

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 46
(Draft 2)

ORDINANCE NO. 97 54

AN ORDINANCE AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO FAMILY AGRICULTURAL (FA-3a) AT KALOKO, NORTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-3-24:12.

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

SECTION 1. Section 25-8-2, Article 8, 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 Kaloko, North Kona, Hawaii, shall be Family Agricultural (FA-3a):

Beginning at the Northeasterly corner of this parcel of land, being also the Northwesterly corner of Lot 4 of Block 2 of Kaloko Mauka Subdivision, Increment 1 (File Plan 994) and being a point on the Southerly side of Kaloko Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 12,163.48 feet South and 2,647.77 feet West and running by azimuths measured clockwise from True South:

1. 45° 10' 1,399.98 feet along Lot 4 of Block 2 of Kaloko Mauka Subdivision, Increment 1 (File Plan 994) and along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha to a point;
2. 135° 10' 563.09 feet along Lot 2 of Block 2 of Kaloko Mauka Subdivision, Increment 1 (File Plan 994) and along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha to a point;

Thence, for the next three (3) courses following along the Southeasterly and Southerly sides of Kaloko Drive:

3. 194° 20' 291.67 feet to a point;

Thence, following on a curve to the right with a radius of 760.00 feet, the chord azimuth and distance being:

4. 254° 45' 1,321.85 feet to a point;
5. 315° 10' 60.00 feet to the point of beginning and containing an area of 22.150 Acres.

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

SECTION 2. This change in district classification is conditioned upon the following:

- A. The applicants, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Final Subdivision Approval of the proposed agricultural subdivision within the subject property shall be secured from the Planning Director within five (5) years from the effective date of this ordinance. The applicants shall reserve the following easements and special setbacks in perpetuity for purposes of protecting and maintaining naturally forested areas and shall delineate such easements and setbacks on plans submitted for subdivision review:
 1. A 60-foot wide "forest reserve easement" along the existing public street frontage of the subject property, exclusive of access points permitted by the Department of Public Works;
 2. A 30-foot "forest reserve easement" along all lot lines not covered by the 60-foot easement; and

3. A 100-foot wide structural setback in lieu of the required 30-foot setback along the subject property's public street frontage to provide an additional buffer.
- C. Restrictive covenant(s) in the deeds of all the proposed agricultural lots within the subject property fronting existing roads shall specify and uphold the easements and setbacks set forth in Condition B. The restrictive covenant(s) shall also specify that no less than fifty percent (50%) of the entire lot area shall be retained in forest. A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicants and the County and recorded with the Bureau of Conveyances in conjunction with the issuance of Final Subdivision Approval.
- D. Restrictive covenant(s) in the deeds of all the proposed agricultural lots within the subject property shall prohibit the construction of a second dwelling unit on each lot. A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicants and the County and recorded with the Bureau of Conveyances in conjunction with the issuance of Final Subdivision Approval.
- E. Restrictive covenant(s) in the deeds of all the proposed agricultural lots within the subject property shall require the individual owners of the proposed lots to file a conservation plan with the Kona Soil and Water Conservation District, with a copy of the approved plan submitted to the Planning Department, prior to any land alteration activities within any of the respective agricultural lots. A copy of the proposed covenant(s) to be recorded with the Bureau of

Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicants and the County and recorded with the Bureau of Conveyances in conjunction with the issuance of Final Subdivision Approval.

- F. A drainage study of the subject property, if required, shall be prepared for review and approval by the Department of Public Works, prior to submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.

- G. An archaeological study/survey of the subject property shall be prepared and approved by the Planning Department, in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD), prior to the submittal of plans for subdivision review or any land alteration activity, whichever occurs first. Should significant historical sites be found within the subject property which merit preservation or the implementation of mitigative measures, the applicants shall prepare and submit an archaeological preservation/mitigation plan for review and approval by the Planning Director, in consultation with the DLNR-HPD, prior to the issuance of Final Subdivision Approval or any land alteration activity of the subject property, whichever occurs first.

- H. 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.

- I. Access(es) to the subject property from Kaloko Drive shall be constructed meeting with the approval of the Department of Public Works.
- J. 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 residential 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 proposed residential lots in each such increment. The fair share contribution may be in a form of cash, land, facilities, or any combination thereof acceptable to the director in consultation with the affected agencies, provided that the fair share contribution to address the potential road impacts shall be in the form of cash and shall be applied to improving the Kaloko Drive/Hawaii Belt Road intersection. The fair share contribution 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 seven (7) residential lots, the indicated total fair share contribution is **\$50,674.12**, 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 J. The fair share contribution shall be allocated as follows:

1. \$3,490.85 per lot for an indicated total of **\$24,435.95** to the County to support park and recreational improvements and facilities;

2. \$168.40 per lot, for an indicated total of **\$1,178.80** to the County to support police facilities;
3. \$332.61 per lot, for an indicated total of **\$2,328.27** to the County to support fire facilities;
4. \$145.62 per lot, for an indicated total of **\$1,019.34** to the County to support solid waste facilities; and
5. \$3,101.68 per lot, for an indicated total of **\$21,711.76** 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 the change of zone, 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 land, 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. For purposes of administering Condition J, the fair market value of land contributed or the cost of any improvements required or made in lieu of the fair share contribution shall be subject to the review and approval of the director, upon consultation with the appropriate agencies.

- K. Comply with applicable laws, rules, regulations and requirements of other affected agencies for approval of the development within the subject property.
- 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 Fee Ordinance.

- M. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:
1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, its successors or assigns, and that are not the result of their fault or negligence.
 2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 3. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.
 4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- N. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the subject property to its original or more appropriate designation.

