

ORDINANCE NO. **06 113** BILL NO. 248

AN ORDINANCE AMENDING SECTION 25-8-8 (UPOLU POINT – KAAUHUHU HOMESTEADS ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO AGRICULTURAL (A-10a) AT KEALAHEHEWA 1<sup>ST</sup>, NORTH KOHALA, HAWAII, COVERED BY TAX MAP KEY 5-5-003:010.

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

SECTION 1. Section 25-8-8, Article 8, Chapter 25 (Zoning Code) of the Hawaii County Code 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kealaheweha 1<sup>st</sup>, North Kohala, Hawaii, shall be Agricultural (A-10a):

Beginning at the Southeast corner of this parcel of land, situated on the Northwestern side of Maliu Road, the coordinates of said point of beginning, referred to Government Survey Triangulation Station "Puu o Nale" being 12,709.84 feet North and 571.40 feet East and thence running by azimuths measured clockwise from True South:

- |    |              |        |  |
|----|--------------|--------|--|
| 1. | 35° 36'      | 807.59 | feet along the Northwestern side of Maliu Road;                        |
| 2. | 167° 20'     | 888.02 | feet along Lot 254 of Land Court Application 1120 (Map 40);            |
| 3. | 166° 20'     | 917.00 | feet along Lots 254 and 44 of Land Court Application 1120;             |
| 4. | 161° 35'     | 76.70  | feet along Lot 44, Land Court Application 1120 (Map 10);               |
| 5. | 271° 40' 30" | 60.00  | feet along the Southerly side of Hawi-Mahukona Road [F.A.P. 27-A (1)]; |
| 6. | 1° 40' 30"   | 5.00   | feet along the same;   |
| 7. | 271° 40' 30" | 400.00 | feet along the same;   |

- |     |      |     |     |        |   |
|-----|------|-----|-----|--------|---|
| 8.  | 181° | 40' | 30" | 5.00   | feet along the same;  |
| 9.  | 271° | 40' | 30" | 153.55 | feet along the same;  |
| 10. | 340° | 00' | 40" | 341.88 | feet along the Government Lands of Hualua;  |
| 11. | 348° | 07' |     | 852.62 | feet along the same, to the point of beginning,<br>and containing an area of 21.352 Acres, more<br>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 1983 (2005 Edition), 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, its 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. 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.
  - D. 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 registration 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.

- E. The applicant shall make a good faith efforts to obtain legal access to the County owned portion of Maliu Road from the State of Hawaii and from the owner of the adjoining road lot. These good faith efforts shall include, but not be limited to, payment of fair market value for any easement and payment of any necessary expenses for new fence lines, surveys or other reasonable modifications. Access shall be from Maliu Road unless the Planning Director determines that the applicant cannot secure access to Maliu Road despite reasonable good faith efforts. If access cannot be obtained from Maliu Road, access may be allowed from Akoni Pule Highway pursuant to Condition J. The good faith efforts shall continue for a period of not less than 2 years from the effective date of this ordinance.
- F. The applicant shall improve the portion of Parcel 40 from the end of the County (Maliu) Road through to the location where any subdivision lot access occurs to a minimum of 20-foot pavement width (agricultural standards) within the existing right-of-way.
- G. The applicant shall provide a 5-foot wide future road widening setback along the entire property frontage of Parcel 40, which shall be dedicated to the County on request.
- H. Any vehicular security gate shall be located beyond the turnaround, meeting with approval of the Department of Public Works.

- I. Any utility s in the County road right-of-way shall  installed as shown on the Department of Public Works Standard Detail R-35 (Revised). The applicant shall provide any necessary easements for installation of such utilities.
- J. There shall be no access to Akoni-Pule Highway unless the applicant is unable to obtain access from Maliu Road. If access is taken from Akoni Pule Highway, it shall be limited to a single point and shall meet with the approval of the State Department of Transportation.
- K. 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.
- L. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- M. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
- N. 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 mitigation measures have been taken.
- O. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

- P. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exaction or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- Q. An initial extension of time for the performance of conditions within the permit 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. 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.
- R. 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.

