


COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 40
 (Draft 4)

ORDINANCE NO. 03 38

AN ORDINANCE AMENDING SECTION 25-8-4 (SOUTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO RESIDENTIAL AND AGRICULTURAL (RA-1a) AT WAIPUNLAULA, SOUTH KONA, HAWAII, COVERED BY TAX MAP KEY 8-2-3:31.

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

SECTION 1. Section 25-8-4, 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 Waipunaula, South Kona, Hawaii, shall be Residential and Agricultural (RA-1a):

Beginning at the Southernmost corner of this parcel of land, being also the Easternmost corner of Lot 8, the Northernmost corner of Lot 9 and the Westernmost corner of Lot 6 of Captain Cook Estates Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAE O KANONI" being 18,778.66 feet North and 3,072.65 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|--------------|--------|---|
| 1. | 97° 33' 40" | 199.63 | feet along Lot 8 of Captain Cook Estates Subdivision and along the remainder of Grant 867 to Prest Cummings to a point; |
| 2. | 208° 33' 30" | 354.30 | feet along the remainder of Grant 867 to Prest Cummings to a point; |
| 3. | 230° 00' | 700.20 | feet along the remainder of Grant 867 to Prest Cummings to a ½ inch pipe (set); |

- | | | | | | |
|----|------|-----|-----|--------|--|
| 4. | 310° | 59' | 15" | 115.65 | feet along Lot 5-A of this subdivision, along the remainder of Grant 867 to Prest Cummings to a ½ inch pipe (set); |
| 5. | 220° | 59' | 15" | 152.41 | feet along Lot 5-A of this subdivision, along the remainder of Grant 867 to Prest Cummings to a ½ inch pipe (set); |

Thence, following along Lot 5-A of this subdivision, along the remainder of Grant 867 to Prest Cummings on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

- | | | | | | |
|----|------|-----|-------|----------|--|
| 6. | 173° | 50' | 07.5" | 29.33 | feet to a ½ inch pipe (set); |
| 7. | 306° | 41' | | 71.70 | feet along existing Roadway Easement and Lot 1 of Captain Cook Estates Subdivision and along the remainder of Grant 867 to Prest Cummings to a point; |
| 8. | 40° | 59' | 15" | 1,016.76 | feet along Lot 6 of Captain Cook Estates Subdivision and along the remainder of Grant 867 to Prest Cummings to a point; |
| 9. | 61° | 07' | 14" | 94.31 | feet along Lot 6 of Captain Cook Estates Subdivision and along the remainder of Grant 867 to Prest Cummings to the point of beginning and containing an area of 5.263 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, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

- B. Final Subdivision Approval of the subject property shall be secured within five (5) years from the effective date of this ordinance.

- C. The current Condominium Property Regime (CPR) shall be dissolved upon securing Final Subdivision Approval for the proposed two lots.

- D. The proposed 3.703-acre lot shall not be further subdivided into more than two resulting lots.

- 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 second dwelling unit and CPRs 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.

- F. No water variance shall be sought or granted to allow the future subdivision of lots not served by a County-approved water system.
- G. Access to the subject property from the roadway easement shall meet with the requirements of the Department of Public Works.
- H. 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.
- I. The applicant shall comply with all applicable laws, rules, regulations and requirements of affected agencies.
- J. 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 one (1) residential unit/lot, the indicated total of fair share contribution is **\$7,876.20** 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 J. The fair share contribution shall be allocated as follows:

1. \$3,798.04 per single-family residential unit for an indicated total of **\$3,798.04** to the County to support park and recreational improvements and facilities;
2. \$183.22 per single-family residential unit for an indicated total of **\$183.22** to the County to support police facilities;
3. \$361.88 per single-family residential unit for an indicated total of **\$361.88** to the County to support fire facilities;
4. \$158.43 per single-family residential unit for an indicated total of **\$158.43** to the County to support solid waste facilities; and
5. \$3,374.63 per single-family residential unit for an indicated total of **\$3,374.63** 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. 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 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.

- K. 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 Fees Ordinance.

