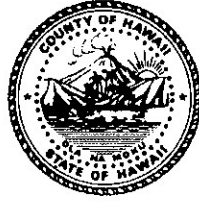


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 10 43 BILL NO. 226

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 LIMITED INDUSTRIAL – 20,000 SQUARE FEET (ML-20) AT KEA'AU, PUNA DISTRICT, HAWAI'I, COVERED BY TAX MAP KEY: 1-6-152:018.

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 District, Hawai'i, shall be Limited Industrial – 20,000 square feet (ML-20):

Beginning at the northeast corner of this parcel of land and running by azimuths measured clockwise from True South:

1. 312° 37' 191.62 feet along Lot 26 of Land Court Application 1053 (Map 6);
2. 58° 10' 410.74 feet along Lot 1151-B-1 of Land Court Application 1053 (Map 168);
3. 158° 00' 169.25 feet along Lot 24-B of Land Court Application 1053 (Map 545);
4. Thence along Lot 24-B of Land Court Application 1053 (Map 545), along a curve to the right having a radius of 50.00 feet , the chord azimuth and distance being: 203° 00' 70.71 feet;

- | | | | |
|----|----------|--------|---|
| 5. | 248° 00' | 150.00 | feet along Lot 24-B of Land Court Application 1053 (Map 545); |
| 6. | 158° 00' | 22.50 | feet along Lot 24-B of Land Court Application 1053 (Map 545); |
| 7. | 247° 17' | 122.58 | feet along Lot 26 of Land Court Application 1053 (Map 545) to the point of beginning and containing an area of 1.646 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 1983 (2005 Edition), the County Council finds the following conditions are:

Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or

- (1) 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. 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. Based upon the calculations, if required, the

applicant shall install a larger or additional meter, and remit the prevailing facilities charge to the Department of Water Supply.

- C. 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.
- D. No Home Improvement Centers shall be constructed on the property.
- E. The portion of Milo Street fronting the property (TMK: 1-6-152: 26) shall be widened an additional 22 feet to align with the approximately 80-foot wide State-owned portion of Milo Street.
- F. The applicant shall provide improvements to the property's Milo Street frontage meeting with the requirements of the Department of Public Works. The improvements shall be located within any future road widening setback.
- G. Should the applicant develop a land use that will generate significantly more trips than was described in the Traffic Impact Analysis Report (TIAR) dated September 2009, 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, any roadway improvements deemed necessary by 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. 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.

- I. 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.
- J. The applicant shall install a wastewater system meeting with the requirements of the State Department of Health.
- K. 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.
- L. The applicant shall notify prospective purchasers, tenants, or lessees of the subject property 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.
- M. 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.
- N. 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.

- O. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

- 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 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.