SECTION 3. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

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

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii

Date of Introduction: March 19, 1997

Date of 1st Reading: March 19, 1997

Date of 2nd Reading: April 2, 1997

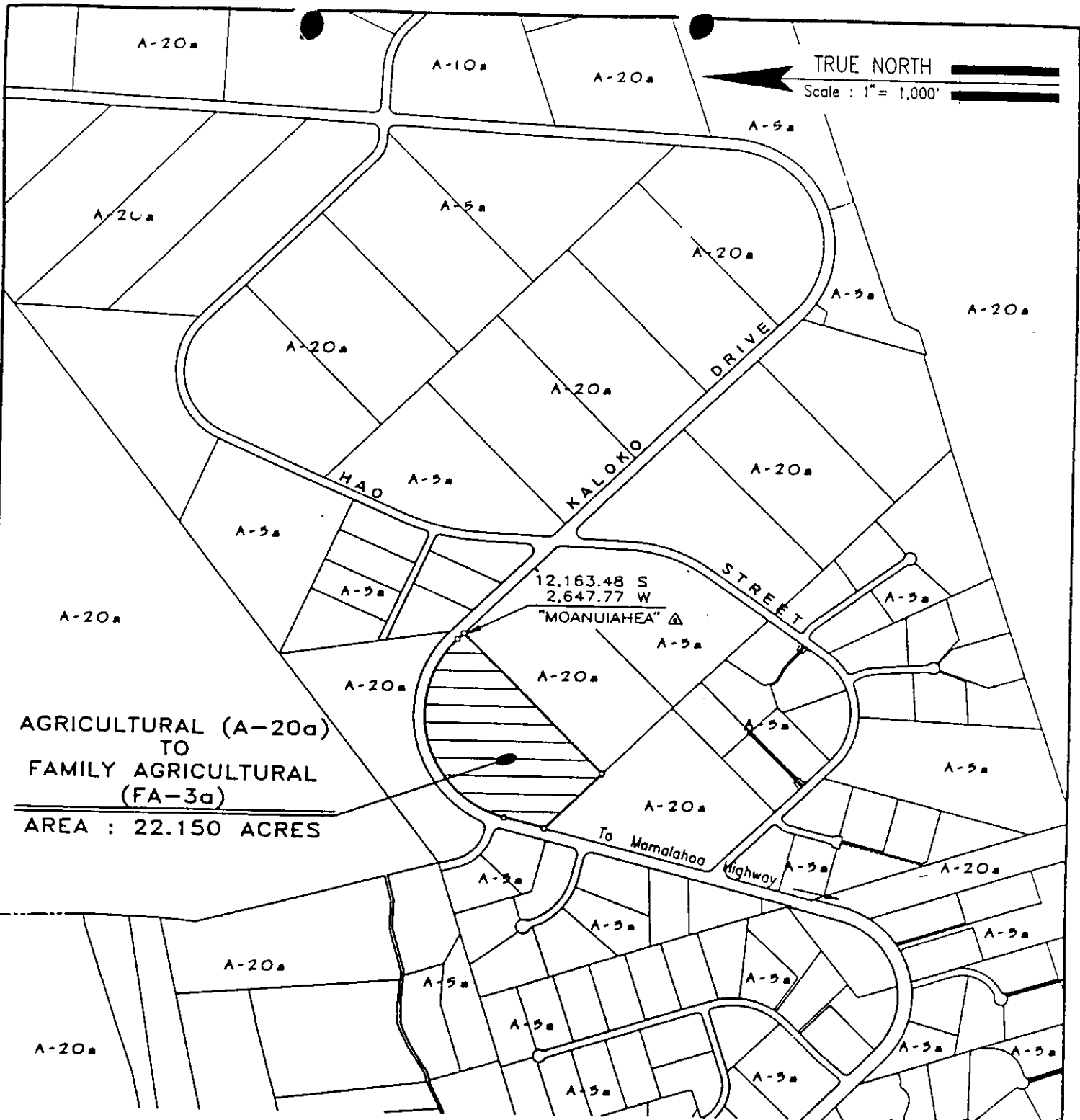
Effective Date: April 7, 1997

APPROVED AS TO FORM AND LEGALITY



DEPUTY CORPORATION COUNSEL

DATED: 4/4/97



AGRICULTURAL (A-20a)
TO
FAMILY AGRICULTURAL
(FA-3a)
AREA : 22.150 ACRES

AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA DISTRICT ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO FAMILY AGRICULTURAL (FA-3a) AT KALO KO, NORTH KONA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT
COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

(DRAFT 2) RECEIVED

Introduced by: Bobby Jean Leithead-Todd
 Date Introduced: March 19, 1997
 First Reading: March 19, 1997
 Published: March 27, 1997

REMARKS:

Second Reading: April 2, 1997
 To Mayor: April 3, 1997
 Returned: April 7, 1997
 Effective: April 7, 1997
 Published: April 15, 1997

REMARKS:

'97 APR 7 PM 3 51

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Leithead-Todd	X			
Ray	X			
Reynolds	X			
Santangelo	X			
Smith	X			
Tyler	X			
Yagong	X			
	9	0	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Leithead-Todd	X			
Ray	X			
Reynolds	X			
Santangelo	X			
Smith	X			
Tyler	X			
Yagong	X			
	9	0	0	0

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

APPROVED AS TO
 FORM AND LEGALITY:

Fredrick M. Morrison
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 4/4/97

James K. ...
 COUNCIL CHAIRMAN

Donald ...
 COUNTY CLERK

Approved/Disapproved this 7 day
 of April, 1997

Bill ...
 MAYOR, COUNTY OF HAWAII

Bill No.: 46 (Draft 2)
 Reference: C-160/PC-33
 Ord. No.: 97 54