

COUNTY OF HAWAII

STATE OF HAWAII

BILL NO. 158
(Draft 5)

ORDINANCE NO. 96 7

AN ORDINANCE AMENDING SECTION 25-87 (NORTH KONA ZONE MAP), AND SECTION 25-88 (SOUTH KONA ZONE MAP), ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM UNPLANNED (U) TO AGRICULTURAL (A-1a) AT HONUAINO 3RD AND 4TH, HOKUKANO 1ST AND 2ND, HALEKII, KEEKEE 1ST AND 2ND, ILIKAHI, KANAKAU 1ST AND 2ND, KALUKALU 1ST, 2ND AND 3RD AND ONOULI 1ST, NORTH AND SOUTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-9-12:4, 11 AND PORTION OF 3 AND 8-1-4:PORTION OF 3.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1. Section 25-87, Article 3, Chapter 25 (Zoning Code) of the Hawaii County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Honuaino 3rd and 4th, Hokukano 1st and 2nd and Kanueue 1st and 2nd, North Kona, Hawaii shall be Agricultural (A-1a):

PARCEL 1:

Beginning at the Northeasterly corner of this parcel of land, being also an angle point on the Southerly boundary of Royal Patent 1098, Land Commission Award 614 to Charles Hall, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OHAU", being 5,408.20 feet North and 934.23 feet East and running by azimuths measured clockwise from True South:

- 1. 345° 15' 189.91 feet along Grant 2029 to S. W. Makahiki to a point:

Thence, following along the remainder of Grant 2029 to S. W. Makahiki on a curve to the right with a radius of 470.00 feet, the chord azimuth and distance being:

2. 316° 23' 15" 424.98 feet to a point;
3. 343° 16' 839.35 feet along the remainders of Grant 2029 to S. W. Makahiki, Grant 1453 to John Cavanah and Grant 1463 to Keawe to a point;

Thence, following along the remainder of Grant 1463 to Keawe on a curve to the left with a radius of 1030.00 feet, the chord azimuth and distance being:

4. 329° 59' 30" 473.03 feet to a point;
5. 316° 43' 68.92 feet along the remainder of Grant 1463 to Keawe to a point;

Thence, following along the remainder of Grant 1463 to Keawe and Grant 1587 to John Peters on a curve to the right with a radius of 1270.00 feet, the chord azimuth and distance being:

6. 345° 33' 1224.95 feet to a point;
7. 14° 23' 350.20 feet along the remainder of Grant 1587 to John Peters to a point;

Thence, following along the remainder of Grant 1587 to John Peters on a curve to the left with a radius of 1030.00 feet, the chord azimuth and distance being:

8. 354° 32' 30" 699.21 feet to a point;
9. 334° 42' 918.92 feet along the remainder of Grant 1587 to John Peters to a point;

Thence, for the next three (3) courses following along Royal Patent 1670 to John D. Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions:

- 10. 66° 00' 770.00 feet to a point;
- 11. 74° 30' 930.00 feet to a point;
- 12. 67° 00' 285.65 feet to a point;

Thence, for the next twenty-one (21) courses following
along the remainder of Grant
1651 to Charles Hall:

- 13. 179° 00' 416.28 feet to a point;
- 14. 149° 00' 221.00 feet to a point;
- 15. 52° 00' 205.00 feet to a point;
- 16. 67° 00' 304.00 feet to a point;
- 17. 80° 00' 573.00 feet to a point;
- 18. 102° 00' 259.00 feet to a point;
- 19. 136° 00' 441.00 feet to a point;
- 20. 120° 00' 641.00 feet to a point;
- 21. 137° 00' 256.00 feet to a point;
- 22. 168° 20' 1123.00 feet to a point;
- 23. 163° 30' 456.00 feet to a point;
- 24. 206° 00' 214.09 feet to a point;
- 25. 243° 00' 693.46 feet to a point;
- 26. 193° 00' 282.00 feet to a point;
- 27. 222° 00' 513.00 feet to a point;
- 28. 210° 19' 324.00 feet to a point;
- 29. 198° 00' 497.68 feet to a point;
- 30. 181° 00' 307.60 feet to a point;
- 31. 258° 00' 140.74 feet to a point;
- 32. 188° 49' 30" 106.80 feet to a point;
- 33. 170° 53' 443.95 feet to a point;

