

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 96  
(Draft 3)

ORDINANCE NO. 97 102

AN ORDINANCE AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA DISTRICTS ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO SINGLE FAMILY RESIDENTIAL (RS-15) AT KAHUA 1ST, NORTH KOHALA, HAWAII, COVERED BY TAX MAP KEY 5-9-01:08.

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

SECTION 1. Section 25-8-7, 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 Kahua 1st, North Kohala, Hawaii, shall be Single Family Residential (RS-15):

Beginning at a point at the North corner of this piece of land, being also the East corner of portion of Government land of Pahinahina and on the Southwesterly side of Kawaihae Mahukona Road, Section II, Project No. A-270-01-62, the coordinates of which referred to Hawaii State Plane Coordinate System, Zone 1 being 453,109.73 feet North and 375,771.74 feet East, and running by true azimuths referred to the Meridian of Government Survey Triangulation Station "PUU PILI" and measured clockwise from South:

- |    |                |             |                                                         |
|----|----------------|-------------|---------------------------------------------------------|
| 1. | 322° 00' 30.5" | 24.31 feet  | along the Southwesterly side of Kawaihae Mahukona Road; |
| 2. | 52° 00' 30.5"  | 20.00 feet  | along the Southwesterly side of Kawaihae Mahukona Road; |
| 3. | 322° 00' 30.5" | 550.00 feet | along the Southwesterly side of Kawaihae Mahukona Road; |
| 4. | 52° 00' 30.5"  | 10.00 feet  | along the Southwesterly side of Kawaihae Mahukona Road; |

5.	322°	00'	30.5"	100.00 feet	along the Southwesterly side of Kawaihae Mahukona Road;
6.	232°	00'	30.5"	20.00 feet	along the Southwesterly side of Kawaihae Mahukona Road;
7.	322°	00'	30.5"	400.00 feet	along the Southwesterly side of Kawaihae Mahukona Road;
8.	232°	00'	30.5"	20.00 feet	along the Southwesterly side of Kawaihae Mahukona Road;
9.	322°	00'	30.5"	500.00 feet	along the Southwesterly side of Kawaihae Mahukona Road;
10.	52°	00'	30.5"	40.00 feet	along the Southwesterly side of Kawaihae Mahukona Road;
11.	322°	00'	30.5"	400.00 feet	along the Southwesterly side of Kawaihae Mahukona Road;
12.	232°	00'	30.5"	40.00 feet	along the Southwesterly side of Kawaihae Mahukona Road;
13.	322°	00'	30.5"	151.70 feet	along the Southwesterly side of Kawaihae Mahukona Road;
14.	26°	03'		889.95 feet	along Lot 9, as shown on Map 4 of Ld. Ct. Cons. 129;

Thence along highwater mark (vegetation line) as of January 7, 1993 for the next thirteen (13) courses, the direct azimuths and distances between points on said highwater mark being:

15.	136°	21'	40"	516.93 feet;
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16.	155° 00'	250.00 feet;	
17.	128° 30'	95.00 feet;	
18.	180° 20'	142.80 feet;	
19.	93° 00'	104.00 feet;	
20.	154° 05'	253.40 feet;	
21.	157° 15'	225.20 feet;	
22.	57° 40'	106.30 feet;	
23.	176° 35'	213.10 feet;	
24.	98° 00'	172.85 feet;	
25.	105° 20'	83.55 feet;	
26.	89° 00'	181.00 feet;	
27.	150° 20'	77.35 feet;	
28.	206° 50' 35"	1,075.00 feet	along portion of the Government land of Pahinahina to the point of beginning and containing an area of 37.880 acres, more or less.

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 applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

- B. The applicant, its successors or assigns shall be responsible for complying with all of the conditions of approval of the Special Management Area Use Permit for the subject property.
  
- C. The proposed development within the subject property shall consist of a maximum of fifty residential lots (not including roadway or other such common area lots). Final Subdivision Approval of the proposed residential subdivision within the subject property shall be secured from the Planning Director within five (5) years from the effective date of this ordinance.
  
- D. Restrictive covenants in the deeds of all proposed residential lots within the subject property shall prohibit the construction of a second dwelling unit on each lot. A copy of the proposed covenants to be recorded with the Bureau of Conveyances shall be submitted with the plans for subdivision to the Planning Director for review and approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances in conjunction with the issuance of Final Subdivision Approval.
  
- E. In conjunction with Final Subdivision approval, the applicant shall construct the necessary distribution pipeline, service laterals, and fire hydrants, meeting with the requirements of the Department of Water Supply. No building permit for any of the residential structures shall be issued until units of water are available and committed to the subject property, as represented in the applicant's agreement with the Kohala Ranch Water Company (formerly Kohala Joint Venture).
  
- F. Access to the subject property from Akoni Pule Highway and any improvements within the Akoni Pule Highway shall be constructed prior to Final Subdivision Approval meeting with the requirements and approval of the State Department of Transportation.

- G. Roadway connections to the adjoining parcel of the subject property's southeastern boundary shall be provided meeting with the approval of the Department of Public Works and shall be delineated on the final subdivision plat map for the subject property.
- H. All interior roadways within the subject property shall be constructed meeting with the requirements of Chapter 23 of the Subdivision Code and with the approval of the Department of Public Works.
- I. All electrical and communication lines within the subject property shall be placed underground.
- J. 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 or bonded meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.
- K. The applicant, its successors or assigns shall prepare a Solid Waste Management Plan prior to securing Final Subdivision Approval for the proposed development within the subject property meeting with the approval of the Department of Public Works. A copy of the approved Plan shall be submitted to the Planning Director.
- L. To ensure that the goals and policies of the Housing Element of the General Plan are implemented, the applicant shall secure the concurrence of the Office of Housing and Community Development that the applicant's affordable housing requirements, if any, have been mutually agreed to prior to Final Subdivision Approval.

- M. A Data Recovery Plan and Preservation Plan shall be prepared for the review and approval by the Planning Director in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD). Proposed mitigation treatment (preservation in place or disinternment/reinternment) for burial sites within the subject property shall be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director prior to submitting plans for subdivision review and prior to any approval for any land alteration permits.
- N. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
- O. The applicant shall develop and submit a comprehensive public access plan for the subject property for review and approval to the Planning Director, in consultation with the Department of Land and Natural Resources in conjunction with Final Subdivision Approval. The public access plan shall provide for mauka-makai and lateral shoreline pedestrian accessways, public parking stalls for users of the shoreline area, signage, and restrictions on use (if any). Such public access improvements shall be completed prior to Final Subdivision Approval for any portion of the subject property.
- P. 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 additional 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. 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 fifty (50) residential lots, the indicated total fair share contribution is **\$361,958.00**, 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 P. The fair share contribution shall be allocated as follows:

1. **\$3,490.85 per lot, for an indicated total of \$174,542.50 to the County to support park and recreational improvements and facilities;**
2. **\$168.40 per lot, for an indicated total of \$8,420.00 to the County to support police facilities;**
3. **\$332.61 per lot, for an indicated total of \$16,630.50 to the County to support fire facilities;**
4. **\$145.62 per lot, for an indicated total of \$7,281.00 to the County to support solid waste facilities;**

5. \$3,101.68 per lot, for an indicated total of **\$155,084.00** 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 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 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 providing and constructing the improvements required in Condition F shall be credited against the sum specified in Condition P(5) for road and traffic improvements and Condition O shall be credited against the sum specified in Condition P(1) for parks and recreation. For purposes of administering Condition P, 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.

- Q. In lieu of actual construction of infrastructural improvements as required under Conditions E, F, H, J, and O, the applicant may enter into an agreement with the County to assure the County that the infrastructural improvements will be constructed together with the appropriate bond, surety or other security deemed acceptable by the Planning Director or appropriate agencies and approved by the Corporation Counsel. Upon execution of such agreement and/or filing of the security with the County, final subdivision approval for the subject property or portions thereof shall be granted prior to the actual construction of required infrastructural improvements.



- R. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the easements of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- S. Comply with applicable laws, rules, regulations and requirements of other affected agencies for approval of the proposed development within the subject property, including the Department of Health.
- T. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the ordinance. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. 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.
- U. 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).

V. 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

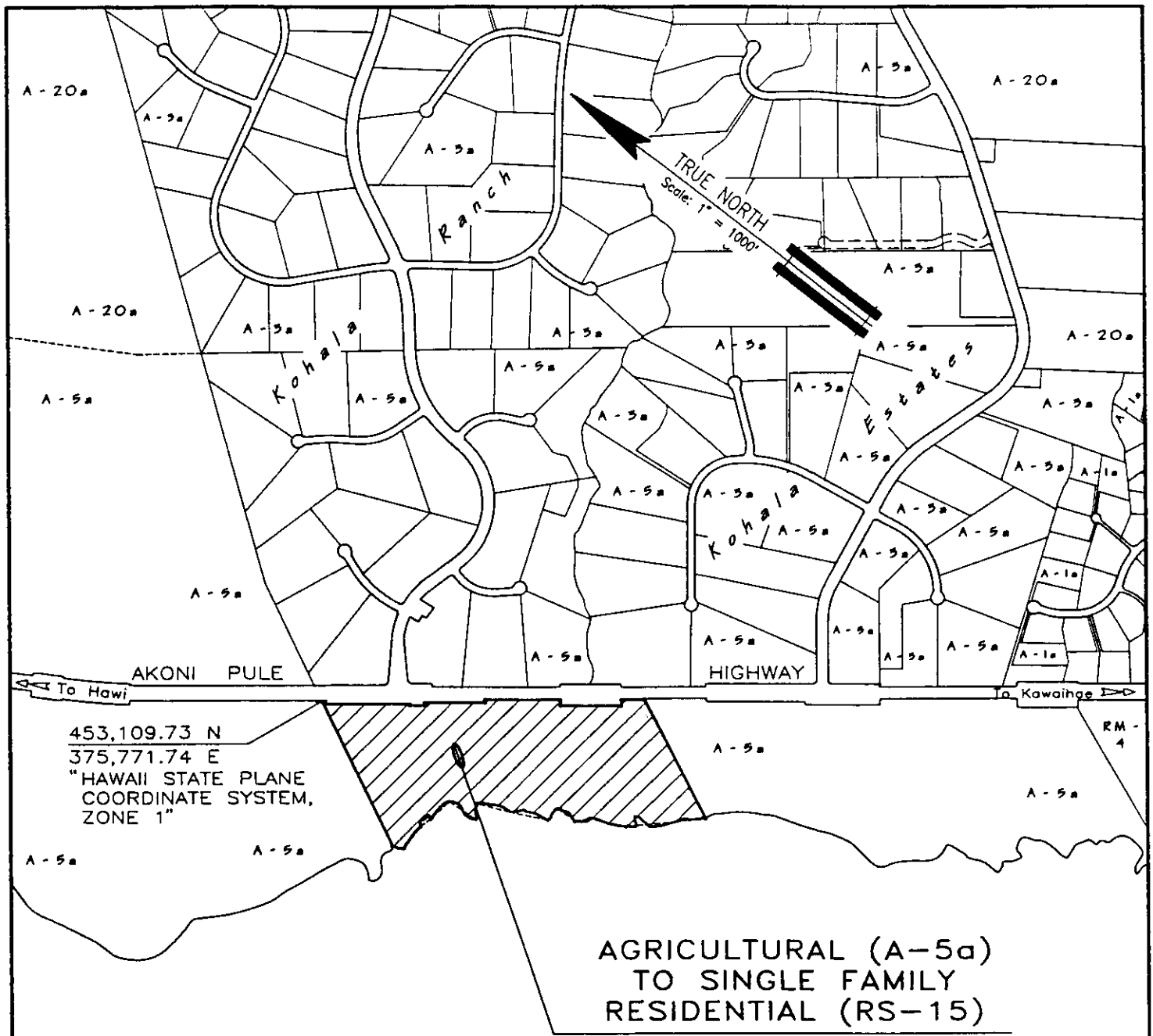
Date of Introduction: June 18, 1997  
Date of 1st Reading: June 18, 1997  
Date of 2nd Reading: July 2, 1997  
Effective Date: July 14, 1997

APPROVED AS TO FORM AND LEGALITY



DEPUTY CORPORATION COUNSEL

DATED: 7/8/97



## AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA DISTRICTS ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO SINGLE FAMILY RESIDENTIAL (RS-15) AT KAHUA 1ST, NORTH KAHALA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT  
COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

RECEIVED

'97 JUL 15 AM 8 46

(DRAFT 2)

Introduced By: Bobby Jean Leithead-Todd (B/R)  
 Date Introduced: June 18, 1997  
 First Reading: June 18, 1997  
 Published: June 25, 1997

REMARKS:

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

Second Reading: July 2, 1997  
 To Mayor: July 7, 1997  
 Returned: July 15, 1997  
 Effective: July 14, 1997  
 Published: July 22, 1997

REMARKS:

(DRAFT 3)

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	
	8	0	1	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 Kanihina*  
 DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII

Date 7/8/97

Approved/Disapproved this 14 day  
 of July 1997

*Heard*  
 MAYOR, COUNTY OF HAWAII

*James C. ...*  
 COUNCIL CHAIRMAN  
*Donald ...*  
 COUNTY CLERK

Bill No.: 96 (Draft 3)  
 Reference: C-330.01/PC-61  
 Ord. No.: 97 102