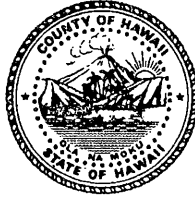


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 22 87 BILL NO. 181

AN ORDINANCE AMENDING ORDINANCE NO. 06 82 WHICH RECLASSIFIED LANDS FROM AGRICULTURAL – 20 ACRES (A-20a) TO FAMILY AGRICULTURAL – 3 ACRES (FA-3a) AT KALOKO MAUKA SUBDIVISION, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY: 7-3-024:008.

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

SECTION 1. Section 2 of Ordinance No. 06 82 is amended as follows:

“SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 [~~2005 Edition~~)] (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 (“Applicant”) shall be responsible for complying with all of the stated conditions of approval.

- B. The [~~applicants, successors or assigns~~] Applicant shall be responsible for complying with all requirements of Chapter 205, [~~Hawaii~~] Hawai'i Revised Statutes, relating to permissible uses within the State Land Use Agricultural District.
- C. [~~The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this change of zone.~~] 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. The Applicant shall construct necessary water system improvements as required by the Department of Water Supply.
- 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 amended ordinance. The [~~applicant~~]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 60-foot wide "forest reserve easement" along the existing roadway frontages of the subject property, exclusive of the access point permitted by the Department of Public Works.
 2. a 30-foot wide "forest reserve easement" along all lot lines not covered by the 60-foot wide easement; and
 3. a 60-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 existing roads]~~ fronting Kaloko Drive and 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.]~~ A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
- F. Restrictive covenants in the deeds of all of 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 (CPR) on each lot, including Lot 1. 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] 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 (DLNR). 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~~]DLNR (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 State of [~~Hawaii~~]Hawai'i 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~~]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.
- [~~3-~~]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. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study of the project site, if required, shall be prepared for review and approval by the Department of Public Works, prior to submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed in a manner meeting with the approval of the Department of Public Works prior to issuance of Final Subdivision Approval.

I. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.

~~[I.]~~J. Vehicular access to Kaloko Drive shall be limited to one common driveway approach as approved by the Department of Public Works.

~~[J.]~~ [~~Building permit for a residence will not be issued until improvements to the intersection at Mamalahoa Highway and Kaloko Drive are completed, provided that if the improvements are not completed within 24 months of the date of the adoption of this ordinance, the applicant shall be allowed to proceed with the building permit.~~

~~The improvements may include the following:~~

- ~~1. — Illuminate intersection at night;~~
- ~~2. — Installation of traffic signalization devices;~~
- ~~3. — Channelize turning movements at the intersection; and~~
- ~~4. — Provide other safety improvements, including appropriate line of sight distance requirements, as may be required by the State Department of Transportation.]~~

K. An Archaeological Field Inspection shall be submitted for the review and approval of the State Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD) prior to the issuance of any land alteration permits or the submittal of plans for Final Subdivision Approval, whichever occurs first. The Applicant shall implement any preservation measures, which shall be shown on the final plat map, as recommended in the Archaeological Inventory Survey (AIS) or subsequent preservation plans.

~~[K.]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-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.]~~In the 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 demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact DLNR-SHPD at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

M. To protect any Hawaiian Hawks ('Io) in the vicinity of the property, ground clearing, grubbing activities and construction shall not occur in the permit area during hawk breeding season of March to September without first conducting surveys for hawk nests and coordinating with US Fish and

Wildlife Service (USFWS) if nests are found. Surveys shall be conducted by a qualified biologist.

- N. To protect Blackburn's Sphinx Moth (BSM) contact DLNR, Division of Forestry and Wildlife (DOFAW) to determine whether a vegetation survey should be conducted. To avoid harm to the BSM, remove plants less than one meter in height or during the dry time of the year. If removing tree tobacco plants or disturbing the ground around these plants, they must be checked thoroughly for the presence of eggs and larvae.
- O. To protect any Hawaiian hoary bats in the vicinity of the property, woody vegetation over 15 feet in height shall not be disturbed, removed or trimmed during bat birthing and pup rearing season, from June 1st to September 15th.
- P. To avoid and minimize potential project impacts to the endangered Hawaiian goose (Nēnē) the Applicant shall implement the following applicable measures: Do not approach, feed, or disturb Nēnē. If Nēnē are present during construction activities, all activities within 100 feet (30 meters) should cease, and the bird should not be approached. Work may continue after the bird leaves the area of its own accord. Contact DOFAW for further guidance if a nest is discovered or a previously undiscovered nest is found on the subject property after work begins.
- Q. To protect any seabirds in the vicinity of the property, the Applicant shall install shielded outdoor lights to direct light downwards. Additionally, the Applicant shall install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area. Finally, the Applicant shall avoid nighttime construction during the seabird fledging period, September 15 through December 15.

