

ORDINANCE NO. 04 110

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM OPEN (O) TO INDUSTRIAL-COMMERCIAL MIXED (MCX-20) AND GENERAL INDUSTRIAL (MG-1a) AT HONOKOHAU 1ST AND 2ND, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-4-8:PORTION 13 & 30.

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

SECTION 1. Section 25-8-3, 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 Honokohau 1st and 2nd, North Kona, Hawai'i, shall be Industrial-Commercial Mixed (MCX-20):

PARCEL "1"

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 310,073.83 feet North and 320,034.85 feet East and thence running by azimuths measured clockwise from true South:

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|----|------|-----|-----|----------|--|
| 1. | 259° | 01' | 40" | 2,361.73 | feet along Lots 57 and 17 of Kaloko Light Industrial Subdivision Unit 1 (File Plan 1806), Kanalani Street, Lots A, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha, Lots 53 and 52 of Kaloko Light Industrial Subdivision Unit 1 (File Plan 1806), Lot 50-A, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha, Lots A and F, being portions of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha; |
| 2. | 349° | 01' | 40" | 596.91 | feet; |
| 3. | 348° | 15' | | 1,852.52 | feet; |
| 4. | 258° | 15' | | 410.00 | feet; |
| 5. | 260° | 10' | | 226.89 | feet; |

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|-----|---|--------------|--|
| 6. | 350° 10' | 888.31 | feet; |
| 7. | 78° 15' 10" | 1,522.85 | feet along Lots 8, 7, 6 and 5, Road G and Lot 3, being portions of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku; |
| 8. | 78° 15' 30" | 1,000.00 | feet along Lot 8-A, being a portion of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku; Lot 8-B, being all of Grant S-15098 to Lanihau Corporation, et al.; and Lot 8-C, being a portion of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku; |
| 9. | 148° 10' | 213.70 | feet along the East side of Queen Kaahumanu Highway (Project Number BD-65-352); |
| 10. | Thence along the East side of Queen Kaahumanu Highway (Project Number BD-65-352), on a curve to the right with a radius of 5,904.00 feet, the chord azimuth and distance being: | | |
| | | 158° 04' 45" | 2,032.68 feet; |
| 11. | 167° 59' 30" | 1,175.19 | feet along the East side of Queen Kaahumanu Highway (Project Number BD-65-352), to the point of beginning and containing an area of 186.733 Acres. |

The district classification of the following area situated at Honokohau 1st and 2nd, North Kona, Hawai'i, shall be General Industrial (MG-1a):

PARCEL "2"

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 310,523.35 feet North and 322,353.41 feet East and thence running by azimuths measured clockwise from true South:

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|----|------|-----|-----|----------|---|
| 1. | 259° | 01' | 40" | 322.18 | feet along Lot F, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha; |
| 2. | 260° | 55' | 29" | 914.00 | feet along Lot F, being a portion of R.P. 8214, L.C. Aw. 7715, Ap. 11 to Lota Kamehameha; |
| 3. | 332° | 45' | | 710.32 | feet; |
| 4. | 337° | 00' | | 1,798.39 | feet; |
| 5. | 80° | 10' | | 1,374.70 | feet; |
| 6. | 78° | 15' | | 410.00 | feet; |
| 7. | 168° | 15' | | 1,852.52 | feet; |
| 8. | 169° | 01' | 40" | 596.91 | feet to the point of beginning and containing an area of 85.733 Acres. |

The district classification of the following area situated at Honokohau 1st and 2nd, North Kona, Hawai'i, shall be Industrial-Commercial Mixed (MCX-20):

PARCEL "3"

Beginning at the Southwest corner of this parcel of land, the coordinates of said point of beginning referred to Hawaiian Plane Coordinate Grid System Zone 1 being 306,466.91 feet North and 321,393.14 feet East and thence running by azimuths measured clockwise from true South:

- | | | | | | |
|----|------|-----|--|--------|---|
| 1. | 148° | 10' | | 459.24 | feet along the East side of Queen Kaahumanu Highway (Project Number BD-65-352); |
|----|------|-----|--|--------|---|

- | | | | |
|----|--------------|----------|--|
| 2. | 258° 15' 30" | 1,000.00 | feet along Lot A, being a portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi (Certificate of Boundaries No. 138); |
| 3. | 328° 10' | 459.24 | feet along Lot 3, being a portion of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku; |
| 4. | 78° 15' 30" | 1,000.00 | feet along Lots IX-A, IX-B and IX-C, being portions of R.P. 6855, L.C. Aw. 9971, Ap. 9 to William Pitt Leleiohoku to the point of beginning and containing an area of 9.901 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.
- A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The applicant shall comply with all conditions of approval of the State Land Use Commission's Decision and Order (Docket No. A00-730) dated September 26, 2003.