34. 268° 39' 20.00 feet along Honalo-Kainaliu Beach Road;

Thence, for the next four (4) courses following along middle of stonewall and along Land Commission Award 3659 to J. Martin:

35. 272° 51' 57.35 feet to a point;

36. 267° 36' 189.05 feet to a point;

37. 269° 43' 203.15 feet to a point;

38. 275° 15' 223.35 feet to a point;

Thence, for the next three (3) courses following along middle of stonewall and along Royal Patent 1098, Land Commission Award 614 to Charles Hall:

39. 268° 14' 434.20 feet to a point;

40. 275° 04' 236.30 feet to a point;

41. 262° 13' 206.40 feet to the point of beginning and containing an area of 383.952 Acres, more or less. (Refer to Parcel 1 as shown on Exhibit "A").

SECTION 2. Section 25-88, Article 3, Chapter 25 (Zoning Code) of the Hawaii County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Halekii, Keekee 1st and 2nd, Ilikahi, Kanakau 1st and 2nd, Kalukalu 1st, 2nd and 3rd and Onouli 1st, South Kona, Hawaii, shall be Agricultural (A-1a):

PARCEL 2:

Beginning at the Northeasterly corner of this parcel of land, being also an angle point on the Southerly boundary of Grant 1587 to John Peters, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OHAU", being 601.01 feet North and 2,479.11 feet East and running by azimuths measured clockwise from True South:

1. 334° 42' 342.98 feet along the remainder of Royal Patent 1670 to John D. Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions to a point:

Thence, following along the remainders of Royal Patent 1670 to John D. Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions and Grant 1176 to Kini on a curve to the left with a radius of 705.00 feet, the chord azimuth and distance being:

2. 298° 34' 831.43 feet to a point;
3. 262° 26' 397.26 feet along the remainder of Grant 1176 to Kini to a point;

Thence, following along the remainder of Grant 1176 to Kini on a curve to the right with a radius of 645.00 feet, the chord azimuth and distance being:

4. 277° 14' 329.53 feet to a point;
5. 292° 02' 85.32 feet along the remainder of Grant 1176 to Kini to a point;

Thence, following along the remainder of Grant 1176 to Kini on a curve to the right with a radius of

30.00 feet, the chord azimuth and distance being:

- 6. 337° 02' 42.43 feet to a point;
- 7. 22° 02' 35.26 feet along the remainder of Grant 1176 to Kini to a point;

Thence, following along the remainders of Grant 1176 to Kini and Grant 1177 to Kamakahiona on a curve to the left with a radius of 705.00 feet, the chord azimuth and distance being:

- 8. 6° 12' 384.70 feet to a point;
- 9. 350° 22' 60.05 feet along the remainder of Grant 1177 to Kamakahiona to a point;

Thence, following along the remainders of Grant 1177 to Kamakahiona and Grant 1175 to Nakauwaa on a curve to the right with a radius of 645.00 feet, the chord azimuth and distance being:

- 10. 6° 42' 30" 362.96 feet to a point;
- 11. 23° 03' 162.63 feet along the remainder of Grant 1175 to Nakauwaa to a point;

Thence, following along the remainders of Grant 1175 to Nakauwaa and Grant 1464 to Ialua along a curve to the left with a radius or 705.00 feet, the chord azimuth and distance being:

- 12. 6° 06' 411.07 feet to a point;
- 13. 349° 09' 54.98 feet along the remainder of Grant 1464 to Ialua to a point;

