

ORDINANCE NO. 04 89

**AN ORDINANCE AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO AGRICULTURAL (A-10a) AT KALOKO, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-3-26:15.**

**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:**

SECTION 1. Section 25-8-2, Article 8, Chapter 25 (Zoning Code) of the Hawai'i 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, Hawai'i, shall be Agricultural (A-10a):

Beginning at the Northwesterly corner of this parcel of land, being also the Southwesterly corner of Lot 1 of Block 8 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) and being a point on the Easterly side of Makahi Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 9,759.88 feet North and 1,523.46 feet East and running by azimuths measured clockwise from True South:

Thence, for the next three (3) courses following along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha:

1.     233° 10'                     700.00                     feet along Lot 1 of Block 8 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) to a point;

- |    |          |          |  |
|----|----------|----------|--|
| 2. | 323° 10' | 1,343.80 | feet along Lots 4 and 5 of Block 8 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) to a point; |
| 3. | 53° 10'  | 900.00   | feet along Lot 3 of Block 8 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) to a point;        |
| 4. | 143° 10' | 820.00   | feet along the Easterly side of Kaloko Drive to a point;   |

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

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

- |    |          |       |                  |
|----|----------|-------|------------------|
| 5. | 188° 10' | 70.71 | feet to a point; |
|----|----------|-------|------------------|

Thence, following on a curve to the left with a radius of 150.00 feet, the chord azimuth and distance being:

- |    |          |        |  |
|----|----------|--------|--|
| 6. | 188° 10' | 212.13 | feet to a point;   |
| 7. | 143° 10' | 323.80 | feet to the point of beginning and containing an area of 25.687 Acres. |

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code, the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
- (2) Reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to:
  - (A) Protection of the public from the potentially deleterious effects of

the proposed use, or

- (B) Fulfillment of the need for public service demands created by the proposed use.
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- 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 roadway frontages of the subject property, exclusive of the access point 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 covenants in the deeds of all the proposed lots within the subject property shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and condominium property regimes on each lot. This restriction may be removed by amendment of this ordinance by the County Council. The owners of the property may also impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i 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 recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
  
- 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, and Natural Resources Conservation Service).
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. 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 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.
- 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. The applicant shall prepare a Solid Waste Management Plan for the development meeting with the approval of the Department of Environmental Management.
- L. Access(es) to the subject property from Kaloko Drive 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 the potential regional impacts of the subject property with respect to roads. The amount of the fair share contribution shall be the sum which is the product of multiplying the number of additional dwelling units proposed to be developed by the amounts allocated for each such lot, and shall become due and payable prior to Final Subdivision Approval for any portion of the subject property. The fair share contribution shall be allocated to road impacts and be in the form of cash and/or in kind services approved by the Planning Director and shall be applied to improving the Kaloko Drive/Hawaii Belt Road intersection. The fair share contribution shall be adjusted annually beginning three years after the effective date of the change of zone, based on the percentage change in the Honolulu Price Index (HPI). For purposes of administering this condition, 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. Upon approval of the fair share condition, the director shall submit a final report to the Council for its information that identifies the specific approved fair share contribution, 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 Fee 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:

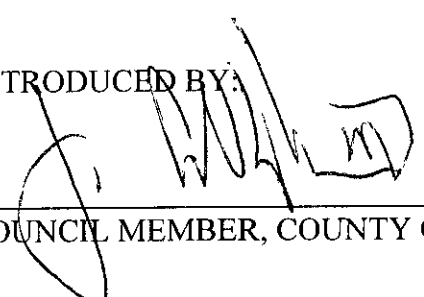
1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, its successors or assigns, and that are not the result of their fault or negligence.
2. Granting of the time extension would not be contrary to the General Plan or Zoning 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 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:

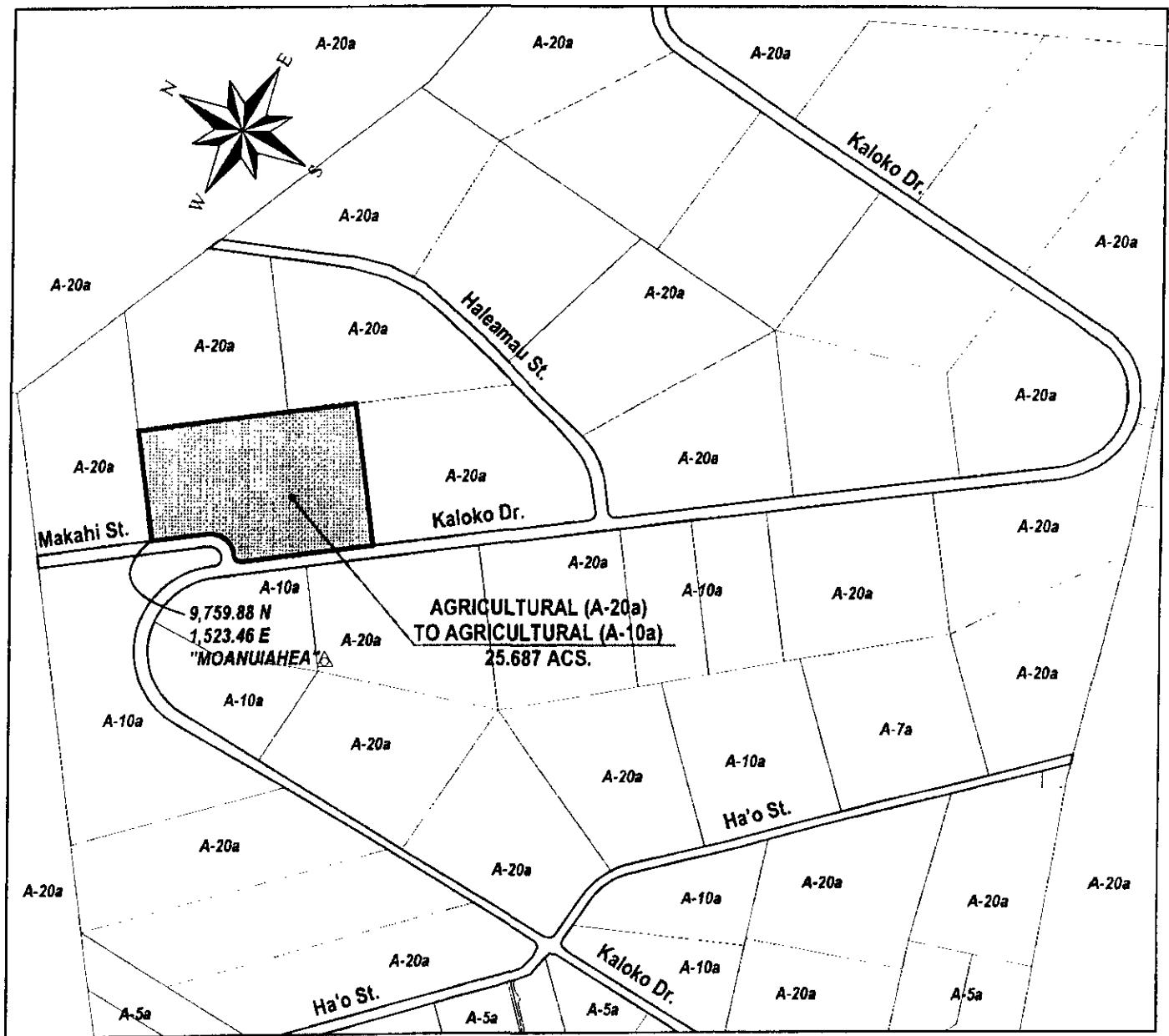
  
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 COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i

Date of Introduction: July 23, 2004  
 Date of 1st Reading: July 23, 2004  
 Date of 2nd Reading: August 4, 2004  
 Effective Date: August 12, 2004

REFERENCE: Comm. 669.1





# 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

2004 AUG 12 PM 4:50  
 County Clerk

Introduced By: J. Curtis Tyler, III  
 Date Introduced: July 23, 2004  
 First Reading: July 23, 2004  
 Published: August 1, 2004

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
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Second Reading: August 4, 2004  
 To Mayor: August 6, 2004  
 Returned: August 12, 2004  
 Effective: August 12, 2004  
 Published: August 19, 2004

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson		X		
Reynolds			X	
Safarik	X			
Tulang			X	
Tyler	X			
	5	1	3	0

(Draft 2)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson			X	
Reynolds	X			
Safarik	X			
Tulang	X			
Tyler	X			
	7	0	2	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:

[Signature]  
 DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII

Date August 10, 2004

Approved/Disapproved this 12<sup>th</sup> day  
 of August, 20 04.

[Signature]  
 MAYOR, COUNTY OF HAWAII

[Signature]  
 COUNCIL CHAIRMAN  
[Signature]  
 COUNTY CLERK

Bill No.: 287 (Draft 2)  
 Reference: C-669.1/PC-98  
 Ord: 04 89