

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 68

ORDINANCE NO. 01 64

AN ORDINANCE AMENDING ORDINANCE NO. 00-105, WHICH AMENDED ORDINANCE NOS. 99-76 AND 94-78, WHICH RECLASSIFIED LANDS FROM UNPLANNED (U) TO AGRICULTURAL (A-1a) AT PUUANAHULU HOMESTEADS, NORTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-1-05:9, 10, 22, 26, 28-34, 39, 40, 41, 58 & 59.

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

SECTION 1. Ordinance No. 00-105, which amended Ordinance No. 99-79, which amended Ordinance No. 94-78, is amended as follows:

“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 Puuanahulu Homesteads, North Kona, Hawaii, shall be Agricultural (A-1a):

Beginning at a set rebar and cap at the Easterly corner of this parcel of land, on the Southwesterly side of a 25-foot wide Road Reserve (Homestead Road) and on the Northwesterly side of Mamalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANINI" being 1006.94 feet North and 5250.91 feet East and running by azimuths measured clockwise from True South:

Thence along the Northwesterly (makai) side of Mamalahoa Highway for the following four (4) courses:

- 1. 62° 13' 00" 8.13 feet to a rebar and cap;

Thence along a curve to the left with a radius of 2045.65 feet, the chord azimuths and distance being;

- 2. 60° 40' 46" 101.76 feet to a rebar and cap;
- 3. 59° 08' 54" 846.01 feet to a found pipe;

- | | | | | | |
|----|------|-----|-----|--------|---|
| 4. | 59° | 11' | 00" | 149.89 | feet to a found pipe in concrete; |
| 5. | 149° | 08' | 00" | 326.37 | feet along Lot C to a found pipe in concrete; |
| 6. | 59° | 10' | 50" | 399.40 | feet along Lot C to a found pipe in concrete; |
| 7. | 329° | 12' | 00" | 331.12 | feet along Lot C to a rebar and cap; |

Thence along the Northwesterly (makai) side of Mamalahoa Highway for the following three (3) courses;

- | | | | | | |
|-----|------|-----|-----|--------|---|
| 8. | 56° | 55' | 00" | 3.37 | feet to a rebar and cap; |
| 9. | 56° | 55' | 10" | 716.93 | feet to a found pipe; |
| 10. | 56° | 57' | 00" | 472.37 | feet to a found pipe; |
| 11. | 121° | 04' | 00" | 681.39 | feet along TMK: 7-1-05:36, the remainder of Grant 7540 to a rebar and cap; |
| 12. | 8° | 18' | 00" | 153.94 | feet along fence and along TMK: 7-1-05:36, the remainder of Grant 7540 to a rebar and cap; |
| 13. | 13° | 18' | 00" | 89.00 | feet along fence and along TMK: 7-1-05:36, the remainder of Grant 7540 to a rebar and cap; |
| 14. | 24° | 47' | 00" | 674.50 | feet along fence, along TMK: 7-1-05:51 and 50, the remainder of Grant 6151 to a found pipe in concrete; |
| 15. | 94° | 16' | 25" | 25.00 | feet crossing end of 25-foot old Homestead Road to a rebar and cap; |
| 16. | 94° | 23' | 30" | 154.28 | feet along fence along Lot 26-B to a found pipe; |
| 17. | 94° | 12' | 30" | 420.73 | feet along fence along Lot 26A-1 to a found pipe at fence corner; |
| 18. | 4° | 25' | 25" | 433.57 | feet along fence along Lot 26A-1 to a found pipe; |

19.	53°	34'	00"	24.51	feet crossing the old Homestead Road (25-foot wide) to a rebar and cap;
20.	143°	41'	00"	270.50	feet along stonewall along Lot 27-B to a found nail at middle of stonewall;
21.	143°	24'	00"	310.24	feet along stonewall along Lot 27-B to a found nail and "+" at middle of stonewall;
22.	32°	35'	50"	537.23	feet along Lot 27-B to a found pipe;

Thence along an old fence line, along State of Hawaii lands for the following (15) courses;

