

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

HO‘OULU-LĀHUI

CHANGE OF ZONE APPLICATION NO. PL-REZ-2024-000070

Upon careful review of the request against the guidelines for granting a change of zone, the Planning Director is recommending that **a favorable recommendation of the Change of Zone request be forwarded to the County Council.** Since this recommendation is made without the benefit of public testimony, the Planning Director reserves the right to modify and/or alter this position based upon additional information presented at the public hearing. This favorable recommendation is based on the following findings:

The applicant is requesting a Change of Zone from an Agricultural 10-acre (A-10a) zoning district to an Agricultural 5-acre (A-5a) zoning district for a 12.043-acre portion of 22.349 acres of land. This request will not change permitted uses under the agricultural zoning, rather it will change the possible density of the zoning, allowing the subdivision of the 12.043-acres into two lots.

The applicant, Ho‘oulu-Lāhui is a non-profit organization that supports the Kua O Ka Lā New Century Public Charter School (hereinafter KOKL), which has been operating on the subject property after its previous facilities were destroyed in the 2018 Kīlauea lava flow in Puna. The purpose of the rezoning request is to facilitate the subdivision of the land and allow the applicant to acquire a 5-acre portion of the larger property that currently houses the school. The rezoning is necessary to meet the minimum lot size requirements for subdivision, enabling KOKL to transition from a lease arrangement to fee-simple ownership, ensuring long-term stability for the school.

The remainder of the property, including Nani Mau Gardens, will continue its existing use under the ownership of Nani Mau Garden Group LLC. Both Nani Mau Gardens and KOKL are operating under an existing Special Permit (SPP No. 73-159), which was amended by the State Land Use Commission in 2009.

Upon successful rezoning, the applicant will apply to subdivide the property immediately with plans to complete it by early 2026. Since no new development is planned, costs will be minimal and limited to necessary subdivision improvements.

During this process, KOKL will continue operating under its existing Special Permit, and once the rezoning, subdivision, and land acquisition are complete. Upon successful subdivision, the school intends to apply for a new Special Permit to formally support its continued operations, including additional office space and expanded community education opportunities. Additionally, the existing Special Permit will need to be amended to remove charter school uses from the Nani Mau Gardens portion of the property.

To consider an area for any type of zoning designation, the applicable goals, policies, and standards of the General Plan must be adequately addressed. It is only through such a comprehensive policy analysis approach that evaluations and decisions can be made to better time and stage developments to achieve growth determined by the General Plan and related planning documents. The implications of these evaluations and decisions must also be considered as they may have an impact on similar areas in the County.

The change of zone request from an Agricultural 10-acre (A-10a) zoning district to an Agricultural 5-acre (A-5a) zoning district conforms to applicable goals, policies, and standards of the General Plan. The subject, 23.349-acre parcel is generally rectangular in shape and is situated at an elevation of 200 feet above sea level. The property has been improved over the years with several structures, including event and visitor facilities supporting the Nani Mau Gardens botanical garden, arboretum, restaurant, special events and related parking. Structures within the 5-acre portion of the property that supports the KOKL school uses include buildings that have been repurposed as classroom and office buildings, a storage shed, two greenhouses, a dwelling, and a beauty salon. While the applicant states that it has yet to be determined whether the dwelling and beauty salon will be used for future school uses, a site visit indicated that the former beauty salon has already been converted into the school's office building.

The subject property and surrounding areas are predominantly zoned for agricultural use, with a mix of A-1a, A-3a, A-5a, and A-10a zoning designations. The neighboring properties to the south, east, and west consist primarily of single-family dwellings with some light agricultural uses, while parcels to the north are currently vacant.

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. The Zoning Code also allows for non-agricultural uses to be permitted with a Special Permit, which has been secured for school use on the subject property.

The General Plan is intended to be used as a policy guide for the coordinated growth and development of all sectors of the County. It sets forth goals, policies, standards, and courses of action to accommodate growth without congestion, to designate and preserve the lands needed for residential use, commercial and visitor services, industry, agriculture, and open space, and to coordinate these uses with the County's service and circulation systems. The overall goals, policies and standards are set forth to physically plan the lands in the County in the best interest of the island's residents. Land Use is one of the principal focal points of public concern and policy. The Land Use Element provides the primary basis for direct control and guidance of publicly and privately owned resources. The request conforms to the following goals and policies of the General Plan Land Use and Education Elements:

- *Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.*
- *Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.*
- *Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.*
- *Zoning requests shall be reviewed with respect to General Plan designation, district goals, regional plans, State Land Use District, compatibility with adjacent zoned uses, availability of public services and utilities, access, and public need.*
- *Encourage continual improvements to existing educational facilities.*

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical

relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County.

