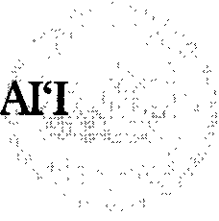


COUNTY OF HAWAII STATE OF HAWAII



BILL NO. 39 (Draft 4)

ORDINANCE NO. 03 37

AN ORDINANCE 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-5a) TO SINGLE FAMILY RESIDENTIAL (RS-20) AT HIENALOLI 2ND, 3RD AND 4TH, NORTH KONA, HAWAII, COVERED BY TAX MAP KEY 7-5-10:PORTION OF 52 AND PORTION OF 65.

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

SECTION 1. Section 25-8-3, 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 Hienaloli 2nd, 3rd, and 4th, North Kona, Hawaii, shall be Single Family Residential (RS-20):

Parcel "A":

Beginning at the Northwesterly corner of this parcel of land, being also the Northeasterly corner of Lot 3 of this subdivision and being a point on the Southerly boundary of Lot 1-B as shown on CSF 16687 (Government Land, State of Hawaii), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHELO" being 7,869.83 feet North and 4,182.20 feet East and running by azimuths measured clockwise from True South:

Thence, for the next six (6) courses following along Lot 1-B as shown on CSF 16687 (Government Land, State of Hawaii):

- 1. 259° 10' 11" 87.25 feet to a point;
2. 246° 00' 11" 150.00 feet to a point;
3. 238° 30' 11" 280.00 feet to a point;

4.	255°	20'	11"	176.00	feet to a point;
5.	231°	50'	11"	150.00	feet to a point;
6.	231°	45'	11"	50.00	feet to a point;
7.	344°	00'		550.75	feet along Lot 5 of this subdivision and along the remainders of Land Commission Award 7716, Apana 5 to R. Keelikolani and Royal Patent 1600 and 1930 to Asa Thurston, Land Commission Award 387, Part 4, Section 2, to American Board of Commissioners for Foreign Missions to a point;
8.	74°	00'		223.24	feet along Lot 5 of this subdivision and along the remainder of Royal Patent 1600 and 1930 to Asa Thurston, Land Commission Award 387, Part 4, Section 2, to American Board of Commissioners for Foreign Missions to a point;
9.	354°	19'		151.88	feet along Lot 5 of this subdivision and along the remainder of Royal Patent 1600 and 1930 to Asa Thurston, Land Commission Award 387, Part 4, Section 2, to American Board of Commissioners for Foreign Missions to a point;
10.	73°	26'		33.89	feet along the Northerly end of Melelina Street to a point;
11.	75°	17'		229.00	feet along the Northerly end of Melelina Street, along Lots 54, 55 and 56 of Kona Heights Subdivision, Increment II (File Plan 1077) and along Land Commission Award 8524-B, Part 3 to Peke to a point;
12.	165°	17'		241.26	feet along Lots 31, 33 (Roadway) and 32 of Kealoha, Increment 2 and along the remainder of Royal Patent 1600 and 1930 to Asa Thurston, Land Commission Award 387, Part 4, Section 2, to American Board of

Commissioners for Foreign Missions to a point;

Thence, for the next eight (8) courses following along middle of stonewall and along Royal Patent 1600 and 1930 to Asa Thurston, Land Commission Award 387, Part 4, Section 2, to American Board of Commissioners for Foreign Missions:

Thence, for the next five (5) courses following along Lot 32 of Kealoha, Increment 2:

- | | | | |
|-----|----------|-------|------------------|
| 13. | 74° 33' | 3.45 | feet to a point; |
| 14. | 100° 27' | 4.56 | feet to a point; |
| 15. | 91° 29' | 21.86 | feet to a point; |
| 16. | 77° 44' | 60.39 | feet to a point; |
| 17. | 69° 02' | 68.36 | feet to a point; |

Thence, for the next three (3) courses following along Lot 29 of Kealoha, Increment 2:

- | | | | |
|-----|----------|--------|--|
| 18. | 59° 36' | 41.06 | feet to a point; |
| 19. | 61° 54' | 76.08 | feet to a point; |
| 20. | 64° 35' | 43.02 | feet to a point; |
| 21. | 156° 00' | 324.66 | feet along Lot 3 of this subdivision and along the remainder of Land Commission Award 7716, Apana 5 to R. Keelikolani to the point of beginning and containing an area of 8.971 Acres. |

Parcel "B":

Beginning at the Southwesterly corner of this parcel of land, being also the Southeasterly corner of Lot 4 and being a point on the Northerly end of Melelina Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHELO" being 7,519.62 feet North and 4,923.41 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|----------|--------|--|
| 1. | 174° 19' | 151.88 | feet along Lot 4 and along the remainder of Royal Patent 1600 and 1930 to Asa Thurston, Land Commission Award 387, |
|----|----------|--------|--|

Part 4, Section 2, to American Board of Commissioners for Foreign Missions to a point;

- | | | | |
|----|-------------|--------|--|
| 2. | 254° 00' | 288.09 | feet along Lot 4 and along the remainders of Lot 5 and Royal Patent 1600 and 1930 to Asa Thurston, Land Commission Award 387, Part 4, Section 2, to American Board of Commissioners for Foreign Missions to a point; |
| 3. | 344° 00' | 154.20 | feet along the remainder of Lot 5 and along the remainders of Royal Patent 1600 and 1930 to Asa Thurston, Land Commission Award 387, Part 4, Section 2, to American Board of Commissioners for Foreign Missions and Land Commission Award 8524-B, Part 3 to Peke to a point; |
| 4. | 70° 38' 56" | 45.58 | feet along Lot 129 of Kona Heights Subdivision, Increment II (File Plan 1077) and along the remainder of Land Commission Award 8524-B, Part 3 to Peke to a point; |
| 5. | 77° 42' 31" | 135.67 | feet along Lots 129, 130 and 134 of Kona Heights Subdivision, Increment II (File Plan 1077) and along the remainder of Land Commission Award 8524-B, Part 3 to Peke to a point; |
| 6. | 73° 26' | 134.41 | feet along Lot 134 of Kona Heights Subdivision, Increment II (File Plan 1077), along Land Commission Award 8524-B, Part 3 to Peke and along the Northerly end of Melelina Street to the point of beginning and containing an area of 1.049 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 applicants, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
 - B. Construction of the new proposed subdivision shall be completed within five (5) years from the effective date of this Ordinance.
 - C. The applicants shall extend Melelina Street to a cul-de-sac within the project site in a manner meeting with the approval of the Department of Public Works (DPW). The extension of Melelina Street shall be constructed to County dedicable standards and dedicated to the County of Hawai'i at such time when requested by the DPW.
 - D. To evaluate the need for additional flood protection improvements, the applicants shall prepare a more detailed flood study of the Hienaloli Drainage Way bend in the vicinity of the project site meeting with the approval of the DPW prior to submittal of subdivision plans.

- E. Restrictive covenants in the deeds of all the proposed lots within the subject property shall give notice that the terms of the zoning ordinance prohibit the construction of a single family dwelling and its related improvements within areas designated as a “100-year flood plain” by the Department of Public Works or designated “AE” by Flood Insurance Rate Maps (FIRM), whichever is deemed more appropriate by the Department of Public Works. This restriction may be removed by amendment of this ordinance by the County Council. 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 recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
- F. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- G. A drainage study shall be prepared and the recommended drainage system shall be constructed meeting with the approval of DPW.
- H. Underground Injection Systems, which receive wastewater or storm runoff from the proposed development, need to address the requirements of Chapter 23, Hawai‘i State Department of Health Administrative Rules, Title 11, “Underground Injection Control.”
- I. The applicants shall comply with Chapter 11-55, Water Pollution Control, Hawai‘i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.