23.	140°	17'	00"	502.04	feet to a found pipe;
24.	141°	54'	00"	369.02	feet to a found pipe;
25.	162°	04'	00"	643.50	feet to a set rebar and cap;
26.	167°	19'	00"	157.00	feet to a set rebar and cap;
27.	166°	09'	45"	473.02	feet to a set rebar and cap;
28.	177°	33'	50"	168.02	feet to a set rebar and cap;
29.	167°	19'	00"	157.00	feet to a set nail in a found "+" on rock;
30.	171°	51'	00"	576.00	feet to a found pipe;
31.	211°	35'	00"	305.03	feet to a found pipe;
32.	224°	52'	00"	141.96	feet to a found pipe;
33.	223°	31'	00"	522.00	feet to a set rebar and cap;
34.	175°	56'	00"	606.79	feet passing over a set rebar and cap at 545.02 feet to a set nail in a found "+" in a set stone;
35.	178°	24'	40"	801.47	feet to a found "+" on rock;
36.	241°	51'	55"	677.87	feet to a found "+" on rock;

37.	245°	07'	50"	373.00	feet to a found "+" on rock;
38.	241°	14'	05"	463.15	feet along State of Hawaii lands to a found pipe and rock marked "XXXVI";
39.	261°	34'	25"	531.86	feet along State of Hawaii lands to a found pipe at fence line;
40.	256°	59'	35"	331.98	feet along a fence line and stonewall, along State of Hawaii lands to a found spike in rock and concrete at fence and wall junction;
41.	317°	36'	00"	591.70	feet along stonewall and fence line, along State of Hawaii lands to a set P.K. Nail at the West face of stonewall;
Thence following near (paralleling) old fence line and broken stonewall, along State of Hawaii lands for the remaining eleven (11) courses;					
42.	324°	55'	00"	684.18	feet to the middle "X" of a rock marked "XXXVII";
43.	323°	29'	00"	232.10	feet to a spike in rock;
44.	325°	25'	00"	436.00	feet to a set rebar and cap;
45.	329°	34'	00"	250.00	feet to a set rebar and cap;
46.	330°	48'	00"	37.90	feet to a set rebar and cap;
47.	331°	33'	35"	910.42	feet to a set nail and cap in concrete;
48.	325°	13'	00"	120.00	feet to a set rebar and cap in concrete;
49.	301°	53'	00"	335.82	feet to a set P.K. Nail in rock;
50.	313°	10'	25"	34.65	feet crossing the end of an old 25-foot wide Homestead Road to a set P.K. Nail in rock;
51.	314°	46'	55"	528.79	feet along the Southwesterly side of the old Homestead Road to a found "+" on rock marked "XXI";

52. 310° 58' 00" 327.75 feet to the point of beginning and containing an area of 425.69 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 applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval;
- (B) The effective date of the rezoning shall be when:
 - (1) The applicant provides assurances satisfactory to the Departments of Water Supply and Planning, upon consultation with the State Department of Health and the Department of Land and Natural Resources, that a water source(s) of sufficient quality and quantity has been established within two years from the enactment of this ordinance; provided that a maximum one-year extension may be granted by the Planning Director with reasonable and sufficient justification;
 - (2) An agreement, together with the appropriate bond, surety or other security deemed acceptable by the Planning Director, is executed between the applicant and the County through its Departments of Water Supply and Planning for the actual development of a proven source and its water transmission and distribution system within one year for the official date of compliance with Condition B(1); provided that a one-year extension may be granted by the Planning Director with reasonable and sufficient justification;
- (C) Plans for the proposed subdivision shall be submitted to the Planning

Department and Final Subdivision Approval secured within five (5) years from the effective date of rezoning determined in Condition B. As represented and agreed to by the applicant, the proposed residential-agricultural subdivision shall not exceed a maximum limit of 106 one to five-acre sized lots. Prior to the issuance of Final Subdivision approval of any portion of the subject property, except for consolidation and resubdivision of existing parcels, the applicant shall submit to the Planning Director to initiate a change of zone application to reclassify all lands comprising the 27-hole golf course, the community park and related recreational facilities into an Open-zoned District classification, and the director shall initiate such rezoning upon the issuance of final subdivision approval;

- (D) 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, vegetables, foliage, and fruits 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;

