

ORDINANCE NO. 03 128

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-3a) TO RESIDENTIAL AND AGRICULTURAL (RA-1a) AT KOHANAIKI, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-3-19:21 & 30.

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 Kohanaiki, North Kona, Hawaii shall be Residential and Agricultural (RA-1a):

Beginning at the Northeasterly corner of this parcel of land, being also a point on the Southerly side of Homestead Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 12,172.29 feet South and 8,239.64 feet West and running by azimuths measured clockwise from True South:

- 1.     356° 30'                   505.65    feet along Grant 3735 to Keaweahawaii to a point;

Thence, for the next three (3) courses following along the Westerly side of Old Government Road:

- 2.     38° 45'                   68.00    feet to a point;
- 3.     3° 45'                    51.07    feet to a point;
- 4.     341° 31' 02"           198.44   feet to a point;

5.      86°   40'   51"      415.80    feet along Lot 8-C and along Royal Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha to a point;

Thence, for the next twenty (20) courses following along Grant 3752, Apana 2 to George Mao:

6.      178°   16'   06"      111.10    feet along Lot 18 to a point;
7.      177°   48'   11"      65.35    feet along Lot 16 to a point;
8.      178°   06'   41"      31.39    feet along Lot 16 to a point;

Thence, for the next three (3) courses following along Lot 14:

9.      178°   40'   16"      49.54    feet to a point;
10.     188°   48'   06"      25.62    feet to a point;
11.     170°   01'   53"      10.31    feet to a point;

Thence, for the next three (3) courses following along Lot 12:

12.     203°   45'   57"      26.55    feet to a point;
13.     168°   55'   22"      52.95    feet to a point;
14.     183°   50'   23"      9.04    feet to a point;
15.     183°   42'   19"      38.25    feet along Lot 10 to a point;
16.     178°   47'   07"      51.74    feet along Lot 10 to a point;

Thence, for the next three (3) courses following along Lot 8:

17.     178°   51'   14"      28.96    feet to a point;
18.     180°   42'   38"      49.05    feet to a point;
19.     183°   21'   10"      9.29    feet to a point;
20.     183°   36'   14"      62.06    feet along Lot 6 to a point;

- 21. 168° 34' 34" 27.47 feet along Lot 6 to a point;
- 22. 168° 20' 06" 38.48 feet along Lot 4 to a point;
- 23. 161° 53' 39" 45.47 feet along Lot 4 to a point;
- 24. 161° 34' 44" 23.87 feet along Lot 2 to a point;
- 25. 167° 27' 29" 71.41 feet along Lot 2 to a point;

Thence, for the next five (5) courses following along Northerly face of stonewall and along the Southerly side of Homestead Road:

- 26. 258° 15' 36" 49.61 feet to a point;
- 27. 264° 19' 35" 38.66 feet to a point;
- 28. 271° 37' 27" 71.15 feet to a point;
- 29. 268° 17' 35" 157.92 feet to a point;
- 30. 277° 19' 02" 101.36 feet to the point of beginning and containing an area of 7.315 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(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The applicant(s), its successors or assigns shall be responsible for complying with all requirements of Chapter 205, Hawaii Revised Statutes, relating to permissible uses within the State Land Use Rural District.
- C. Final Subdivision Approval of the subject property shall be secured within five (5) years from the effective date of this ordinance.
- D. 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 owners of the property may also impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i 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.
- E. The applicant 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 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 proposed residential 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 shall be applied to improving the Kaloko Drive/Hawaii Belt Road intersection. The fair share contribution shall have a value of \$9,472.11 per lot. Based upon the applicant's representation of intent to subdivide and develop up to two (2) lots, the indicated total fair share contribution is \$18,944.22, 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 E. The fair share contribution shall be allocated as follows:

\$9,472.11 per lot for an indicated total of \$18,944.22 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 (HICPI). In lieu of paying the fair share contribution, the applicant may construct and contribute land, 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 E, 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.

- F. Homestead Road, if used to provide access to more than one lot, shall be improved from the point of the subdivision access to Highway 190, meeting with the requirements of the Department of Public Works, prior to receipt of final subdivision approval.
- G. Install streetlights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division.
- 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(s) shall comply with all applicable laws, rules, regulations and requirements of affected agencies.
- J. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being complied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are

not required.

- 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(s), 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(s) 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 Planning 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.