Thence, following along the remainder of Grant 1464 to Ialua on a curve to the right with a radius of 645.00 feet, the chord azimuth and distance being:

14. 3° 07' 311.35 feet to a point;
15. 17° 05' 307.17 feet along the remainders of
Grant 1464 to Ialua and Grant
1576 to Lohi to a point;

Thence, following along the remainders of Grant 1576
to Lohi, Grant 1160 to H. N.
Greenwell and Royal Patents
4386 and 7146, Land Commission
Award 8452 to A. Keohokalole
on a curve to the left with a
radius of 1130.00 feet, the
chord azimuth and distance
being:

16. 349° 47' 1036.55 feet to a point;
17. 322° 29' 272.49 feet along the remainder of
Royal Patents 4386 and 7146,
Land Commission Award 8452 to
A. Keohokalole to a point;

Thence, following along the remainder of Royal Patents
4386 and 7146, Land Commission
Award 8452 to A. Keohokalole
on a curve to the right with a
radius of 870.00 feet, the
chord azimuth and distance
being:

18. 352° 50' 30" 879.41 feet to a point;
19. 23° 12' 488.09 feet along the remainder of
Royal Patents 4386 and 7146,
Land Commission Award 8452 to
A. Keohokalole to a point;

Thence, following along middle of stonewall and along
Grant 1162 to F. O. Shulze,
the direct azimuth and
distance being:

20. 78° 08' 30" 958.38 feet to a point;

Thence, following along middle of stonewall and along
Grant 1162 to F. O. Shulze,
the direct azimuth and
distance being:

21. 57° 14' 50" 1532.00 feet to a point;

Thence, for the next four (4) courses following along
the remainder of Royal Patents
4386 and 7146, Land Commission
Award 8452 to A. Keohokalole:

- | | | | |
|-----|------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22. | 160° | 00' | 200.00 feet to a point; |
| 23. | 149° | 00' | 452.00 feet to a point; |
| 24. | 160° | 51' | 628.00 feet to a point; |
| 25. | 152° | 30' | 327.00 feet to a point; |
| 26. | 182° | 19' | 313.00 feet along the remainders of
Royal Patents 4386 and 7146,
Land Commission Award 8452 to
A. Keohokalole and Grant 1745
to John Cavanah to a point; |

Thence, for the next five (5) courses following along
the remainder of Grant 1745 to
John Cavanah:

- | | | | |
|-----|------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27. | 171° | 27' | 400.00 feet to a point; |
| 28. | 161° | 20' | 606.00 feet to a point; |
| 29. | 175° | 16' | 440.00 feet to a point; |
| 30. | 182° | 42' 30" | 1190.00 feet to a point; |
| 31. | 155° | 00' | 489.00 feet to a point; |
| 32. | 181° | 00' | 353.00 feet along the remainders of
Grant 1745 to John Cavanah and
Royal Patent 1670 to John D.
Parish on a portion of Land
Commission Award 387, Part 4,
Section 2 to the American
Board of Commissioners for
Foreign Missions to a point; |
| 33. | 153° | 00' | 492.00 feet along the remainder of
Royal Patent 1670 to John D.
Parish on a portion of Land
Commission Award 387, Part 4,
Section 2 to the American
Board of Commissioners for
Foreign Missions to a point; |
| 34. | 179° | 00' | 126.72 feet along the remainder of
Royal Patent 1670 to John D. |

Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions to a point;

- 35. 247° 00' 285.65 feet along Grant 1651 to Charles Hall to a point;
- 36. 254° 30' 930.00 feet along Grant 1651 to Charles Hall to a point;
- 37. 246° 00' 770.00 feet along Grant 1587 to John Peters to the point of beginning and containing an area of 372.010 Acres, more or less.

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof herein after referred to as "subject property").

