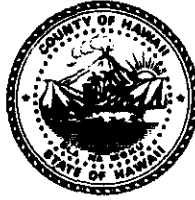


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 227
Draft 2

ORDINANCE NO. 06 78

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO MULTIPLE-FAMILY RESIDENTIAL (RM-2.5) AT KAHULUI 1ST, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-5-17:POR. 5 AND 2.

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 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kahului 1st, North Kona, Hawai'i, shall be Multiple-Family Residential (RM-2.5):

Beginning at the Northwesterly corner of this parcel of land, being also the Southwesterly corner of Lot 2-A of this subdivision and being a point on the Northeasterly side of Kuakini Highway (F.A.S.P. No. S-229(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA (NORTH MERIDIAN)" being 6,168.35 feet South and 4,653.86 feet East and running by azimuths measured clockwise from True South:

Thence, for the next eight (8) courses following along the remainder of Grant 1868 to Kaupena:

1. 214° 40' 23" 343.16 feet along Lot 2-A of this subdivision to a point;

Thence, following along Lots 2-A and 1-A of this subdivision on a curve to the right with a radius of 700.00 feet, the chord azimuth and distance being:

2. 253° 28' 06" 877.16 feet to a point;

Thence, for the next six (6) courses following along Lot 1-A of this subdivision:

3. 292° 15' 49" 159.31 feet to a point;
4. 22° 00' 595.57 feet to a point;
5. 95° 00' 244.47 feet to a point;
6. 80° 00' 160.00 feet to a point;
7. 35° 00' 140.00 feet to a point;
8. 20° 00' 110.00 feet to a point;
9. 124° 40' 536.70 feet along the Northeasterly side of Kuakini Highway (F.A.S.P. No. S-229(1)) to the point of beginning and containing an area of 14.000 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 1983 (2005 Edition), 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, landowner, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

- B. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the “Water Commitment Guidelines Policy” to the Department of Water Supply within ninety days from the effective date of this ordinance for the initial commitment of 50 units of water. The applicant shall obtain water commitments to develop the requested number of units prior to submitting plans for Final Plan Approval for any portion of the project.
- C. Construction of the proposed development shall be commenced within five (5) years from the effective date of this ordinance. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).
- D. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code relating to Affordable Housing Policy, provided further that, as represented by the applicant, the applicant shall generate affordable housing credits on-site equal to not less than fifty percent of the units developed for each phase of the development. Affordable housing credits in excess of the basic requirements of Chapter 11, Article 1, Hawaii County Code, shall be credited to the applicant, its successors, or assigns. The affordable housing plan shall be approved by the Administrator of the Office of Housing and Community

Development prior to final subdivision approval or final plan approval, whichever occurs first.

- E. A Traffic Impact Analysis Report (TIAR) prepared by a licensed professional engineer shall be submitted to the Department of Public Works for review and approval prior to the issuance of Final Plan Approval. The TIAR shall include a schedule of improvements describing when each improvement should be required in development of the project.
- F. Accesses to and any improvements (including roadway, utilities and/or intersection improvements) within Kuakini Highway and the future alignment of Kahului to Keauhou Parkway, including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy. All sight distances shall meet the current guidelines of A Policy on Geometric Design of Highways and Streets (AASHTO). All approaches may be subject to access management movement restrictions as required by the Department of Public Works. No vehicular security gate shall be installed within sixty (60) feet of any approach to Kuakini Highway or the future Kahului to Keauhou Parkway right-of-way. A vehicular turnaround shall be provided within the project property on the ingress side of any such gate.
- G. The proposed alignment and right-of-way for Kahului to Keauhou Parkway, including the intersection with Kuakini Highway and Kuakini Highway Improvements Phase II, as determined by the Department of Public Works, shall be reserved by subdivision of the proposed right-of-way to create a separate lot for future roadway improvements prior to the issuance of any certificate of occupancy and conveyed to the County upon request, at no cost to the County.

