

ORDINANCE NO. 02 101

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI‘I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-1a) TO MULTIPLE FAMILY RESIDENTIAL (RM-4) AT WAIAHA 1<sup>ST</sup>, NORTH KONA, HAWAI‘I, COVERED BY TAX MAP KEY 7-5-17: PORTION OF 7.

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

SECTION 1. Section 25-8-3, Article 8, Chapter 25 (Zoning Code) of the Hawai‘i County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Waiaha 1<sup>st</sup>, North Kona, Hawai‘i, shall be Multiple Family Residential (RM-4):

Beginning at the Northeasterly corner of this parcel of land, being the SE corner of Land Court, Lot 1 on the southwesterly side of Hualalai Road, the coordinates of said point of beginning referred to government survey Triangulation Station "KAILUA" (North Meridian) being 4,019.90 feet South and 5,797.91 feet East and running by azimuths measured clockwise from True South:

- |    |      |     |     |             |  |
|----|------|-----|-----|-------------|--|
|    |      |     |     |             | Thence, along the Southwesterly side of Hualalai Road for the following three (3) courses; |
| 1. | 328° | 29' | 17" | 141.65 feet | to a point;  |
| 2. | 319° | 18' | 00" | 62.91 feet  | to a point;  |
| 3. | 304° | 42' | 24" | 11.46 feet  | to a point;  |

Thence, along Lot A, along a curve to the left having a radius of 50.00

					feet, the chord azimuth and distance being;
4.	91°	35'	47"	54.62 feet	to a point;
					Thence, along Lot A, along a curve to the left having a radius of 100.00 feet, the chord azimuth and distance being;
5.	35°	47'	40"	77.15 feet	to a point;
6.	13°	06'	10"	33.04 feet	along Lot A to a point;
					Thence, along Lot A, along a curve to the right having a radius of 160.00 feet, the chord azimuth and distance being;
7.	37°	00'	44"	129.69 feet	to a point;
8.	60°	55'	18"	144.12 feet	along Lot A to a point;
9.	89°	04'	30"	20.28 feet	along a Water Tank site (TMK: 7-5-17:15) to a point;
10.	359°	04'	30"	10.85 feet	along a Water Tank site (TMK: 7-5-17:15) to a point;
11.	60°	55'	18"	92.44 feet	along Lot A to a point;
					Thence, along Lot A, along a curve to the left having a radius of 900.00 feet, the chord azimuth and distance being;
12.	142°	59'	20"	248.44 feet	to a point;

- |     |              |             |  |
|-----|--------------|-------------|--|
| 13. | 135° 03' 20" | 145.67 feet | to a point;<br><br>Thence, along Lot A, along a curve to the right having a radius of 500.00 feet, the chord azimuth and distance being;       |
| 14. | 145° 39' 39" | 184.04 feet | to a point;  |
| 15. | 265° 37' 49" | 550.21 feet | along the remainder of Lot B, along Land Court Application 1666, Lot 1, Map 1 to a point;  |
| 16. | 268° 27' 49" | 95.35 feet  | along the remainder of Lot B, along Land Court Application 1666, Lot 1, Map 2 to the point of beginning and containing an area of 4.979 acres. |

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, 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.

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

- B. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this ordinance.
- C. Final Plan Approval for the proposed multiple family residential development and its related improvements shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-71 (c)(3), 25-2-72, 25-2-74 and 25-4-12 within five (5) years from the effective date of this ordinance. Plans shall identify proposed structures, fire protection measures, access roadway(s) and driveway(s), parking area(s) and landscaping associated with the proposed development.
- D. Primary access to the project site from Hualalai Road shall be via Road D as identified on plans submitted by the applicant as part of this Change of Zone Application. Direct primary access from the project site onto Hualalai Road shall be prohibited. Road E shall be limited to emergency uses only and shall be designed and constructed to standards meeting with the approval of the Department of Public Works and the State Department of Transportation.
- E. Road D, as identified on plans submitted with the applicant's Change of Zone Application, shall be designed and constructed to standards meeting with the approval of the Department of Public Works. The applicant shall design Road D so that a future physical connection with Lelehuna Street stub-out within the Kona Hillcrest Subdivision can be constructed to provide for pedestrian and bicycle access. This future connection may be used for emergency vehicles but shall be barricaded to prevent through public vehicular traffic. Perpetual easement(s) to allow for public access over and across Road D shall be provided in favor of and at no cost to the County of Hawai'i prior to issuance of a Certificate of Occupancy for any portion of the proposed development.

