



**ORDINANCE NO. 04 103**

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-.5a) AT KOHANAIKI, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-3-19:28.

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 Residential and Agricultural (RA-.5a):

Beginning at a found 1/2" iron pipe in concrete on top of an old dry stacked rock wall, being the Northeast corner of this herein-described tract of land and being on the South line of a 47.710 acre tract of land as found in Document No. 2000-096375, as recorded in the State of Hawaii Bureau of Conveyances; said beginning point coordinates of which referred to Government Survey Triangulation Station "MOANUIAHEA" being 11,821.92 feet South and 8,533.43 feet West and running by azimuths measured clockwise from true South:

Thence, following along the remainder of Grant 2030 to Kaiakoili along the East line of this herein-described tract of land, along the center of an old dry stacked rock wall with the following (4) four courses:

- |    |      |     |     |        |   |
|----|------|-----|-----|--------|---|
| 1. | 344° | 50' | 36" | 12.77  | feet to a 1/2" pipe found in concrete;  |
| 2. | 348° | 38' | 52" | 116.87 | feet to a set 1/2" iron stake with a red plastic cap marked No. 10743;  |
| 3. | 349° | 31' | 30" | 82.49  | feet to a set 1/2" iron stake with a red plastic cap marked No. 10743;  |
| 4. | 347° | 15' | 41" | 120.84 | feet to a set 1/2" iron stake with a red plastic cap marked No. 10743, being the Southeast corner of this herein-described tract of land on the North side of an old "Government Road"; |

Thence, following along the remainder of Grant 2030, along the center of an old dry stacked rock wall, along the North line of said "Government Road", being the South line of this herein-described tract of land, with the following (3) courses;

- |    |     |     |     |        |  |
|----|-----|-----|-----|--------|--|
| 5. | 88° | 54' | 36" | 131.72 | feet to a set ½" iron stake with a red plastic cap marked No. 10743;   |
| 6. | 84° | 19' | 46" | 69.78  | feet to a set ½" iron stake with a red plastic cap marked No. 10743;   |
| 7. | 85° | 44' | 19" | 302.99 | feet to a found ½" iron pipe recognized as the Southwest corner of this herein-described tract of land, being the Southeast corner of a 0.33 acre tract; |

Thence, following along the remainder of Grant 2030, along the approximate center of an old dry stacked wall, along the East and North line of the said 0.33 acre tract, with the following (2) two courses:

- |    |      |     |     |        |  |
|----|------|-----|-----|--------|--|
| 8. | 168° | 48' | 32" | 120.97 | feet to a found ½" iron pipe in concrete;  |
| 9. | 84°  | 45' | 20" | 121.77 | feet to a found ½" iron pipe in concrete, being the upper Southwest corner of this herein-described tract of land; |

Thence, following along the remainder of Grant 2030, along the approximate center of an old dry stacked wall, along the West line of this herein-described tract of land, being the East line of a 3-1/2 acre tract with the following (2) two courses:

- |     |      |     |     |        |   |
|-----|------|-----|-----|--------|---|
| 10. | 164° | 49' | 35" | 42.33  | feet to a set ½" iron stake with a red plastic cap marked No. 10743;  |
| 11. | 172° | 33' | 36" | 122.00 | feet to a found small nail in a "+" on said rock wall, being recognized as the Northwest corner of this herein-described tract of land; |

Thence, following along the remainder of Grant 2030, along the approximate center of an old dry stacked wall, along the North line of this herein-described tract of land, being the South line of a 47.710 acres, with the following (6) six courses:

- |     |      |     |     |        |                               |
|-----|------|-----|-----|--------|-------------------------------|
| 12. | 261° | 19' | 27" | 106.16 | feet to a nail set in a rock; |
|-----|------|-----|-----|--------|-------------------------------|

13.	243°	42'	24"	49.96	feet to a set ½" iron stake with a red plastic cap marked No. 10743;
14.	267°	21'	31"	64.88	feet to a set ½" iron stake with a red plastic cap marked No. 10743;
15.	262°	51'	37"	262.37	feet to a set ½" iron stake with a red plastic cap marked No. 10743;
16.	294°	57'	08"	12.87	feet to a set ½" iron stake with a red plastic cap marked No. 10743;
17.	260°	30'	39"	122.04	feet to the point of beginning and containing an area of 4.07 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 an ohana dwelling or 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. Access to the property shall be through the Hualalai Vistas Subdivision to the north. The applicant shall extend a County dedicable subdivision road and associated utilities from the southern boundary of the Hualalai Vistas Subdivision to the Homestead Road on the southern boundary of the subject property prior to or in conjunction with final subdivision approval. The intersection of the Homestead Road and the proposed interior subdivision road shall be improved meeting with the approval of the Department of Public Works. The subdivision road shall be dedicated to the County upon request. There shall be no access on the Homestead Road for construction vehicles for the subdivision improvements.