- (E) As agreed to by the applicant, restrictive covenants in the deeds of all the proposed residential-agricultural 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 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) A wastewater disposal system shall be constructed in a manner meeting with the approval of the State Department of Health and/or the Department of Public Works, whichever is applicable;
- (G) A comprehensive drainage study of the subject property shall be prepared for the review and approval of the Department of Public Works, in conjunction with 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 subject property;
- (H) A final archaeological inventory survey and mitigation plan shall be prepared and submitted for approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division,

prior to submittal of plans for subdivision review. The Plan shall consist of two subplans;

- (1) An archaeological data recovery plan for the sites to undergo data recovery;
 - (2) A detailed preservation/interpretation plan for the sites to undergo preservation. The preservation/interpretation plan shall include buffer zones, signage, interim protection measures, and long-range preservation concerns. The Plan shall also detail measures to provide unrestricted access to all individuals wishing to visit any burial sites which may be located within the project site. Proposed mitigation treatment (preservation in place or disinterment/reinternment) for burial sites, including the preparation of a burial treatment plan, must be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. The Planning Department and the State of Hawaii's Historic Preservation Division shall verify in writing the successful execution of the plan, prior to land altering activities in the area of historic sites;
- (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 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;
 - (J) Access(es) to the project site shall be constructed in a manner meeting with the approval of the Departments of Transportation-Highways Division and/or Public Works, whichever is applicable. The proposed main project access

roadway intersection with the Mamalahoa Highway shall be channelized with left turn storage lanes and acceleration and deceleration lanes with appropriate street lighting which shall be completed prior to Final Subdivision Approval for any portion of the Agricultural-zoned area within the project site. Guardrails shall be installed along the project site's Mamalahoa Highway frontage for all lots requiring protection from highway traffic;

(K) In lieu of the actual construction of infrastructural improvements as required under Conditions F, G and J, the applicant may enter into an agreement with the Planning Director to assure the county that the infrastructural improvements will be constructed together with the appropriate bond, surety or other security deemed acceptable to the Planning Director and the Corporation Counsel. Upon execution of such agreement and/or filing of the security with the County, final subdivision approval for the subject property or portions thereof shall be granted prior to the actual construction of required infrastructural improvements;

(L) The applicant shall pay its fair share contribution to address potential regional impacts of the project with respect to park, fire, police, solid waste disposal facilities, sewer and roads. 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 residential-agricultural lot counts are adjusted. The fair share contribution for each residential - agricultural 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 shall have a maximum combined value of \$728,984.26. The fair share contributions described above shall be adjusted annually based on the percentage change in the Honolulu Consumer Price Index (HCPI). In lieu of paying the fair share contribution, the applicant may construct such facilities related to park, fire, police, solid waste

disposal facilities, sewers and roads with the approval of the appropriate agency(ies). Any contributions required by this ordinance that exceed the fair share requirement of the subject property shall, at the applicant's request be credited towards any of the applicant's future developments that require infrastructural impact contributions;

(M) To ensure the Goals and Policies of the Recreation Element of the General Plan are implemented, the applicant shall:

(1) Subdivide and convey in fee, approximately 10 + acres of land within the project site, to the Pu'uanahulu Community Association or its designee for development as a community park, within six (6) months from the effective date of this amendment. The applicant shall be responsible for payment of the park's real property taxes and liability insurance for a two year period [after its conveyance to the Pu'uanahulu Community Association] from the effective date of this ordinance;

(2) as represented by and committed to by the applicant, construction of the community park and community recreational center shall commence no later than December 1, 2000 and be completed no later than [March 1] November 30, 2001, and the construction of the volunteer fire station shall commence no later than [March] September 1, 2001 and be completed no later than [July 1, 2001] February 1, 2002[; and]. A maximum 6-month time extension for completion of the required improvements may be granted by the Planning Director provided that an agreement is entered into between the Planning Director and the applicant, its assigns or successors, accompanied by a surety bond (other than personal surety), certified check or other security acceptable to the Director, in the sum equal to the cost of all work required to complete the required improvements within the extended time period; and