- C. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within ninety days from the effective date of this ordinance.
- D. The subject area shall be zoned in multiple increments:
1. The first increment shall consist of Parcel 2 (MG zoned area) and Parcel 3 (9.9-acre MCX zoned area) whose zoning shall be effective upon adoption of this ordinance.
 2. Zoning increments within Parcel 1 (186.7-acre MCX zoned area) shall be identified by the applicant as part of future subdivision applications. The effective date of these future zoning increments shall be upon completion of construction or acceptance of financial assurance thereof, by bond or other means, meeting with the approval of the Planning Director, whichever occurs first, for the portion of road improvements as shown on the approved circulation plan within each increment. The incremental zoning boundaries shall be identified on the subdivision maps and shall be along the portions of the roads proposed to be improved and shall not include large lots, as described in Section 23-28, Chapter 23, Hawaii County Code, or any remainder lot that is designated by the applicant on its subdivision plans.
- E. Prior to construction on the proposed lots, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in

accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

- F. An overall landscaping master plan, including a minimum 50-foot wide landscaping buffer along the property's frontage on Queen Kaahumanu Highway shall be submitted to and approved by the Planning Department prior to the issuance of Final Plan approval for any development within Lots 1 and 3. The Landscaping Master Plan shall reflect the proposed landscaping concept depicted in Figure 4-4g of the petitioner's Final Environmental Impact Statement dated April 2003 and shall include, but not necessarily limited to, plant species list, identification of view corridors from within and outside of the project area and maintenance program. The required landscaping improvements shall be installed in conjunction with the development of immediate surrounding areas.

- G. An updated Traffic Impact Analysis Report (TIAR) certified by a licensed engineer shall be submitted for review and approval to the Planning Director and Department of Public Works, prior to receipt of Final Subdivision Approval. The TIAR shall be updated to include the increase in the MCX-zoned area and the inclusion of interior intersections along the South Access Road and Honokohau Street. The revised TIAR shall also evaluate impacts to the Kamanu Street and Kealakehe Parkway intersection. The improvements identified in the updated TIAR shall be provided in an appropriate design year or phased with the needed right-of-way provided. Mitigation measures called for in the revised TIAR that are reasonably related to the project impacts shall be implemented meeting with the approval of the Planning Director in consultation with the Department of Public Works.

- H. All access and intersection improvements along Queen Kaahumanu Highway shall be constructed meeting with all the requirements and approval of the State Department of Transportation. Access to Parcel 1 from Queen Kaahumanu Highway shall be limited to the North Access Road and, after construction of the National Park Service/Lanikai (South Access Road) signalized intersection, to the National Park Service/Lanikai (South Access Road) intersection and to the

North Access Road under such terms and conditions required by the Department of Transportation.

- I. Prior to the granting of Tentative Subdivision Approval for any lot within the subject area, the applicant shall prepare an overall Roadway Circulation Plan showing the major road corridors within the project area for review and approval by the Planning Department, in consultation with the Department of Public Works and the State Department of Transportation.

- J. Prior to the issuance of a Certificate of Occupancy of any structure within the project area, except as provided in Conditions K, L and M below, Kamanu Street Extension shall be constructed and available for use across the entire project area. The applicant shall construct Kamanu Street extending from the north property boundary to the south property boundary meeting with the approval of the Department of Public Works. At its sole discretion, the applicant may construct Kamanu Street Extension in stages, the first of which shall consist of preliminary vehicular access (hereinafter defined as road improvements constructed to non-dedicable standards) meeting with the safety and design requirements of the Department of Public Works, suitable for through-vehicular travel. Construction of the first stage shall be completed prior to the issuance of the County's issuance of a Certificate of Occupancy for any portion of the subject property, except as provided herein. The second stage shall consist of upgrading the preliminary vehicular access to dedicable standards including curbs, gutters and sidewalks, meeting with the approval of the Department of Public Works, which shall be constructed in conjunction with Final Subdivision Approval for any lands along the roadway improvements constructed in the first stage, excluding large lots or remainder lots. In the event that Kamanu Street is constructed with County or other government funding or financing, the applicant shall dedicate the Kamanu Street right-of-way to the County at no cost, and the Kamanu Street improvements shall be improved to County dedicable standards, including curb, gutter and sidewalks, prior to the issuance of a Certificate of Occupancy within the subject property, except as provided in Conditions K, L and M herein. In this event, prior to the granting of Final Subdivision approval for

lots fronting Kamanu Street, other than bulk or remainder lots, the applicant shall reimburse or otherwise contribute to the appropriate agency for the cost of construction. Provided that reimbursement shall occur within five years of completion of construction, or if reimbursement is by way of the applicant taking over bond payments, such repayment shall begin within four years of completion of construction. Reimbursement of the cost of construction of Kamanu Street shall not include any costs in excess of those necessary for a County-dedicable road serving the project area only.