- H. If the project is built before the portion of the Kahului to Keauhou Parkway is built through the property, access shall consist of (1) a main project entrance located in the right-of-way of the future Parkway, with an intersection on Kuakini Highway, and (2) at Kuakini Highway north of the Waiaha Drainageway. For the main project entrance, the applicant shall provide full intersection improvements at Kuakini Highway consisting of, but not limited to, pavement widening, a dedicated left turn storage lane, drainage improvements, and any relocation of utilities meeting with the approval of the Department of Public Works, and shall dedicate the necessary right-of-way to the County for its Kuakini Highway widening project at no cost to the County, prior to the issuance of a certificate of occupancy for any residential structures. Improvements may be constructed in phases as the project is built out, with the approval of the Department of Public Works. The driveway from the intersection with Kuakini Highway to the main project entrance shall be constructed meeting with the approval of the Department of Public Works and shall, to the extent that it can be done without greatly increasing the cost to the applicant beyond the access needs of their project, be built so that it can be converted to be used as a portion of the Parkway when the Parkway is built. Upon construction of the Parkway, the applicant, its successors, and assigns, shall be responsible for the cost of constructing a replacement access from the project to the Parkway, at a location meeting with the approval of the Department of Public Works. The applicant shall have the right to require the Department of Public Works to finalize the access point prior to the issuance of plan approval for the project. The necessary intersection improvements shall be determined by the Department of Public Works and shall be limited to right-in, right-out only, unless otherwise determined by the Department of Public Works. The Department of Public Works may approve a secondary access to the Parkway as long as it is limited to a right-in only. Access (2) on Kuakini Highway shall be limited to right-out movements only.

- I. If the Parkway is built before the project, the applicant shall construct intersection improvements in the Parkway₁ and the Kuakini Highway for Access (2) as determined by the Department of Public Works, at its sole cost. The location of the access point on the Parkway₁ and any necessary improvements, shall be determined by the Department of Public Works , and the access shall be limited to a right-in, right-out only, unless otherwise determined by the Department of Public Works. Access (2) shall be limited to a right-out only, unless otherwise approved by the Department of Public Works.
- J. Install streetlights, signs and markings meeting with the approval of the Department of Public Works.
- K. To allow for the coordinated development of the subject property and the property immediately mauka, (Lot 1-A of Subdivision No. 04-0153), so that the portion of Lot 1-A that is on the same side of the Waiaha drainageway as the subject property can be developed without additional access points being created on the Parkway or Kuakini Highway, the applicant shall provide easements on selected project roadways, allowing access by Lot 1-A through the project to (1) the Parkway, and (2) the Kuakini access point. The easement to the Kuakini access point in favor of Lot 1-A shall be required only if Lot 1-A is rezoned with a condition requiring it to share maintenance costs and liability for the easement. The owner of Lot 1A shall be required to pay fair market value for the use of the easements. The designation of the interior roadways to be used for the easements, and the standard for road construction, shall be approved by the Planning Director in consultation with the Department of Public Works.
- L. The applicant shall not install utilities in the Kahului to Keauhou Parkway and Kuakini Highway rights-of way unless approved by the Department of Public

Works. The applicant shall provide any necessary easements for installation of such utilities.

- M. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- N. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to issuance of a construction permit. Any recommended drainage improvements shall be constructed meeting with the approval of the Department of Public Works prior the issuance of any certificate of occupancy.
- O. There shall be no construction of dwellings and related improvements or other substantial buildings, or subdivision roads within areas designated “AE” by Flood Insurance Rate Maps (FIRM). Restrictive covenants in the deeds of all lots or condominium units shall give notice of the terms of this rezoning condition. No residential lots may be created which lack a buildable area. 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 or Final Plan Approval, as applicable. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
- P. The applicant shall submit a flood study prepared by a licensed professional civil engineer for the Waiaha Drainageway within the subject property to the Department of Public Works prior to the issuance of any construction permit. If required by the Department of Public Works, the applicant shall submit the study to the Federal Emergency Management Agency (FEMA) and obtain a Letter of

Map Change (LOMC) prior to the issuance of any construction permit or grading permit, for areas determined by the Department of Public Works. The applicant shall construct any remedial improvements the study recommends to render the subject property reasonably safe from flooding by the base flood event. These improvements may include, but not be limited to interceptor channels, revetments, permanent erosion control and hazard barrier fencing prior to the issuance of any certificate of occupancy. Channelization shall be according to the County of Hawaii Storm Drainage Standards and shall meet with the approval of the Department of Public Works.

- Q. A portion of the subject property, as determined by the Department of Public Works, shall be encumbered with a drainage and access easement in favor of the County or shall be subdivided and conveyed to the County at no cost to the County, for the Waiaha Drainageway at Kuakini Highway culvert project and culvert maintenance access prior to the issuance of any construction permit.
- R. A National Pollutant Discharge Elimination System (NPDES) permit and an Underground Injection Control (UIC) permit, if required, shall be secured from the State Department of Health before the commencement of construction activities.
- S. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
- T. The applicant shall perform an engineering study to determine if the sewer line has adequate capacity to handle the proposed flows in accordance with the City and County of Honolulu Wastewater Design Standards. If the off-site sewer line does not have adequate capacity, the applicant shall be responsible for necessary improvements. Sewer lines shall be installed within the development to connect

with the County's sewer system, meeting with the approval of the Department of Environmental Management, and prior to the issuance of a Certificate of Occupancy.

