

COUNTY OF HAWAI‘I PLANNING DEPARTMENT BACKGROUND AND RECOMMENDATION

PLANNING DIRECTOR INITIATED

EDWARD & RHONDALL RAPOZA

REPEAL CHANGE OF ZONE ORDINANCE NO. 10 2 (PL-PDI-2024-000006/AMEND REZ 2009-000096) & STATE LAND USE BOUNDARY ORDINANCE NO. 10 1 (PL-PDI-2024-000007/ AMEND SLU 2009-000022)

The Planning Director has initiated the repeal of Change of Zone Ordinance No. 10 2, amendment to Section 25-8-3 (North Kona Zone Map), Chapter 25, Article 8, of the Hawai‘i County Code 1983 (2016 edition, as amended), which will revert the current zoning of the subject property from Single-Family Residential-10,000 square feet (RS-10) to its original Agricultural-5 acre (A-5a) zoning district and repeal of State Land Use Boundary Ordinance No. 10 1, which will revert the State Land Use Boundary District from Urban to its original designation of Agricultural, for approximately 14.437 acres of land. The subject parcel is located on the south side of Hualālai Road, approximately 0.6 miles east of its intersection with Queen Ka‘ahumanu Highway, Kahului 2nd, North Kona, Hawai‘i TMK: 7-5-017:042.

PLANNING DIRECTOR’S REQUEST

1. **Request:** The Planning Director is initiating a repeal of Change of Zone Ordinance No. 10 2 and State Land Use Boundary Ordinance No. 10 1 in response to a written request, dated March 21, 2024, submitted by the property owners Edward and Rhondall Rapoza. (**Planning Department Exhibit 1- Request Letter**). The repeal of Ordinance No. 10 2 would revert the zoning of approximately 14.437 acres of land to its original Agricultural-5 acre (A-5a) zoning district from the current Single-Family Residential-10,000 square feet (RS-10) zoning district. According to the Zoning Code, the Agricultural district provides for agricultural and very low density agriculturally based residential use, encompassing rural areas of good to marginal agricultural and grazing land, forest land, game habitats, and areas where urbanization is not found to be appropriate. Requirements for establishing a land use in both districts, including lists of the variety of permitted uses, are shown in Section 25-5-1

to 8 (RS District) and Section 25-5-70 to 77 (A District) of the Zoning Code.

(Planning Department Exhibit 2 – Zoning Code Requirements for RS District and Planning Department Exhibit 3 – Zoning Code Requirements for A District)

The repeal of Ordinance No. 10 1 would revert the State Land Use District classification from Urban to its original classification of Agricultural for approximately 14.437 acres of land. According to the Land Use Commission, the State Land Use Agricultural district is characterized by lands with a high capacity for intensive cultivation that shall be given the greatest possible protection. A list of the variety of permitted land uses in both the Urban and the Agricultural district is shown in Hawai‘i Revised Statutes, Section 205-2(b) (Urban) and Hawai‘i Revised Statutes, Section 205-2(d) (Agricultural). **(Planning Department Exhibit 4 – Hawai‘i Revised Statutes, Section 205-2)**

2. **Reason for Request:** The subject property was rezoned in 2010 from A-5a to RS-10 with the objective of developing a 53-lot single-family residential subdivision. The applicant for the original change of zone also obtained a State Land Use Boundary Amendment from Agricultural to Urban as well as approval for a Planned Unit Development (PUD), to allow for some smaller lot sizes of approximately 7,500 square feet. The development was never completed, and the property was sold to the current landowners, with a warranty deed recorded with the State Bureau of Conveyances on February 29, 2024. By letter dated March 21, 2024, the landowners stated that their goal is to establish a family farm and pursue long term agricultural use on the property.
3. **Landowners:** Edward J. Rapoza and Rhondall K. Rapoza.

STATE AND COUNTY PLANS

4. **State Land Use District:** Urban.
5. **General Plan LUPAG Map Designation:** Urban Expansion, which allows for “*a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined*”.
6. **County Zoning:** Single-Family Residential-10,000 square feet (RS-10).