SECTION 3. These changes in district classification are conditioned upon the following:

- A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The applicant, successors or assigns shall be responsible for complying with all requirements of Chapter 205, Hawaii Revised Statutes, relating to permissible uses within the State Land Use Agricultural District.
- C. The effectuation of the water commitment rights in the Kealakekua Source Agreement to the current landowners of the subject property with the acceptance of the prevailing facilities charge for the 499 units of water by the Department of Water

Supply of the required water commitment payment shall be in accordance with its "Water Commitment Policy". Prior to approval of the 500th lot within the development area, the applicant shall secure the necessary "Water Commitments" and comply with the Department of Water Supply's "Water Commitment Policy" for the remaining units of water for the proposed subdivision and golf course development.

- D. Subdivision plans for any portion of the subject property for this change of zone shall be submitted to the Planning Department and Final Subdivision Approval secured within five (5) years from the effective date of this ordinance.
- E. A wastewater disposal system shall be constructed in a manner meeting with the approval of the State Department of Health and/or the Department of Public Works, whichever is applicable.
- F. All electrical and communication utilities and systems within the subject property shall be placed underground, with the exception of the main 69 KV transmission line from the Mamalahoa Highway to the proposed electrical substation site.
- G. A Flood Study of the subject property shall be submitted to the Planning Department in conjunction with plans submitted for subdivision review for any portion of the subject property. Drainage improvements shall be constructed in a manner meeting with the approval of the Department of Public Works, prior to the issuance of Final Subdivision Approval for the subject property.

H. An archaeological mitigation and interpretation plan shall be prepared and submitted for approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division and Hawaiian community organizations, prior to submitting plans for subdivision review. The Plan shall consist of three subplans:

1. an archaeological data recovery plan for the sites to undergo data recovery,
2. a detailed interim protection/preservation plan for the sites to undergo preservation, and
3. an interpretation plan which shall include buffer zones, signage and long-range preservation concerns which may be submitted at a later date. Approved mitigation measures shall be implemented prior to or in conjunction with any land alterations within the subject property.

I. 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.

J. A solid waste management plan shall be prepared meeting with the approval of the Department of

Public Works prior to submitting plans for subdivision review. The Plan shall include, but not be limited to, the management of construction solid waste as well as operating and domestic solid waste generated by the proposed development. Approved recommendations and mitigation measures shall be implemented at a time and in a manner meeting with the approval of the Department of Public Works.

- K. A final comprehensive public access plan, to be developed in consultation with community groups, shall be submitted to and approved by the Planning Director prior to final subdivision approval, or any land alteration activity, whichever comes first. The final comprehensive public access plan shall be developed in consultation with the Planning Director and the Department of Land and Natural Resources and shall include mauka-makai and lateral shoreline accesses, parking area(s), signage, emergency response considerations, restrictions on use (if any), provision of recreational and restroom facilities at appropriate locations, and related improvements; provided, that the construction of the coastline park and access ways shall be subject to the obtaining of all necessary discretionary permits (e.g., Conservation District Use Approval, Special Management Area Use Permit, etc.); provided, further, that the applicant shall be responsible to comply with the following terms and conditions:

1. An area comprising twenty-five percent (25%) of the total park area, as shown on Exhibit "E" attached hereto and made a part hereof, shall be developed and improved by the applicant or its agent in phases within five (5) years from

the date Final Subdivision Approval is obtained on the subject property. The first phase shall be completed and open to the public within thirty (30) days following the opening of the golf course;

2. Upon opening the first phase of the park area, a minimum of twenty-five (25) public parking stalls in addition to parking stalls for residents, guests, and employees within the subject property and the applicant's adjacent lands at the principal shoreline access parking area(s), signage and provisions for public access for night fishing and marine food gathering purposes over designated vehicular and pedestrian access routes subject to restrictions which limit said uses to recreation uses only, and other restrictions which provide for the health and safety of the general public and residents alike. The number of parking stalls shall be increased commensurately with the approval of additional park phases in accordance with the public access plan; and
3. The public shoreline access plan shall also integrate where appropriate, any public accessway(s) to interpretive trail system(s) and to the historical and archaeological sites to be approved by the Planning Director, in consultation with the Department of Land and Natural Resources in conjunction with the detail mitigation plan for the park area situated in the Conservation district.