- U. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
- V. The project shall include a park site or sites consisting of at least one acre developed as a play field or passive recreation area. The park area(s) shall not be located within the Waiaha Drainageway or Flood Hazard Area.
- W. The applicant, its successors, and assigns shall be responsible for the cost of any sound abatement measures to reduce sound within the project that are required to qualify the Parkway for Federal construction funds. Until the completion of the Parkway through the subject property, covenants in all deeds to the subject property, including deeds to individual units and to any lots subdivided from the subject property, and promotional and sales materials given to prospective purchasers, shall inform prospective owners of the following: "Plans for the area involve the construction of the Parkway within a right-of-way shown on the attached map. The Parkway will be a major highway that is expected to carry a high volume of traffic. The County of Hawaii has determined that the construction of this highway is important to the proper development of Kona as a whole. The construction of the Parkway will create noise, dust, and other impacts. The contractor building the Parkway will be required to follow some regulations to reduce noise and dust, but some impacts will occur. After completion, traffic on the Parkway will cause noise and other effects that must be expected from a busy roadway. A prospective purchaser who cannot accept the future construction of the Parkway in this area is advised to seek another area to reside. This property

was rezoned on condition that if noise abatement measures between the Parkway and adjacent residences in this project must be taken to qualify the Parkway project for federal funding, the residential owners would be required to pay for the noise abatement. The construction of the Parkway will also make it necessary to relocate one entrance to the property and may, during the construction period, cause some changes to the project's access." The sales materials and covenants do not have to follow the exact wording of this condition but shall inform the prospective purchasers of the substance of this condition.

- X. 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 – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- Y. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. 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 unit counts are adjusted. The fair share contribution shall become due and payable prior to receipt of Final Plan Approval. The fair share contribution for each unit shall be based on the number of units developed. 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 **\$6,411.25** per multiple family residential unit

(\$9,991.21 per single family residential unit). Based upon the applicant's representation of intent to develop a total of 212 multiple family residential units, the indicated total of fair share contribution is **\$1,359,185.00** for the multiple 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. The fair share contribution per multiple family residential unit (single family residential unit) shall be allocated as follows:

1. **\$3,162.49** per multiple family residential unit (**\$4,817.93** per single family residential unit) to the County to support park and recreational improvements and facilities for a total of **\$670,447.88**;
2. **\$99.95** per multiple family residential unit (**\$232.42** per single family residential unit) to the County to support police facilities for a total of **\$21,189.40**;
3. **\$307.46** per multiple family residential unit (**\$459.06** per single family residential unit) to the County to support fire facilities for a total of **\$65,181.52**;
4. **\$137.04** per multiple family residential unit (**\$200.98** per single family residential unit) to the County to support solid waste facilities for a total of **\$29,052.48**; and
5. **\$2,704.31** per multiple family residential unit (**\$4,280.82** per single family residential unit) to the County to support road and traffic improvements for a total of **\$573,313.72**.

In lieu of paying the fair share contribution, the applicant may contribute land and/or construct 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 review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council. Improvements to the drainage as it crosses under Kuakini Highway (Conditions N and P) may be credited against the road fair share, and the dedication of the land value of the Parkway right-of-way (Condition G), Kuakini Highway right-of-way (Condition H), and Parkway noise abatement measures (Condition W) shall be credited against fair share.

- Z. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exaction or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- AA. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- BB. An initial extension of time for the performance of conditions within the ordinance may be granted by the 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, 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 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.

CC. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the 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.