The subject property is designated Low Density Urban (ldu) by the LUPAG Map which includes residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre. While the requested A-5a zoning is not explicitly consistent with the LUPAG's urban designation, the rezoning is being requested to create a separate lot for the continued school use, which is a public use.

The Hilo Community Development Plan (HCDP) identifies the area as "Alternative Residential Expansion", however, the HCDP was never adopted as an ordinance and has not been updated since 1975, thus some of these land use designations may be obsolete, making the request's consistency with the General Plan more important.

Based on the preceding, the proposed A-5a zoning would be consistent with the General Plan.

All essential utilities and services are available to the site. Access to the subject property is from Makalika Street, a County-owned and maintained roadway with 20-foot-wide pavement and grassed shoulders within a 50-foot-wide right-of-way via an existing driveway. When the property is subdivided, the property retained by Nani Mau Gardens will contain the existing driveway access to Makalika Street, along with part of the parking lot. According to the applicant an easement will be provided to allow for the continued shared use of the existing driveway and parking lot. Thus, no improvements are planned to the existing access and parking configuration. The preceding will be added as a condition of approval.

A Traffic Impact Analysis (TIAR) conducted for the 2009 Special Permit amendment that allowed the operation of a school on the property identified challenges with left turns onto Makalika Street from the highway during morning peak hours, leading to a recommendation for staff, parents, and buses to use Railroad Avenue instead. A condition of the Special Permit requires periodic reminders to parents and staff to use Railroad Avenue to access the property. According to the applicant, the current school traffic volume remains low, generating only 26 peak-hour trips, as 90% of the current 140 students arrive and leave on buses or carpools. The 26 peak hour trips are below the 50-trip threshold that would require a new TIAR, however, a condition of approval will

require a TIAR should the applicant develop a use that will generate over 50 peak-hour trips.

Based on the proposed A-5a zoning, the Department of Public Works (DPW) recommends that the applicant provide improvements to the property's Makalika and Awa Street frontages consisting of, but not limited to paved shoulders and swales, drainage improvements, and any required utility relocation, meeting the requirements of the Americans with Disabilities Act and install streetlights and traffic control devices as may be required by the DPW Traffic Division. The Director is not inclined to require these improvements as the school has been operating on the property for several years, there is no new construction currently planned, and the zoning change is only being requested to create a 5-acre lot for the school to own in fee.

DPW also recommends a drainage study to be prepared and any required drainage improvements to be constructed meeting with approval of DPW. Since the rezone area is already developed with school facilities, parking, and approved drainage systems, and no new development is currently proposed, a drainage study condition will be included. However, the study will only be required as part of the subdivision approval process if required by DPW.

According to the Department of Water Supply (DWS), the applicant submitted water demand calculations for the school that estimated average daily water demand of 1,738 gallons per day, or 5 additional units of water. This additional water can be made available from an existing 12-inch water line within Makalika Street, which fronts the subject parcel. DWS indicated that this additional service would require the installation of a 1-inch meter with a 1 ½-inch service lateral. DWS requests that the applicant pays a water commitment deposit for the additional water units and they will be required to construct and dedicate water system improvements and pay required facilities charges as part of the subdivision process. The preceding will be added as a condition of approval.

The subject property is not serviced by the County's sewer system, thus all existing development on the property has been developed with individual wastewater systems (IWS) meeting with the requirements of the State Department of Health (DOH). A condition of approval will require that wastewater disposal for any new development on the property similarly meets DOH standards.

Solid waste will be handled by a commercial hauler and disposed of at authorized

landfill sites, all essential utilities are available to the property and police, fire and medical facilities are located nearby in Hilo. A condition of approval will be included to require the applicants to meet all applicable County, State and Federal laws, rules, regulations, and requirements.