7. **Community Development Plan:** The Kona CDP, originally adopted by the Hawai‘i County Council on September 25, 2008, and most recently amended on September 18, 2019, identifies the property as located within the Kona Urban Area. Additionally, the western (makai) portion of the property is within the preliminary Pua‘a-Wai‘aha Village Transit-Oriented Development (TOD) area.
8. **Special Management Area:** The subject parcel is over 1.1 miles from the nearest shoreline and is not situated within the Special Management Area.

DESCRIPTION OF SUBJECT PROPERTY AND SURROUNDING AREA

9. **Subject Property:** The subject 14.437-acre vacant parcel is irregular in shape and overgrown with vegetation. The northern boundary of the parcel is partially bordered by Hualālai Road.
10. **Surrounding Land Uses/Zoning:** Surrounding properties are zoned A-1a, A-5a and RS-7.5, with uses primarily consisting of residential, agricultural and vacant land. Pualani Estates Subdivision borders the subject property to the south, and properties to the west and north have existing Special Permits. Parcel No. 7-5-017:044, located immediately north of the subject property, has an approved Special Permit (SPP 21-000227) to operate a gymnastics/sports facility, for which the applicant (Kona Aerial Gymnastic Team Inc.) is working with the Department of Public Works to obtain building permits. Parcel No. 7-5-017:041, located immediately west (makai) of the subject property, has an approved Special Permit (SPP 17-000195) for a church use, for which the applicant (Living Stones Church) has requested a time extension to complete construction. Parcel No. 7-5-017:043, located immediately east (mauka) of the subject property, was the subject of a request to rezone (PL-REZ-2021-000012) from an Agricultural-5 acre (A-5a) zoning district to a Family Agricultural-1 acre (FA-1a) acre zoning district. Although the Leeward Planning Commission forwarded a favorable recommendation to the Hawai‘i County Council, the change of zone was denied at the County Council’s hearing on November 2, 2022.
11. **Flood Insurance Rate Map (FIRM):** The property is classified as Flood Zone “X”, an area of minimal flood hazard.

12. **Flora/Fauna Resources:** Vegetation on the subject property consists of introduced grasses, kiawe, koa haole, and other grasses, vines, weeds and shrubs. Species observed include the Zebra Dove, Spotted Dove, Common Myna, House Sparrow and House Finch, with no known rare or endangered flora or fauna on the property.
13. **Archaeological/Cultural/Historical Resources:** An Archaeological Inventory Survey was prepared by Rechtman Consulting, LLC and approved by the Department of Land and Natural Resources, State Historic Preservation Division (SHPD) on October 4, 2006. By letter dated June 15, 2009, SHPD stated that no historic properties would be affected by the original development project because “SHPD previously reviewed this project and mitigation has been completed.” Mitigation consisted of a data recovery plan. According to SHPD, data recovery fieldwork was completed and there were no sites designated for preservation within the property.
14. **Public Access:** There is no designated public access to the mountain or shoreline through the property.

UTILITIES AND SERVICES

15. **Access:** Access to the property is from Hualālai Road, a county collector street with an average pavement width of 20 feet within a variable right-of-way. At the time of the original rezoning, the Department of Public Works (DPW) noted that Hualālai Road is substandard based on width, alignment and roadside hazard clearances.
16. **Water:** At the time of the original rezoning, the Department of Water Supply (DWS) noted that the applicant was a member of the Waiaha System, LLC, which executed a Water Development Agreement with the Water Board to secure water commitments for the development.
17. **Wastewater:** There are no existing sewer facilities servicing the subject property, however, according to the previous development’s sewer report, an 8-inch sewer connection is available at the north end of Paulehia Street in the adjacent Pualani Estates Subdivision. At that time, the Department of Environmental Management stated that a sewer study would be required prior to connection to the sewer line.

18. **Solid Waste:** There are no municipal waste collection services in the County. All solid waste generated by the subject property will require private disposal at an approved landfill.
19. **Utilities and Services:** Electric, cable, and telephone services are available to the property. Kona Community Hospital is located in Kealahou. Police and fire services are located in Kealahou and Kailua-Kona.

