

ORDINANCE NO. 05 64

AN ORDINANCE AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO FAMILY AGRICULTURAL 3-ACRE (FA-3a) AT KAHUA 1<sup>ST</sup>, NORTH KOHALA, HAWAII, COVERED BY TAX MAP KEY 5-9-6:5.

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

SECTION 1. Section 25-8-7, 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 Kahua 1<sup>st</sup>, North Kohala, Hawaii, shall be Family Agricultural 3 acre (FA-3a):

Beginning at a 1/2" iron pipe found in concrete for the Southwest corner of this herein-described tract of land, being the Southeast corner of Lot 60, being on the North side of Ala Kahua Drive, an Eighty (80) foot wide roadway and the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PILI" being 15,720.855 feet South and 28,589.348 feet West and running by azimuths measured clockwise from true South:

- 1. 157° 56' 40" 881.94 feet along said Lot 60 to a found 1/2" iron pipe in concrete;
- 2. 247° 15' 40" 193.18 feet along Lot 62-B to a found 1/2" iron pipe in concrete;
- 3. 321° 26' 00" 998.29 feet along Lot 762-C and Lot 762-B to a found 1/2" iron pipe in concrete;

Thence along said Kahua Drive on a curve to the right with a radius of 460.00 feet, the chord azimuth and distance being:

4. 76° 38' 01" 482.41 feet to the point of beginning and containing an area of 7.740 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 applicants, 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. Final Subdivision Approval of the proposed subdivision development shall be secured within five (5) years from the effective date of this change of zone ordinance.
- D. Restrictive covenants in the deeds of all proposed lots within the 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 owner of the property may also, in addition, impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State 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.

- E. All driveway connections to Ala Kahua Drive shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
- F. All grading and grubbing activities and drainage improvements shall meet with the approval of the County Department of Public Works.
- G. A drainage study of the subject property, if required, shall be prepared by the applicants and submitted to the Department of Public Works for review and approval, 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.
- H. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- I. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
- 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 Resource - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.

- K. 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.
- L. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- M. 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).

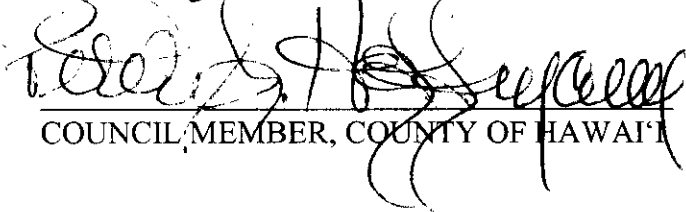
N. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the area to its original or more appropriate designation.

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 HAWAII

  
\_\_\_\_\_  
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: April 20, 2005  
Date of 1st Reading: April 20, 2005  
Date of 2nd Reading: May 4, 2005  
Effective Date: May 16, 2005

REFERENCE: Comm: C-172

OFFICE OF THE COUNTY CLERK  
County of Hawai'i  
Hilo, Hawai'i

Introduced By: K. Angel Pilago/Pete Hoffmann  
Date Introduced: April 20, 2005  
First Reading: April 20, 2005  
Published: N/A

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
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Second Reading: May 4, 2005  
To Mayor: May 6, 2005  
Returned: May 17, 2005  
Effective: May 16, 2005  
Published: May 22, 2005

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE

	AYES	NOES	ABS	EX
Arakaki			X	
Higa	X			
Hoffmann	X			
Holschuh	X			
Ikeda	X			
Isbell	X			
Jacobson		X		
Pilago	X			
Safarik			X	
	6	1	2	0

ROLL CALL VOTE

	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann	X			
Holschuh	X			
Ikeda	X			
Isbell	X			
Jacobson		X		
Pilago	X			
Safarik	X			
	8	1	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 May 10, 2005

Approved/Disapproved this 16<sup>th</sup> day

of May, 20 05  
[Signature]  
MAYOR, COUNTY OF HAWAII

[Signature]  
COUNCIL CHAIRMAN

[Signature]  
COUNTY CLERK

Bill No.: 60  
Reference: C-172/PC-13  
Ord No.: 05 64