

COUNTY OF HAWAI'I

STATE OF HAWAI'I

BILL NO. 147

(Draft 2)

ORDINANCE NO. 03 144

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 FAMILY AGRICULTURAL (FA-1a) AT KOHANAIKI, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-3-7:27 & 50.

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, Hawai'i shall be Family Agricultural (FA-1a):

Beginning at the Southeasterly corner of this parcel of land, being also the Northeasterly corner of a portion of Grant 2030 to Kaiakoili and being a point on the Westerly side of Hawaii Belt Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being 11,786.73 feet South and 8,041.74 feet West and running by azimuths measured clockwise from True South:

Thence, for the next nineteen (19) courses, following along middle of stonewall and along the remainder of Grant 2030 to Kaiakoili the direct azimuths and distances being:

- 1. 82° 55' 15" 273.09 feet to a pipe;
- 2. 23° 39' 5.01 feet to a pipe;
- 3. 88° 15' 209.06 feet to a pipe;
- 4. 164° 57' 12.67 feet to a pipe;

5.	80°	30'	30"	122.04	feet to a pipe;
6.	114°	58'		12.88	feet to a pipe;
7.	82°	51'	30"	262.48	feet to a pipe;
8.	87°	22'		64.88	feet to a pipe;
9.	63°	42'		49.96	feet to a pipe;
10.	81°	19'	30"	106.16	feet to a "+" on rock;
11.	163°	50'	30"	98.72	feet to a pipe;
12.	72°	56'		360.43	feet to a "+" on rock;
13.	81°	23'	30"	89.99	feet to a pipe;
14.	65°	27'		104.23	feet to a "+" on rock;
15.	72°	17'	30"	74.17	feet to a pipe;

Thence, for the next four (4) courses following along stonewall and along the remainder of Grant 2030 Kaiakoili the direct azimuths and distance being:

16.	338°	04'		138.97	feet to a pipe;
17.	343°	39'		69.43	feet to a spike;
18.	335°	31'		74.21	feet to a pipe;
19.	340°	01'		97.84	feet to a "+" on rock;

Thence, for the next three (3) courses following along the Northerly side of Homestead Road:

20.	80°	17'	30"	96.98	feet to a "+" on rock;
21.	76°	11'		61.55	feet to a spike in concrete;
22.	70°	32'		348.78	feet to a pipe;

Thence, for the next three (3) courses following along the Easterly side of

Homestead Road:

23.	150°	00'		36.02	feet to a "+" on rock;
24.	157°	41'		93.00	feet to a spike in concrete;
25.	154°	35'		88.61	feet to a spike in concrete;
26.	156°	49'	30"	246.15	feet along the Easterly side of Homestead Road and along the remainder of Grant 2030 to Kaiakoili to a "+" on rock;
27.	143°	36'	30"	78.70	feet along the remainder of Grant 2030 to Kaiakoili to a pipe;
28.	79°	33'	30"	248.87	feet along the remainder of Grant 2030 to Kaiakoili to a pipe;

Thence, for the next six (6) courses following along the Easterly side of stonewall and along the Easterly side of Kohanaiki Road:

29.	153°	57'		340.42	feet to a pipe;
30.	160°	32'	30"	223.40	feet to a "+" on rock;
31.	157°	03'		87.93	feet to a pipe;
32.	171°	17'		43.21	feet to a pipe;
33.	160°	33'		87.16	feet to a pipe;
34.	139°	32'		54.10	feet to a "+" on rock;

Thence, for the next nineteen (19) courses following along middle of stonewall and along Grant 2027 to Kamehehu:

Thence, for the next five (5) courses following along Lot 37 of Kona Hills Estates Subdivision, Unit I (File Plan 1695):

35.	267°	54'	30"	147.33	feet to a pipe;
36.	263°	51'		234.20	feet to a pipe;

37.	252°	32'		336.32	feet to a pipe;
38.	260°	13'	30"	141.64	feet to a pipe;
39.	257°	37'		241.10	feet to a pipe;
40.	257°	02'	30"	330.45	feet along Lots 37 and 15 of Kona Hills Estates Subdivision, Unit I (File Plan 1695) to a pipe;
41.	278°	56'		242.49	feet along Lot 15 and the Southerly end of Roadway Lot A of Kona Hills Estates Subdivision, Unit I (File Plan 1695) to a pipe;
42.	276°	02'	30"	82.66	feet along the Southerly end of Roadway Lot A and Lot 14 of Kona Hills Estates Subdivision, Unit I (File Plan 1695) to a "+" on rock;

Thence, for the next four (4) courses following along Lot 14 of Kona Hills Estates Subdivision, Unit I (File Plan 1695):

43.	264°	30'		47.27	feet to a pipe;
44.	285°	22'		71.20	feet to a pipe;
45.	265°	09'		68.76	feet to a pipe;
46.	255°	35'		46.11	feet to a pipe;
47.	271°	56'	30"	136.68	feet along Lots 14 and 5 of Kona Hills Estates Subdivision, Unit I (File Plan 1695) to a pipe;