AGENCY COMMENTS

20. None were solicited or received.

PUBLIC COMMENTS

21. As of the time of this writing, the Planning Department has received no public comments regarding this request.

PLANNING DIRECTOR'S RECOMMENDATION TO REPEAL CHANGE OF ZONE ORDINANCE NO. 10 2

The Planning Director recommends that the Planning Commission forward a favorable recommendation to the Hawai'i County Council on the request to repeal Ordinance No. 10 2, which will revert the current zoning of the subject property from Single-Family Residential-10,000 square feet (RS-10) to its original Agricultural-5 acre (A-5a) zoning district for approximately 14.437 acres of land.

Since the subject parcel was rezoned, there have not been any significant land use regulatory changes in this area. The proposed reversion to the original A-5a zoning would not be entirely consistent with the General Plan's Land Use Pattern Allocation Guide (LUPAG) map Urban Expansion Designation, which allows for a "*a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined.*" However, given that other properties immediately adjacent to the subject property have not converted to urban uses, the Planning Director believes that the reversion will be consistent with existing surrounding zoning designations and land use patterns. The Kona CDP identifies the property as located within the Urban Area and partially within a preliminary Transit-Oriented Development (TOD) area, but for the reasons mentioned above, the Planning Director is supportive of the requested reversion.

The subject parcel is not situated within the Special Management Area, there are no known archaeological, historical, or cultural resources and no protected/endangered floral or faunal resources found on the subject parcel.

Surrounding properties are zoned A-1a, A-5a and RS-7.5, with uses primarily consisting of residential and agricultural with some vacant land. Pualani Estates Subdivision borders the subject property to the south, and properties to the west and north have existing special permits for non-agricultural uses, for which the respective applicants are working on condition compliance. Parcel No. 7-5-017:043, located immediately east (mauka) of the subject property, was the subject of a request to rezone from an A-5a to an FA-1a zoning district, however the change of zone was denied by the Hawai'i County Council. Given the preceding, reverting the subject property to the A-5a zoning district will be consistent with most existing surrounding land uses and zoning.

Access to the property is from Hualālai Road, a county collector street with an average pavement width of 20 feet within a variable right-of-way. Any future access from Hualālai Road will need to comply with requirements of the Department of Public Works (DPW), who provided comments to the original 2009 rezone application noting that Hualālai Road is substandard based on width, alignment and roadside hazard clearances. Regarding water supply, the applicant at the time was a member of the Waiaha System, LLC, which executed a Water Development Agreement with the Water Board to secure water commitments for the development. Any future construction permitted in the A-5a zoning district should include verification that water is available from the Department of Water Supply (DWS) or provide an equivalent alternative. Regarding wastewater, any future development should include consultation with the Department of Environmental Management (DEM) as to whether connection to existing sewer lines is required or whether the property is under Department of Health (DOH) wastewater jurisdiction. Given the preceding and noting that utilities and services are available to the property, infrastructure in the area is adequate to support the A-5a zoning district.

Lastly, although the recommendation to repeal Ordinance No. 10 2 will extinguish any conditions related to the RS-10 zoning, it is made with the understanding that the landowners remain responsible for developing the parcel in compliance with all other applicable governmental requirements in connection with the Agricultural-5 acre (A) zoning district prior

to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, compliance with County Streets, Water, Sewer and Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the preceding, the Planning Director recommends that the Planning Commission forward a favorable recommendation to the County Council for the repeal of Ordinance No. 10 2, which will revert the zoning district from Single-Family Residential-10,000 square feet (RS-10) to Agricultural-5 acre (A-5a).

PLANNING DIRECTOR'S RECOMMENDATION TO REPEAL STATE LAND USE BOUNDARY ORDINANCE NO. 10 1

The Planning Director recommends that the Planning Commission forward a favorable recommendation to the Hawai'i County Council on the request to repeal Ordinance No. 10 1, which will revert the State Land Use Boundary District from Urban to its original designation of Agricultural, for approximately 14.4370 acres of land.

Although surrounding properties to the south are classified Urban, with residential zoning and uses, including Pualani Estates Subdivision, properties on all other sides of the subject property are classified Agricultural, with agricultural zoning and uses primarily consisting of residential, agricultural, vacant land, and non-agricultural uses approved by special permits. Given the preceding, reverting to the Agricultural District will be consistent with existing surrounding State Land Use classifications.

