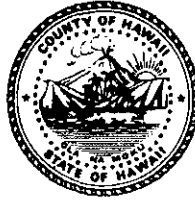


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 35

Draft 2

ORDINANCE NO. 09 52

AN ORDINANCE AMENDING SECTION 25-8-22 (PUNA DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – 20 ACRES (A-20a) TO LIGHT INDUSTRIAL - 1 ACRE (ML-1a) AT KEA'AU, PUNA, HAWAI'I, COVERED BY TAX MAP KEY 1-6-003:018 AND 023.

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

SECTION 1. Section 25-8-22, Article 8, Chapter 25 (Zoning Code) of the Hawai'i 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 Kea'au Puna, Hawai'i, shall be Light Industrial – 1 acre (ML-1a):

Beginning at the north corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 11,208.80 feet North and 9,990.50 feet East and running by azimuths measured clockwise from True South:

- 1. 347° 44' 530.52 feet along the remainder of Lot 41, Land Court Application 1053, Map 7;
- 2. 58° 10' 876.41 feet along Lot 41, Land Court Application 1053, Map 7;
- 3. Thence along Exception 6, Land Court Application 1053, Map 1 along a curve to the left having a radius of 901.95 feet, the chord azimuth and distance being: 165° 33' 15" 364.91 feet;
- 4. 153° 53' 154.98 feet along Exception 6, Land Court Application 1053, Map 1;
- 5. 222° 33' 74.01 feet along Lot 32 (Roadway) Land

Court Application, Map 6;

6. 239° 40' 858.63 feet along Lot 32 (Roadway) Land Court Application, Map 6 to the point of beginning and containing an area of 10.373 acres.

All as shown on the map attached hereto, marked Exhibit "A" and by reference made 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 shall secure and finalize building permits for all renovated and new structures prior to issuance of a Certificate of Occupancy.
- 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 professional engineer licensed in the State of Hawai'i and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within 180 days from the effective date of this ordinance. The applicant shall differentiate between the amount of water needed from the Department's system and the amount of water to be utilized through the

proposed on-site water well. Based upon the calculations, if required, the applicant shall install a larger or additional meter, remit the prevailing facilities charge to the Department of Water Supply, and install a reduced pressure backflow prevention assembly.

- D. To provide a minimum flow of 2,000 gallons per minute for fire protection, if required by the Department of Water Supply, the applicant shall extend approximately 1,500 feet of 6-inch waterline from the end of the existing 12-inch waterline on Milo Street to the subject properties, with a looped connection to the existing 8-inch waterline fronting the subject properties. The installation of fire hydrants may also be required.
- E. Should the applicant be required to construct improvements within the road right-of-way fronting the subject properties, the applicant shall be responsible for relocating and adjusting the Department of Water Supply's affected water system facilities.
- F. Should any of the existing structures straddle the boundaries of TMK 1-6-003:018 and TMK 1-6-003:018, the applicant shall secure Final Subdivision Approval to cure any structural encroachment issues within two (2) years from the effective date of this ordinance.
- G. Final Plan Approval for the proposed development shall be obtained within five (5) years from the effective date of this ordinance in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, from all property boundaries and the future Railroad Avenue Road Reserve, paved driveway access and parking stalls associated with the proposed development. All new structures and improvements shall utilize the Road Reserve as the adjusted setback line. 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), Chapter 25 (Zoning Code), Hawai'i County Code for ML zoning."

- H. No Home Improvement Centers shall be constructed on the property.
- I. Should the applicant develop a land use that will generate significantly more trips than was described in the Traffic Impact Analysis Report (TIAR), a revised TIAR shall be submitted for review and approval by the Department of Public Works. The applicant shall implement, at no cost to the County, its proportionate traffic or transportation improvements, including adjustments or improvements to the traffic signal lights at the intersection of the Kea'au Bypass and Milo Street, deemed necessary by the Department of Public Works.
- J. The applicant shall comply with the standards outlined in Standard Details for Public Works Construction R-34 (revised) by providing improvements consisting of shoulders and continued berm treatment to the properties' Milo Street roadway frontage. Should the Milo Street extension be dedicated to the County in the future, the applicant shall improve the roadway frontage to full dedicable standards.
- K. Appropriate proof of the access from the subject properties over Railroad Avenue and/or Milo Street shall be submitted to the Planning Department prior to the issuance of Final Plan Approval of any new use or new structure on the subject properties.
- L. The applicant shall provide a minimum 20-foot corner radius (property line) at the intersection of Milo Street and Railroad Avenue incorporating any future road widening setbacks. That portion of the subject properties fronting Railroad Avenue shall reflect a future road widening setback and road reserve equal to one-half (1/2) the difference between the existing right-of-way and sixty (60) feet.

- M. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to Final Plan Approval. Any drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
- N. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
- O. The applicant shall install aerobic septic wastewater system(s) or equivalent wastewater system meeting with the requirements of the State Department of Health.
- P. Prior to alteration or demolition of the seven structures identified in the Archaeological Inventory Survey dated July 2008 by Haun & Associates, the applicant shall provide to Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD) photo-documentation of the structures.
- Q. 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 DLNR-SHPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigation measures have been taken.
- R. The applicant shall notify prospective purchasers, tenants, or lessees of the subject properties that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under Hawai'i Revised Statutes chapter 165, the Hawai'i Right to Farm Act. This notice shall be included in any disclosure required for the sale or transfer of the subject properties.

- S. Any action that would interfere with or restrain farming operations on adjacent or contiguous properties shall be prohibited; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district.
- 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. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- V. 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, 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 Planning Commission and the County Council for appropriate action.