Thence, for the next six (6) courses following along Lot 5 of Kona Hills Estates Subdivision, Unit I (File Plan 1695);

48.	283°	17'		59.43	feet to a pipe;
49.	274°	44'		86.39	feet to a pipe;
50.	272°	50'	30"	123.27	feet to a pipe;

- 51. 281° 19' 72.47 feet to a pipe;
- 52. 273° 25' 66.67 feet to a pipe;
- 53. 266° 37' 89.36 feet to a "+" on rock;
- 54. 348° 36' 30" 462.07 feet along Lots 4, 3, 2 and 1 and along the remainder of Grant 2030 to Kaiakoili to a pipe;
- 55. 271° 20' 211.20 feet along Lot 1 and along the remainder of Grant 2030 to Kaiakoili to a point;

Thence, for the next three (3) courses following along the Westerly side of Hawaii Belt Road (F.A.P. No. F10 (5)):

- 56. 357° 59' 34" 107.01 feet to a point;
- 57. 88° 48' 14" 10.00 feet to a point;

Thence, following on a curve to the right with a radius of 3,769.72 feet, the chord azimuth and distance being:

- 58. 359° 43' 03" 120.22 feet to the point of beginning and containing an area of 53.163 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 Agricultural District.
- C. Final Subdivision Approval of the subject property shall be secured within five (5) years from the effective date of this ordinance.
- D. Lots within the proposed subdivision shall not exceed the number of units of water which are available and have been committed to the subject property by the Department of Water Supply. Any further development shall occur only when sufficient County water becomes available by construction of on- and off-site water system improvements. All water system improvements shall meet with the requirements of the Department of Water Supply prior to the issuance of Final Subdivision Approval.
- 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 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.

- F. The applicant(s), its successors or assigns shall improve the intersection at the State Highway 190 (Mamalahoa Highway) and the proposed subdivision road in accordance with the requirements of the Department of Public Works and the State Department of Transportation prior to receipt of Final Subdivision Approval. This may include, but not be limited to, a left-hand turn lane, a dedicated right turn lane from the subdivision road to southbound Mamalahoa Highway and a refuge lane with an additional 10-foot future road widening setback along the length of Mamalahoa Highway. Applicant shall prepare a Traffic Impact Analysis Report (TIAR).

- G. All connector roadways within the proposed subdivision shall be constructed to County dedicable standards and dedicated to the County at no cost to the County. The subdivision roads shall have at least one connection to the north to the adjoining properties and at least one connection to the south that will connect to the Old Homestead Road. The east-west (mauka-makai) road within the subdivision shall connect to Kohanaiki Homestead Road and to Mamalahoa Highway. The roadway connection to Kohanaiki Homestead Road shall be gated and locked and used only in times of emergency and for evacuation purposes.

- H. A water line shall be constructed from the subject property to Kohanaiki Homestead Road and a fire hydrant installed within the County owned Kohanaiki Homestead Road right-of-way to provide fire protection in this area.

- I. The applicant shall provide a 20-foot wide future road widening setback easement along the length of the property fronting Kohanaiki Homestead Road.

- J. Install streetlights, signs, and markings meeting with the approval of the

Department of Public Works, Traffic Division.

- K. 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.

- L. A drainage study of the subject property, if required, shall be prepared by the applicant and submitted to the Department of Public Works for review and approval, prior to the submittal of plans for Plan Approval review. Drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.

- M. 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 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, shall be determined by the County Council. The fair share contribution shall have a

maximum combined value of **\$9,472.11** per single-family residential unit/lot. Based upon the applicant's representation of intent to develop up to thirty (30) additional residential units/lots over the present zoning, the indicated total of fair share contribution is **\$284,163.30** 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 M. The fair share contribution shall be allocated as follows:

1. \$4,567.62 per single-family residential unit for an indicated total of **\$137,028.60** to the County to support park and recreational improvements and facilities;
2. \$220.34 per single-family residential unit for an indicated total of **\$6,610.20** to the County to support police facilities;
3. \$435.20 per single-family residential unit for an indicated total of **\$13,056.00** to the County to support fire facilities;
4. \$190.54 per single-family residential unit for an indicated total of **\$5716.20** to the County to support solid waste facilities; and
5. \$4058.41 per single-family residential unit for an indicated total of **\$121,752.30** 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 F and H shall be credited

against the sum specified in Condition M (5) for road and traffic improvements.

For purposes of administering Condition M, 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.