Within 30 days of the effective date of this ordinance, the applicant shall submit a Grant of Easement document to the County of Hawaii, through its Planning Department, the right in the nature of a 50-foot wide perpetual easement for ingress, egress, access and right-of-way purposes, over and across the subject property between the Hualalai Vistas Subdivision and the Homestead Road.

If the Hualalai Vistas Subdivision precedes the development of the subject property, within 60 days of a request by the County Planning Director, the landowner of the subject property shall submit a subdivision application which would enable the landowner to convey, at no cost, that area covered by the Grant of Easement to the County of Hawaii. Documents conveying this easement in fee to the County shall be filed with the Planning Director within 30 days of issuance of final subdivision approval creating this road lot.

This is to enable the Hualalai Vistas Subdivision to construct a subdivision access road to the Homestead Road as required by Ordinance 03-144.

- F. If access cannot be obtained from Hualalai Vistas Subdivision because of non-development of that subdivision, the Homestead Road shall be widened and improved along the entire subject property frontage and east to Mamalahoa Highway (Highway 190) to County-dedicable standards, meeting with the requirements of the Subdivision Code and the Department of Public Works. The intersection of the Homestead Road shall be improved meeting with the requirements of the Department of Transportation, prior to final subdivision approval.
- G. Install streetlights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division.
- H. A Burial Treatment Plan shall be submitted for review and approval of the Planning Director prior to submitting plans for subdivision review or prior to issuance of any land alteration permits, in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD). Proposed mitigation treatment for the burial site(s) within the subject area shall be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans are finalized for the site(s). A copy of the approved plan shall be submitted to the Planning Department for its files.
- I. 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.
- J. The applicant(s) shall comply with all applicable laws, rules, regulations and requirements of affected agencies.

K. The applicant shall pay its fair share contribution to address potential regional impacts of the project with respect to roads, park, fire, police and solid waste disposal facilities. The fair share contribution shall be initially based on the representations contained within the change of zone application and may be increased or reduced proportionally if the lot counts are adjusted. The fair share contribution shall become due and payable prior to receipt of Final Plan Approval or within five (5) years from the effective date of this change of zone ordinance, whichever occurs first. The fair share contribution for each lot shall be based on a maximum density for each lot as determined by the zoning resulting from this change of zone. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of \$9,671.44 per single family residential unit. Based upon the applicant's representation of intent to develop a total of seven (7) single-family residential units, the indicated total of fair share contribution is **\$67,700.08** for the 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 K. The cost of providing and/or constructing the improvements within the Homestead Road right-of-way shall be credited against the sum specified herein for road and traffic improvements. The fair share contribution shall be allocated as follows:

1. **\$4,663.74** per single family residential unit for the seven (7) single family residential units for an indicated total of **\$32,646.18** to the County to support park and recreational improvements and facilities;
2. **\$224.98** per single family residential unit for the seven (7) single family residential units for an indicated total of **\$1,574.86** to the County to support police facilities;
3. **\$444.36** per single family residential unit for the seven (7) single family residential units for an indicated total of **\$3,110.52** to the County to support fire facilities;

4. **\$194.55** per single family residential unit for the seven (7) single family residential units for an indicated total of **\$1,361.85** to the County to support solid waste facilities;
  5. **\$4,143.81** per single family residential unit for the seven (7) single family residential units for an indicated total of **\$29,006.67** to the State or County to support road and traffic improvements.
- L. 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.
- M. 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.
- N. With the exception of condition E, 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.
- O. 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:

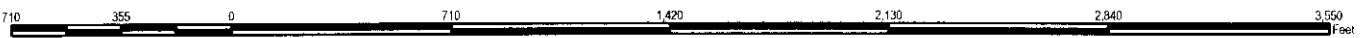
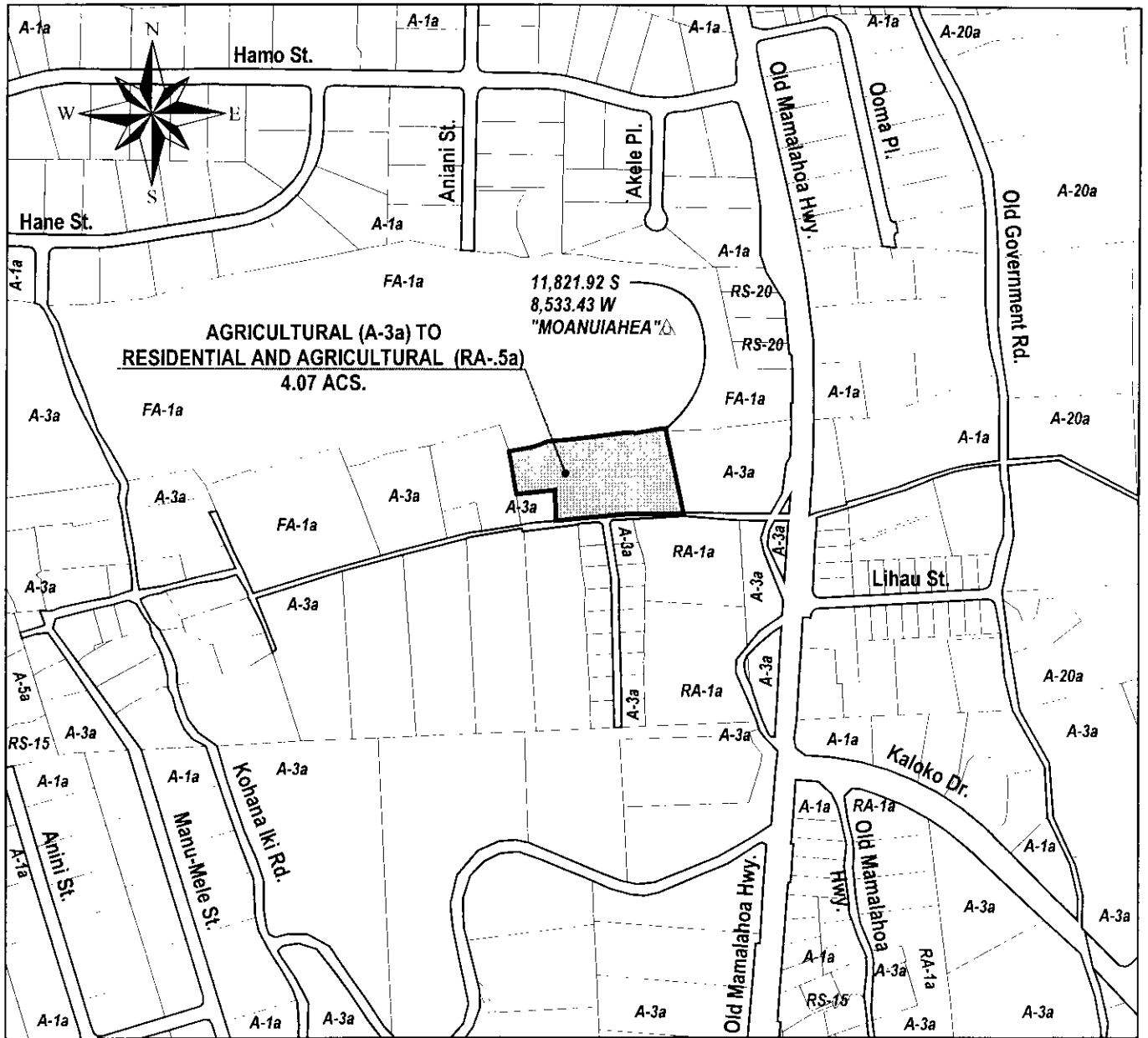
  
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: August 18, 2004  
Date of 1st Reading: August 18, 2004  
Date of 2nd Reading: September 1, 2004  
Effective Date: September 14, 2004

REFERENCE: Comm. 700.5





# 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-5a)  
 AT KOHANAIKI, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT  
 COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK  
County of Hawaii

Hilo, Hawaii

SEP 14 PM 12:18  
(Draft 3)

Introduced By: Leningrad Elarionoff  
Date Introduced: August 18, 2004  
First Reading: August 18, 2004  
Published: August 29, 2004

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Second Reading: September 1, 2004  
To Mayor: September 2, 2004  
Returned: September 14, 2004  
Effective: September 14, 2004  
Published: September 19, 2004

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	0	2	0

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			
	6	1	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:

[Signature]  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date 9/3/04

Approved/Disapproved this 14<sup>th</sup> day  
of September, 2004.

[Signature]  
MAYOR, COUNTY OF HAWAII

[Signature]  
COUNCIL CHAIRMAN  
[Signature]  
COUNTY CLERK

Bill No.: 302 (Draft 3)  
Reference: C-700.5/PC-104  
Ord: 04 103