- F. The applicant shall provide improvements to Hualalai Road in the vicinity of the project site and its Hualalai Road-Road D intersection and dedicate such improvements to the County of Hawai'i prior to the issuance of a Certificate of Occupancy for any portion of the multiple family residential project. These improvements to Hualalai Road include the widening of Hualalai Road and its right-of-way; installation of a left-turn lane at its Road D intersection; curb, gutter and sidewalk improvements, and other improvements as may be required by the Department of Public Works.
  
- G. If required by the Director of Public Works, a drainage study of the project site and immediately surrounding area shall be provided prior to the issuance of Final Plan Approval. Drainage improvements within the project site, if required, shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
  
- H. The applicant shall submit a Solid Waste Management Plan for the development to the Department of Environmental Management for its review and approval. A copy of the approved Plan shall be submitted to the Planning Department prior to the issuance of Final Plan Approval.
  
- I. 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 – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.

- J. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code relating to Affordable Housing Policy. This requirement shall be approved by the County Housing Agency prior to final subdivision approval of each increment.
- K. The applicant shall make its fair share contribution to mitigate potential regional impacts of the subject project with respect to roads, parks and recreation, fire, police and solid waste disposal facilities. The amount of the fair share contribution shall be the sum which is the product of multiplying the number of multiple family residential units proposed to be constructed by the amounts allocated hereinbelow, 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 multiple family residential units in each such increment. The fair share contribution shall 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 **\$5,054.07** per multiple-family residential unit. Based upon the applicant's representation of intent to develop up to 52 multiple family residential units, the indicated total of fair share contribution is **\$262,811.64** for the multiple family residential units. However, the total amount shall be increased or reduced in proportion with the actual number of units according to the calculation and payment provisions set forth in this Condition K. The fair share contribution shall be allocated as follows:

1. \$2,493.03 per multiple-family residential unit for an indicated total of **\$129,637.56** to the County to support park and recreational improvements and facilities;
2. \$78.79 per multiple-family residential unit for an indicated total of **\$4,097.08** to the County to support police facilities;
3. \$242.37 per multiple-family residential unit for an indicated total of **\$12,603.24** to the County to support fire facilities;
4. \$108.03 per multiple-family residential unit for an indicated total of **\$5,617.56** to the County to support solid waste facilities;
5. \$2,131.85 per multiple-family residential unit for an indicated total of **\$110,856.20** to the State or County to support road and traffic improvements.

The fair share contributions described above shall be adjusted annually by the Hawai'i County Planning Department, 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 may be credited against the sum specified in Condition K (5) for road and traffic improvements. For purposes of administering Condition K, 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 review and approval of the director, upon consultation with the appropriate agencies. If the in-lieu credits exceed the fair share sums specified in Condition K, then such excess may be applied to the

fair share amounts for later rezonings of adjacent property. The excess in-lieu credits shall only apply for a period of seven years, unless the time limit extension is granted by the Hawai'i County Council.

Upon approval of the fair share contributions or in lieu contributions by the director, the director shall submit a final report to the Council for its information that identifies the specific approved fair share and/or in lieu contributions, as allocated, and further implementation requirements.

- K. The applicant shall comply with all applicable laws, rules, regulations and requirements of affected agencies for approval of the proposed subdivision within the subject property.
- L. There shall be no further Urban redistricting of the adjoining property without a Land Use Commission Boundary Amendment.
- M. Should the Hawai'i County 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.
- N. 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 applicant, successors or assigns, and that are not the result of their fault or negligence.
  2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  3. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.
  4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
  5. If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.
- O. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the subject area 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.