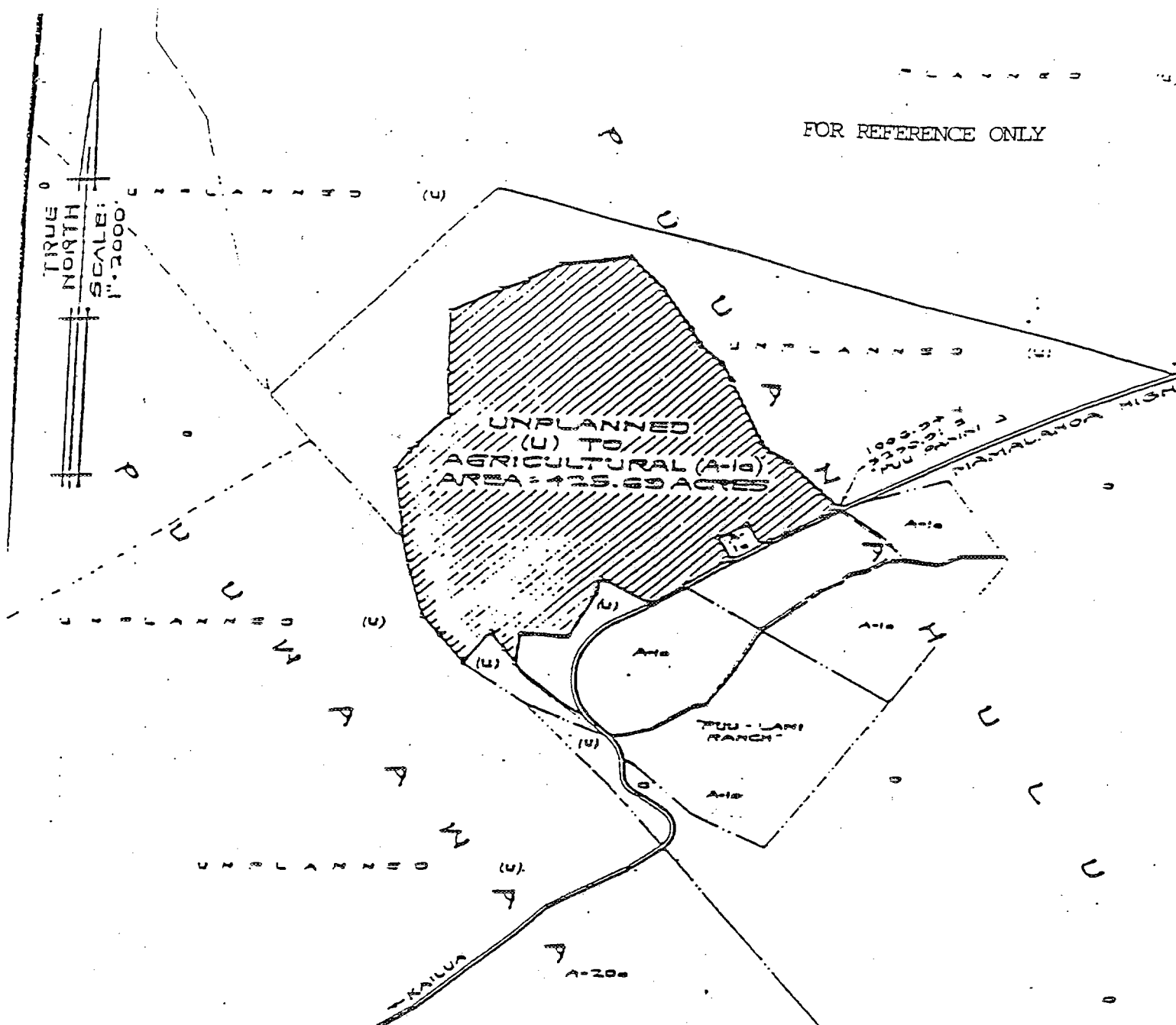
- (3) the applicant shall provide metered potable water service equal to three (3) units of water, as units are defined by the County Department of Water Supply for use at the community park. Upon the County's request, the applicant shall also provide a minimum of one (1) unit of water to its property line to accommodate a public rest stop.