- L. Prior to final approval of a small lot subdivision plat within the subject property, the applicant shall convey to the County of Hawaii by way of a perpetual easement the right to public access and recreational use of its privately owned coastline park and trails; provided, that restrictions will be allowed to be established by the applicant, subject to the approval of the Planning Director, to promote public health and safety and the general security of the premises for residents and guest of the project to protect the area's pristine condition, and to minimize any liability to the applicant, pursuant to Chapter 520, Section 520-4, Hawaii Revised Statutes. The applicant shall retain ownership of its coastline park and trails in fee simple and maintain all lands in the coastline park area and operate such facility for public recreational use in accordance with the above terms and conditions. This condition shall not be applicable to any roadway, trail or other rights-of-way, which are deemed public highways or trails as defined in Chapter 264, Hawaii Revised Statutes;
- M. Roadway improvements and access(es) to the subject property, including all plans and construction, shall meet with the approval of the Department of Public Works. Prior to the issuance of Final Subdivision Approval for any portion of the subject property, the applicant shall:
1. construct the channelization and signalization of the Mamalahoa Highway-Haleki'i Street intersection;

2. determine the final right-of-way alignment of the entire Mamalahoa Highway Bypass between the approximate vicinity of Keauhou and Captain Cook, including its intersection areas and its acquired ownership or control. The applicant shall provide the Planning Director with a metes and bounds description of each road right-of-way segment involved and evidence of its ownership or control as deemed necessary by the Planning Director. In lieu of the applicant obtaining or acquiring ownership or control of any segment of the Mamalahoa Highway Bypass, the requirement shall be deemed fulfilled upon the county's formal initiation of condemnation action(s) for such segments and an agreement has been entered into between the applicant and the county providing for the applicant's reimbursement to the county for the acquisition of the lands condemned;
3. construct the Mamalahoa Highway Bypass in its entirety between the approximate vicinity of Keauhou and Captain Cook, consisting of two lanes with sufficient right-of-way for a total of four lanes, provided further, that the section of the Mamalahoa Highway Bypass between Keauhou and Haleki'i Street shall be completed and available for public use prior to the occupancy of any dwelling unit within the entire project area;
4. construct the extension of Haleki'i Street through the subject property as generally reflected in Exhibit "B", which phasing of improvements shall be approved by the

Department of Public Works. If, before the completion and opening of the entire Mamalahoa Highway Bypass, a portion of said bypass is completed and opened, and said portion provides a connection to Haleki'i Street, a barricade or breakaway gate meeting with the requirements of the Department of Public Works, shall be installed by the applicant as part of the required Haleki'i Street improvements. The purpose of this condition is to prevent the use of Haleki'i Street as a vehicular thoroughfare between the existing Mamalahoa Highway and a portion of the Mamalahoa Highway Bypass until the entire proposed Mamalahoa Highway Bypass between the approximate vicinity of Keauhou and Captain Cook has been completed and opened for general public use; and

5. provide roadway stub-outs, generally shown in Exhibit "B", to provide future connections between the subject property and the adjacent properties to the north and south; provided that such stubouts shall be constructed in accordance with the construction phasing as approved by the Department of Public Works.