There are no severe geological or topographical problems for the property that cannot be properly rectified, or which would render the land unusable. The subject property is in an area designated as Zone “X”, an area determined to be an area of minimal flood hazard, on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). A condition of approval will be added to require that all development generated runoff will be disposed of on-site and not directed toward any adjacent properties and all earthwork activity, including grading, grubbing, and stockpiling, and the project will conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai‘i County Code.

The request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management Area. The subject property is located approximately 4.5 miles from the nearest shoreline, is not situated within the Special Management Area and will not be impacted by coastal hazards and beach erosion. There is no designated public access to the mountains or the shoreline that runs through the property. The proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai‘i Revised Statutes.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai‘i State Supreme Court’s “PASH” and “*Ka Pa‘akai O Ka‘Aina*” decisions, the issue relative to Native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

- Investigation of valued resources: No formal archaeological or cultural studies were conducted on the subject property because the subject property has a history of development and use as the Nani Mau Gardens and, more recently, as a charter school, which has significantly altered its original condition. A report entitled, “*A Biological Survey of 5-acre portion of TMK (3) 2-2-048: 013 South Hilo District,*

Island of Hawai‘i” was conducted in June 2024 by Ron Terry, Ph.D., of Geometrician Associates. This report covered the property designated for KOKL Public Charter School.

- The valued cultural, historical, and natural resources found in the rezoning area: No known archeological or historical features exist on the subject property nor is the property listed as a historic site on the State or National Register of Historic Places.

Given the site’s prior development history as the Nani Mau Gardens and its current use as a charter school, no known ongoing Native Hawaiian traditional and customary practices have been identified within the project area. Additionally, the lack of designated public access limits traditional gathering or subsistence activities that might typically occur on undeveloped lands.

The biological survey identified 132 plant species, with only four native species present (moa, hapu‘u fern, māmaki, and pycneus sedge). None are rare or endangered. The fauna observed on-site were all non-native, though endangered Hawaiian hawks have been observed in the broader area. Other potential visitors include Hawaiian hoary bats and nēnē, but no nesting habitat was found.

- Possible adverse effect or impairment of valued resources: Native plants and/or endangered species are unlikely to be impacted by the proposed development due to the already impacted property and the fact that no further land alteration or development are proposed at this time. A letter from the State Historic Preservation Division (SHPD) dated January 11, 2006, determined that no historic properties would likely be affected by the existing or proposed uses of the site, however, a condition of approval will be included to protect subsurface historic resources, should they be found.
- Feasible actions to protect native Hawaiian rights: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights.

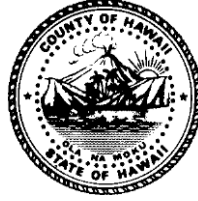
Lastly, this recommendation is made with the understanding that the applicants remain responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the

subject property. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many 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 findings, the request for a change of zone from an Agricultural 10-acre (A-10a) zoning district to an Agricultural 5-acre (A-5a) zoning district would result in an appropriate land use pattern that would further benefit the general public.

The accompanying draft bill to amend Section 25-8-33 (City of Hilo District Zone Map), Article 8, Chapter 25 (Zoning) of the Hawai'i County Code, is provided for your favorable consideration. Please note the proposed conditions of approval attached to the draft bill.

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING) OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), BY CHANGING THE ZONE MAP CLASSIFICATION FROM AGRICULTURAL - 10 ACRES (A-10a) TO AGRICULTURAL - 5 ACRES (A-5a) AT PANA'EWA, HILO, HAWAI'I, COVERED BY TAX MAP KEY: 2-2-048:013.

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

SECTION 1. Section 25-8-33, Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Pana'ewa, Hilo, Hawai'i, shall be Agricultural-5 acres (A-5a).

Beginning at the northwest corner of this parcel of land, being the southwest corner of Lot 4, Grant 130032 to Yoshiro Kami Itusuko Kami, said Pana'ewa Farm Lots on the east line of Awa Street, 50 ft. wide, said Point of Beginning referred to Government Survey Triangulation Station "HALAI" being 15,875.13 feet south and 14,965.65 feet west, and running by azimuths measured clockwise from true South:

- | | | | | | |
|----|------|-----|-----|--------|---|
| 1. | 251° | 00' | 00" | 814.60 | feet along Lot 4, thence; |
| 2. | 341° | 00' | 00" | 644.00 | along remainder of Lot 5, thence; |
| 3 | 71° | 00' | 00" | 814.60 | feet along north line of Makalika Street, 50 feet wide, thence; |
| 4. | 160° | 00' | 00" | 644.00 | feet along said Awa Street to the Point of Beginning enclosing an area of 12.043 acres, more or less. |

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 (2016 Edition, as amended), the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
- (2) Reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to:
 - (A) Protection of the public from the potentially deleterious effects of the proposed use, or
 - (B) Fulfillment of the need for public service demands created by the proposed use.

