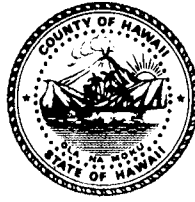


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 12 32 BILL NO. 166  
(Draft 2)

AN ORDINANCE AMENDING ORDINANCE NO. 95 98 WHICH AMENDED SECTION 25-8-22 (formerly referred to as Section 25-103) (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 AGRICULTURAL – 1 ACRE (A-1a) AT KEA'AU, PUNA, HAWAI'I, COVERED BY TAX MAP KEY 1-6-003:010.

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

**SECTION 1.** Ordinance No. 95 98 is amended as follows:

“SECTION 1. Section [~~25-103~~] 25-8-22, Article [~~3~~] 8, Chapter 25 (Zoning Code) of the [~~Hawaii~~] 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 [~~Keaau~~] Kea'au, Puna, [~~Hawaii~~] Hawai'i, shall be Agricultural – 1 acre (A-1a):

Beginning at the east corner of this parcel of land and along the southerly side of [~~Keaau-Pahoa~~] Kea'au – Pāhoa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station “OLAA”, being 3,433.98 feet North and 8,374.26 feet East, thence running by azimuths measured clockwise from true South:

- |    |          |          |  |
|----|----------|----------|--|
| 1. | 52° 18'  | 2,096.03 | feet along the remainder of R.P. 7223, L.C. Aw. 8559-B, Ap. 16 to William C. Lunalilo; |
| 2. | 142° 18' | 1,050.10 | feet along Lot A-18-A-2-B, Land Court Application 1053;                                |
| 3. | 232° 18' | 1,478.70 | feet along Lot A-18-A-2-B, Land Court Application 1053;                                |

- |    |          |        |   |
|----|----------|--------|---|
| 4. | 320° 25' | 345.00 | feet along the remainder of R.P. 7223, L.C. Aw. 8559-B, Ap. 16 to William C. Lunalilo (Lot 10-A);                     |
| 5. | 298° 30' | 118.95 | feet along the remainder of R.P. 7223, L.C. Aw. 8559-B, Ap. 16 to William C. Lunalilo (Lot 10-A);                     |
| 6. | 228° 00' | 154.17 | feet along the remainder of R.P. 7223, L.C. Aw. 8559-B, Ap. 16 to William C. Lunalilo (Lot 10-A);                     |
| 7. | 232° 00' | 400.00 | feet along the remainder of R.P. 7223, L.C. Aw. 8559-B, Ap. 16 to William C. Lunalilo (Lot 10-A);                     |
| 8. | 321° 54' | 610.13 | feet along [Keaau-Pahoa] <u>Kea'au – Pāhoa</u> Road to the point of beginning and containing an area of 44.341 Acres. |

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. ~~[This change in district classification is conditioned upon the following:]~~

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, successor or assigns shall be responsible for complying with all of the stated conditions of approval.~~

- ~~B. Final Subdivision Approval of the subdivision development shall be secured within five years from the effective date of this change of zone ordinance. As represented by the applicant, the proposed subdivision shall not exceed a maximum of 36 lots (includes the visitor center lot).~~
- ~~C. The applicant(s) shall make its fair share contribution to mitigate the potential regional impacts of the project with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. The fair share contribution shall be initially based on the representations within the change of zone application and shall be increased or reduced proportionally if the lot counts are adjusted. The total fair share contribution or its proportionate amount based upon incremental subdivision shall be due and payable prior to final subdivision approval of each increment of the subject property. The fair share contribution for each lot shall be based on a maximum density for each lot as determined by the zoning resulting from this change of zone. The fair share contribution in a form of cash, land, facilities or any combination thereof acceptable to the director, in consultation with the affected agencies shall have a maximum combined value of \$253,370.60. The fair share contribution shall be as follows:~~
- ~~● \$122,179.75 to the County to support park and recreational improvements and facilities;~~
  - ~~● \$5,894.00 to the County to support police services and facilities;~~
  - ~~● \$11,641.35 to the County to support fire services and facilities;~~
  - ~~● \$5,596.70 to the County to support solid waste facilities; and~~
  - ~~● \$108,558.80 to the State or County to support road and traffic improvements.~~

~~The fair share contribution described above shall be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). In lieu of paying the fair share contribution in cash, the applicant may construct such facilities related to parks and recreation, fire, police, solid waste disposal~~

~~facilities and roads. The cost of constructing the improvements required in Condition G shall be credited against the sum specified in Condition C(5) for road and traffic improvements. For purposes of administering Condition C, the cost of any improvements required or made in lieu of the fair share contribution shall be such amount as approved by the Planning Director, upon consultation with the appropriate agencies. Any improvements constructed by the applicant to satisfy this condition shall be located within the region impacted by the proposed development.~~

~~D. Restrictive covenants in the deeds of all the subdivided lots shall:~~

- ~~1. Require that all uses established on the lots be in conformance with the requirements of Chapter 205, Hawaii Revised Statutes (State Land Use Law) and Chapter 25, Hawaii County Code (Zoning Code);~~
- ~~2. Prohibit the construction of an ohana dwelling or a second dwelling unit on each lot until the completion of the Kea'au Pāhoa Bypass; and~~
- ~~3. Disclose to all lot owners within the subject property that the 50-foot wide roadways which extend to the southeast and southwest boundaries of the subject property shall be dedicated to the County upon the mayor's request.~~
- ~~4. Provide that pursuant to Condition E of this ordinance, the applicant and all lot owners shall consent to the dedication of such roadway lots and agree to execute any documents and perform any acts necessary to accomplish said dedication.~~

~~A copy of the proposed covenants with the above requirements shall be submitted to the Planning Department for review and approval and a copy of the approved covenants shall be recited in an instrument executed by the applicants and the County prior to final subdivision approval for any portion of the subject property. The Planning Director shall promptly deliver such document to the Bureau of Conveyances for recordation. 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 provide county-dedicable standard 50-foot wide roadways extending to the southeast and southwest boundaries of the property meeting with the approval of the Department of Public Works and which shall be dedicated to the County upon the mayor's request.~~
- F. — ~~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 Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.~~
- G. — ~~Prior to Final Subdivision Approval or issuance of a certificate of occupancy for commercial facilities permitted under any special permit, whichever occurs first, the applicant shall:~~
1. — ~~Install street lights and appropriate safety rails or features at the Kea'au-Pāhoa Road intersection near the subject property meeting with the approval of the Department of Transportation Highways Division;~~
  2. — ~~If deemed appropriate by the Department of Water Supply in consultation with the Department of Public Works, relocate the existing public water pipe stand shall to a location along and within the Kea'au-Pāhoa Road right-of-way.~~
- H. — ~~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.~~
- I. — ~~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 its 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; and~~
  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).~~
- J. ~~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. This recommendation does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.]~~
- 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, Hawai'i Revised Statutes, relating to permissible uses within the State Land Use Agricultural District.
- C. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within one hundred and eighty (180) days from the effective date of this amended ordinance.

- D. Final Subdivision Approval shall be secured within five (5) years from the effective date of this amended ordinance. As represented by the applicant, the subject property shall be subdivided to create no more than 35 lots. Restrictive covenants in the deeds of all proposed lots shall give notice that the terms of the zoning ordinance shall prohibit further subdivision of the subdivided lots. This restriction may be removed by amendment of this ordinance by the County Council.
- E. Restrictive covenants in the deeds of all proposed lots 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.
- F. All new driveway connections shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
- G. The applicant shall dedicate and provide County-dedicable standard 50-foot roadways extending to the northwest, southeast, and southwest boundaries of the property, meeting with the approval of the Department of Public Works. The applicant, its successors or assigns shall fully execute and submit to the County all documents necessary for dedication of all constructed, and fully-built County-dedicable roadways within 90 days of their completion in accordance with construction plans as approved by the County.

- H. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- I. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. If required, a drainage study shall be prepared and submitted to the Department of Public Works and any required drainage improvements shall be constructed, meeting the approval of the Department of Public Works prior to Final Subdivision Approval.
- J. All earthwork activity, including grubbing and grading, shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
- 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 Department of Land and Natural Resources – 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.
- L. The applicant(s) shall make their fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads for the additional lots to be created. The fair share contribution shall become due and payable prior to receipt of Final Subdivision Approval. The fair share contribution shall be based on the actual number of additional lots created. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall



have a combined value of \$12,316.47 per single family residential unit. The total amount shall be determined with the actual number of units according to the calculation and payment provisions set forth in this condition.

The fair share contribution shall be allocated as follows:

- \$5,939.22 per single family residential unit to the County to support park and recreational improvements and facilities;
- \$286.51 per single family residential unit to the County to support police facilities;
- \$565.89 per single family residential unit to the County to support fire facilities;
- \$247.75 per single family residential unit to the County to support solid waste facilities; and
- \$5,277.10 per single family residential unit to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicant may contribute land and/or construct improvements/facilities related to parks and recreation, fire, police, solid waste disposal facilities and roads within the region impacted by the proposed development, subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council.

- M. 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.

N. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to Final Subdivision Approval.

O. The applicants, successors or assigns shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

P. An extension of time for the performance of conditions within the amended 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 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.

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

**SECTION 2.** Material to be deleted is bracketed and struck through and material to be added is underscored.

**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:



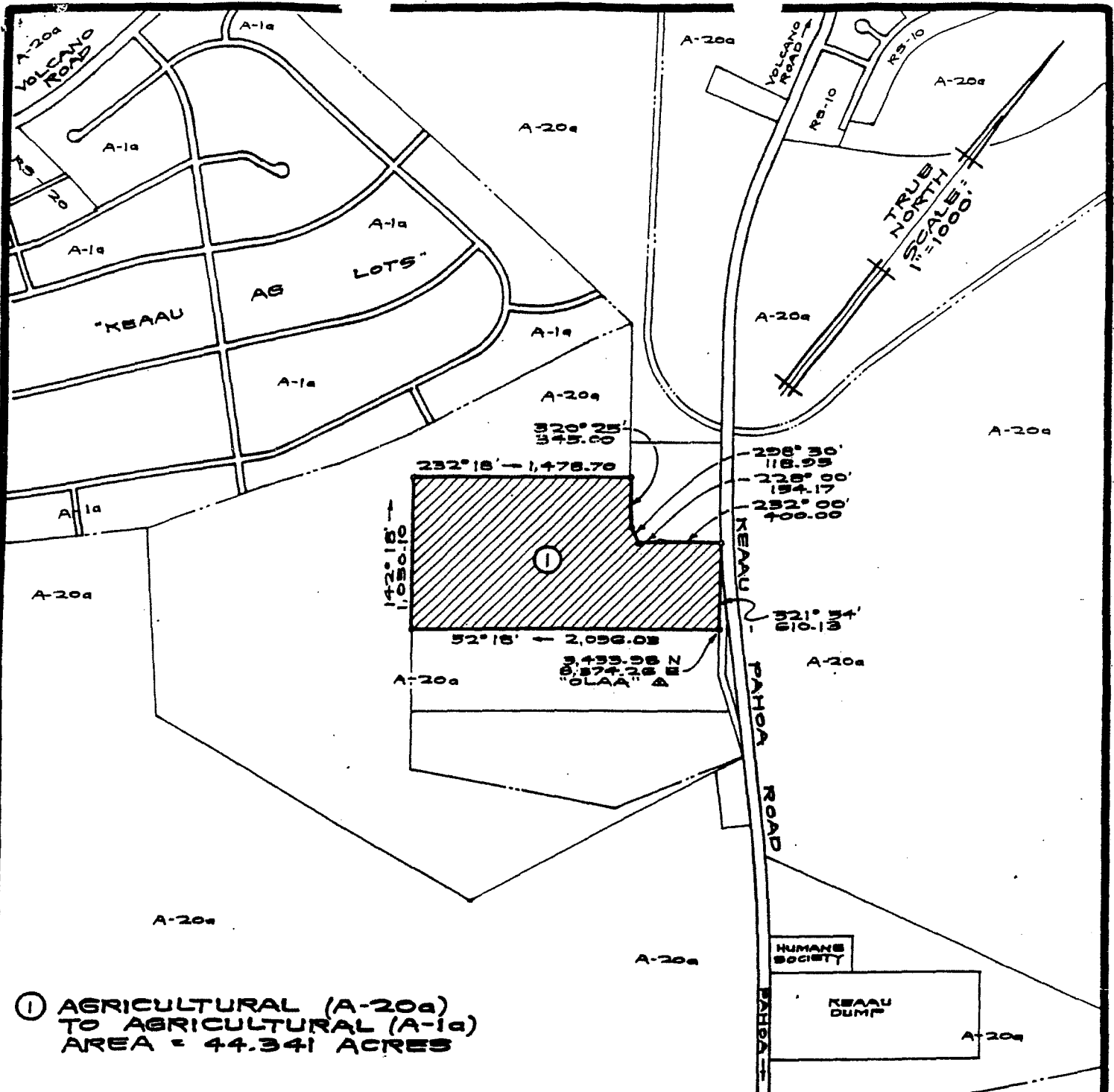
COUNCIL MEMBER, COUNTY OF HAWAII

          Hilo          , Hawai'i

Date of Introduction:     February 1, 2012  
Date of 1st Reading:     February 1, 2012  
Date of 2nd Reading:    February 15, 2012  
Effective Date:          March 6, 2012

REFERENCE: **Comm:** 524.2

FOR REFERENCE ONLY



- ① AGRICULTURAL (A-20a)  
TO AGRICULTURAL (A-1a)  
AREA = 44.341 ACRES

## AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-103 (PUNA DISTRICT ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO AGRICULTURAL (A-1a) AT KEAAU, PUNA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT  
COUNTY OF HAWAII

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

COUNTY CLERK  
COUNTY OF HAWAII

(Draft 2)

2012 MAR -6 AM 10: 58

Introduced By: Brenda Ford  
Date Introduced: February 1, 2012  
First Reading: February 1, 2012  
Published: February 11, 2012

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Second Reading: February 15, 2012  
To Mayor: February 24, 2012  
Returned: March 6, 2012  
Effective: March 6, 2012  
Published: March 15, 2012


REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Blas	X			
Ford	X			
Hoffmann	X			
Ikeda	X			
Onishi	X			
Pilago	X			
Smart	X			
Yagong	X			
Yoshimoto	X			
	9	0	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Blas	X			
Ford	X			
Hoffmann		X		
Ikeda	X			
Onishi			X	
Pilago	X			
Smart	X			
Yagong	X			
Yoshimoto	X			
	7	1	1	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

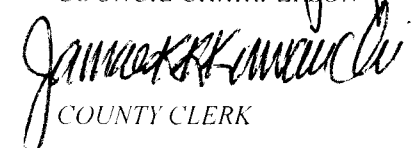
Date FEB 29 2012

Approved/Disapproved this 6<sup>th</sup> day

of March, 20 12

  
MAYOR, COUNTY OF HAWAII

  
COUNCIL CHAIRPERSON

  
COUNTY CLERK

Bill No.: 166 (Draft 2)

Reference: C-524.2/PC-37

Ord No.: 12 32