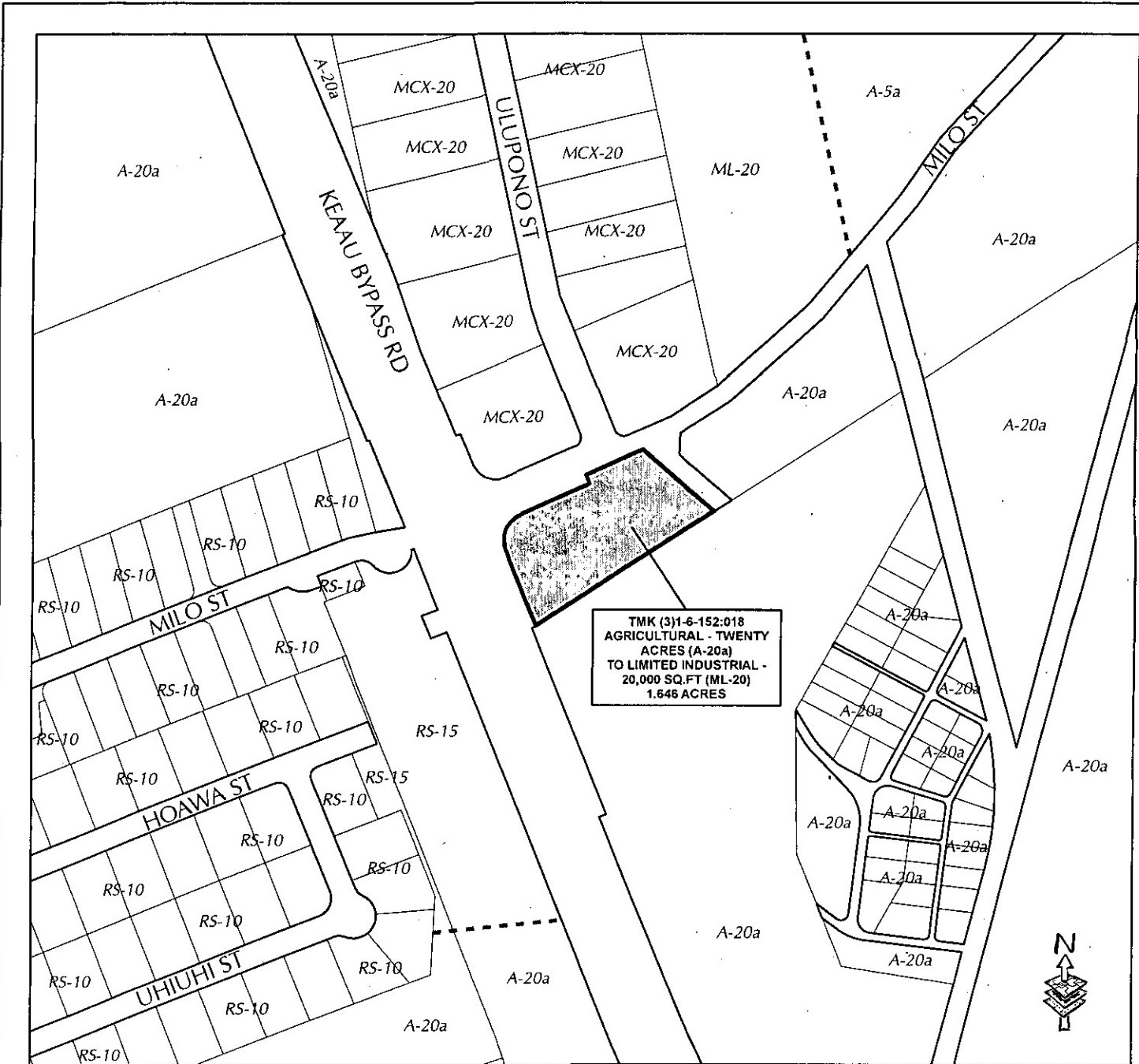
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAI'I

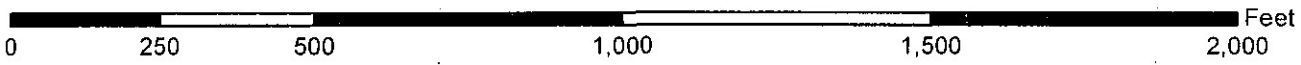
 Kona , Hawai'i

Date of Introduction: April 20, 2010
Date of 1st Reading: April 20, 2010
Date of 2nd Reading: May 5, 2010
Effective Date: May 20, 2010

REFERENCE: Comm. 753



TMK (3)1-6-152:018
 AGRICULTURAL - TWENTY
 ACRES (A-20a)
 TO LIMITED INDUSTRIAL -
 20,000 SQ.FT (ML-20)
 1.646 ACRES



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 - TWENTY ACRES (A-20a)
 TO LIMITED INDUSTRIAL - 20,000 SQUARE FEET (ML-20)
 AT KEA'AU, PUNA DISTRICT, HAWAII

MAP PREPARED BY:
 COUNTY OF HAWAII, PLANNING DEPARTMENT

TMK: (3)1-6-152:018

DATE: Nov. 6, 2009

EXHIBIT "A"

Greenhouse Specialists, Inc.
 Map 1282

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

RECEIVED

Introduced By: Donald Ikeda
 Date Introduced: April 20, 2010
 First Reading: April 20, 2010
 Published: N/A

REMARKS: _____

Second Reading: May 5, 2010
 To Mayor: May 13, 2010
 Returned: May 20, 2010
 Effective: May 20, 2010
 Published: May 27, 2010

REMARKS: _____


2010 ROLL CALL VOTE 49



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

ROLL CALL VOTE

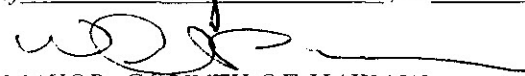
| | AYES | NOES | ABS | EX |
|---------------|------|------|-----|----|
| Enriques | X | | | |
| Ford | X | | | |
| Greenwell | | | X | |
| Hoffmann | | | X | |
| Ikeda | X | | | |
| Naeole-Beason | | | X | |
| Onishi | X | | | |
| Yagong | X | | | |
| Yoshimoto | X | | | |
| | 6 | 0 | 3 | 0 |

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 HAWAI'I
 Date MAY 14 2010


 COUNCIL CHAIRMAN

 COUNTY CLERK

Bill No.: 226
 Reference: C-753/PC-75
 Ord No.: 10 43

Approved/Disapproved this 20th day
 of May, 20 10

 MAYOR, COUNTY OF HAWAI'I