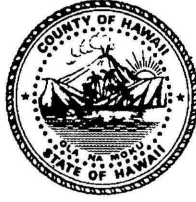


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 20 34 BILL NO. 153

AN ORDINANCE AMENDING SECTION 25-8-2 (NORTH & SOUTH KONA DISTRICTS ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING) OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – TWENTY ACRES (A-20a) TO AGRICULTURAL – FIVE ACRES (A-5a) AT KALOKO, NORTH KONA DISTRICT, HAWAI'I, COVERED BY TAX MAP KEY: 7-3-025:002.

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

SECTION 1. Section 25-8-2, Article 8, Chapter 25 (Zoning) of the Hawai'i County Code 1983 (2016 Edition, as amended) 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 District, Hawai'i, shall be Agricultural–5 acres (A-5a):

Beginning at the Southeasterly corner of this parcel of land, being also the Northeasterly corner of Lot 5 of Block 5 of Kaloko Mauka Subdivision, Increment 1 (File Plan 994) and being a point on the Westerly side of Kaloko Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 11,020.25 feet South and 994.18 feet East and running by azimuths measured clockwise from True South:

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

1. 135° 10' 1,963.64 feet along Lot 5 of Block 5 of Kaloko Mauka Subdivision, Increment 1 (File Plan 994) to a point;

- | | | | |
|----|----------|----------|--|
| 2. | 183° 00' | 637.38 | feet along Lot 4-D of Block 5 of Kaloko Mauka Subdivision, Increment 1 to a point; |
| 3. | 315° 10' | 1,963.64 | feet along Lot 7 of Block 5 of Kaloko Mauka Subdivision, Increment 1 (File Plan 994) to a point; |
| 4. | 3° 00' | 637.38 | feet along the Westerly side of Kaloko Drive to the point of beginning and containing an area of 21.296 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 (2016 Edition, as amended), 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. The applicants shall submit the required water commitment payment 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 change of zone ordinance. The applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
- 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 Kaloko Drive 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. 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.
- G. 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.
- H. Access to Kaloko Drive shall be limited to one (1) combined driveway access for all proposed lots. The combined access driveway, including the provision of adequate sight distances, shall comply with Chapter 22 (County Streets) of the

Hawai‘i County Code and shall meet with the approval of the Department of Public Works. A “no vehicular access planting screen” easement shall be included along the Kaloko Drive frontage, except for the one combined access, and delineated on the preliminary and final subdivision plat.

- I. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai‘i County Code.
- J. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties.
- K. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the development and/or construction work, the applicant will cease work in the immediate vicinity of the find, protect the find from additional disturbance, and contact the State Historic Preservation Division at (808) 933-7651.
- L. 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 three (3) additional lots, the fair share contribution is **\$14,596.67 per additional lot**, for a combined total of **\$43,790.01**. 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.

- M. 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.
- N. The applicant shall comply with all applicable County, State and Federal laws, rules, requirements and regulations.
- O. 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. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. This ordinance shall take effect upon its approval.

