant(s) shall also specify that, including the area comprising the forest reserve easements described in Condition D, no less than eighty percent (80%) of the entire lot area shall be retained in forest. 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 applicant 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 agricultural 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 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 applicant and the County and recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.
- G. A forest management plan for the proposed lots within the subject property shall be prepared and submitted for review and approval by the Planning Director in consultation with the State Department of Land and Natural Resources, the State Department of Health, the State Department of Agriculture and the U.S. Department of Natural Resources Conservation Service. The forest management plan shall require the following:
1. Include at minimum, the best forest and reforestation practices, program for implementation and other applicable forestry management criteria, including those of the State Department of Land and Natural Resources (i.e. Forest Stewardship Program).
 2. The forest management program shall include a restrictive covenant for the proposed lots within the subject property which shall be recorded

with the State of Hawaii Bureau of Conveyances and/or Land Court. A copy of the covenants to be recorded 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 applicant and the County and recorded with the Bureau of Conveyances prior to the issuance of final subdivision approval.

3. If more than twenty percent (20%) of the subject property has been cleared or grubbed prior to the submittal of the forest management plan or the recording of the restrictive covenant(s), the reforestation program for any cleared or grubbed area(s) in excess of the 20% within the subject property shall be substantially implemented prior to the issuance of final subdivision approval.
 4. This forest management plan shall govern the proposed lots within the subject property for a period of fifty (50) years and its termination may be considered after the 50-year period has elapsed by amending this ordinance requiring County Council approval by ordinance.
- H. A drainage study of the project site, if required, shall be prepared for review and approval by the Department of Public Works, prior to 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.
- I. An archaeological study/survey of the subject property shall be prepared and approved by the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HIPD), prior to the 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 subject property which merit preservation or the implementation of mitigative measures, the applicants shall prepare and submit an archaeological preservation/mitigation plan for review and approval by the DLNR-HPD prior to the issuance of Final Subdivision Approval or any land alteration activity, whichever occurs first.

- J. 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-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
- K. Access(es) to the subject property from Kapehe Street shall be constructed in a manner meeting with the approval of the Department of Public Works.
- L. The applicant shall prepare a Solid Waste Management Plan for the development meeting with the approval of the Department of Public Works.
- M. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject property with respect to parks and recreation, fire, police, solid waste disposal facilities, and roads. The amount of the fair share contribution shall be the sum which is the product of multiplying the number of residential lots proposed to be subdivided by the amounts allocated hereinbelow for each such lot, and shall become due and payable prior to final subdivision approval for any portion of the subject property or its increments. If the subject

property is subdivided in two or more increments, the amount of the fair share contribution due and payable prior to final subdivision approval of each increment shall be a sum calculated in the same manner according to the number of additional proposed residential lots in each such increment. The fair share contribution may be in a form of cash, land, facilities, or any combination thereof acceptable to the director in consultation with the affected agencies, 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 shall have a maximum combined value of **\$7,239.16 per lot**. Based upon the applicant's representation of intent to subdivide and develop up to two residential lots, the indicated total fair share contribution is **\$14,478.32**, which applies to the additional density created, however, the total amount shall be increased or reduced in proportion with the actual number of subdivided lots according to the calculation and payment provisions set forth in this Condition M. The fair share contribution shall be allocated as follows:

1. \$3,490.85 per lot, for an indicated total of **\$6,981.70** to the County to support park and recreational improvements and facilities;
2. \$168.40 per lot, for an indicated total of **\$336.80** to the County to support police facilities;
3. \$332.61 per lot, for an indicated total of **\$665.22** to the County to support fire facilities;
4. \$145.62 per lot, for an indicated total of **\$291.24** to the County to support solid waste facilities;

5. \$3,101.68 per lot, for an indicated total of **\$6,203.36** to the State or County to support road and traffic improvements.

The fair share contributions described above shall be adjusted annually beginning three years after the effective date of the change of zone, based on the percentage change in the Honolulu Consumer Price Index (HCPI). In lieu of paying the fair share contribution, the applicant may construct and contribute 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 approval of the director. For purposes of administering Condition M, the fair market value of land contributed or the cost of any improvements required or made in lieu of the fair share contribution shall be subject to the review and approval of the director, upon consultation with the appropriate agencies;

- N. 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 Fee Ordinance.
- O. 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).
- P. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may 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: June 19, 1996
 Date of 1st Reading: August 23, 1996
 Date of 2nd Reading: September 6, 1996
 Effective Date: September 19, 1996

APPROVED AS TO FORM AND LEGALITY



DEPUTY CORPORATION COUNSEL

DATED: 9/19/96

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

(DRAFT 3)

Introduced By: Takashi Domingo
 Date Introduced: June 19, 1996
 First Reading: August 23, 1996
 Published: September 1, 1996

REMARKS:
06/19/96 - Deferred pending public hearing on Council level
07/23/96 - Deferred on Council level

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki			X	
Easley	X			
Childs		X		
De Lima	X			
Domingo	X			
Osorio	X			
Van De Car		X		
Ray		X		
Smith	X			
	5	3	1	0

Second Reading: September 6, 1996
 To Mayor: September 11, 1996
 Returned: September 19, 1996
 Effective: September 19, 1996
 Published: September 30, 1996


REMARKS:

(DRAFT 4)

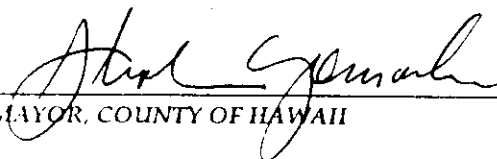
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Easley	X			
Childs		X		
De Lima	X			
Domingo			X	
Osorio	X			
Van De Car		X		
Ray			X	
Smith	X			
	5	2	2	0

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


 COUNCIL CHAIRMAN


 COUNTY CLERK

Approved/Disapproved this 19 day
 of September, 19 96.


 MAYOR, COUNTY OF HAWAII

Bill No.: 244 (Draft 4)
 Reference: C-1086/PC-126
 Ord. No.: 96 100