- K. Prior to the issuance of a Certificate of Occupancy for improvements within an approximately 10-acre portion of Parcel 1 along Kanalani Street Extension between the north property boundary and North Access Road, Kanalani Street Extension from the north property boundary to the North Access Road and the construction of improvements within the North Access Road/Queen Kaahumanu Highway intersection and North Access Road, as provided in the TIAR, shall be completed to County dedicable standards.
- L. Prior to the issuance of a Certificate of Occupancy for improvements within Parcel 2 other than for uses or improvements permitted or allowed as part of the on-going quarry and related activities, Kamanu Street Extension shall be constructed and available for use across the entire project area as provided in Condition J above.
- M. Prior to the issuance of a Certificate of Occupancy within Parcel 3, the applicant shall improve the north side of Honokohau Street, meeting with the approval of the Department of Public Works.
- N. Street lights, traffic signals and applicable traffic control devices shall be installed as required by the Department of Public Works as warranted pursuant to the Manual on Uniform Traffic Control Devices.
- O. In order to address and mitigate potential impacts from non-point source pollutants, the applicant shall participate with the County of Hawaii in a pilot storm drainage program for roadways within the Kaloko-Honokohau region.

This pilot program may potentially include other developments within the County and apply to all other government and private developments. The applicant shall participate by constructing all roadways within the proposed industrial-commercial park to County dedicable standards with paved swales. The drainage system within the road rights-of-way shall, if required by the County of Hawaii, include storm drain filtration devices which meet with the approval of the Department of Public Works, in consultation with the National Park Service, and the applicable permitting requirements of the Underground Injection Control (UIC) of the Federal Safe Drinking Water Action and the National Pollutant Discharge Elimination System of the Federal Clean Water Act. The roadway and related improvements covered herein shall be considered eligible for dedication to the County of Hawaii.

- P. An Emergency Response Plan shall be submitted to the Civil Defense Agency for review and approval prior to the issuance of a Certificate of Occupancy.

- Q. An Archaeological Preservation and Burial Treatment Plan shall be submitted for the review and approval of the Planning Director, in consultation with the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD). Proposed mitigation treatment for the burial sites within the subject property shall be approved by the SHPD's Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Archaeological Preservation and Burial Treatment Plan shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval, Final Subdivision review or prior to the issuance of any land alteration permit, whichever comes first.

- R. 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 is found that sufficient mitigation measures have been taken.

- S. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code, relating to Affordable Housing Policy.

- T. 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.

- U. Comply with all other applicable laws, rules, regulations and requirements of other affected agencies.

- V. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the enactment of the ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Director acknowledges that further reports are not required.

- W. 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 applicant, successors or assigns, and that are not the result of their fault or negligence.

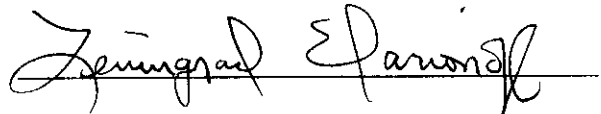
 - 2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.

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).
- X. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning 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:

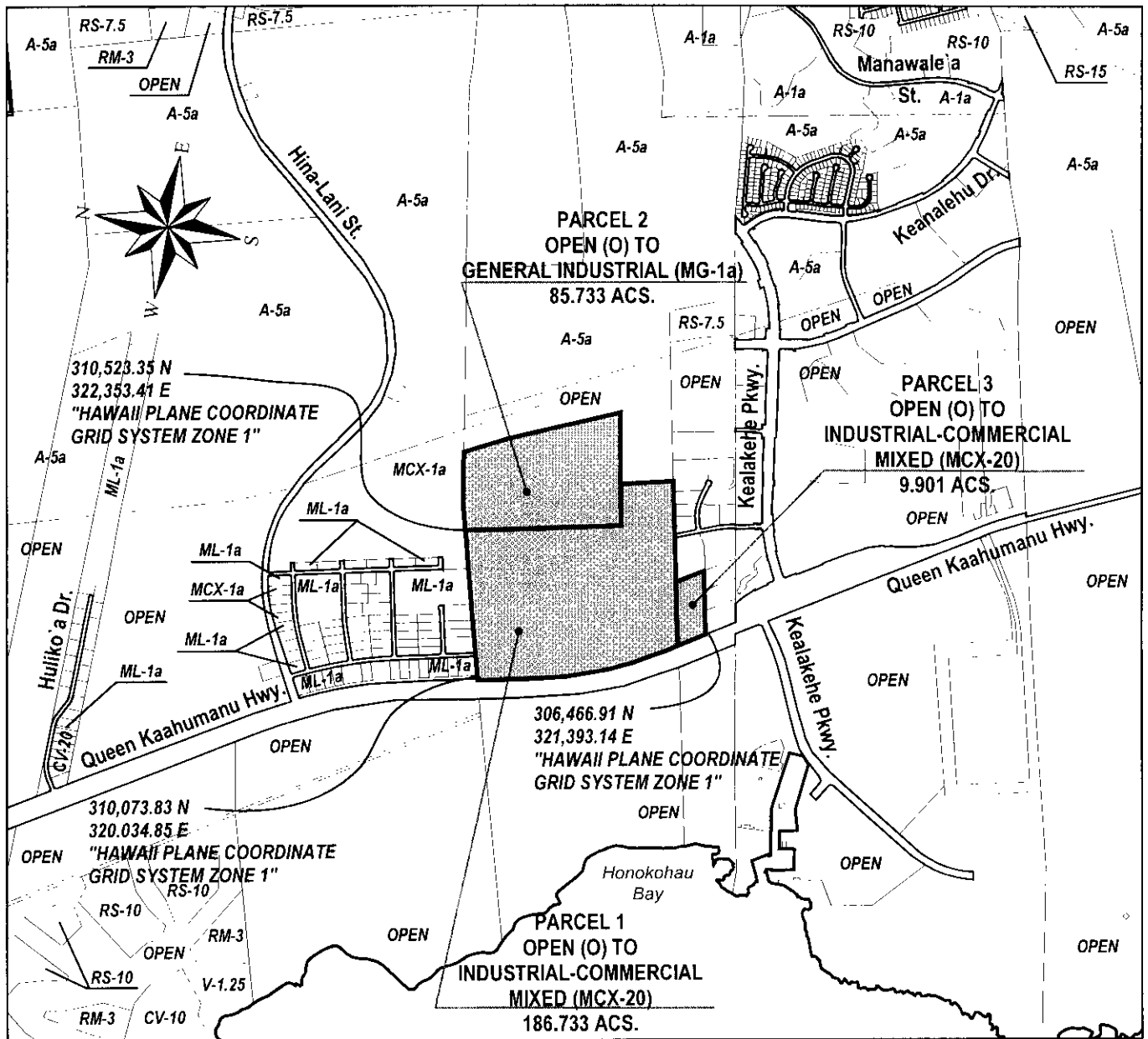


COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i

Date of Introduction: September 15, 2004
Date of 1st Reading: September 15, 2004
Date of 2nd Reading: October 4, 2004
Effective Date: October 12, 2004

REFERENCE: Comm. 722.12



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP)
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE,
 BY CHANGING THE DISTRICT CLASSIFICATION
 FROM OPEN (O)
 TO INDUSTRIAL-COMMERCIAL MIXED (MCX-20)
 AND GENERAL INDUSTRIAL (MG-1a)
 AT HONOKOHAU 1st, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

OCT 12 PM 2 15

(Draft 4)

Introduced By: Leningrad Elarionoff
 Date Introduced: September 15, 2004
 First Reading: September 15, 2004
 Published: N/A

REMARKS: _____

Second Reading: October 4, 2004
 To Mayor: October 5, 2004
 Returned: October 12, 2004
 Effective: October 12, 2004
 Published: October 17, 2004

REMARKS: _____

| 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 | 2 | 0 | 0 |

| 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 | | | |
| | 6 | 1 | 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:

B. J. Littlehead-Todd
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date October 6, 2004

Approved/Disapproved this 12th day
 of October, 2004

Harry Lee
 MAYOR, COUNTY OF HAWAII

[Signature]
 COUNCIL CHAIRMAN
[Signature]
 COUNTY CLERK

Bill No.: 309 (Draft 4)
 Reference: C-722.12/PC-107
 Ord: 04 110