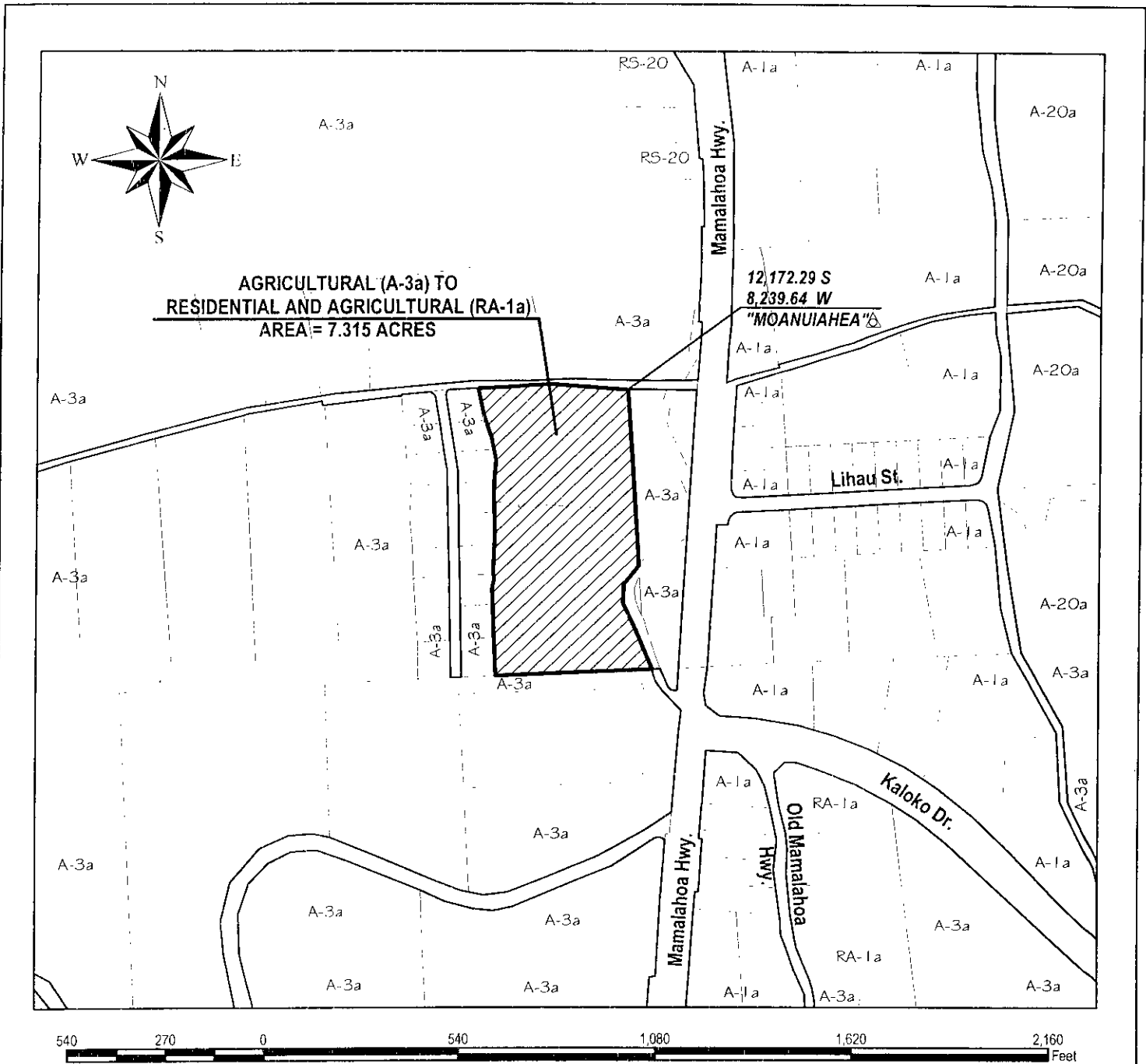
INTRODUCED BY: 

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COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i

Date of Introduction: August 20, 2003  
Date of 1st Reading: August 20, 2003  
Date of 2nd Reading: September 4, 2003  
Effective Date: September 16, 2003  
REFERENCE: Comm. 291.3





# 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-3a) TO  
 RESIDENTIAL AND AGRICULTURAL (RA-1a)  
 AT KOHANAIKI, NORTH KONA, HAWAII  
 PREPARED BY: PLANNING DEPARTMENT  
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK  
County of Hawaii  
Hilo, Hawaii

Introduced By: J. Curtis Tyler, III  
Date Introduced: August 20, 2003  
First Reading: August 20, 2003  
Published: August 31, 2003

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
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Second Reading: September 4, 2003  
To Mayor: September 10, 2003  
Returned: September 16, 2003  
Effective: September 16, 2003  
Published: September 28, 2003

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Reynolds	X			
Safarik	X			
Tyler	X			
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(DRAFT 3)


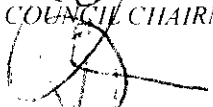
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Reynolds	X			
Safarik	X			
Tyler	X			
	7	0	1	0

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

APPROVED AS TO  
FORM AND LEGALITY:

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

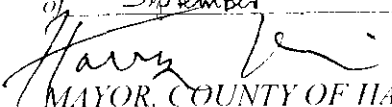
Date 9/16/03

  
COUNCIL CHAIRMAN  
  
COUNTY CLERK

Bill No.: 130 (Draft 3)  
Reference: C-291.3/PC-53  
Ord No.: **03 128**

Approved/Disapproved this 16<sup>th</sup> day

of September, 20 03

  
MAYOR, COUNTY OF HAWAII