

COUNTY OF HAWAI'I

STATE OF HAWAI'I

BILL NO. 243  
(Draft 4)

ORDINANCE NO. 02 105

AN ORDINANCE AMENDING SECTION 25-8-2 (NORTH & SOUTH KONA DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO FAMILY AGRICULTURAL (FA-3a) AT KALOKO, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-3-24:11.

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

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

Beginning at the Northernmost corner of this parcel of land, being also the Easternmost corner of Lot 3, Block 2 of Kaloko Mauka Subdivision, Increment 1 (File Plan 994) and being a point on the Southwesterly 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. 315° 10' 690.00 feet along the Southwesterly side of Kaloko Drive to a point;

Thence, for the next three (3) courses following along the remainder of Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha:

2. 45° 10' 1,399.98 feet along Lots 5-A, 5-B, 5-D and 5-F of Block 2 of Kaloko Mauka Subdivision, Increment 1 to a point;

3. 135° 10' 690.00 feet along Lot 1-E-1 of Block 2 of Kaloko Mauka Subdivision, Increment 1 and along Lot 2 of Block 2 of Kaloko Mauka

Subdivision, Increment 1 (File Plan 994) to a point;

4. 225° 10' 1,399.98 feet along Lot 3 of Block 2 of Kaloko Mauka Subdivision, Increment 1 (File containing an area of 22.176 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. In this case, there is a desire to protect the forest and watershed areas, to control the overall density of the area, to preserve the present ambience of the Kaloko Mauka Subdivision and to mitigate concerns over the Kaloko Drive/Mamalahoa Highway intersection and the use of the subdivision roads.

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

B. The applicants, its successors or assigns shall be responsible for complying with all requirements of Chapter 205, Hawai'i Revised Statutes, relating to permissible uses within the State Land Use Agricultural District.

C. 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.

- D. Final Subdivision Approval of the proposed family-agricultural subdivision 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 delineate such easements and setbacks on plans submitted for subdivision review:
1. a 60-foot wide “forest reserve easement” along Kaloko Drive frontage from the property line for affected proposed lots, exclusive of sight distances and access points permitted by the Department of Public Works. This 60-foot wide “forest reserve easement” shall satisfy the front structural setback in lieu of the required 30-foot setback for the proposed lots with frontage along Kaloko Drive; and
  2. a 30-foot “forest reserve easement” along all proposed lot lines not covered by the 60-foot “forest reserve easement.”
- E. Restrictive covenant(s) in the deeds of all the proposed family-agricultural lots fronting Kaloko Drive shall specify and uphold the easements and setbacks set forth in Condition D. The restrictive covenant(s) shall also specify that, including the area comprising the forest reserve easements described in Condition D, no less than sixty-seven percent (67%) of the entire lot area shall be retained in forest, and no tree and shrub with trunk size over six inches in diameter on any lot shall be cut back, removed, or killed unless diseased or such cutting, removal or killing is necessary for the construction of any lawful structure or improvements to the 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 recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval. If the covenants requiring forest protection are breached by the lot owner, in addition to any other penalties that may be imposed by law, no building permit may be issued for the lot until appropriate mitigation has been approved by the Director and fully implemented.

- F. Restrictive covenant(s) in the deeds of all the proposed family-agricultural lots within the subject property shall give notice that the terms of the rezoning ordinance prohibit the construction of a second dwelling unit and condominium property regimes 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 recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.
  
- G. A Forest Management Plan for the proposed lots within the subject property shall be prepared and submitted to the Planning Director for review and approval, in consultation with the State Department of Land and Natural Resources. The Forest Management Plan shall require the following:
  - 1. Include at a minimum, the best forest and reforestation practices, program for implementation and other applicable forestry management criteria, including those of the State Department of Land and Natural Resources, such as the Forest Stewardship Program.

2. The Forest Management Program shall include a restrictive covenant for the proposed lots within the subject property, which shall be recorded with the Bureau of Conveyances and/or Land Court. A copy of the covenants 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 recorded with the Bureau of Conveyances prior to the issuance of Final Subdivision Approval.
  3. If more than twenty percent (20%) of the subject property has been cleared or grubbed prior to the submittal of the Forest Management Plan or the recording of the restrictive covenant(s), the reforestation program for any cleared or grubbed area(s) in excess of the 20% within the subject property shall be substantially implemented prior to the issuance of Final Subdivision Approval.
  4. This Forest Management Plan shall govern the proposed lots within the subject property for a period of fifty (50) years and its termination may be considered after the 50-year period has elapsed by amending this ordinance requiring County Council approval by ordinance.
- H. The proposed agricultural lots shall not be permitted to have any direct vehicular access to Kaloko Drive.
- I. No interior private subdivision road right-of-way shall exceed 20 feet in width, and all shall be constructed with curvature, to maintain an appearance of a country road, in a manner meeting with the approval of the Department of Public Works, with the minimal clearing necessary to meet private road standards.

