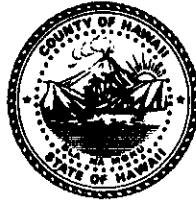


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 297

Draft 2

ORDINANCE NO. 06 116

AN ORDINANCE AMENDING SECTION 25-8-34 (PAPAIKOU-ONOMEA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – 20 ACRES (A-20a) AND SINGLE FAMILY RESIDENTIAL – 15,000 SQUARE FEET (RS-15) TO RESIDENTIAL AND AGRICULTURAL – 1 ACRE (RA-1a) AT WAINAKU, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY 2-6-032:006.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Section 25-8-34, 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 Wainaku, South Hilo, Hawai'i, shall be Residential and Agricultural – 1 acre (RA-1a):

PARCEL "A":

Beginning at a point at the northeast corner of this parcel of land and at the southerly side of Wainaku Farm Lots Road Lot A the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 10,300.70 feet North and 662.20 feet East and running by azimuths measured clockwise from true South:

- | | | | |
|----|----------|-------------|-----------------------------|
| 1. | 1° 00' | 669.18 feet | along remainder of Lot 1-D; |
| 2. | 100° 00' | 240.00 feet | along remainder of Lot 1-D; |
| 3. | 126° 00' | 245.00 feet | along remainder of Lot 1-D; |
| 4. | 113° 00' | 110.00 feet | along remainder of Lot 1-D; |
| 5. | 91° 00' | 60.00 feet | along remainder of Lot 1-D; |
| 6. | 67° 00' | 215.00 feet | along remainder of Lot 1-D; |
| 7. | 97° 24' | 23.32 feet | along remainder of Lot 1-D; |

8.	115° 14'	41.31 feet	along Lot 7, Wainaku Farm Lots;
9.	170° 38'	374.23 feet	along Lot C, Wainaku Farm Lots, thence along Lot C, Wainaku Farm Lots along a curve to the right having a radius of 975.00 feet the chord azimuth and distance being:
10.	173° 12'	87.33 feet;	
11.	175° 46'	91.21 feet	along Lot C, Wainaku Farm Lots; thence, along Lot C, Wainaku Farm Lots along a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being:
12.	224° 55'	30.26 feet	to a point at the southerly side of Wainaku Farm Lots Road Lot A;
13.	274° 04'	924.83 feet	along the southerly side of Wainaku Farm Lots Road Lot A, to the point of beginning and containing an area of 11.909 Acres.

PARCEL "B":

Beginning at a point at the northwest corner of this parcel of land and at the southerly side of Wainaku Farm Lots Road Lot A the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 10,300.70 feet North and 662.20 feet East and running by azimuths measured clockwise from true South:

1.	274° 04'	28.47 feet	along the southerly side of Wainaku Farm Lots, Road Lot A; thence, along the southerly side of Wainaku Farm Lots, Road Lot A along a curve to the left having a radius of 330.00 feet, the chord azimuth and distance being:
2.	270° 59' 40"	35.37 feet;	
3.	3° 44'	726.06 feet	along Lot 1-B, Addition to Haaheo Elementary School and Lots 1-C, Wainaku Farm Lots;

4.	106° 39'	78.31 feet	along Lot 7, Wainaku Farm Lots;
5.	93° 29'	435.80 feet	along Lot 7, Wainaku Farm Lots;
6.	115° 14'	370.32 feet	along Lot 7, Wainaku Farm Lots;
7.	277° 24'	23.32 feet	along remainder of Lot 1-D;
8.	247° 00'	215.00 feet	along remainder of Lot 1-D;
9.	271° 00'	60.00 feet	along remainder of Lot 1-D;
10.	293° 00'	110.00 feet	along remainder of Lot 1-D;
11.	306° 00'	245.00 feet	along remainder of Lot 1-D;
12.	280° 00'	240.00 feet	along remainder of Lot 1-D;
13.	181° 00'	669.18 feet	along remainder of Lot 1-D to the point of beginning and containing an area of 2.862 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(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. The applicant shall comply with construction improvements and installation requirements, meeting with the approval of the Department of Water Supply, prior to Final Subdivision Approval.
- D. Final Subdivision Approval of the subject property shall be secured within five (5) years from the effective date of this ordinance.
- E. Improvements to the intersection of Wainaku Road and Kulana Kea Road within the existing rights-of-way, including but not limited to straightening the curve and flattening the storage area, shall be constructed prior to final subdivision approval, as required by the Department of Public Works.
- F. No structures or other substantial improvements shall be constructed within the drainage easement identified on the Final Subdivision Map dated October 9, 2001. Restrictive covenants in the deeds of all lots 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 covenants 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.

