



ORDINANCE NO. **04 120**

AN ORDINANCE AMENDING SECTION 25-8-28 (KA‘U 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 PROJECT DISTRICT AT PALIMA AND PAAUAU, KA‘U, HAWAII, COVERED BY TAX MAP KEY 9-6-5:18 AND 9-6-6:4.

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

SECTION 1. Section 25-8-28, 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 Palima and Paauau, Ka‘u, Hawaii, shall be Agricultural Project District:

Beginning at the west corner of this parcel of land, also being the south corner of Grant 2655 to Nahala, the coordinates of said point of beginning referred to Government Survey Triangulation Station “MILL FLAG” being 6,637.62 feet North and 6,604.23 feet West and thence running by azimuths measured clockwise from true South:

- 1. 213° 39’ 00” 1591.69 feet along Grant 2655 to Nahala;
- 2. 297° 10’ 00” 389.40 feet along Grant 3533 to B. P. Bishop Estate;
- 3. 309° 10’ 00” 367.62 feet along same;
- 4. 311° 10’ 00” 1,812.36 feet along same;
- 5. 329° 36’ 00” 1,533.46 feet along same;
- 6. 11° 01’ 00” 712.42 feet along Grant 2727, Apana 2;

- | | | | | |
|----|--------------|----------|------|---|
| 7. | 27° 33' 00" | 952.45 | feet | along Grant 1374, Apana 2 to M. Keawe; |
| 8. | 45° 03' 00" | 76.56 | feet | across Meyer Road; |
| 9. | 136° 37' 00" | 4,400.92 | feet | along L. C. Aw. 9971, R.P. 7709, Ap. 12 to W. P. Leleiohoku to the point of beginning and containing a gross area of 171.782 Acres, more or less. |

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, 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. All uses permitted directly or indirectly in the Agricultural and Intensive Agricultural districts shall be permitted in the Agricultural Project District.

- D. Prior to filing an application for Subdivision, the applicant shall submit documentation to the Planning Department indicating the availability of sufficient water for the project site and proposed development. The applicant shall construct a private water system which provides water to each lot. The water system may have a single source, and does not have to be constructed to County dedicable Department of Water Supply standards, but the project engineer shall certify that the components will be functionally equivalent to Department of Water Supply standards.
- E. A detailed site plan of the Agricultural Project District, which includes the location and number of lots and other related improvements on the property, shall be submitted to the Planning Director within one year from the effective date of the Agricultural Project District ordinance or prior to submission of plans for subdivision approval, whichever occurs first.
- F. Final Subdivision Approval of the proposed Agricultural Project District (APD) area shall be secured from the Planning Director within five (5) years from the effective date of this ordinance. The minimum lot size shall be no less than five (5) acres and shall not exceed seventeen (17) lots.
- G. The primary access road, Meyer Road, shall be constructed to a 20-foot wide pavement, on a 50-foot wide right-of-way. The other project access roads shall be paved per the “private road standards” of the subdivision code, if they serve fewer than four lots, or 16 feet wide, if more than four lots. The project engineer shall certify the stability of the road shoulders and drainage system.
- H. Upon consultation with the Natural Resources Conservation Service, 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.

- I. 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 seventeen (17) lots. With the consent of a majority of the landowners within the APD, any further subdivision or increase in density will require an amendment to this ordinance.
 - (2) Only one farm dwelling will be permitted on each proposed lot. A recorded covenant shall give notice of the restriction, which may be removed by amendment to this ordinance.

- J. An archaeological inventory survey shall be submitted to the State of Hawaii Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) for acceptance. The applicant shall obtain approval of a Preservation and Mitigation Plan, which shall include a Burial Treatment Plan, from the DLNR-HPD. The applicant shall include all of the DLNR-HPD mitigation measures and conditions specified in the Preservation and Mitigation Plan, including the Burial Treatment Plan, into the plans for the project, which shall be conditions of subdivision approval. In lieu thereof, the applicant can satisfy this condition by a "no effect" letter from the DLNR-HPD.

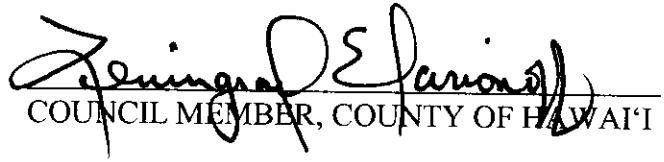
- K. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) 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.
- L. The applicant shall obtain a determination from the DLNR-HPD as to the presence of any State-owned trails on the subject site. There shall be no disturbance or alteration of such trails without written approval of the DLNR-HPD.
- M. 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. Covenants in the deeds shall give notice to the purchasers of the private roads and water systems and that these were not constructed to County standards and are not maintained by the County.
- N. Comply with all other applicable laws, rules, regulations and requirements of other affected agencies.
- O. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this Agricultural Project District 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.