- J. A drainage study of the project site, if required, shall be prepared and submitted to the Department of Public Works for review and approval, prior to submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed in a manner meeting with the approval of the Department of Public Works in conjunction with the issuance of Final Subdivision Approval.
  
- K. Wastewater shall be disposed of in a manner meeting with the requirements of the Department of Health.
  
- L. An Archaeological Inventory Survey of the subject property shall be prepared and submitted to the Planning Director for review and approval, in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD), prior to Final Subdivision Approval or any land alteration activities, whichever occurs first. The scope of work for the Archaeological Inventory Survey shall be determined by the DLNR-HPD. Should significant historical sites be found within the project site which merit preservation or the implementation of mitigative measures, the applicants shall submit an Archaeological Data Recovery Plan and Preservation Plan for the review and approval of the Planning Director in consultation with DLNR-HPD. A copy of the approved Final Archaeological Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director for its files prior to Final Subdivision Approval or prior to any approval for any land alteration permits, whichever occurs first. In lieu of the above, a letter of clearance from DLNR-HPD shall be submitted to the Planning Director for its files prior to Final Subdivision Approval or prior to any approval for any land alteration permits, whichever occurs first.
  
- M. 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.

- N. The applicants shall make its fair share contribution to mitigate potential regional impacts of the subject project with respect to roads. The amount of the fair share contribution shall be the sum which is the product of multiplying the number of lots proposed to be subdivided by the amounts allocated hereinbelow for each such lot, and shall become due and payable within ninety days of the effective date of this ordinance. 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 lots in each such increment. The fair share contribution, 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/or in kind services approved by the Planning Director and shall be applied to improving the Kaloko Drive/Mamalaho Highway intersection. The fair share contribution shall have a value of **\$7,876.20** per lot. Based upon the applicants' representation of intent to subdivide and develop up to seven (7) lots, the indicated total fair share contribution is **\$55,133.40**, however, the total amount shall be increased or reduced in proportion to the actual number of subdivided lots according to the calculation and payment provisions set forth in this Condition N. The fair share contribution shall be allocated as follows:

\$7,876.20 per lot for an indicated total of **\$55,133.40** to the State or County to support road and traffic improvements.

The fair share contribution 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).

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

- O. Comply with all applicable laws, rules, regulations and requirements of the affected agencies for approval of the development within the subject property.
- P. 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.
- Q. 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).

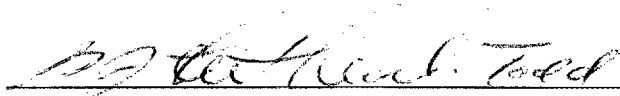
5. If the applicants should require an additional extension of time, the Planning Director shall submit the applicants' request to the County Council for appropriate action.

R. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning 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.