The applicant shall construct the Mamalahoa Highway Bypass to standards set forth by the Department of Public Works for Alii Highway with such modifications as may be deemed necessary by the Department of Public Works. The applicant shall provide a landscape buffer along highway sections within five hundred feet of existing dwellings, as required by the chief engineer, to reduce the impacts of noise and light on the residents therein

and to generally beautify the highway appearance in such locations; provided that the applicant shall enter into a reimbursement agreement with the County which sets forth the terms and conditions of reimbursement for costs incurred for the construction, land acquisition and design of the Mamalahoa Highway Bypass out of funds paid to the state and/or county by other developers or landowners whom the county may determine as benefiting from the Mamalahoa Highway Bypass and which funds are available to the county for such purpose; and provided further, that the total amount of reimbursement due to the applicant shall not exceed the total cost of land acquisition, design and construction of the Mamalahoa Highway Bypass incurred by the applicant, less the pro rata portion attributed to the subject property;

- N. In lieu of actual construction of infrastructural improvements as required under Conditions E, G, J, K, and M, the applicant may enter into an agreement with the Planning Director and the Department of Public Works and the Department of Water Supply, if applicable, to assure the county that the infrastructural improvements will be constructed together with the appropriate bond, surety or other security deemed acceptable to the Planning Director and approved by the Corporation Counsel. Upon execution of such agreement and filing of the security with the county, if applicable, Final Subdivision Approval for the subject property or portions thereof shall be granted prior to the actual construction of required infrastructural improvements.

O. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject property with respect to parks and recreation , fire, police, solid waste disposal facilities, and 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 final subdivision approval for any portion of the subject property or its increments. If the subject property is subdivided in two or more increments, the amount of the fair share contribution due and payable prior to final subdivision approval of each increment shall be a sum calculated in the same manner according to the number of additional proposed lots in each such increment. The fair share contribution for each lot, except for lots larger than ten acres in size or which are committed exclusively for golf course and park purposes, shall be based on the maximum allowable density of building sites as determined by the zoning of such lot. 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 **\$7,239.16 per lot**. Based upon the applicant's representation of intent to subdivide and develop up to 400 lots, the indicated total fair share contribution is **\$2,895,664.00**, however, the total amount shall be increased or reduced in proportion with the actual number of subdivided lots according to the calculation and payment provisions set forth in this Condition O.

The fair share contribution shall be allocated as follows:

1. \$3,490.85 per lot, for an indicated total of \$1,396,340.00 to the County to support park and recreational improvements and facilities;
2. \$168.40 per lot, for an indicated total of \$67,360.00 to the County to support police facilities;
3. \$332.61 per lot, for an indicated total of \$133,044.00 to the County to support fire facilities;
4. \$145.62 per lot, for an indicated total of \$58,248.00 to the County to support solid waste facilities;
5. \$3,101.68 per lot, for an indicated total of \$1,240,672.00 to the State or County to support road and traffic improvements.

The fair share contributions 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, the applicant may construct and contribute 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 approval of the director. The cost of constructing the improvements required in Conditions J, K and M shall

be credited against the sum specified in Condition O(4) for solid waste facilities, Condition O(1) for parks and recreation, and in Condition O(5) for road and traffic improvements. For purposes of administering Condition O, the value of land contributed or 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.

- P. Comply with all applicable laws, rules, regulations and requirements, including those of the Department of Health, Fire, State Department of Education and the Department of Water Supply.

- Q. 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.

- R. An annual progress report shall be submitted to the Planning Director prior to each anniversary date of the approval of this change of zone. The report shall address in detail the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

S. An extension of time for the performance of conditions within the ordinance, with the exception of Condition C, 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 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); and
5. should the Applicant 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 Director shall initiate rezoning of the area to its original or more appropriate designation.

SECTION 4. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

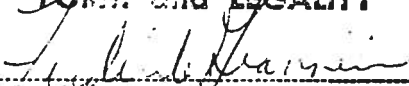
SECTION 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii

Date of Introduction: December 15, 1995
Date of 1st Reading: December 15, 1995
Date of 2nd Reading: January 3, 1996
Effective Date: January 15, 1996

DEPUTY APPROVED as to
FORM and LEGALITY

CORPORATION COUNSEL
COUNTY OF HAWAII
Date 1/8/96