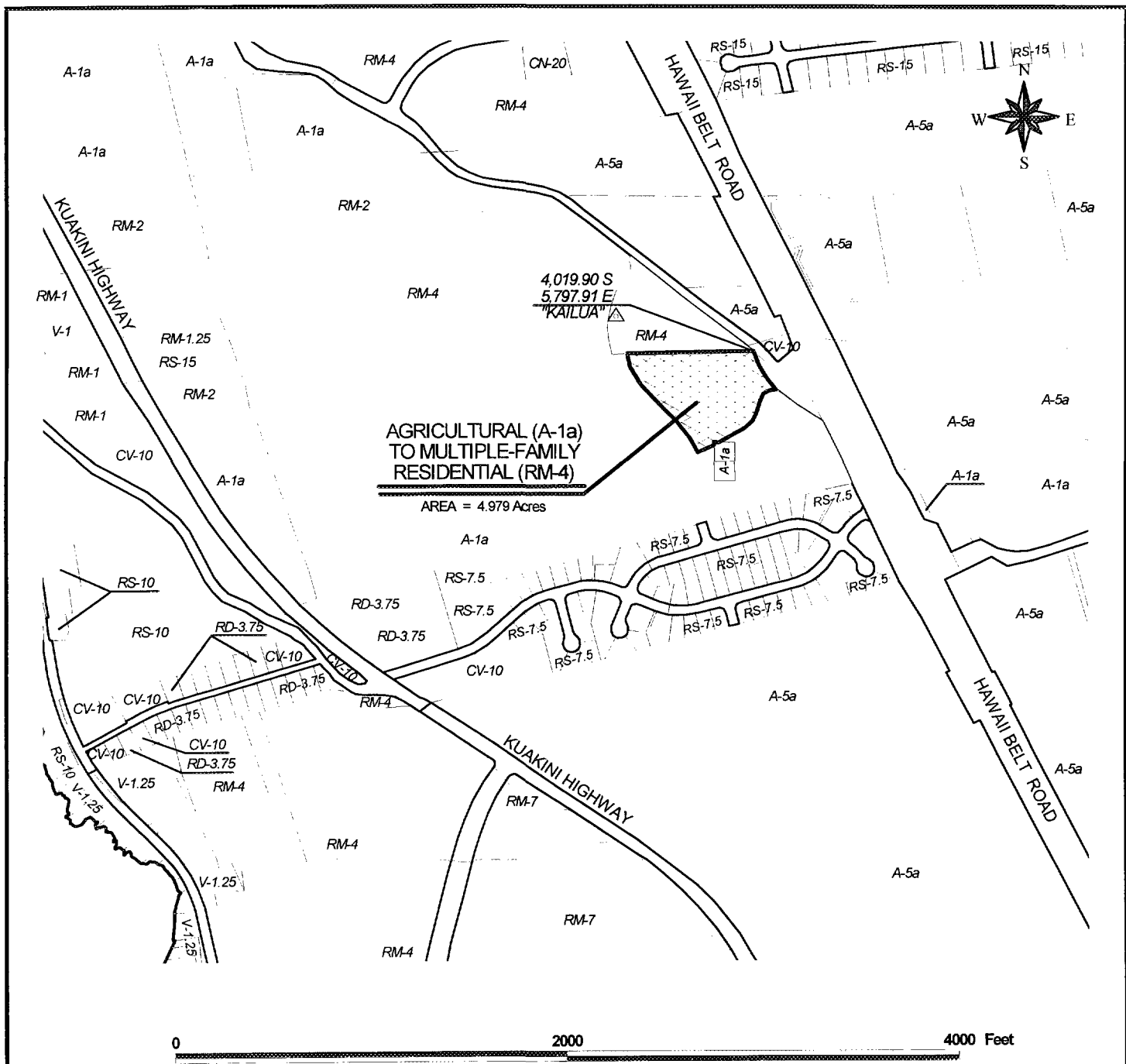
INTRODUCED BY:

  
\_\_\_\_\_  
COUNCIL MEMBER, COUNTY OF HAWAI'I

\_\_\_\_\_ Hilo \_\_\_\_\_, Hawai'i

Date of Introduction: July 31, 2002  
Date of 1st Reading: July 31, 2002  
Date of 2nd Reading: August 14, 2002  
Effective Date: August 28, 2002

REFERENCE: Comm. 675.26



# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-1a) TO MULTIPLE-FAMILY RESIDENTIAL (RM-4) AT WAIAHA 1st, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT  
COUNTY OF HAWAII

TMK : 7-5-010:Por. 086 (FORMALLY 7-5-017:Por. 007)

APRIL 10, 2002

EXHIBIT "A"

(U of N BENCORP:1060)

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

(DRAFT 3)

Introduced By: Bobby Jean Leithead-Todd  
 Date Introduced: July 31, 2002  
 First Reading: July 31, 2002  
 Published: August 11, 2002

REMARKS: \_\_\_\_\_  
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Second Reading: August 14, 2002  
 To Mayor: August 23, 2002  
 Returned: August 28, 2002  
 Effective: August 28, 2002  
 Published: September 11, 2002

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Elarionoff	X			
Jacobson	X			
Leithead-Todd	X			
Pisicchio	X			
Safarik	X			
Tyler	X			
Yagong	X			
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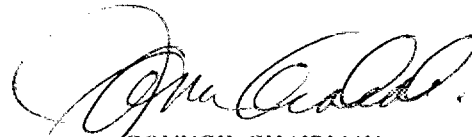

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Jacobson	X			
Leithead-Todd	X			
Pisicchio	X			
Safarik	X			
Tyler	X			
Yagong	X			
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I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO  
FORM AND LEGALITY:

Patricia K. O'Gada  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date 8/26/02

  
COUNCIL CHAIRMAN  
  
COUNTY CLERK

Approved/Disapproved this 28<sup>th</sup> day  
of August, 2002  
Harry K.  
MAYOR, COUNTY OF HAWAII

Bill No.: 242 (Draft 3)  
Reference: C-675.26/PC-Waived  
Ord No.: 02 101