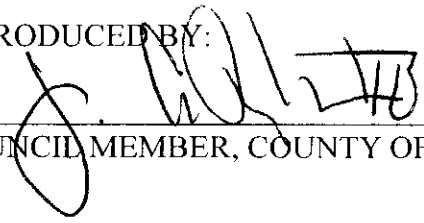
- N. The applicant(s) shall comply with all applicable laws, rules, regulations and requirements of affected agencies.
- O. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the ordinance. The report shall include, but not be limited to, 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.
- P. 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.
- 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 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.
- 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 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

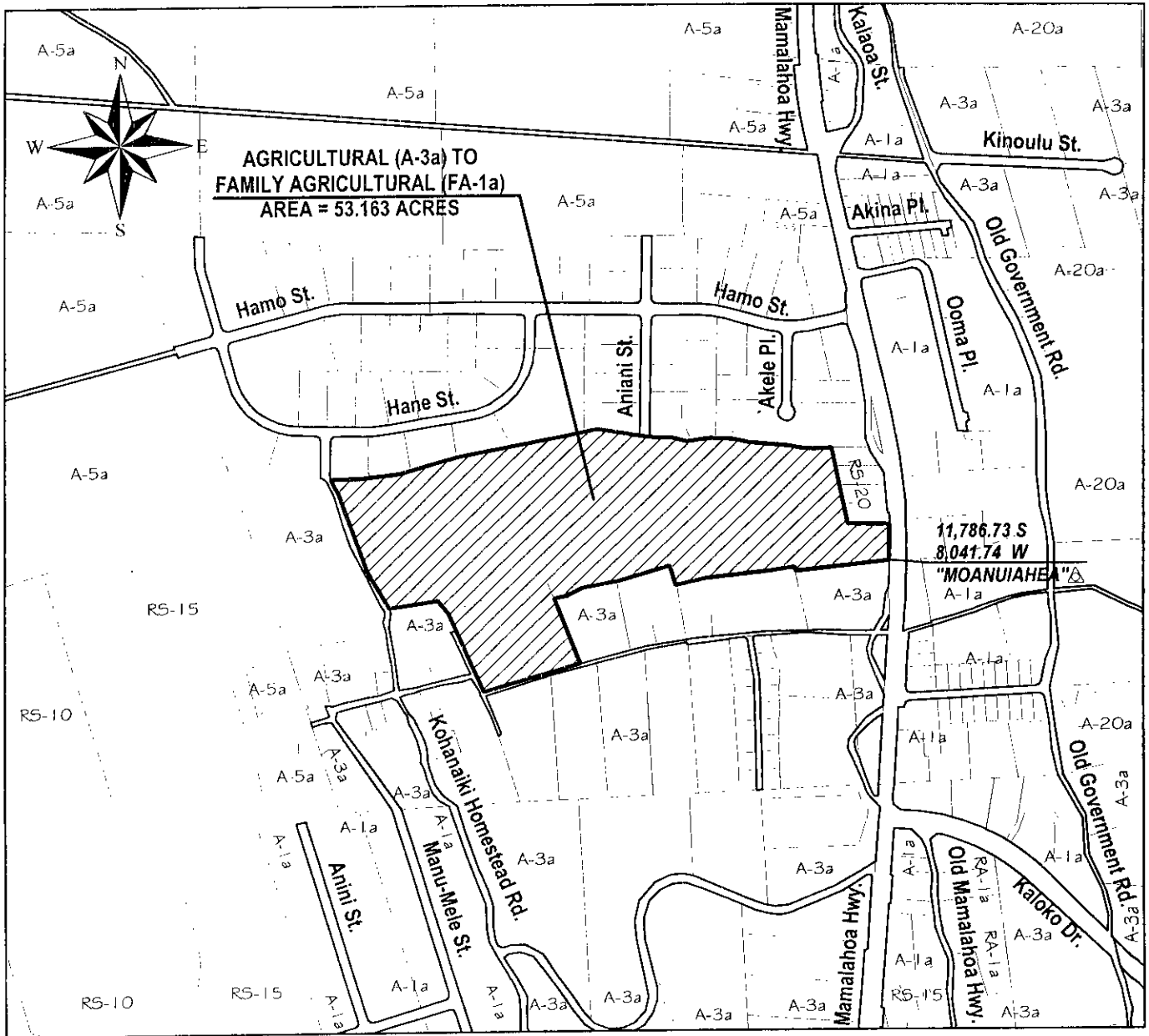
Date of Introduction: October 8, 2003

Date of 1st Reading: October 8, 2003

Date of 2nd Reading: October 22, 2003

Effective Date: October 29, 2003

REFERENCE: Comm. 342.3



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
 FAMILY AGRICULTURAL (FA-1a)
 AT KOHANAIIKI, NORTH KONA, HAWAII
 PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK
 County of Hawaii
 Hilo, Hawaii

RECEIVED

03 OCT 30 PM 1 20

Introduced By: J. Curtis Tyler, III
 Date Introduced: October 8, 2003
 First Reading: October 8, 2003
 Published: October 19, 2003

REMARKS: (By request)

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

Second Reading: October 22, 2003
 To Mayor: October 27, 2003
 Returned: October 30, 2003
 Effective: October 29, 2003
 Published: November 9, 2003

REMARKS:

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

[Signature]
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date OCT 28 2003

[Signature]
 COUNCIL CHAIRMAN

[Signature]
 COUNTY CLERK

Bill No.: 147 (Draft 2)

Reference: C-342.3/PC-57

Ord No.: 03 144

Approved/Disapproved this 29th day
 of October, 2003

[Signature]
 MAYOR, COUNTY OF HAWAII