SEE ATTACHED CONDITIONS

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:

COUNCIL MEMBER, COUNTY OF HAWAI'I

_____, Hawai'i

Date of Introduction:

Date of 1st Reading:

Date of 2nd Reading:

Effective Date:

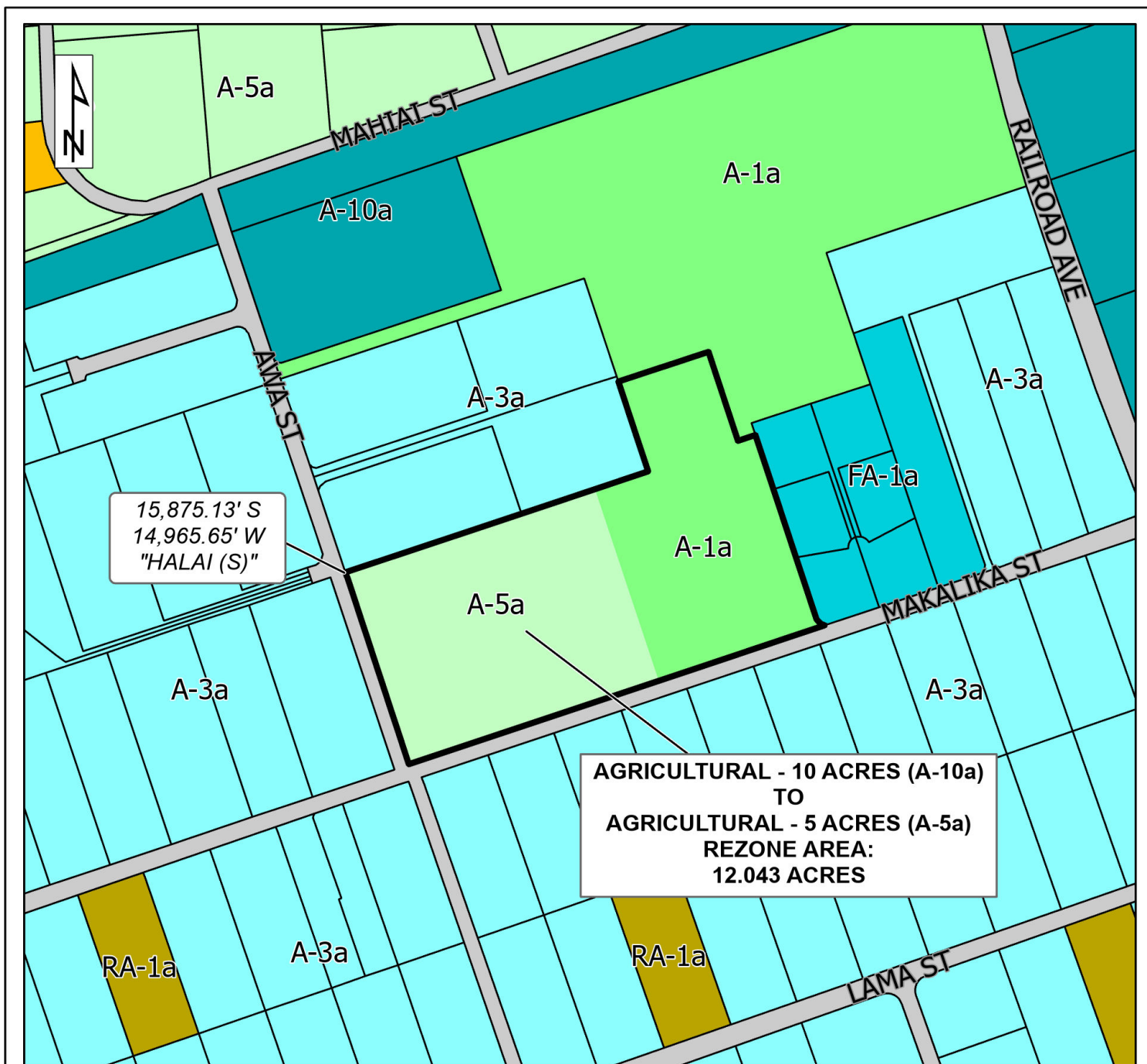
HO'OUU-LĀHUI
CHANGE OF ZONE APPLICATION NO. PL-REZ-2024-000070
CONDITIONS OF APPROVAL