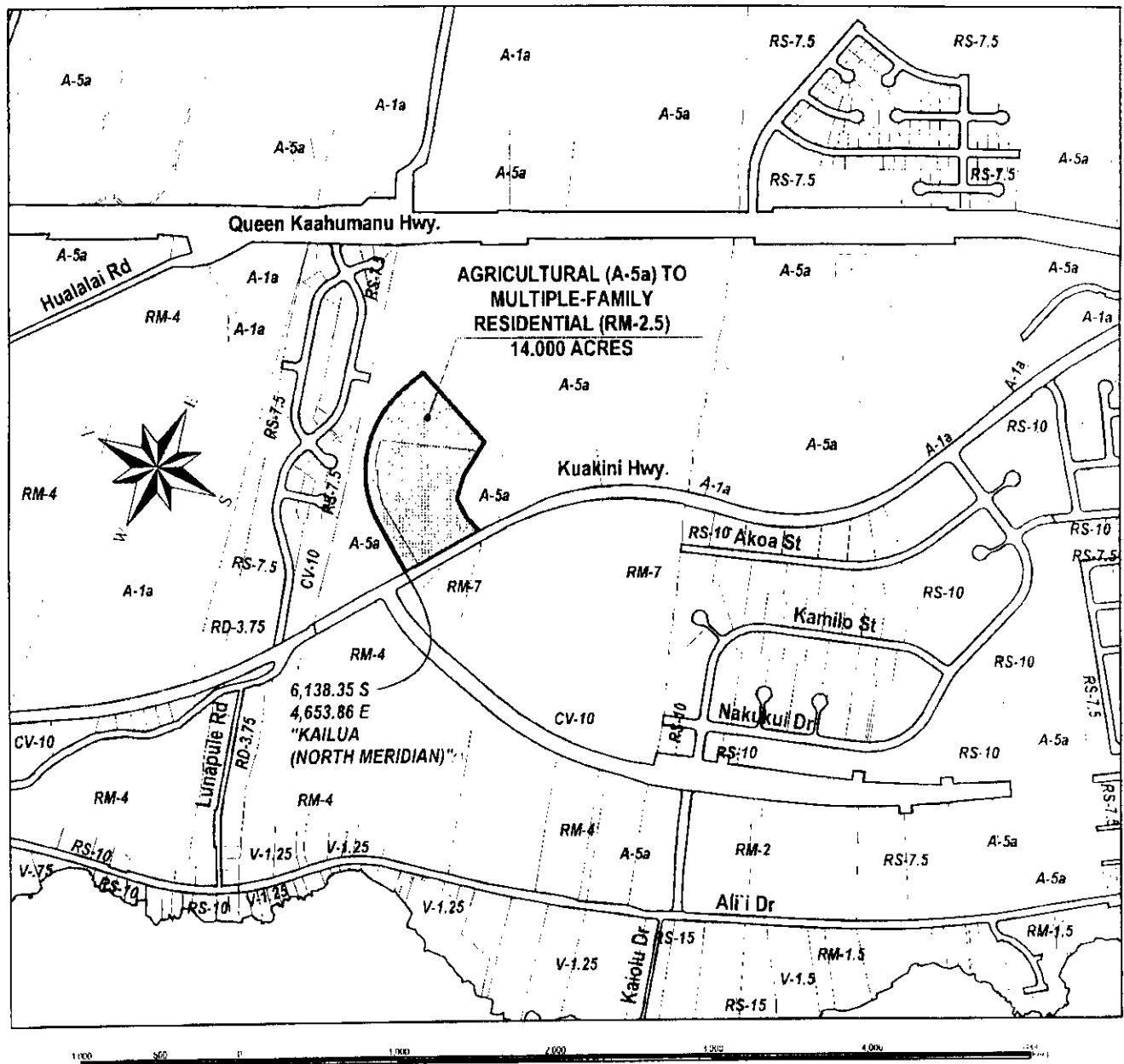
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: May 2, 2006
Date of 1st Reading: May 2, 2006
Date of 2nd Reading: May 17, 2006
Effective Date: June 1, 2006