Similarly, the proposed reversion would not be entirely consistent with the General Plan's Land Use Pattern Allocation Guide (LUPAG) map which designates the subject property as Urban Expansion, as defined above. However, given that other properties immediately adjacent to the subject property have not converted to urban uses, the Planning Director believes that the reversion will be consistent with existing land use patterns. The Kona CDP identifies the property as located within the Urban Area and partially within a preliminary Transit-Oriented Development (TOD) area, but for the reasons mentioned above, the Planning Director is

supportive of the requested reversion.

Access to the property is from Hualālai Road, a county collector street with an average pavement width of 20 feet within a variable right-of-way. Any future access from Hualālai Road will need to comply with requirements of the Department of Public Works (DPW), who provided comments to the original 2009 rezone application noting that Hualālai Road is substandard based on width, alignment and roadside hazard clearances. Regarding water supply, the applicant at the time was a member of the Waiaha System, LLC, which executed a Water Development Agreement with the Water Board to secure water commitments for the development. Any future construction should include verification that water is available from the Department of Water Supply (DWS) or provide an equivalent alternative. Regarding wastewater, any future development should include consultation with the Department of Environmental Management (DEM) as to whether connection to existing sewer lines is required or whether the property is under Department of Health (DOH) wastewater jurisdiction.

Given the preceding and noting that utilities, services and infrastructure in the area is adequate to support uses allowable in the Agricultural District, the Planning Director recommends that the Planning Commission forward a favorable recommendation to the County Council for the repeal of Ordinance No. 10 1 which will revert the State Land Use District classification from the Urban to the Agricultural District.

March 21, 2024

Zendo Kern
Planning Director
County of Hawaii Planning Department
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, HI 96720-3043

TMK: 3-7-5-017-042

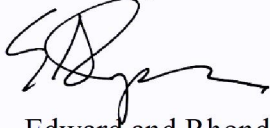
Dear Mr. Kern:

Please consider this letter as a formal request to revert the above referenced TMK to its original zoning of agriculture (A-5a) and State land use agriculture.

We have purchased this property to establish a family farm and pursue long term agriculture use.

As always, thank you for your consideration and timely response. If you have any questions please contact us by email, ed@edrapoza.com, or by phone, 808-937-3965.

Sincerely,



Edward and Rhondall Rapoza

Section 25-4-68. Grounds for approval or denial.

The director shall approve an application for recognition of a de minimis structure position discrepancy unless:

- (a) The discrepancy is greater than the difference as allowed by the de minimis structure position discrepancy definition, or
- (b) The director finds that the improvement was placed with knowledge that it would violate the minimum yard or open space requirements; or
- (c) The improvement could be moved, or the discrepancy otherwise corrected, without significant expense, difficulty, or hardship to the applicant.

(2002, ord 02-70, sec 3.)

Section 25-4-69. Recognition of de minimis structure position discrepancy.

If the director accepts the application for recognition of de minimis structure position discrepancy, the director shall notify the applicant in writing that the discrepancy is not a violation of the zoning code and that it may remain in place without a variance.

(2002, ord 02-70, sec 3.)

Section 25-4-70. Disclosure.

A de minimis structure position discrepancy shall be disclosed by the owner to subsequent purchasers of the property in question.

(2002, ord 02-70, sec 3.)

Section 25-4-71. Appeals.

The director's decision with respect to a de minimis structure position discrepancy is appealable to the board of appeals.

(2002, ord 02-70, sec 3.)

Article 5. Zoning District Regulations.**Division 1. RS, Single-Family Residential Districts.****Section 25-5-1. Purpose and applicability.**

The RS (single-family residential) district provides for lower or low and medium density residential use, for urban and suburban family life. It applies to areas having facilities, and to carry out the above stated purpose.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-2. Designation of RS districts.

Each RS (single-family residential) district shall be designated on the zoning map by the symbol "RS" followed by a number which specifies the required minimum building site area in thousands of square feet.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-3. Permitted uses.

