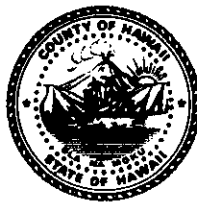


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. **06 152**

BILL NO. 251
(Draft 2)

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 RESIDENTIAL AND AGRICULTURAL (RA-1a) AND MULTIPLE FAMILY RESIDENTIAL (RM-3.5) AT MOEAUOA 2ND, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-5-3:7, 8, 9.

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 Moeauoa 2nd, North Kona, Hawai'i, shall be Residential and Agricultural (RA-1a):

Beginning at the Northeasterly corner of this parcel of land, being also the Northwesterly corner of Lot 7-A-1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA (NORTH MERIDIAN)" being 4,939.22 feet North and 7,769.05 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|--------------|--------|---|
| 1. | 321° 19' | 46.13 | feet along Lot 7-A-1 and along the remainder of Grant 1635 to J. L. Waiau to a point; |
| 2. | 323° 28' 20" | 127.50 | feet along Royal Patent 3991, Land Commission Award 7379, Apana 2 to Kahelepo to a point; |
| 3. | 320° 42' 40" | 105.89 | feet along the remainder of Grant 1635 to J. L. Waiau to a point; |
| 4. | 327° 05' 45" | 316.31 | feet along the remainder of Grant 1601 to Kanehailua to a point; |

Thence, for the next four (4) courses following along Lot 6 and along the remainder of Royal Patent 8126, Land Commission Award 9971, Apana 27 to W. P. Leleiohoku:

5.	307°	35'	45"	166.06	feet to a point;
6.	343°	23'		94.02	feet to a point;
7.	323°	27'		72.52	feet to a point;
8.	307°	52'	20"	174.68	feet to a point;
9.	76°	20'		17.38	feet along the remainder of Road to a point;

Thence, for the next twenty-one (21) courses following along middle of stonewall and along Land Commission Award 11216, Apana 39 to M. Kekauonohi:

10.	68°	36'	40"	187.10	feet to a point;
11.	55°	45'	41"	129.12	feet to a point;
12.	56°	31'	10"	116.97	feet to a point;
13.	55°	45'	15"	402.04	feet to a point;
14.	64°	25'	20"	212.51	feet to a point;
15.	53°	20'	30"	169.73	feet to a point;
16.	85°	23'		22.52	feet to a point;
17.	43°	42'		26.02	feet to a point;
18.	56°	45'	50"	334.08	feet to a point;
19.	60°	55'	30"	408.67	feet to a point;
20.	57°	37'	30"	297.62	feet to a point;
21.	60°	26'	50"	204.78	feet to a point;
22.	61°	22'	40"	300.32	feet to a point;
23.	68°	06'		10.95	feet to a point;
24.	65°	43'	20"	262.90	feet to a point;
25.	65°	03'	10"	479.85	feet to a point;
26.	66°	02'		345.18	feet to a point;

27.	60°	36'	30"	503.03	feet to a point;
28.	63°	21'	10"	423.04	feet to a point;
29.	61°	17'	50"	364.35	feet to a point;
30.	57°	41'	10"	536.00	feet to a point;

Thence, from a tangent azimuth of 192° 09' 54" following along the remainders of Lot 6-B-1 and Royal Patent 8126, Land Commission Award 9971, Apana 27 to W. P. Leleiohoku on a curve to the left with a radius of 330.00 feet, the chord azimuth and distance being:

31.	191°	47'	37"	4.28	feet to a point;
32.	191°	25'	20"	259.36	feet along the remainders of Lot 6-B-1 and Royal Patent 8126, Land Commission Award 9971, Apana 27 to W. P. Leleiohoku to a point;

Thence, following along the remainders of Lot 6-B-1, Royal Patent 8126, Land Commission Award 9971, Apana 27 to W. P. Leleiohoku and Grant 1861, Apana 1 to Kahiamoe on a curve to the right with a radius of 300.00 feet, the chord azimuth and distance being:

33.	215°	38'	10"	246.09	feet to a point;
34.	239°	51'		501.62	feet along the remainders of Lot 6-B-1, Lot 6-B-2 and Grant 1861, Apana 1 to Kahiamoe to a point;
35.	149°	51'		435.04	feet along the remainders of Lot 6-B-2 and Grant 1861, Apana 1 to Kahiamoe to a point;

Thence, for the next thirty-six (36) courses following along middle of stonewall and along Royal Patent 7456, Land Commission Award 8559-B, Apana 11 to W. C. Lunailo;

36.	243°	29'	40"	86.94	feet to a point;
37.	246°	27'	50"	118.06	feet to a point;
38.	252°	24'		24.46	feet to a point;

39.	258°	11'		31.36	feet to a point;
40.	245°	03'		29.12	feet to a point;
41.	170°	04'		4.64	feet to a point;
42.	241°	13'		74.64	feet to a point;
43.	250°	06'	10"	146.57	feet to a point;
44.	241°	32'	20"	202.99	feet to a point;
45.	232°	29'	30"	136.90	feet to a point;
46.	235°	38'		63.97	feet to a point;
47.	234°	03'		104.46	feet to a point;
48.	228°	56'	45"	215.09	feet to a point;
49.	240°	39'	30"	133.49	feet to a point;
50.	230°	59'		27.83	feet to a point;
51.	230°	44'	20"	133.91	feet to a point;
52.	236°	15'		64.59	feet to a point;
53.	232°	28'	30"	202.67	feet to a point;
54.	239°	04'	40"	312.24	feet to a point;
55.	240°	29'		77.40	feet to a point;
56.	243°	20'	10"	608.49	feet to a point;
57.	233°	28'	40"	219.42	feet to a point;
58.	238°	57'		217.41	feet to a point;
59.	241°	44'	50"	352.74	feet to a point;
60.	245°	01'		86.54	feet to a point;
61.	247°	09'	35"	127.36	feet to a point;

62.	251°	20'	10"	213.74	feet to a point;
63.	236°	34'	20"	136.75	feet to a point;
64.	227°	08'		23.15	feet to a point;
65.	218°	45'		37.31	feet to a point;
66.	223°	07'		39.68	feet to a point;
67.	214°	03'		74.16	feet to a point;
68.	216°	52'		87.11	feet to a point;
69.	206°	49'	20"	116.67	feet to a point;
70.	213°	37'	30"	95.40	feet to a point;
71.	218°	49'	30"	124.29	feet to the point of beginning and containing an area of 97.347 Acres.

The district classification of the following area situated at Moeauoa 2nd, North Kona, Hawai'i, shall be Multiple Family Residential (RM-3.5):

Beginning at the Southwesterly corner of this parcel of land, being also the Southwesterly corner of Lot 6-B-1, Southeasterly corner of Lot 6-A-1 and being a point on the Northerly boundary of Land Commission Award 11216, Apana 39 to M. Kekauonohi, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA (NORTH MERIDIAN)" being 1,175.43 feet North and 3,227.54 feet East and running by azimuths measured clockwise from True South:

1.	147°	39'	40"	543.85	feet along Lot 6-A-1 and along the remainders of Royal Patent 8126, Land Commission Award 9971, Apana 27 to W. P. Leleiohoku and Grant 1861, Apana 1 to Kahiamoe to a point;
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Thence, for the next twelve (12) courses following along middle of stonewall and along Royal Patent 7456, Land Commission Award 8559-B, Apana 11 to W. C. Lunailo:

2.	244°	30'	40"	39.70	feet to a point;
3.	234°	11'	10"	205.64	feet to a point;