All necessary approvals to allow the construction of the proposed facilities within the project site shall be applied for and secured by the applicant with the [commence] construction for the community park and community recreational center [shall be] to commence no later than December 1, 2000 and [completion] to be completed no later than [March 1] November 30, 2001, and the [commence] construction for the volunteer fire station [be] to commence no later than [March] September 1, 2001 and [completion] to be completed no later than [July 1, 2001] February 1, 2002, subject to a maximum 6-month time extension if approved by the Planning Director;

- (N) The applicant shall install pedestrian walkways and bike lanes within the proposed subdivision development as a means of addressing pedestrian and bicyclist safety. The location of these walkways and bike lanes, which shall be determined by the Planning Director in consultation with Na Ala Hele, shall be indicated on plans submitted for subdivision review;
- (O) A solid waste management plan shall be prepared meeting with the approval of the Department of Public Works prior to submitting plans for subdivision review. The Plan shall include, but not be limited to, the management of construction solid waste as well as operating and domestic solid waste generated by the subject property. Approved recommendations and mitigation measures shall be implemented at a time and in a manner meeting with the approval of the Department of Public Works;

- (P) The applicant shall establish and maintain a landscaping program around the new electric substation located near the northeast boundary of the subject properties;
- (Q) The applicant, successors or its assigns shall recite in the deeds of all the proposed agricultural lots within the proposed agricultural lots within the project site, to be recorded with the Bureau of Conveyances, that all prospective lot owners shall be responsible for paying any additional real property taxes owed as a result of withdrawing the property from dedicated agricultural use to residential use and shall inform the Director of Finance in writing of any such changes;
- (R) The applicant shall comply with the provisions set forth by the State Department of Land and Natural Resources for the acquisition of paper homestead roads relating to the public easement route;
- (S) Comply with all applicable laws, rules, regulations and requirements of the affected agencies;
- (T) 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.
- (U) An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this change of zone. The report shall address in detail 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 with and the Planning Director acknowledges that further reports are not required;

FOR REFERENCE ONLY



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 UNPLANNED (U) TO AGRICULTURAL (A-1a) AT PUUANAHULU HOMESTEADS, NORTH KONA, HAWAII.

PREPARED BY: PLANNING DEPARTMENT
COUNTY OF HAWAII

TMR: 7-1-05: 9, 10, 22, 26, 28-34, 39-41, 50 & 50

FEB. 4, 1994

EXHIBIT "A"

(SPEAR DEVELOPMENT CORP.)

(V) An initial extension of time for the performance of conditions within the ordinance, with the exception of [Condition] Conditions B and M, 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 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) Should the applicant require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.


(W) Further, 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 2. Material to be deleted is bracketed and material to be added is underscored.

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 20, 2001

Date of 1st Reading: June 20, 2001

Date of 2nd Reading: July 6, 2001

Effective Date: July 23⁰, 2001

REFERENCE: Comm. _____

APPROVED AS TO FORM AND LEGALITY

CORPORATION COUNSEL

DATED: _____

OFFICE OF THE COUNTY CLERK

County of Hawai'i

Hilo, Hawai'i

Introduced By: Bobby Jean Leithead-Todd
 Date Introduced: June 20, 2001
 First Reading: June 20, 2001
 Published: N/A

REMARKS: _____

Second Reading: July 6, 2001
 To Mayor: July 10, 2001
 Returned: July 17, 2001
 Effective: July 16, 2001
 Published: July 22, 2001

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Elarionoff	X			
Jacobson	X			
Leithead-Todd	X			
Pisicchio	X			
Safarik	X			
Tyler	X			
Yagong	X			
	9	0	0	0

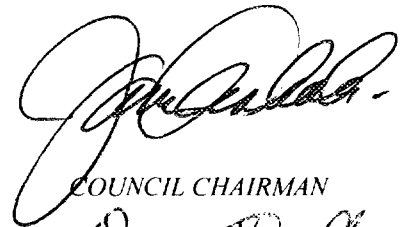
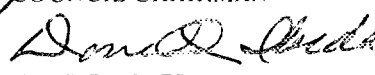
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Elarionoff	X			
Jacobson	X			
Leithead-Todd	X			
Pisicchio	X			
Safarik	X			
Tyler	X			
Yagong	X			
	9	0	0	0

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

APPROVED AS TO
FORM AND LEGALITY:


 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 7/12/01


 COUNCIL CHAIRMAN

 COUNTY CLERK

Approved/Disapproved this 16th day

July, 2001

 MAYOR, COUNTY OF HAWAII

Bill No.: Bill 68
 Reference: C-230/PC-26
 Ord. No.: 01 64