- (a) The following uses shall be permitted in the RS district:
- (1) Adult day care homes.
 - (2) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (3) Community buildings, as permitted under section 25-4-11.
 - (4) Crop production.
 - (5) Dwellings, single-family.
 - (6) Family child care homes.
 - (7) Group living facilities.
 - (8) Home occupations, as permitted under section 25-4-13.
 - (9) Meeting facilities.
 - (10) Model homes, as permitted under section 25-4-8.
 - (11) Neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses.
 - (12) Public uses and structures, as permitted under section 25-4-11.
 - (13) Short-term vacation rentals situated in the general plan resort and resort node areas.
 - (14) Temporary real estate offices, as permitted under section 25-4-8.
 - (15) Utility substations, as permitted under section 25-4-11.
- (b) In addition to those uses permitted under subsection (a) above, the following uses may be permitted in the RS district, provided that a use permit is issued for each use:
- (1) Bed and breakfast establishments as permitted under section 25-4-7.
 - (2) Care homes.
 - (3) Churches, temples and synagogues.
 - (4) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (5) Day care centers.
 - (6) Golf courses and related golf course uses, including golf driving ranges, golf maintenance buildings and golf club houses, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.
 - (7) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
 - (8) Medical clinics.
 - (9) Schools.
 - (10) Telecommunication antennas and towers.
 - (11) Yacht harbors and boating facilities.
- (c) Buildings and uses normally considered directly accessory to the uses permitted in this section shall also be permitted in the RS district.
- (1996, ord 96-160, sec 2; ratified April 6, 1999; am 2012, ord 12-28, sec 3; am 2014, ord 14-86, sec 3; am 2018, ord 18-114, sec 5; am 2019, ord 19-100, sec 3; am 2021, ord 21-26, sec 5.)

Section 25-5-4. Height limit.

The height limit in the RS district shall be thirty-five feet.
(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-5. Minimum building site area.

The minimum building site area in the RS district shall be seven thousand five hundred square feet.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-6. Minimum building site average width.

Each building site in the RS district shall have a minimum average width of sixty feet, plus two feet for each five hundred square feet of required building site area in excess of seven thousand five hundred square feet, except that no building site shall be required to have an average width of more than one hundred fifty feet.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-7. Minimum yards.

The minimum yards in the RS district shall be as follows:

- (1) On a building site with a required area of seven thousand five hundred square feet to and including nine thousand nine hundred ninety-nine square feet:
 - (A) Front and rear yards, fifteen feet; and
 - (B) Side yards, eight feet.
- (2) On a building site with a required area of ten thousand square feet to and including nineteen thousand nine hundred ninety-nine square feet:
 - (A) Front and rear yards, twenty feet; and
 - (B) Side yards, ten feet.
- (3) On a building site with a required area of twenty thousand square feet or more:
 - (A) Front and rear yards, twenty-five feet; and
 - (B) Side yards, fifteen feet.

(1996, ord 96-160, sec 2; ratified April 6, 1999; am 1997, ord 97-88, sec 1.)

Section 25-5-8. Other regulations.

- (a) There may be more than one single-family dwelling on each building site in an RS district provided there is not less than the required minimum building site area for each dwelling.
- (b) One guest house, in addition to a single-family dwelling, may be located on any building site in the RS district.
- (c) An ohana dwelling may be located on any building site in the RS district, as permitted under article 6, division 3 of this chapter.
- (d) If a legal building site in the RS district has less area or average width than is required, then the yard requirements for the building site shall be the same as in the RS district having the largest requirements for which the building site can comply.
- (e) Exceptions to the regulations for the RS district regarding heights, building site areas, building site average widths and yards, may be approved by the commission within a planned unit development, or by the director within a cluster plan development.

(1996, ord 96-160, sec 2; ratified April 6, 1999; am 2015, ord 15-33, sec 3.)

- (e) Exceptions to the regulations for the FA district regarding heights, building site areas, building site average widths and yards, may be approved by the commission within a planned unit development.
 - (f) Plan approval shall be required prior to the construction or installation of any new structure or development, or of any addition to an existing structure or development which is used for minor agricultural products processing.
- (1996, ord 96-160, sec 2; ratified April 6, 1999; am 2015, ord 15-33, sec 4.)

Division 7. A, Agricultural Districts.

Section 25-5-70. Purpose and applicability.

The A (agricultural) district provides for agricultural and very low density agriculturally-based residential use, encompassing rural areas of good to marginal agricultural and grazing land, forest land, game habitats, and areas where urbanization is not found to be appropriate.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-71. Designation of A districts.