- A. The applicant(s), its successor(s), or assign(s) ("Applicant") shall be responsible for complying with all the stated conditions of approval.
- B. The Applicant shall comply with all requirements and conditions of Special Permit No. 73-159 until it is either amended to remove the school use or revoked.
- C. A water commitment deposit shall be paid to the Department of Water Supply (DWS) within 180 days from the effective date of this ordinance in accordance with Rule 5 of DWS's Rules and Regulations. The Applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
- D. Prior to receipt of Final Subdivision Approval, the Applicant shall construct necessary water system improvements as required by the Department of Water Supply (DWS), which shall include, but not be limited to the installation of a service lateral that will accommodate a 1-inch water meter.
- E. Final Subdivision Approval shall be completed within five (5) years from the effective date of this ordinance. The time during which required plans, reports, studies, or relevant permit applications are under review for approvals by government agencies shall not count towards the deadline established in the ordinance. To justify this tolling, the Applicant shall provide evidence of the excluded time period to the planning department for its review and approval, which shall consist of dates obtained from a government agency website, permitting program, or office indicating when the required plans, reports, studies, or permit applications were submitted, approved, denied, or returned by the government agency.
- F. Based on the Applicant's representation to use the existing accesses from Makalika Street, the Applicant shall secure perpetual grant of easement for shared use of the parking lot and access to Makalika Street with the remainder lot prior to the issuance of Final Subdivision Approval.

- G. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentary Control, of the Hawai'i County Code.
- H. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties. If required by the Department of Public Works (DPW), a drainage study shall be prepared and the recommended drainage system shall be constructed meeting the approval of the Department of Public Works, Engineering Division, prior to the issuance of Final Subdivision Approval.
- I. Should the Applicant develop a land use which the Planning Department, in consultation with the Department of Public Works, determines will generate over 50 peak hour trips, a Traffic Impact Analysis Report (TIAR) shall be submitted for review and approval by the Department of Public Works prior to Final Plan Approval. The Applicant shall implement, when required by the Department of Public Works, at no cost to the County, any transportation system improvements that may be deemed necessary by the Department of Public Works.
- J. The method of sewage disposal shall meet with the requirements of the Department of Health.
- K. 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 the department of Land and Natural Resources- State Historic Preservation Division (DLNR-SHPD) at (808) 933-7651. Subsequent work shall proceed upon receipt of an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- L. 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 Fees Ordinance.

- M. The Applicant shall comply with all applicable County, State and Federal codes, laws, rules, regulations, and requirements.
- N. An initial extension of time for the performance of conditions within this ordinance may be requested in accordance with Section 25-2-44, subsections (c) and (d), of the Hawai'i County Code.
- O. If any conditions have not been completed by the deadline, or if a time extension request has not been submitted in accordance with section 25-2-44(c), the planning department shall inform the Applicant that the ordinance is null and void without further action by the County. In that event, the zoning designation of the property(s) affected by the ordinance shall automatically revert to its immediate prior zoning designation.



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP) ARTICLE 8,
CHAPTER 25 (ZONING) OF THE HAWAII COUNTY CODE 1983 (2016 EDITION, AS AMENDED),
BY CHANGING THE ZONE MAP CLASSIFICATION FROM
AGRICULTURAL - 10 ACRES (A-10a) TO
AGRICULTURAL - 5 ACRES (A-5a)
AT PANA'EWA, HILO, HAWAII

MAP PREPARED BY:
COUNTY OF HAWAII, PLANNING DEPARTMENT

TMK: (3) 2-2-048:013

DATE: January 6, 2025

EXHIBIT "A"

Ho'oulu-Lāhui
Map: