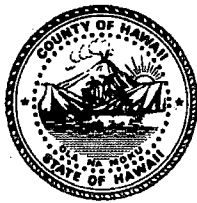


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 15 105 BILL NO. 92

AN ORDINANCE AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA 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 – TWENTY ACRES (A-20a) TO AGRICULTURAL – SEVEN ACRES (A-7a) AT KALOKO, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY: 7-3-026:003.

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

SECTION 1. Section 25-8-2, 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 Kaloko, North Kona, Hawai'i, shall be Agricultural – Seven Acres (A-7a):

Beginning at a ½ inch pipe in concrete (found) at the Northeasterly corner of this parcel of land, being also the Southeasterly corner of Lot 1-B of Block 6 of Kaloko Mauka Subdivision, Increment 2 and being a point on the Westerly side of Hao Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 12,326.15 feet South and 2,263.18 feet East and running by azimuths measured clockwise from True South:

1. 315° 00' 1,137.51 feet along the Westerly side of Hao Street to a ½ inch pipe in concrete (found);

Thence, the next three (3) courses following along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha:

2. 71° 45' 1,160.64 feet along Lot 6-A and Lot 5-A-1-B of Kaloko Mauka Subdivision, Increment 3 to a point;
3. 161° 45' 1,015.77 feet along Lot 2 of Block 6 of Kaloko Mauka Subdivision, Increment 2 (File Plan 1010) to a point;
4. 251° 45' 648.65 feet along Lot 1-B of Block 6 of Kaloko Mauka Subdivision, Increment 2 to the point of beginning and containing an area of 21.095 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:

- (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, its 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. To comply with County Council Resolution No. 58 97, adopted on June 2, 1997, the 21.095-acre property may not be subdivided into more than two (2) lots.
- D. 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. The applicant shall reserve the following easements and special setbacks in perpetuity for purposes of protecting and maintaining naturally forested areas and shall delineate such easements and setbacks on plans submitted for subdivision review:
1. a 100-foot wide "forest reserve easement" along the existing roadway frontage of the subject property, exclusive of the access point permitted by the Department of Public Works;
  2. a 30-foot "forest reserve easement" along all lot lines not covered by the 100-foot easement; and
  3. a 100-foot wide structural setback in lieu of the required 30-foot setback along the existing property's public street frontage to provide an additional buffer.
- E. Restrictive covenant(s) in the deeds of all the proposed agricultural lots fronting Hao Street shall specify and uphold the easements and setbacks set forth in Condition D. The restrictive covenant(s) shall also specify that, including the area comprising the forest reserve easements described in Condition D, no less than eighty percent (80%) of the entire lot area shall be retained in forest. A copy of

the proposed covenant(s) to be recorded with the 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 approved covenant(s) shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.

- F. 'Ohana Dwelling Permit Nos. 89-127 issued May 9, 1989 and 93-281 issued October 14, 1993 are void.
- G. 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 regimes 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.
- H. A Forest Management Plan for the proposed lots within the subject property shall be prepared and submitted for review and approval by the Planning Director in consultation with the State Department of Land and Natural Resources. The forest management plan shall require the following:
  - 1. Include at minimum, the best forest and reforestation practices program for implementation and other applicable forestry management criteria, including those of the State Department of Land and Natural Resources (i.e. Forest Stewardship Program).

2. The forest management program shall include a restrictive covenant for the proposed lots within the subject property which shall be recorded with the Bureau of Conveyances and/or Land Court. A copy of the covenants to be recorded shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.
3. If more than twenty percent (20%) of the subject property has been cleared or grubbed prior to the submittal of the Forest Management Plan or the recording of the restrictive covenant(s), the reforestation program for any cleared or grubbed area(s) in excess of the 20% within the subject property shall be substantially implemented prior to the issuance of Final Subdivision Approval.
4. This Forest Management Plan shall govern the proposed lots within the subject property for a period of fifty (50) years and its termination may be considered after the 50-year period has elapsed by amending this ordinance requiring County Council approval by ordinance.
  - I. Access to Hao Street, including the provision of adequate sight distances, shall comply with Chapter 22 of the Hawai'i County Code and shall meet with the approval of the Department of Public Works.
  - J. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawai'i County Code.
  - K. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties.

- L. 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 the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
- M. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject property with respect to roads. 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 to address the potential road impacts shall be in the form of cash and/or in-kind services approved by the County Council and shall be applied to improving the Kaloko Drive/Māmalahoa Highway intersection. Based upon the applicant's representation of intent to subdivide and develop up to one (1) additional lot, the total fair share contribution is **\$13,506.70**. The fair share contribution shall be adjusted annually by the Hawai'i County Planning Department, beginning three (3) years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). Upon approval of the fair share contribution, the Planning Director shall submit a final report to the County Council for its information that identifies the specific approved fair share contributions, as allocated, and further implementation requirements.
- 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 Fee Ordinance.