R. To prevent the spread of Rapid 'Ōhi'a Death (ROD), if 'Ōhi'a trees are present and will be removed, trimmed or potentially injured, DOFAW requests that Applicant follow the guidance of the College of Tropical Agriculture and Human Resources, University of Hawai'i. Additionally, the Applicant shall minimize the movement of plant or soil material between worksites in order to prevent the spread of invasive species. All equipment, materials and personnel shall be cleaned of excess soil and debris. All gear that contains soil, such as work boots and vehicles, should be thoroughly cleaned with water and sprayed with 70% alcohol solution.

[L.]S. The [applicant]Applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject property with respect to roads. The amount of the fair share contribution shall be the sum which is the product of multiplying the number of lots proposed to be subdivided by the amounts allocated hereinbelow for each such lot, and shall become due and payable prior to receipt of [~~final subdivision approval~~]Final Subdivision Approval. 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/[~~Mamalahoa~~]Māmalahoa Highway intersection. The fair share contribution shall have a value of [~~\$9,991.20~~]**\$15,057.57** per additional lot. Based upon the [applicant's]Applicant's representation of intent to subdivide and develop up to six (6) additional lots, the indicated total fair share contribution is [~~\$59,947.20~~]**\$90,345.42**. The fair share contribution shall be allocated as follows:

- **\$15,057.57** per additional lot for an indicated total of **\$90,345.42** to the State or County to support road and traffic improvements.

The fair share contribution shall be adjusted annually by the ~~[Hawaii County]~~ Planning Department, beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index ~~[HCPI]~~(HCPI). Upon approval of the fair share contributions, the Planning Director shall submit a final report to the Council for its information that identifies the specific approved fair share contributions, as allocated, and further implementation requirements.

~~[M.]T.~~ To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the ~~[applicant]~~Applicant shall comply with the requirements of Chapter 11, Article 1, ~~[Hawaii]~~ 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.

~~[N.]U.~~ 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.]V.~~ The ~~[applicant]~~Applicant shall comply with all applicable County, State and Federal Laws, rules, requirements and regulations, including the Department of Public Works, Department of Water Supply and Department of Health.

~~[P.]W.~~ 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]~~Applicant, 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.

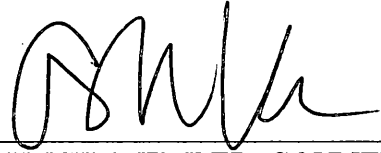
X. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the area to its original or more appropriate designation.”

SECTION 2. Material to be deleted is bracketed and stricken. New material is underscored.

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:

 B/R

COUNCIL MEMBER, COUNTY OF HAWAII

 Kona, Hawai'i

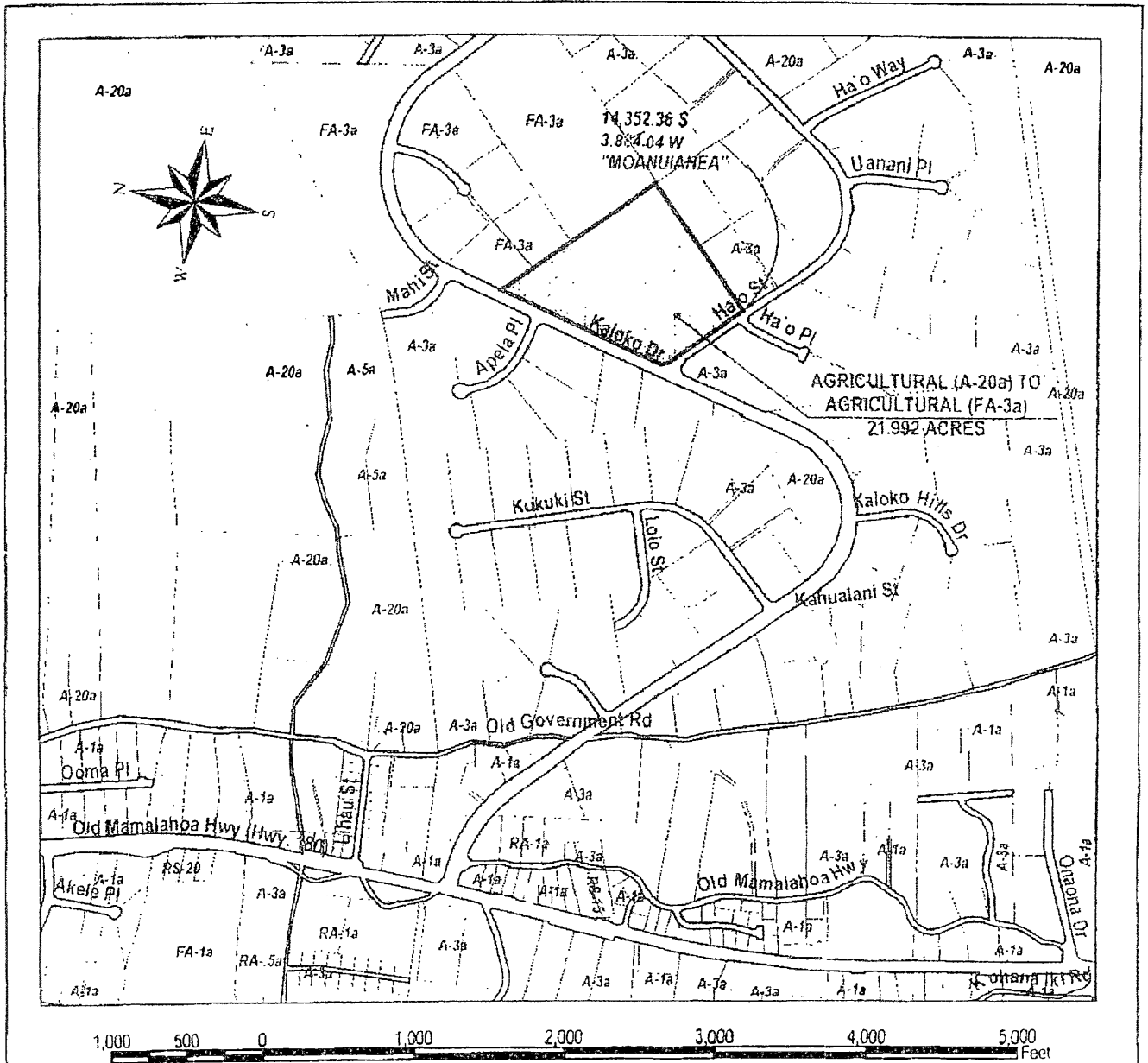
Date of Introduction: July 6, 2022

Date of 1st Reading: July 6, 2022

Date of 2nd Reading: July 19, 2022

Effective Date: August 3, 2022

REFERENCE Comm. 829



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 (A-20a)
 TO FAMILY AGRICULTURAL (FA-3a)
 AT KALOKO MAUKA SUBDIVISION, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

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

COUNTY CLERK
 COUNTY OF HAWAII

2022 AUG -5 PM 2: 20

Introduced By: Ashley L. Kierkiewicz (B/R)
 Date Introduced: July 6, 2022
 First Reading: July 6, 2022
 Published: July 15, 2022

REMARKS: _____

Second Reading: July 19, 2022
 To Mayor: July 27, 2022
 Returned: August 5, 2022
 Effective: August 3, 2022
 Published: August 26, 2022

REMARKS: _____

| | AYES | NOES | ABS | EX |
|-----------------------|------|------|-----|----|
| Chung | X | | | |
| David | X | | | |
| Inaba | X | | | |
| Kāneali'i-Kleinfelder | | | X | |
| Kierkiewicz | X | | | |
| Kimball | X | | | |
| Lee Loy | X | | | |
| Richards | | | X | |
| Villegas | X | | | |
| | 7 | 0 | 2 | 0 |

| ROLL CALL VOTE | | | | |
|-----------------------|------|------|-----|----|
| | AYES | NOES | ABS | EX |
| Chung | | | X | |
| David | X | | | |
| Inaba | X | | | |
| Kāneali'i-Kleinfelder | X | | | |
| Kierkiewicz | X | | | |
| Kimball | X | | | |
| Lee Loy | X | | | |
| Richards | X | | | |
| Villegas | X | | | |
| | 8 | 0 | 1 | 0 |

ROLL CALL VOTE

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


 COUNCIL CHAIRPERSON


 COUNTY CLERK

Approved/Disapproved this 3rd day
 of AUGUST, 2022


 MAYOR, COUNTY OF HAWAII

Bill No.: 181
 Reference: C-829/PC-69
 Ord No.: 22 87