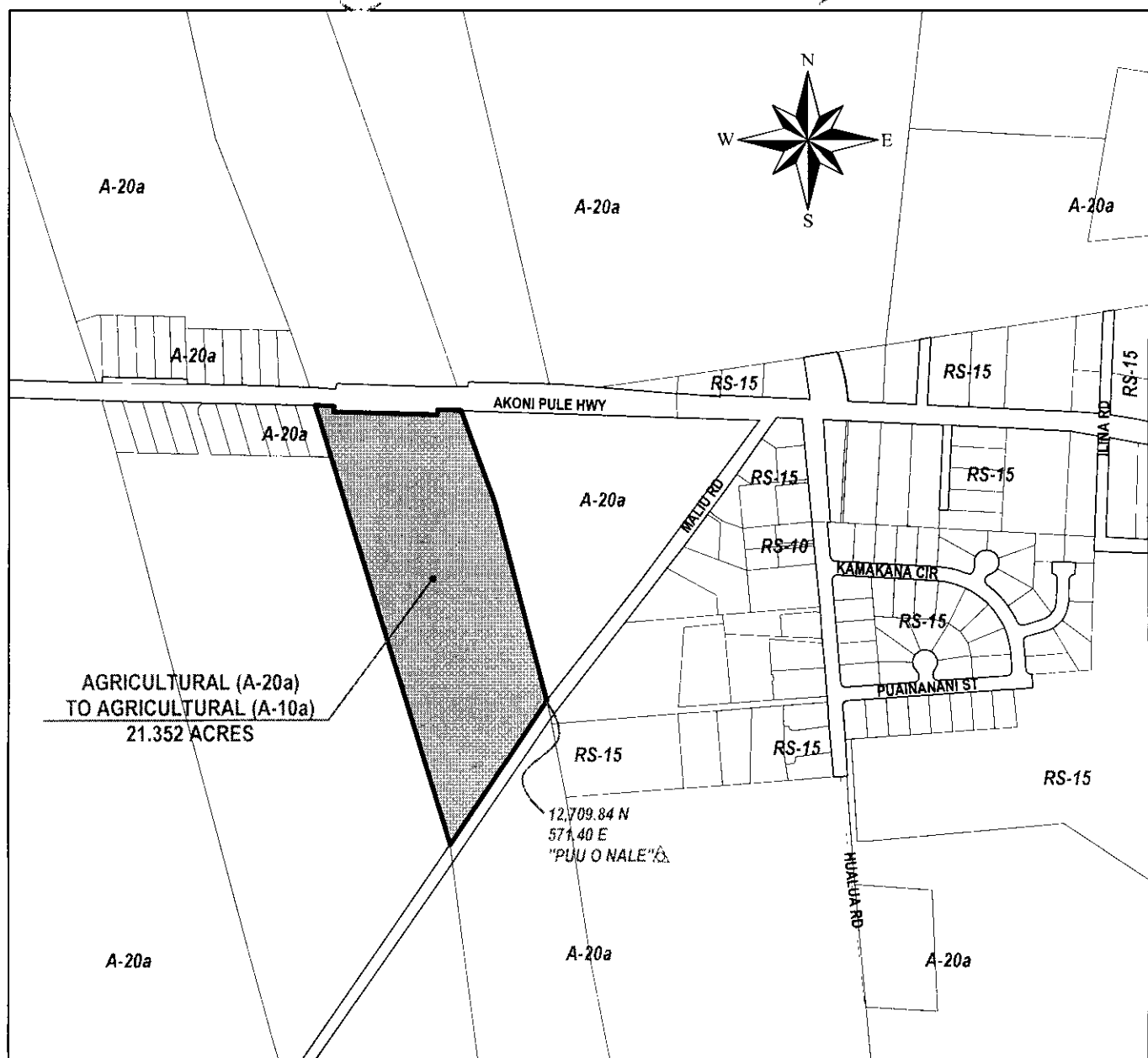
INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: July 19, 2006  
Date of 1st Reading: July 19, 2006  
Date of 2nd Reading: August 1, 2006  
Effective Date: August 8, 2006

REFERENCE: Comm. 764



# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-8 (UPOLU POINT-KAAUHUHUU HOMESTEADS ZONE MAP)  
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE  
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION  
 FROM AGRICULTURAL (A-20a)  
 TO AGRICULTURAL (A-10a)  
 AT KEALAHEHEWA 1st, NORTH KOHALA, HAWAII

PREPARED BY: PLANNING DEPARTMENT  
 COUNTY OF HAWAII

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

Introduced By: K. Angel Pilago  
Date Introduced: July 19, 2006  
First Reading: July 19, 2006  
Published: N/A

REMARKS: \_\_\_\_\_  
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Second Reading: August 1, 2006  
To Mayor: August 2, 2006  
Returned: August 9, 2006  
Effective: August 8, 2006  
Published: August 15, 2006

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X		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:

  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date AUG 03 2006

  
COUNCIL CHAIRMAN  
  
COUNTY CLERK

Bill No.: 248  
Reference: C-764/PC-98  
Ord No.: 06 113

Approved/Disapproved this 8<sup>th</sup> day

of August, 2006  
  
MAYOR, COUNTY OF HAWAII