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

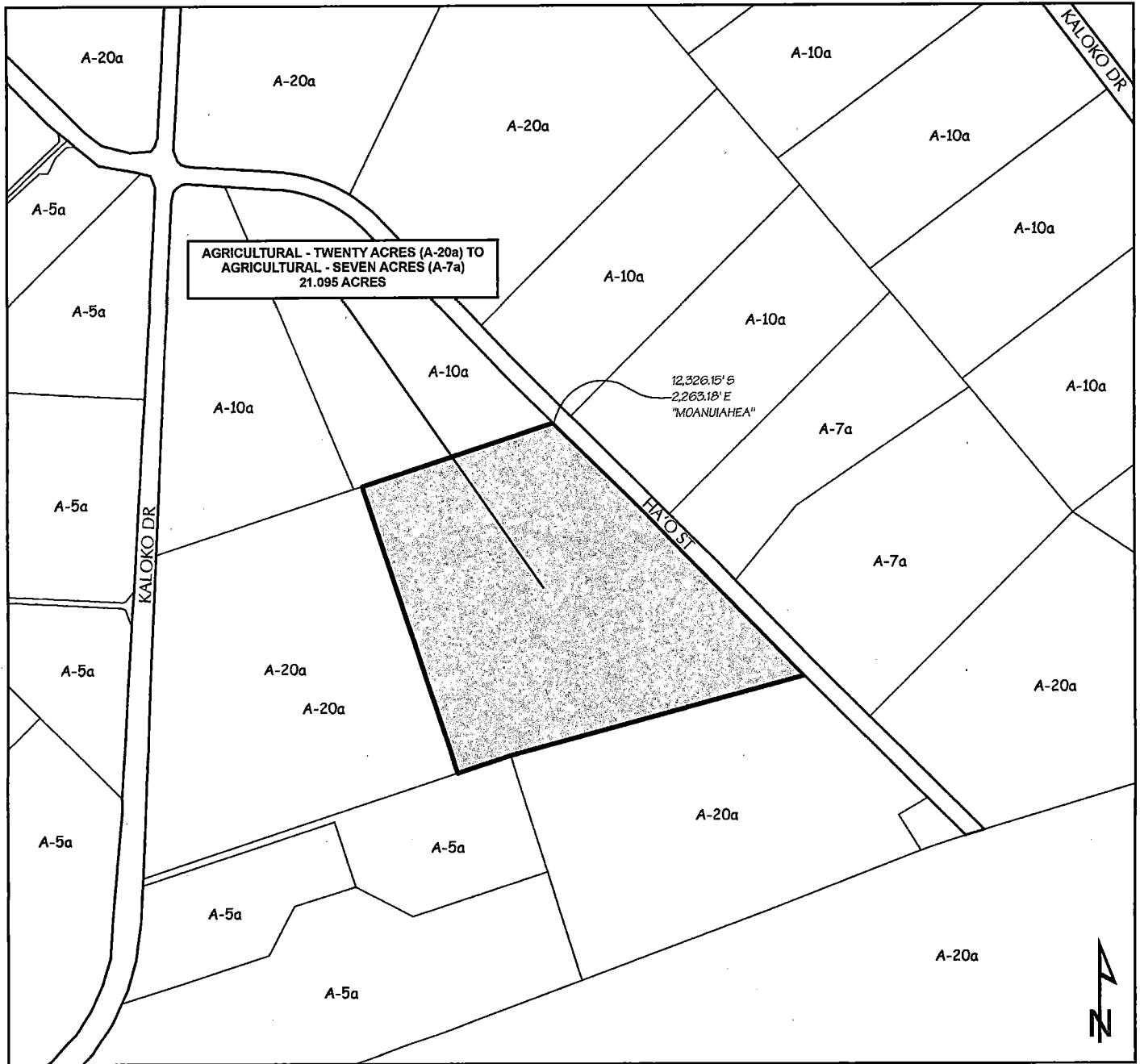
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COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: October 20, 2015  
Date of 1st Reading: October 20, 2015  
Date of 2nd Reading: November 3, 2015  
Effective Date: November 20, 2015

REFERENCE Comm. 468





# **AMENDMENT TO THE ZONING CODE**

AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA 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 AGRICULTURAL - SEVEN ACRES (A-7a) AT KALO KO, NORTH KONA, HAWAII

MAP PREPARED BY:  
COUNTY OF HAWAII, PLANNING DEPARTMENT

TMK: (3) 7-3-026:003

DATE: MARCH 23, 2015

EXHIBIT "A"

Lorant  
Map: 1358

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

COUNTY CLERK  
 COUNTY OF HAWAII

2015 NOV 20 AM 3:44

Introduced By: Greggor Ilagan (B/R)  
 Date Introduced: October 20, 2015  
 First Reading: October 20, 2015  
 Published: October 31, 2015

REMARKS: \_\_\_\_\_  
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Second Reading: November 3, 2015  
 To Mayor: November 12, 2015  
 Returned: November 20, 2015  
 Effective: November 20, 2015  
 Published: November 28, 2015

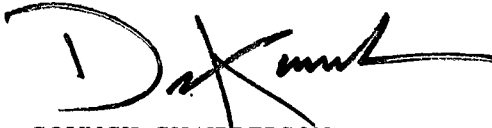

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Ilagan	X			
Kanuha			X	
Onishi	X			
Paleka	X			
Poindexter			X	
Wille	X			
	7	0	2	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Ilagan	X			
Kanuha	X			
Onishi	X			
Paleka	X			
Poindexter	X			
Wille	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

Approved/Disapproved this 20<sup>th</sup> day  
 of November, 2015  
  
 MAYOR, COUNTY OF HAWAII

  
 COUNCIL CHAIRPERSON  
  
 COUNTY CLERK

Bill No.: 92  
 Reference: C-468/PC-29  
 Ord No.: 15 105