Each A (agricultural) district shall be designated on the zoning map by the symbol “A” followed by a number together with the lower case letter “a” which indicates the required or minimum number of acres for each building site. For example, A-10a means an agricultural district with a minimum building site area of ten acres.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-72. Permitted uses.

- (a) The following uses shall be permitted in the A district:
 - (1) Agricultural parks.
 - (2) Agricultural products processing, major and minor.
 - (3) Agricultural tourism as permitted under section 25-4-15.
 - (4) Animal hospitals.
 - (5) Aquaculture.
 - (6) Botanical gardens, nurseries and greenhouses, seed farms, plant experimental stations, arboretums, floriculture, and similar uses dealing with the growing of plants.
 - (7) Campgrounds, parks, playgrounds, tennis courts, swimming pools, and other similar open area recreational facilities, where none of the recreational features are entirely enclosed in a building.
 - (8) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
 - (9) Crop production.
 - (10) Dwelling, single-family, as permitted under chapter 205, Hawai‘i Revised Statutes and as permitted under section 25-5-77(b).
 - (11) Farm dwellings, as permitted under section 25-5-77(b) and (c).

- (12) Fertilizer yards utilizing only manure and soil, for commercial use.
 - (13) Forestry.
 - (14) Game and fish propagation.
 - (15) Group living facilities.
 - (16) Kennels.
 - (17) Livestock production, provided that piggeries, apiaries, and pen feeding of livestock shall only be located on sites approved by the State department of health and the director, and must be located no closer than one thousand feet away from any major public street or from any other zoning district.
 - (18) Public uses and structures which are necessary for agricultural practices.
 - (19) Retention, restoration, rehabilitation, or improvement of building or sites of historic or scenic interest.
 - (20) Riding academies, and rental or boarding stables.
 - (21) Roadside stands for the sale of agricultural products grown on the premises.
 - (22) Utility substations, as permitted under section 25-4-11.
 - (23) Vehicle and equipment storage areas that are directly accessory to aquaculture, crop production, game and fish propagation, livestock grazing and livestock production.
 - (24) Veterinary establishments.
 - (25) Wind energy facilities.
- (b) The following uses may be permitted in the A district, provided that a use permit is issued for each use:
- (1) Golf courses and related golf course uses, including golf course driving ranges, golf maintenance buildings and golf club houses, provided that the property is within the state land use urban or rural district. Golf courses and golf driving ranges shall not be permitted within the state land use agricultural district unless approved by the County before July 1, 2005.
 - (2) Telecommunication antennas and towers.
- (c) The following uses may be permitted in the A district, provided that a special permit is obtained for such use if the building site is located within the State land use agricultural district:
- (1) Adult day care homes.
 - (2) Airfields, heliports, and private landing strips.
 - (3) Bed and breakfast establishments, as permitted under section 25-4-7.
 - (4) Community buildings, as permitted under section 25-4-11.
 - (5) Excavation or removal of natural building material or minerals, for commercial use.
 - (6) Family child care homes.
 - (7) Guest ranches.
 - (8) Home occupations, as permitted under section 25-4-13.
 - (9) Lodges.
 - (10) Meeting facilities.
 - (11) Model homes, as permitted under section 25-4-8.
 - (12) Public dumps.

- (13) Public uses and structures, other than those necessary for agricultural practices, as provided under section 25-4-11.
 - (14) Temporary real estate offices, as permitted under section 25-4-8.
 - (15) Trailer parks with density of three thousand five hundred square feet of land area per trailer, provided that plan approval is secured prior to commencing such use.
 - (16) Uses, other than those specifically listed in this section, which meet the standards for a special permit under chapter 205, Hawai'i Revised Statutes.
 - (d) The following uses may be permitted in the A district, provided that either a use permit is issued for each use if the building site is outside of the State land use agricultural district or a special permit is issued for each use if the building site is within the State land use agricultural district:
 - (1) Bed and breakfast establishments, as permitted under section 25-4-7.
 - (2) Crematoriums, funeral homes, funeral services, and mortuaries.
 - (3) Churches, temples and synagogues.
 - (4) Day care centers.
 - (5) Hospitals, sanitariums, old age, convalescent, nursing and rest homes.
 - (6) Major outdoor amusement and recreation facilities.
 - (7) Medical clinics.
 - (8) Schools.
 - (e) Buildings and uses accessory to the uses permitted in this section shall also be permitted in the A district.
 - (f) No building site shall be established after December 1, 1996 which shall in any way restrict or limit aquaculture, horticulture, production of crops, keeping of livestock, game and fish propagation, or the processing, sale or other commercial use of the products of such uses.
- (1996, ord 96-160, sec 2; ratified April 6, 1999; am 2008, ord 08-155, sec 13; am 2010, ord 10-17, sec 6; am 2012, ord 12-28, sec 9; ord 12-124, sec 8; am 2014, ord 14-86, sec 9; am 2021, ord 21-26, sec 10.)

Section 25-5-73. Height limit.

The height limit in the A district shall be thirty-five feet for any residential structure, including any single-family dwelling, or farm dwelling, and forty-five feet for all other structures. The director may, however, permit by plan approval, any nonresidential agricultural structures to be constructed to a height of one hundred feet, if the director determines that the additional height above the forty-five foot height limit is necessary.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-74. Minimum building site area.

The minimum building site area in the A district shall be five acres.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-75. Minimum building site average width.

Each building site in the A district shall have a minimum average width of two hundred feet for the first five acres of required area plus twenty feet for each additional acre of required area. Provided that no building site shall be required to have an average width greater than one thousand feet.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-76. Minimum yards.

- (a) Except as otherwise provided in this section, the minimum yards in the A district shall be thirty feet for front and rear yards, and twenty feet for side yards.
- (b) For accessory uses such as shade cloth structures used in controlling the amount of sunlight in the raising of plants and flowers, rear, side and front yards in the A district shall be at least ten feet, except where the A district shares common boundaries with urban zones and main government roads.
- (c) For accessory uses such as plastic roofed and shade cloth wooden or metal framed structures used in controlling the amount of sunlight, rainfall, wind and other elements of nature in the raising of fruits, vegetables and similar agricultural products, rear, side and front yards shall be at least ten feet except where:
 - (1) Exterior walls of any type other than shade cloth are added to the wooden or metal framed structure;
 - (2) The specific use allowed is abandoned; and
 - (3) The A district shares common boundaries with urban zones and main government roads.

(1996, ord 96-160, sec 2; ratified April 6, 1999; am 1999, ord 99-110, sec 1.)

Section 25-5-77. Other regulations.

- (a) If any legal building site in the A district has an area of less than five acres, then the yard, minimum building site average width and height requirements for the building site shall be the same as the yard and height requirements in the FA district.
- (b) One single-family dwelling or one farm dwelling shall be permitted on any building site in the A district. A farm dwelling is a single-family dwelling that is located on or used in connection with a farm or if the agricultural activity provides income to the family occupying the dwelling.
- (c) Additional farm dwellings may be permitted in the A district only upon the following conditions:
 - (1) A farm dwelling agreement for each additional farm dwelling, on a form prepared by the director, shall be executed between the owner of the building site, any lessee having a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement, and the County. The agreement shall require the dwelling to be used for farm-related purposes.

- (2) The applicant shall submit an agricultural development and use program, farm plan or other evidence of the applicant's continual agricultural productivity or farming operation within the County to the director. Such plan shall also show how the farm dwelling will be utilized for farm-related purposes.
 - (d) An ohana dwelling may be located on any building site in the A district, as permitted under article 6, division 3 of this chapter.
 - (e) Exceptions to the regulations for the A district regarding heights, building site areas, building site average widths and yards, may be approved by the commission within a planned unit development.
- (1996, ord 96-160, sec 2; ratified April 6, 1999; am 2015, ord 15-33, sec 4.)

Division 8. IA, Intensive Agricultural Districts.

Section 25-5-80. Purpose and applicability.

The IA (intensive agricultural) district provides for the preservation of important agricultural lands as provided for in the general plan and characterized by a mix of small and large scale commercial farms and other agricultural operations which may include residential use in the form of farm dwellings closely tied to intensive agricultural use. The lands in the IA district are those lands which have the soil, quality, growing season, and moisture supply needed to sustain high yields of crops generally or of specific crops of statewide or local importance when managed according to modern farming methods. All IA districts shall be located within the State land use agricultural or conservation district.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-81. Designation of IA districts.

The IA (intensive agricultural) district shall be designated by the symbol "IA" followed by a number together with the lower case letter "a" which indicates the required or minimum number of acres for each building site.

(1996, ord 96-160, sec 2; ratified April 6, 1999.)

Section 25-5-82. Permitted uses.

- (a) The following uses shall be permitted in the IA district:
 - (1) Agricultural parks.
 - (2) Agricultural products processing, major and minor.
 - (3) Agricultural tourism as permitted under section 25-4-15.
 - (4) Aquaculture.
 - (5) Cemeteries, as permitted under chapter 6, article 1 of this Code.
 - (6) Crop production.
 - (7) Farm dwellings, as permitted under sections 25-5-87(b) and (c).
 - (8) Forestry.

2023 Hawaii Revised Statutes

Title 13. Planning and Economic Development

205. Land Use Commission

205-2 Districting and classification of lands.

Universal Citation: HI Rev Stat § 205-2 (2023)

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§205-2 Districting and classification of lands. (a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

- (1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
- (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;

(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and

(4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

In addition, urban districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section

182-1, and construction and operation of wireless communication antenna, as defined under section 205-4.5(a)(18), as permissible uses.

(d) Agricultural districts shall include:

(1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;

(2) Farming activities or uses related to animal husbandry and game and fish propagation;

(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind-generated energy production for public, private, and commercial use;

(5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;

(6) Solar energy facilities; provided that:

(A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and

(B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6;

(7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12);

(8) Wind machines and wind farms;

(9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;

(10) Agricultural parks;

(11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(12) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;

(13) Open area recreational facilities;

(14) Geothermal resources exploration and geothermal resources development, as defined under section 182-1;

(15) Agricultural-based commercial operations registered in Hawaii, including:

(A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

(B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items;

(C) A retail food establishment owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

(D) A farmers' market, which is an outdoor market limited to producers selling agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii; and

(E) A food hub, which is a facility that may contain a commercial kitchen and provides for the storage, processing, distribution, and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph;

(16) Hydroelectric facilities as described in section 205-4.5(a)(23); and

(17) Composting and co-composting operations; provided that operations that process their own green waste and do not require permits from the department of health shall use the finished composting product only on the operation's own premises to minimize the potential spread of invasive species.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Conservation

districts shall also include areas for geothermal resources exploration and geothermal resources development, as defined under section 182-1. [L 1963, c 205, pt of §2; Supp, §98H-2; HRS §205-2; am L 1969, c 182, §5; am L 1975, c 193, §3; am L 1977, c 140, §1 and c 163, §1; am L 1980, c 24, §2; am L 1985, c 298, §2; am L 1987, c 82, §3; am L 1989, c 5, §2; am L 1991, c 191, §1 and c 281, §2; am L 1995, c 69, §8; am L 2005, c 205, §2; am L 2006, c 237, §3 and c 250, §1; am L 2007, c 159, §2; am L 2008, c 31, §2 and c 145, §2; am L 2011, c 217, §2; am L 2012, c 97, §6, c 113, §2, c 167, §1, and c 329, §3; am L 2014, c 55, §2; am L 2015, c 228, §2; am L 2016, c 173, §2; am L 2017, c 12, §15 and c 129, §2; am L 2018, c 49, §3; am L 2022, c 131, §2]

Note

The 2018 amendment applies to permit applications filed with the State or county after December 31, 2018. L 2018, c 49, §6(2).

Cross References

Districts, generally, see chapter 4.

Attorney General Opinions

Uses within agricultural districts. Att. Gen. Op. 62-33, 62-38.

Dwellings permissible under this section are further defined by regulations established under §205-7. Att. Gen. Op. 75-8.

Law Journals and Reviews

Avoiding the Next Hokuli`a: The Debate over Hawai`i's Agricultural Subdivisions. 27 UH L. Rev. 441 (2005).

Case Notes

Cited: 134 H. 187, 339 P.3d 685 (2014).

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