

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 129
(Draft 2)

ORDINANCE NO. 97 133

AN ORDINANCE AMENDING SECTION 25-8-4 (SOUTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO AGRICULTURAL PROJECT DISTRICT (APD) AT KA'AWALOA, SOUTH KONA, HAWAII, COVERED BY TAX MAP KEY 8-1-9:18, 19, 21 AND PORTIONS OF 20, 22, 23 AND 24.

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

SECTION 1. Section 25-8-4, Article 8, 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 Ka'awaloa, South Kona, Hawaii, shall be Agricultural Project District (APD):

Beginning at the Northerly corner of this parcel of land, being also a point on the Southerly side of Ka'awaloa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAE O KANONI" being 21,718.24 feet North and 969.04 feet West and running by azimuths measured clockwise from True South:

Thence, for the next four (4) courses following along Lot 4-A and along the remainder of Royal Patents 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalole:

1. 327° 39' 139.28 feet to a point;
2. 328° 19' 250.45 feet to a point;
3. 327° 40' 64.68 feet to a point;
4. 329° 55' 101.50 feet to a point;

Thence, for the next seven (7) courses following along the remainder of Royal Patents 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalole:

5. 324° 45' 40" 113.75 feet along Lot 7-B to a point;
6. 327° 11' 64.51 feet along Lot 7-B to a point;
7. 46° 00' 246.78 feet along the remainder of Lot 2 to a point;
8. 57° 00' 141.66 feet along the remainder of Lot 2 to a point;
9. 39° 00' 319.53 feet along the remainder of Lot 2 to a point;
10. 55° 25' 450.83 feet along Lot 3 to a point;
11. 145° 47' 987.61 feet along Lot 3 to a point;

Thence, for the next seven (7) courses following along the Southerly side of Kaawaloa Road:

12. 254° 44' 195.20 feet to a point;
13. 248° 42' 172.77 feet to a point;
14. 232° 31' 161.85 feet to a point;
15. 234° 51' 164.85 feet to a point;
16. 236° 45' 95.61 feet to a point;
17. 240° 15' 333.26 feet to a point;
18. 238° 04' 58.93 feet to the point of beginning and containing an area of 22.511 Acres.

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof (herein after referred to as the "subject property").

SECTION 2. This change in district classification is conditioned upon the following:

- A. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

- B. The applicant, its 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 required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this ordinance.

- D. Final Subdivision Approval within the proposed agricultural project district (APD) area shall not exceed seven lots and shall be secured from the Planning Director within five (5) years from the effective date of this ordinance. Subdivision plans shall delineate the 50-foot access easement, from Napo'opo'o Road to and within the subject property.

- E. Access to the subject property from Napo'opo'o Road shall meet the requirements of the Department of Public Works. Roadway improvements, if required, at the intersection of the access road and Napo'opo'o Road shall meet the requirements of the Department of Public Works.

- F. The roadway improvements for the access extending to the subject property and the interior roadway within the subject property shall be constructed to a 16-foot wide paved roadway within a 20-foot wide graded right-of-way, shall be engineered to follow the natural contours of the land not to exceed 20 percent in grade in any area and shall comply with the applicable grading, driveway, drainage and roadway standards of the Department of Public Works. No street lights will be required within the subject property.

- G. A drainage study of the subject property, 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 meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.

H. Restrictive covenant(s) in the deeds of all the proposed agricultural lots within the subject property shall include the following:

- (1) As contained in the master conceptual plan, the APD for the subject property shall be subdivided into no more than seven (7) lots. Each of the proposed lots shall not be further subdivided for a period of forty (40) years from the effective date of Final Subdivision Approval. With the consent of a majority of the land owners within the APD, any further subdivision or increase in density will require an amendment to this ordinance.
- (2) A minimum of eighty five percent (85%) of the total land area within each proposed lot shall be retained in its existing orchard use or in other agricultural uses for crop production, floriculture, nurseries and similar uses dealing with the growing of plants. Accessory uses and facilities such as shade houses, agricultural storage sheds and other uses necessary to facilitate or process the primary agricultural products shall be permitted. Public retail sales of agricultural products shall be prohibited.
- (3) Only one farm dwelling will be permitted on each proposed lot, and the area utilized for the farm dwelling purposes shall be limited to fifteen (15%) of the total land area within each proposed lot. The remainder of each proposed lot shall continue to be utilized for agricultural uses indicated in H(2) above.

- (4) The existing tropical fruit orchards, which produce lychee, rambutan and avocado, shall be maintained on the newly created lots as long as they are viable. Prior to any new proposed agricultural use other than the existing agricultural use or other permitted agricultural uses identified in H(2) which may create any additional impact to the existing infrastructure or cause any adverse effects to the public's health, safety and welfare, the new proposed use will be considered as an amendment to this ordinance and processed for Council approval.

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 shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances in conjunction with the issuance of Final Subdivision Approval for any portion of the subject property. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.

- I. 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 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.
- J. 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.

- K. Comply with all other applicable laws, rules, regulations and requirements of the affected agencies for the development of the subject property.

- L. 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).

- M. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the area within the subject property 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

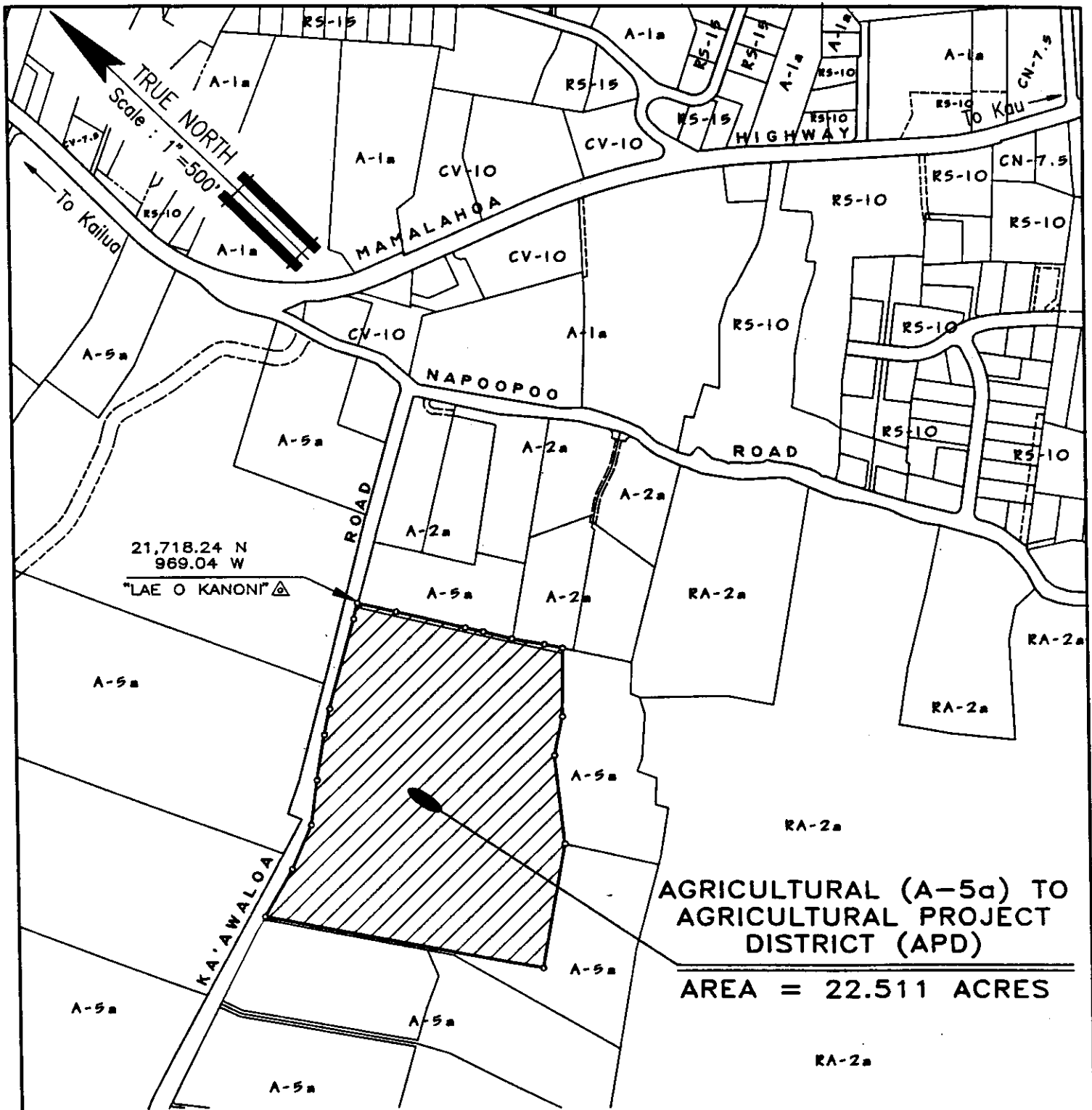
Date of Introduction: September 17, 1997
Date of 1st Reading: September 17, 1997
Date of 2nd Reading: October 15, 1997
Effective Date: October 23, 1997

APPROVED AS TO FORM AND LEGALITY



DEPUTY CORPORATION COUNSEL

DATED: 10/18/97



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-4 (SOUTH KONA ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO AGRICULTURAL PROJECT DISTRICT (APD) AT KA'AWALOA, SOUTH KONA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT
COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

RECEIVED

(DRAFT 2)
97-001-23 PM 1:48

Introduced By: Bobby Jean Leithead-Todd (B/R)
 Date Introduced: September 17, 1997
 First Reading: September 17, 1997
 Published: N/A

REMARKS:
10/01/97 - Deferred on Council level.

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Leithead-Todd	X			
Ray	X			
Reynolds	X			
Santangelo	X			
Smith	X			
Tyler	X			
Yagong	X			
	9	0	0	0

Second Reading: October 15, 1997
 To Mayor: October 17, 1997
 Returned: October 23, 1997
 Effective: October 23, 1997
 Published: November 5, 1997

REMARKS:

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Leithead-Todd	X			
Ray	X			
Reynolds	X			
Santangelo	X			
Smith			X	
Tyler	X			
Yagong			X	
	7	0	2	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:


 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 10/18/97

Approved/Disapproved this 23 day
 of October, 1997.


 MAYOR, COUNTY OF HAWAII


 COUNCIL CHAIRMAN

 COUNTY CLERK

Bill No.: 129 (Draft 2)
 Reference: C-452/PC-77
 Ord. No.: 97 133