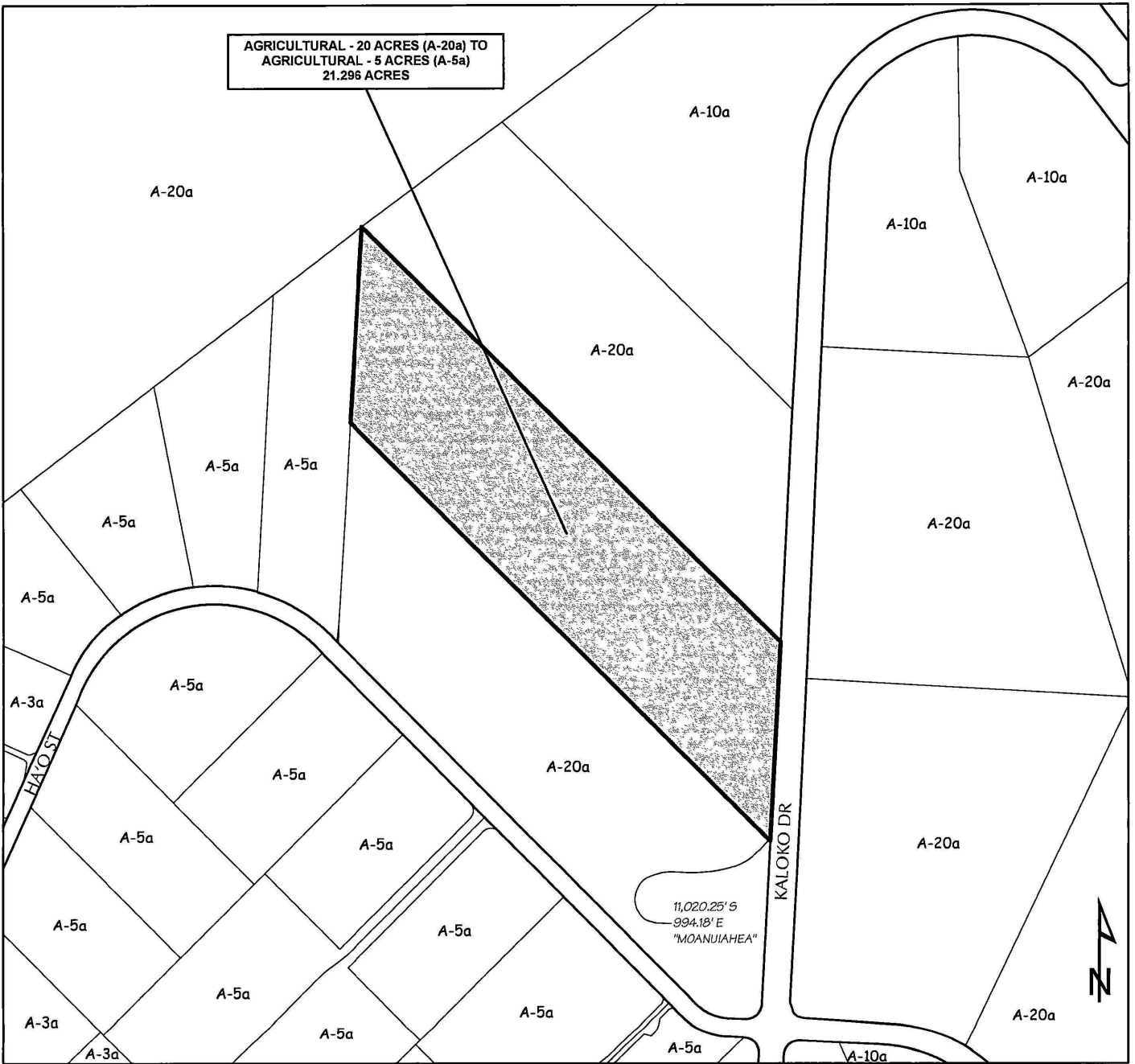
INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'OSMA', followed by the initials 'B/R' written vertically to the right of the signature.

COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo _____, Hawai'i
Date of Introduction: April 8, 2020
Date of 1st Reading: April 8, 2020
Date of 2nd Reading: April 22, 2020
Effective Date: May 1, 2020

REFERENCE Comm. 840



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-2 (NORTH & SOUTH KONA DISTRICTS ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING) OF THE HAWAII COUNTY CODE 1983 (2016 EDITION, AS AMENDED), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL - TWENTY ACRES (A-20a) TO AGRICULTURAL - FIVE ACRES (A-5a) AT KALOKO, NORTH KONA, HAWAII

MAP PREPARED BY:
 COUNTY OF HAWAII, PLANNING DEPARTMENT

TMK: (3) 7-3-025-002

DATE: February 27, 2020

EXHIBIT "A"

Jean K. Campbell Trust and Jeffrey S. Clapp Trust
 Map: 1410

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

COUNTY CLERK
COUNTY OF HAWAI'I

RECEIVED

Time 3:05 p.m. By X

Date May 1, 2020

Introduced By: Ashley L. Kierkiewicz (B/R)
Date Introduced: April 8, 2020
First Reading: April 8, 2020
Published: April 18, 2020

REMARKS: _____

Second Reading: April 22, 2020
To Mayor: April 30, 2020
Returned: May 1, 2020
Effective: May 1, 2020
Published: May 15, 2020

REMARKS: _____


ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kaneali'i-Kleinfelder	X			
Kierkiewicz	X			
Lee Loy	X			
Poindexter	X			
Richards	X			
Villegas	X			
	9	0	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung			X	
David	X			
Eoff	X			
Kaneali'i-Kleinfelder	X			
Kierkiewicz	X			
Lee Loy	X			
Poindexter	X			
Richards	X			
Villegas	X			
	8	0	1	0

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

Approved Disapproved this 1st day
of May, 2020


MAYOR, COUNTY OF HAWAI'I


COUNCIL CHAIRPERSON

COUNTY CLERK

Bill No.: 153
Reference: C-840/Waived PC
Ord No.: 20 34