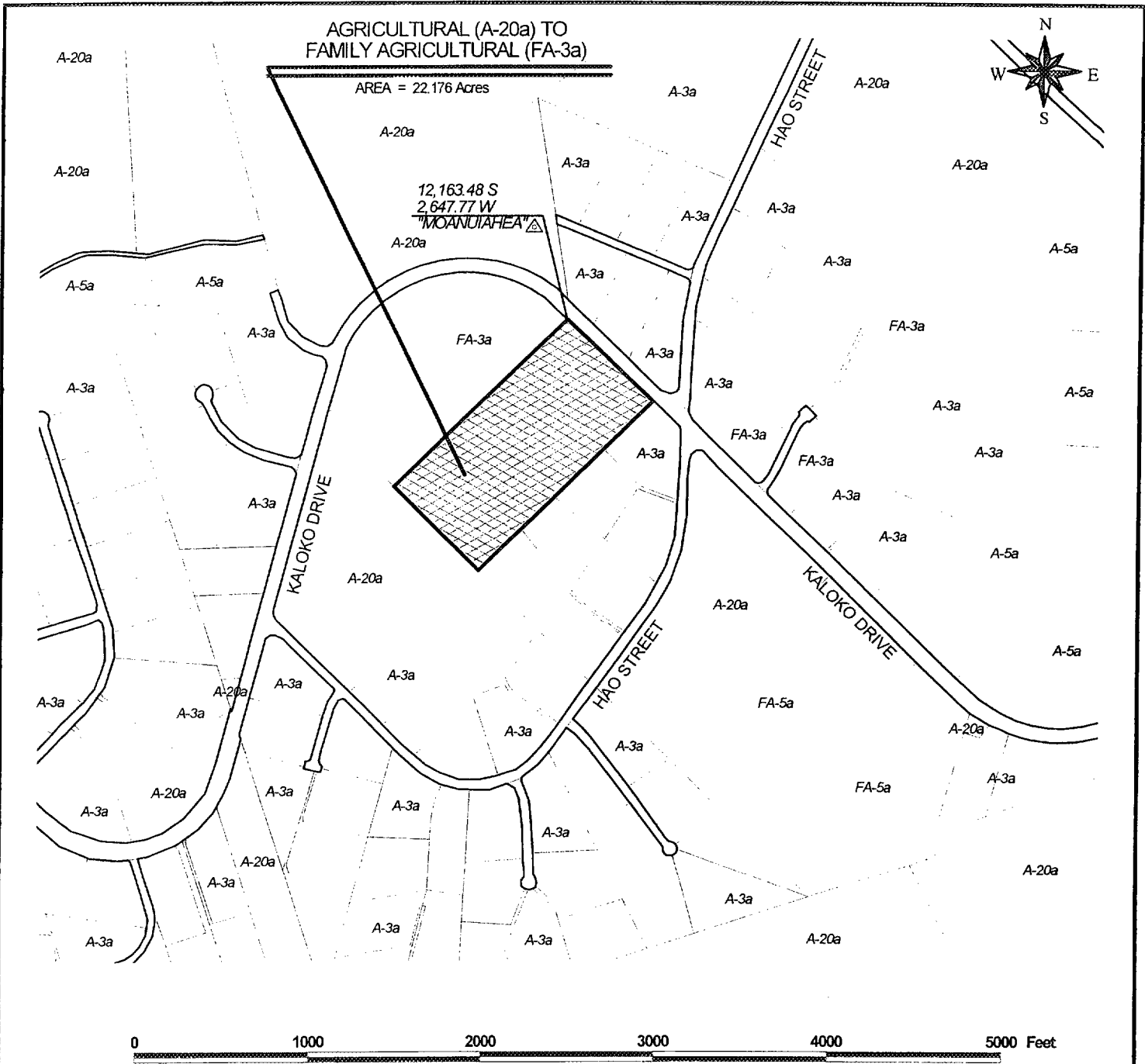
INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i

Date of Introduction: August 14, 2002  
Date of 1st Reading: August 14, 2002  
Date of 2nd Reading: August 28, 2002  
Effective Date: September 12, 2002

REFERENCE: Comm. 689.3



# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-2 (NORTH AND SOUTH KONA DISTRICTS ZONE MAP) ARTICLE 8,  
CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT  
CLASSIFICATION FROM AGRICULTURAL (A-20) 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 3)

Introduced By: Bobby Jean Leithead-Todd  
 Date Introduced: August 14, 2002  
 First Reading: August 14, 2002  
 Published: August 25, 2002

REMARKS: \_\_\_\_\_  
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Second Reading: August 28, 2002  
 To Mayor: September 4, 2002  
 Returned: September 12, 2002  
 Effective: September 12, 2002  
 Published: September 26, 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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(DRAFT 4)

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			
	8	1	0	0

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

APPROVED AS TO  
FORM AND LEGALITY:

  
 DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII

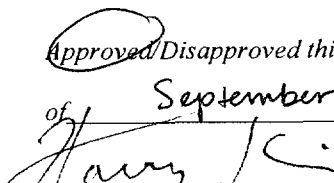
Date September 10, 2002

  
 COUNCIL CHAIRMAN

COUNTY CLERK

Bill No.: 243 (Draft 4)  
 Reference: C-689.2/PC-97  
 Ord No.: 02 105

Approved/Disapproved this 12<sup>th</sup> day  
 of September, 20 02

  
 MAYOR, COUNTY OF HAWAII