

COUNTY OF HAWAII  STATE OF HAWAII

BILL NO. 269
(Draft 2)

ORDINANCE NO. 98 90

AN ORDINANCE AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA DISTRICT ZONE MAP), ARTICLE 8, 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 7-3-26:5.

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

SECTION 1. Section 25-8-2, 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 Kaloko, North Kona, Hawaii, shall be Agricultural (A-10a):

Beginning at the South corner of this parcel of land, situated on the Northeasterly side of Hao Street, the coordinates of said point of beginning, referred to Government Survey Triangulation Station "Moanuihea" being 12,624.26 feet South and 2,646.16 feet East and thence running by azimuths measured clockwise from True South:

1. 135° 00' 850.00 feet along the Northeasterly side of Hao Street;
2. 225° 00' 1,077.56 feet along Lot 6 of Block 7, Kaloko Mauka Subdivision, Increment 2 (File Plan 1010);
3. 320° 00' 853.25 feet along Lots 7 and 9 of Block 7, Kaloko Mauka Subdivision, Increment 2 (File Plan 1010);
4. 45° 00' 1,003.19 feet along Lot 10 of Block 7, Kaloko Mauka Subdivision, Increment 2 (File Plan 1010), to the point of beginning and containing an area of 20.301 Acres, more or less.

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 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 of the proposed agricultural subdivision shall be secured from the Planning Director within five (5) years from the effective date of this ordinance. The applicants shall reserve the following easements and special setbacks in perpetuity for purposes of protecting and maintaining naturally forested areas and 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 sight easements required by the Department of Public Works and 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 property's public street frontage to provide an additional buffer.
- E. Restrictive covenant(s) in the deeds of all the proposed agricultural lots fronting Hao Street 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 applicants and the County and recorded with the Bureau of Conveyances approval 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 applicants 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 a 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, such as the Forest Stewardship Program or the Soil Conservation Service Management 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 Bureau of Conveyances and/or Land Court. A copy of the covenants 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.
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. Restrictive covenant(s) in the deeds of all the proposed agricultural lots within the subject property 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 submitted to the Planning Department, prior to any land alteration activities within any of the respective agricultural 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.
- I. 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 in a manner meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.
- J. An archaeological study/survey of the subject property shall be prepared and submitted for review and approval to the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD), prior to the submittal of plans for subdivision review or any land alteration activity, whichever occurs first. 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 Planning Director, in consultation with the DLNR-HPD, prior to the issuance of Final Subdivision Approval or any land alteration activity, whichever occurs first.

- K. 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.
- L. 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.
- M. The applicant shall make its fair share contribution to mitigate potential regional impacts of the subject project with respect to roads, parks and recreation, fire, police and solid waste disposal facilities. 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 proposed residential lots in each such increment. 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, provided that the fair share contribution to address the potential road impacts shall 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 single-family residential unit**. Based upon the applicant's representation of intent to develop up to two (2) residential units,

the indicated total of fair share contribution is **\$14,478.32** for single-family residential units. However, the total amount shall be increased or reduced in proportion with the actual number of units 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 single-family residential unit for an indicated total of **\$6,981.70** to the County to support park and recreational improvements and facilities;
2. **\$168.40** per single-family residential unit for an indicated total of **\$336.80** to the County to support police facilities;
3. **\$332.61** per single-family residential unit for an indicated total of **\$665.22** to the County to support fire facilities;
4. **\$145.62** per single-family residential unit for an indicated total of **\$291.24** to the County to support solid waste facilities; and
5. **\$3,101.68** per single-family residential unit 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 review and approval of the director, upon consultation with the appropriate agencies.

Upon approval of the fair share contributions or in lieu contributions by the director, the director shall submit a final report to the Council for its information that identifies the specific approved fair share and/or in lieu contributions, as allocated, and further implementation requirements

- N. Comply with all applicable laws, rules, regulations and requirements of the affected agencies for approval of the development within the subject property.
- O. 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.
- 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).

Q. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of 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

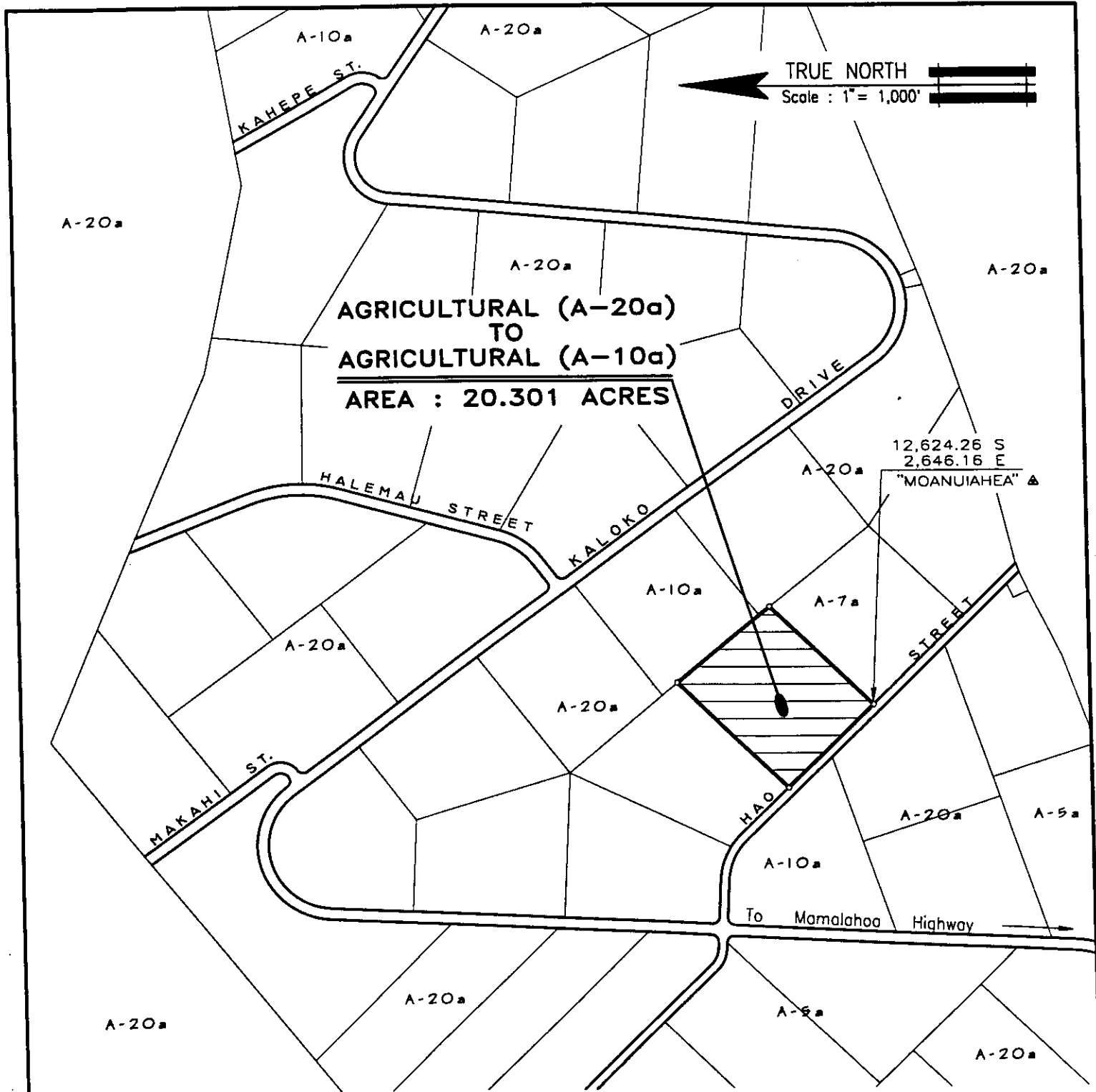
Date of Introduction: August 5, 1998
Date of 1st Reading: August 5, 1998
Date of 2nd Reading: August 19, 1998
Effective Date: August 27, 1998

APPROVED AS TO FORM AND LEGALITY



CORPORATION COUNSEL

DATED: 8/25/98



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA DISTRICT ZONE MAP) ARTICLE 8, 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.

PREPARED BY : PLANNING DEPARTMENT
COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK
County of Hawaii
Hilo, Hawaii

Introduced By: Bobby Jean Leithead-Todd
Date Introduced: August 5, 1998
First Reading: August 5, 1998
Published: August 14, 1998

REMARKS:

Second Reading: August 19, 1998
To Mayor: August 24, 1998
Returned: August 27, 1998
Effective: August 27, 1998
Published: September 4, 1998

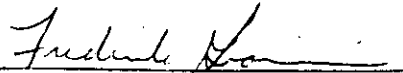
REMARKS:

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			
	8	0	1	0

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:


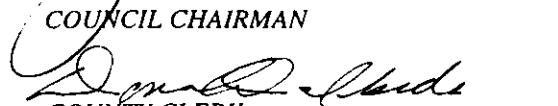


DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date 8/25/98

Approved/Disapproved this 27 day
of August, 1998


MAYOR, COUNTY OF HAWAII


COUNCIL CHAIRMAN

COUNTY CLERK

Bill No.: 269 (Draft 2)
Reference: C-909.01/PC-133
Ord. No.: 98 90