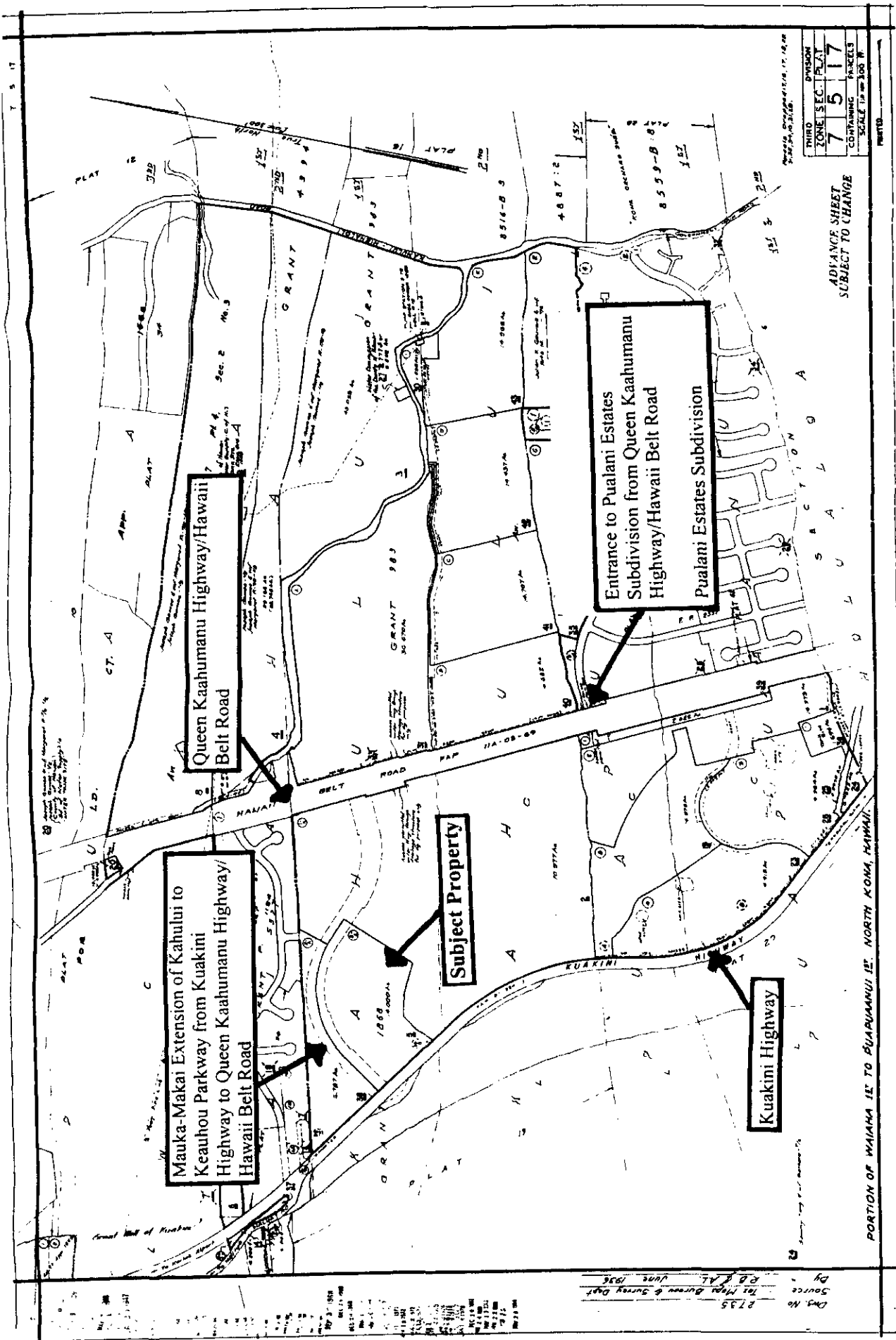
REFERENCE: Comm. 690.7



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
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION
 FROM AGRICULTURAL (A-5a)
 TO MULTIPLE-FAMILY RESIDENTIAL (RM-2.5)
 AT KAHULUI 1st, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII



PLAT	DIVISION
7517	7517
CONTAINING	PAGES
SCALE 1" = 100' N	

ADVANCE SHEET
SUBJECT TO CHANGE

PORTION OF WAIHANA 1ST TO PŪHUANUI 1ST, NORTH KONA, HAWAII.

EXHIBIT "A-1"

OFFICE OF THE COUNTY CLERK
County of Hawai'i
Hilo, Hawai'i

(Draft 2)

Introduced By: Donald Ikeda
Date Introduced: May 2, 2006
First Reading: May 2, 2006
Published: May 12, 2006

REMARKS: _____

Second Reading: May 17, 2006
To Mayor: May 18, 2006
Returned: June 2, 2006
Effective: June 1, 2006
Published: June 8, 2006

REMARKS: _____

ROLL CALL VOTE 753				
	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann		X		
Holschuh	X			
Ikeda	X			
Isbell	X			
Jacobson		X		
Pilago		X		
Safarik	X			
	6	3	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann		X		
Holschuh	X			
Ikeda	X			
Isbell		X		
Jacobson		X		
Pilago		X		
Safarik	X			
	5	4	0	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:

By B. Selby
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date 5-19-06

[Signature]
COUNCIL CHAIRMAN
Constantine R. Klein
COUNTY CLERK

Approved/Disapproved this 1st day

of June, 2006
Harry K. Kiri
MAYOR, COUNTY OF HAWAII

Bill No.: 227 (Draft 2)
Reference: C-690.7/PC-66
Ord No.: 06 78