- 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 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 Project District.
 - (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) If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the County Council for appropriate action.
- Q. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the subject 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 HAWAII

Hilo, Hawai'i

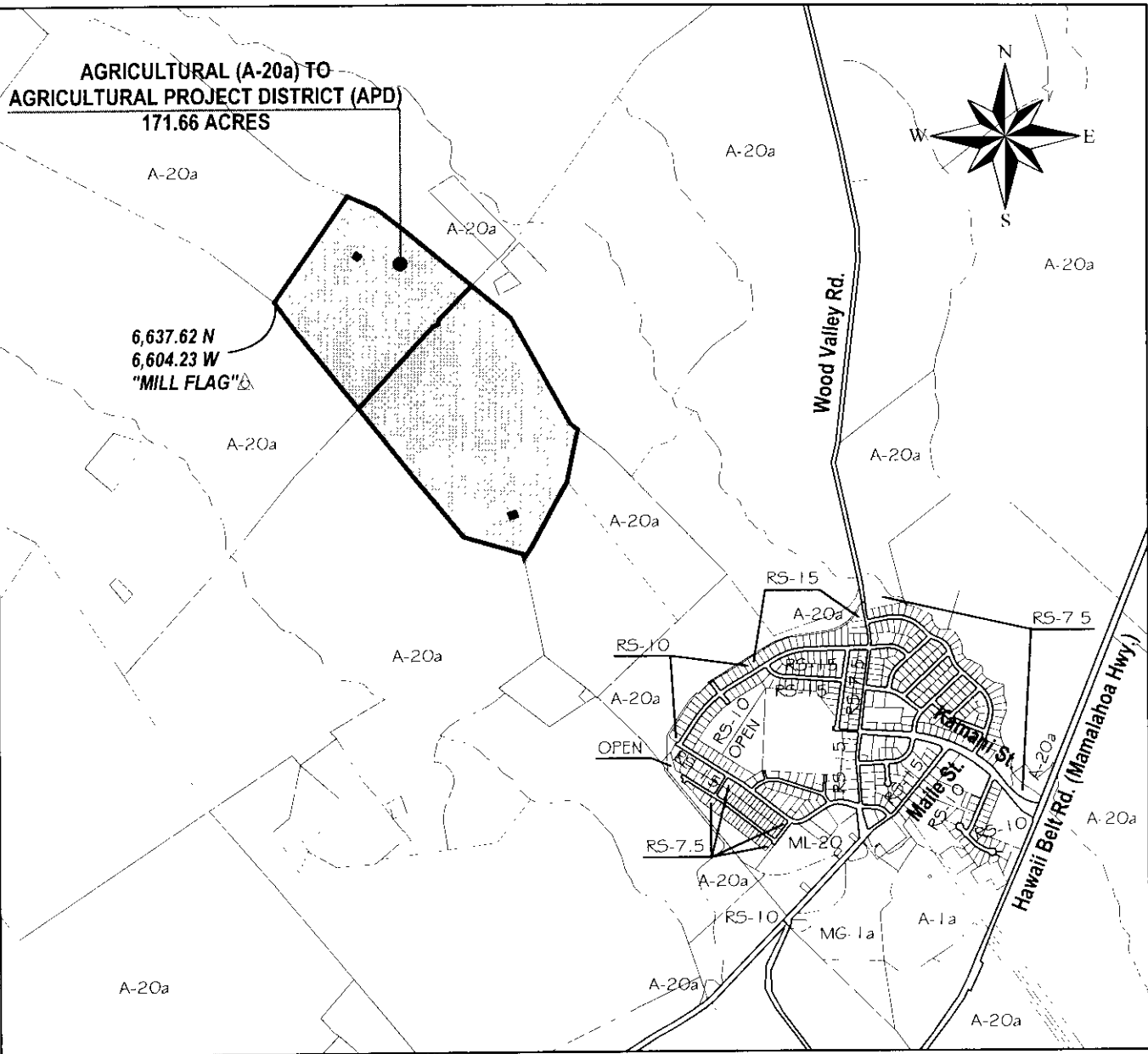
Date of Introduction: May 19, 2004

Date of 1st Reading: August 18, 2004

Date of 2nd Reading: October 20, 2004

Effective Date: November 8, 2004

REFERENCE: Comm. 561



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-28 (KAU 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 PROJECT DISTRICT (APD)
 AT PALIMA & PAAUUAU, KAU, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

TMK: 9-6-005:018 & 9-6-006:004

Date: March 3, 2004

EXHIBIT "A"

(Hester Farming Co., LLC:1121)

OFFICE OF THE COUNTY CLERK
 County of Hawaii
Hilo, Hawaii

2004 OCT 20 PM 3:27

Introduced By: Leningrad Elarionoff
 Date Introduced: May 19, 2004
 First Reading: August 18, 2004
 Published: N/A

REMARKS:

May 19, 2004 - Deferred
June 7, 2004 - Public Hearing

Second Reading: October 20 2004
 To Mayor: October 22, 2004
 Returned: November 8, 2004
 Effective: November 8, 2004
 Published: November 14, 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		
	6	2	1	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	3	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:

[Signature]
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 10/20/04

Approved/Disapproved this 8th day
 of November, 2004

[Signature]
 MAYOR, COUNTY OF HAWAII

[Signature]
 COUNCIL CHAIRMAN
[Signature]
 DEPUTY COUNTY CLERK

Bill No.: 249
 Reference: C-561/PC-90
 Ord: 04 120