- G. 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.
- H. A drainage plan shall be submitted for the review and approval of the Department of Public Works in conjunction with the subdivision application process. A copy of said plan shall also be provided to the owner of TMK: 2-6-32: 1 for review and comment. The applicant shall establish drainage easements and maintain drainageways so as to direct water away from Kulana Kea Road. The drainage easements shall be included on the subdivision plat map.
- I. All development generated runoff shall be disposed of on site and not be directed toward any adjacent properties.
- J. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- 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. 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. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to Final Subdivision Approval.
- M. 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 become due and payable prior to receipt of Final Plan Approval. The fair share contribution for each additional lot shall be based on the actual number of residential units developed. The fair share contribution in the 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 **\$9,991.20** per single family residential unit. The total amount shall be determined by the actual number of additional units or lots according to the calculation and payment provisions set forth in this condition. The fair share contribution per single family residential unit shall be allocated as follows:
1. **\$4,817.93** per single family residential unit to the County to support park and recreational improvements and facilities;
 2. **\$232.42** per single family residential unit to the County to support police facilities;
 3. **\$459.06** per single family residential unit to the County to support fire facilities;

4. **\$200.98** per single family residential unit to the County to support solid waste facilities; and
5. **\$4,280.82** per single family residential unit to the County to support road and traffic improvements.

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; provided however, that the cost of providing and constructing the improvements required in Condition E shall be credited against the sum specified in Condition M(5) for road and traffic improvements.

- N. The applicant(s) shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- O. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the 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 satisfied. 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:

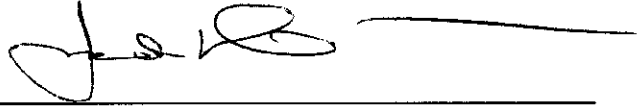
1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant(s), its successors or assigns, and that are not the result of their fault or negligence.
2. Granting of the time extension would not be contrary to the General Plan or Zoning 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.

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:

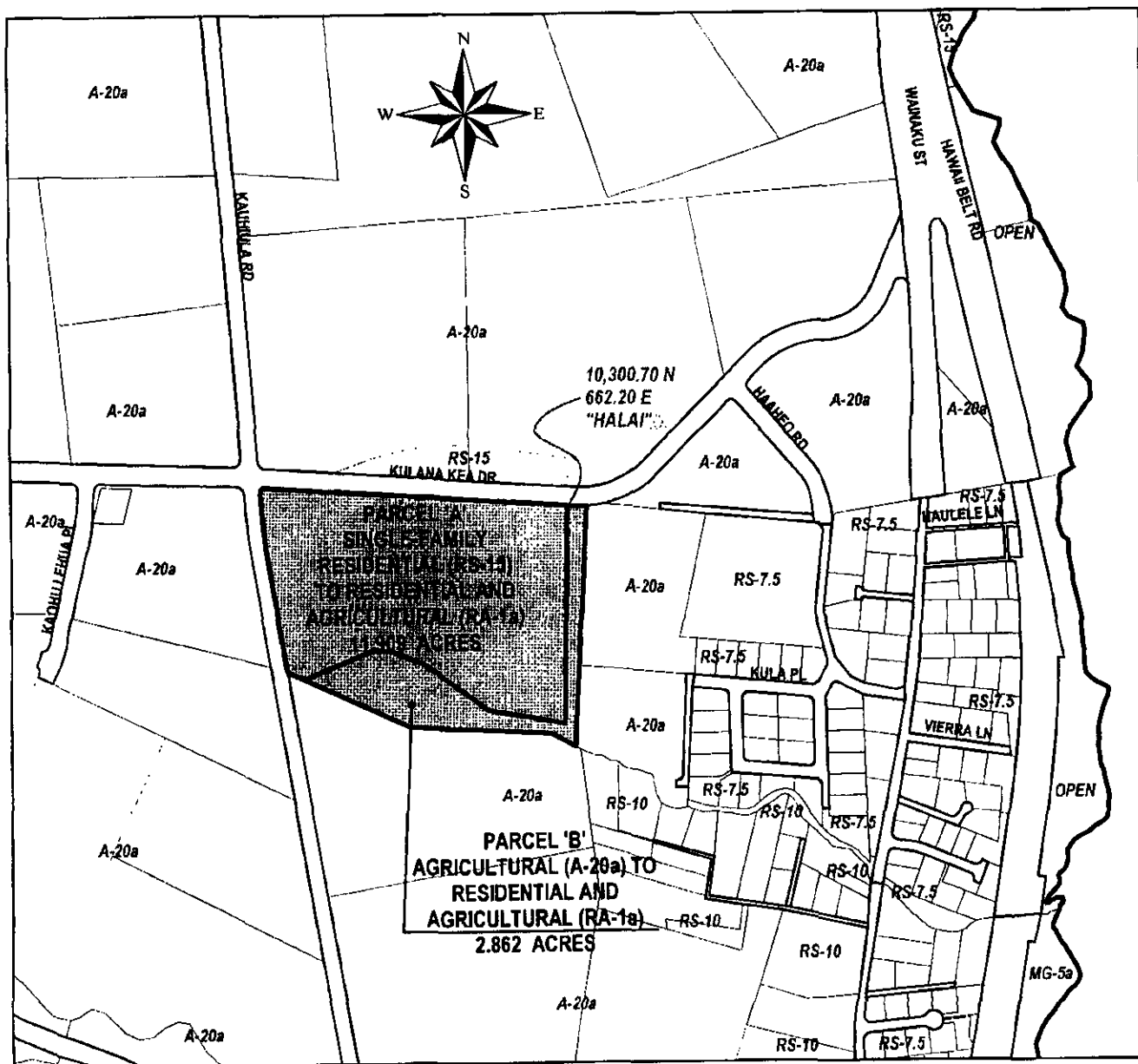


COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i

Date of Introduction: July 19, 2006
Date of 1st Reading: July 19, 2006
Date of 2nd Reading: August 1, 2006
Effective Date: August 8, 2006

REFERENCE: Comm. 933.1



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-34 (PAPAIOU-ONOMEA ZONE MAP)
ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE
1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION
FROM AGRICULTURAL (A-20a) AND SINGLE-FAMILY RESIDENTIAL (RS-15)
TO RESIDENTIAL AND AGRICULTURAL (RA-1a)
AT WAINAKU, SOUTH HILO, HAWAII

PREPARED BY: PLANNING DEPARTMENT
COUNTY OF HAWAII

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

Introduced By: Fred C. Holschuh
Date Introduced: July 19, 2006
First Reading: July 19, 2006
Published: July 28, 2006

REMARKS: _____

Second Reading: August 1, 2006
To Mayor: August 2, 2006
Returned: August 9, 2006
Effective: August 8, 2006
Published: August 15, 2006

REMARKS: _____

2006 AUG 9 AM 7:55 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			
	8	0	1	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			
	9	0	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:

Ang D. Selig
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date AUG 03 2006

[Signature]

COUNCIL CHAIRMAN

Carsten R. Kiri

COUNTY CLERK

Bill No.: 297 (Draft 2)
Reference: C-933.1/PC-96
Ord No.: 06 116

Approved/Disapproved this 8th day

of August, 2006
Harry Kiri
MAYOR, COUNTY OF HAWAII