- L. 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, 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 applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.
- M. 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:

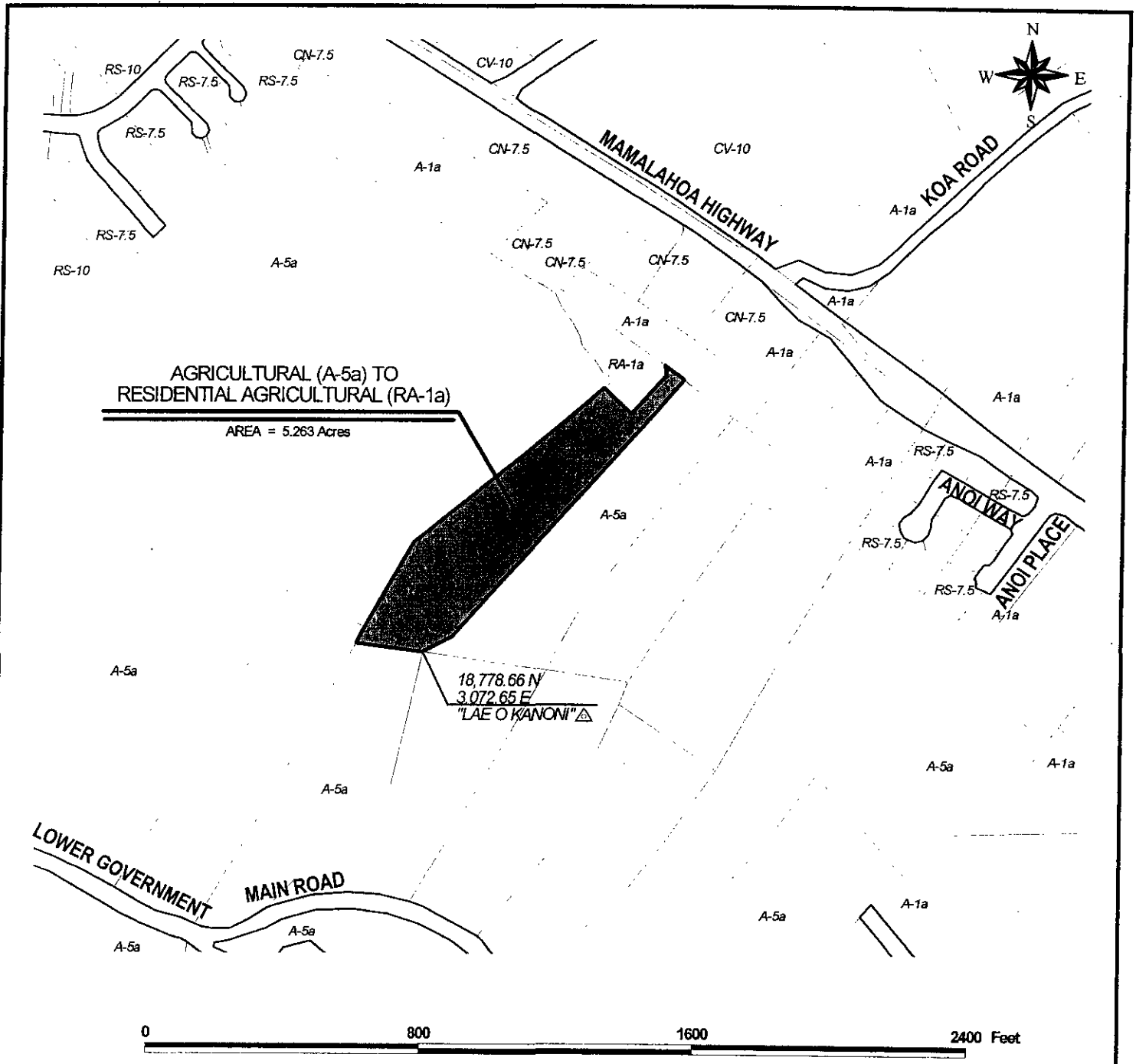


COUNCIL MEMBER, COUNTY OF HAWAII

_____ 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: COMB. 97.3



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-4 (SOUTH KONA ZONE MAP) ARTICLE 8, CHAPTER 25
 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT
 CLASSIFICATION FROM AGRICULTURAL (A-5a) TO RESIDENTIAL AGRICULTURAL (RA-1a)
 AT WAIPUNAULA, SOUTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK
County of Hawaii
Hilo, Hawaii

(DRAFT 4)

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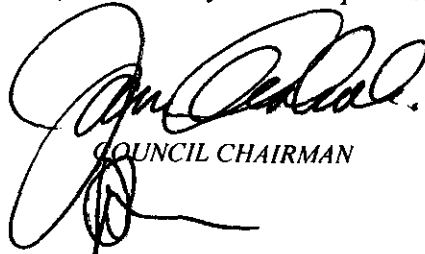
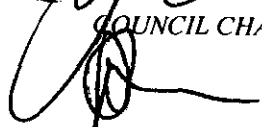
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson			X	
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler	X			
	7	0	2	0

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 Whado
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date March 4, 2003


COUNCIL CHAIRMAN

COUNTY CLERK

Bill No.: 40 (Draft 4)

Reference: C-97.3/PC-17

Ord No.: 03 38

Approved/Disapproved this 6th day

of March, 2003
Harry Kim
MAYOR, COUNTY OF HAWAII