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:

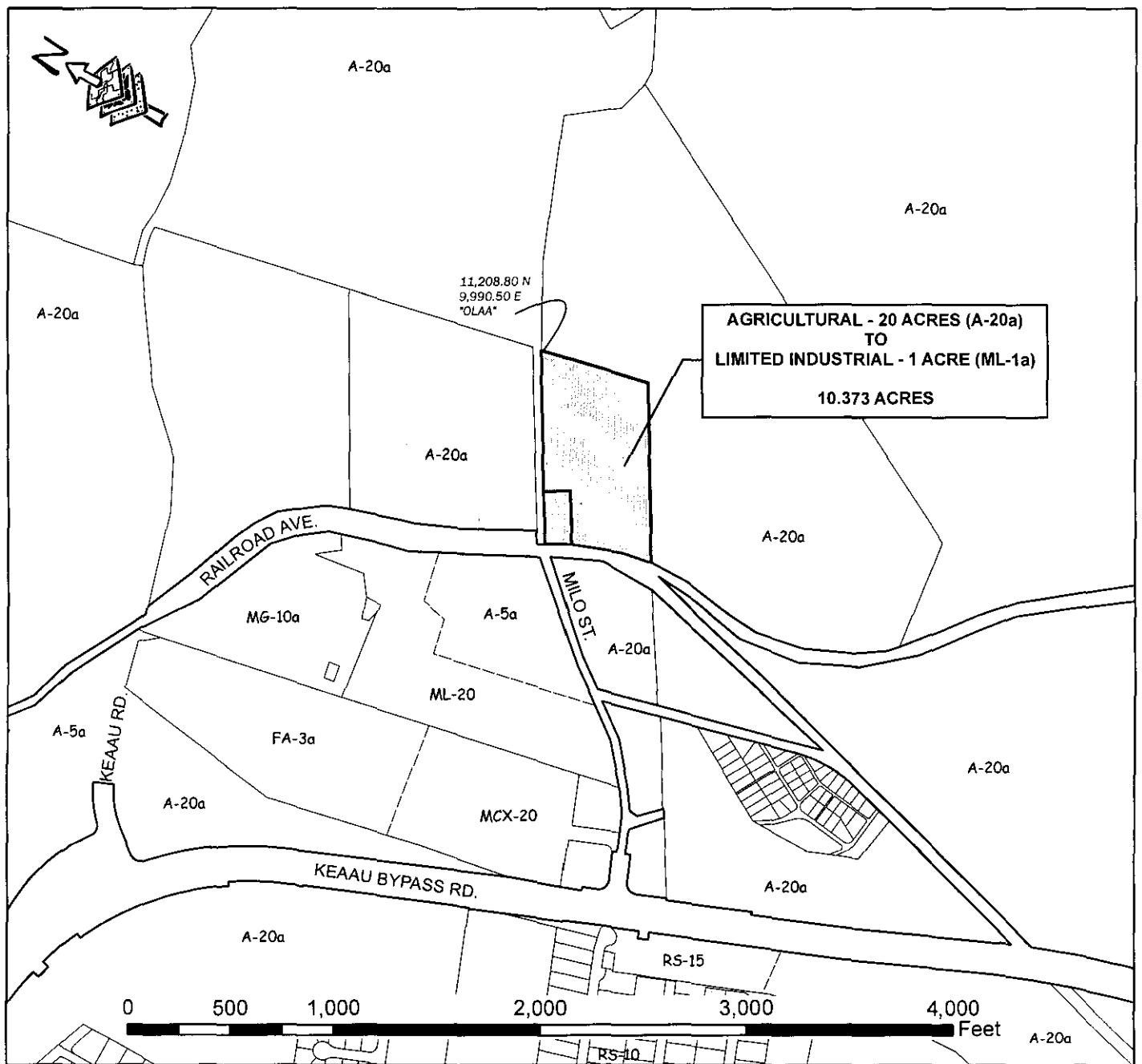


COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i

Date of Introduction: April 8, 2009
Date of 1st Reading: April 8, 2009
Date of 2nd Reading: April 22, 2009
Effective Date: May 11, 2009

REFERENCE: Comm. 149.3



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-22 (PUNA DISTRICT ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL - 20 ACRES (A-20a) TO LIGHT INDUSTRIAL - 1 ACRE (ML-1a) AT KEAAU, PUNA, HAWAII

MAP PREPARED BY:
COUNTY OF HAWAII, PLANNING DEPARTMENT

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

(Draft 2)

RECEIVED

Introduced By: Donald Ikeda
 Date Introduced: April 8, 2009
 First Reading: April 8, 2009
 Published: April 17, 2009

REMARKS: _____

Second Reading: April 22, 2009
 To Mayor: April 30, 2009
 Returned: May 12, 2009
 Effective: May 11, 2009
 Published: May 19, 2009

REMARKS: _____

2009 ROLL CALL VOTE

	AYES	NOES	ABS	EX
Enriques				
Ford	X			
Greenwell	X			
Hoffmann	X			
Ikeda	X			
Naeole			X	
Onishi	X			
Yagong	X			
Yoshimoto	X			
	8	0	1	0

ROLL CALL VOTE

	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann	X			
Ikeda	X			
Naeole	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	9	0	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 - 8 2009

[Signature]

COUNCIL CHAIRMAN

[Signature]

COUNTY CLERK

Bill No.: 35 (Draft 2)
 Reference: C-149.3/PC-25
 Ord No.: 09 52

Approved/Disapproved this 11th day
 of May, 2009
[Signature]
 MAYOR, COUNTY OF HAWAII