- J. 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.
- K. Restrictive covenants in the deeds of all the proposed lots within the subject property shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and condominium property regimes on each lot. This restriction may be removed by amendment of this ordinance by the County Council. The owner of the property may also, in addition, impose private covenants restricting the number of dwellings. 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 recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
- L. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicants 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.
- M. The applicants shall comply with all other applicable laws, rules, regulations and requirements of the affected agencies, including those of the Department of Health, Fire Department, Public Works and Department of Water Supply.
- N. The applicants shall submit an Archaeological Mitigation Plan for Lot 4 (8.971-acres) and Lot 5 (6.063-acres) for the review and approval of the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division (SHPD), prior to the submittal of plans for

subdivision review and/or any land alteration activities within the project site. All archaeological mitigation measures that are required by the approved Archaeological Mitigation Plan shall be fully implemented by the applicants prior to the submittal of plans for subdivision review and/or any land alteration activities within the project site.

- O. Should any unidentified sites or remains, such as lava tubes, artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the affected area shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

- P. 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 residential units/lots without a dwelling and/or valid residential building permit 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. Further, any additional dwelling(s) on a subdivided lot within the subject site shall be subject to the appropriate fair share contribution and shall be due and payable to the Planning Department. The payment receipt shall be submitted to and acknowledged by the Planning

Department and the Building Division prior to the issuance of a building permit. 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, shall be determined by the County Council. The fair share contribution shall have a maximum combined value of **\$7,876.20** per single-family residential unit/lot. Based upon the applicant's representation of intent to develop up to seventeen (17) residential units/lots, the indicated total of fair share contribution is **\$133,895.40** for single-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 P. The fair share contribution shall be allocated as follows:

1. \$3,798.04 per single-family residential unit for an indicated total of **\$64,566.68** to the County to support park and recreational improvements and facilities;
2. \$183.22 per single-family residential unit for an indicated total of **\$3,114.74** to the County to support police facilities;
3. \$361.88 per single-family residential unit for an indicated total of **\$6,151.96** to the County to support fire facilities;
4. \$158.43 per single-family residential unit for an indicated total of **\$2,693.31** to the County to support solid waste facilities; and
5. \$3,374.63 per single-family residential unit for an indicated total of **\$57,368.71** 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 Conditions C and R shall be credited against the sum specified in Condition P (5) for road and traffic improvements.

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 review and approval of the director, upon consultation with the appropriate agencies.

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.

- Q. 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.

- R. The applicant shall provide a four-way stop condition at the Nani Kailua/Kakalina Street intersection under the guidance of a licensed engineer within 90 days from the effective date of this ordinance. The impact of this improvement shall be evaluated by a licensed engineer in consultation with the Kona Traffic Safety Committee and the Department of Public Works for a six-month period. At that time the licensed engineer will report to the Council to determine if the improvement will remain. Should the study find that the 4-way stop is not warranted, the applicant shall restore the intersection to its original condition.

- S. 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 require an additional extension of time, the Planning Director shall submit the applicants' request to the County Council for appropriate action.
- T. 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:

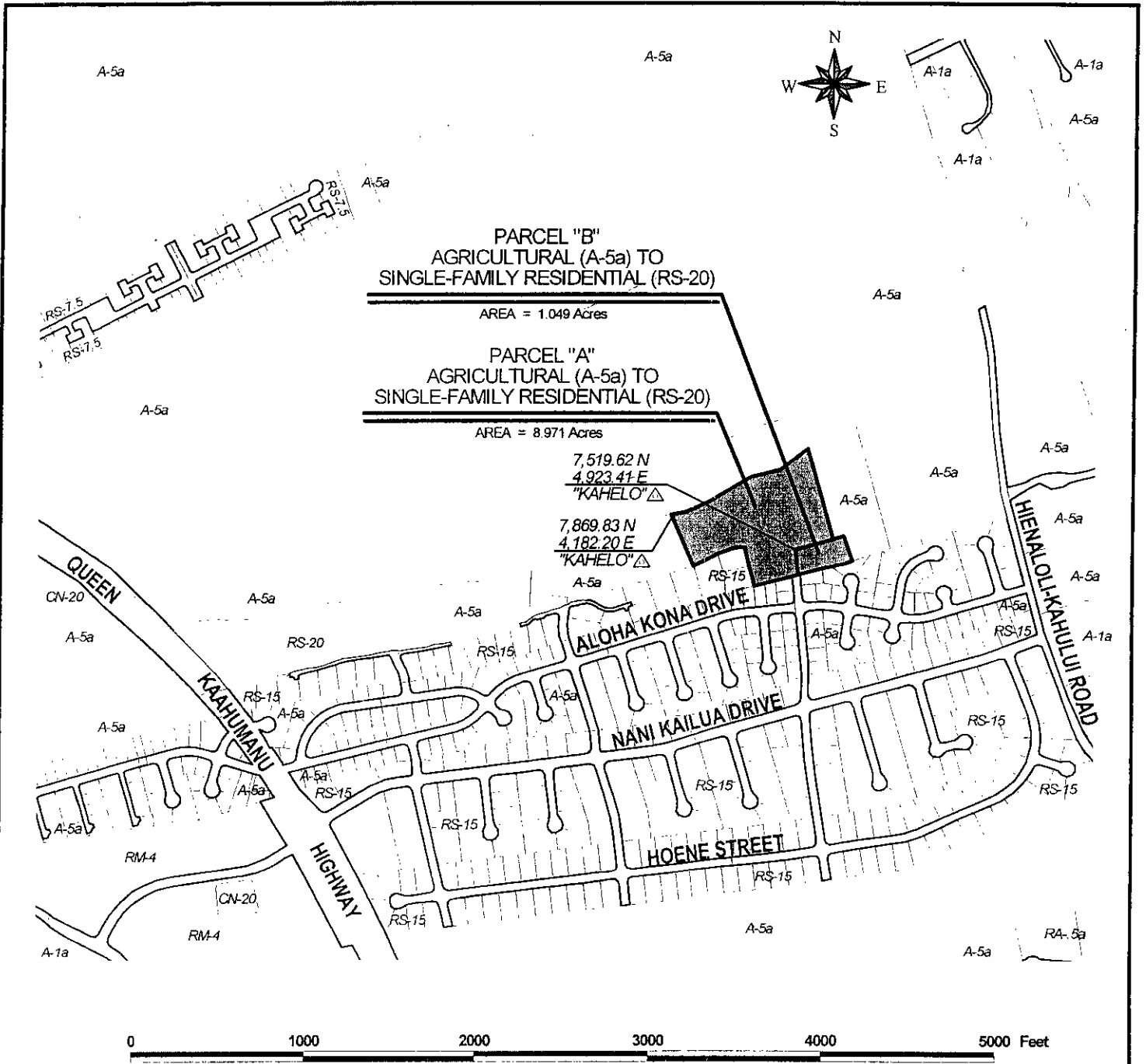


COUNCIL MEMBER, COUNTY OF HAWAII

_____ Hilo, Hawai'i

Date of Introduction: February 5, 2003
Date of 1st Reading: February 5, 2003
Date of 2nd Reading: February 20, 2003
Effective Date: March 6, 2003

REFERENCE: Comm. 96.20



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-5a) TO SINGLE-FAMILY RESIDENTIAL (RS-20) AT HIENALOLI 2nd, 3rd & 4th, 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: February 5, 2003
First Reading: February 5, 2003
Published: February 16, 2003

REMARKS: _____

Second Reading: February 20, 2003
To Mayor: February 28, 2003
Returned: March 6, 2003
Effective: March 6, 2003
Published: March 20, 2003

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler	X			
	8	0	1	0

(DRAFT 4)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson			X	
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler	X			
	7	0	2	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:

Justin Prado
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date March 4, 2003


COUNCIL CHAIRMAN


COUNTY CLERK

Bill No.: 39 (Draft 4)
Reference: C-96.20/PC-16
Ord No.: 03 37

Approved/Disapproved this 6th day

of March, 2003
Harry Kim
MAYOR, COUNTY OF HAWAII