4.	246°	22'		93.45	feet to a point;
5.	240°	17'		38.24	feet to a point;
6.	233°	22'	40"	161.83	feet to a point;
7.	224°	10'	20"	231.44	feet to a point;
8.	226°	13'		114.88	feet to a point;
9.	223°	51'	40"	118.53	feet to a point;
10.	205°	11'		7.41	feet to a point;
11.	209°	14'		34.30	feet to a point;
12.	217°	04'		90.27	feet to a point;
13.	243°	29'	40"	66.47	feet to a point;
14.	329°	51'		435.04	feet along the remainders of Lot 6-B-2 and Grant 1861, Apana 1 to Kahiamoe to a point;
15.	59°	51'		501.62	feet along the remainders of Lot 6-B-2, Lot 6-B-1 and Grant 1861, Apana 1 to Kahiamoe to a point;

Thence, following along the remainders of Lot 6-B-1, Grant 1861, Apana 1 to Kahiamoe and Royal Patent 8126, Land Commission Award 9971, Apana 27 to W. P. Leleiohoku on a curve to the left with a radius of 300.00 feet, the chord azimuth and distance being:

16.	35°	38'	10"	246.09	feet to a point;
17.	11°	25'	20"	259.36	feet along the remainder of Lot 6-B-1 and Royal Patent 8126, Land Commission Award 9971, Apana 27 to W. P. Leleiohoku to a point;

Thence, following along the remainders of Lot 6-B-1 and Royal Patent 8126, Land Commission Award 9971, Apana 27 to W. P. Leleiohoku on a curve to the right with a radius of 330.00 feet, the chord azimuth and distance being:

- | | | | |
|-----|-------------|--------|---|
| 18. | 11° 47' 37" | 4.28 | feet to a point; |
| 19. | 57° 41' 10" | 248.07 | feet along middle of stonewall and along Land Commission Award 11216, Apana 39 to M. Kekauonohi to the point of beginning and containing an area of 10.829 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, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
 - B. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this ordinance.
 - C. Final Subdivision Approval shall be secured within five (5) years from the effective date of this ordinance.
 - D. Construction of the proposed affordable housing project shall be completed 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).

- E. A Use Permit shall be secured prior to the development of the proposed Salvation Army Complex within five (5) years from the effective date of this ordinance.
- F. Prior to Final Subdivision Approval, the applicant shall determine the ownership of the north/south road near the mauka end of the property after consultation with the State of Hawaii, County of Hawaii and adjoining owners. If it is a public right-of-way, the applicant shall quitclaim any portion of the property within the right-of-way to the appropriate public owner.
- G. An 80-foot wide road right-of-way, graded full width, exclusive of slopes, to County roadway specifications, shall be provided within the subject property for the planned extension of Hienaloli-Kahului Road, at no cost to the County. The Hienaloli-Kahului Road Extension alignment shall be approved by the Planning Director in consultation with the Department of Public Works.
- H. Individual lots shall not take access from the Hienaloli-Kahului Road Extension.
- I. Provide roadway connections to adjoining parcels, meeting with the approval of the Planning Director in consultation with the Department of Public Works. All roadways in the RA zone shall be constructed to dedicable standards and dedicated to the County upon request, at no cost to the County or, if not constructed to dedicable standards, shall be open to public traffic including access from neighboring properties.

- J. Provide concrete curb, gutters and sidewalks in the RM-3.5 zoned area meeting with the approval of the Department of Public Works.
- K. Vehicular security gates for any subdivision road or commercial access shall not be located within 60 feet of any existing or future public right-of-way. A turn-around shall be provided on the public road side of any such gate.
- L. Install street lights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division.
- M. All development generated runoff shall be disposed of on site and not be directed toward any adjacent properties. A drainage study shall be prepared and submitted to the Department of Public Works prior to the issuance of any construction permit. Drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to the issuance of final subdivision construction approval or a certificate of occupancy.
- N. Any new construction or substantial improvements within the flood zone designated "A" or "AE" on the Flood Insurance Rate Map (FIRM) shall be subject to the requirements of Chapter 27 - Flood Control of the Hawaii County Code. Flood plain alterations shall also conform to Hawaii County Storm Drainage Standards for channelization and subdivision road construction. Technical data shall be submitted to show that there will be no increase in peak flow or velocity to downstream properties in the 10, 50 and 100-year flood event by any channelization. There shall be no construction of dwellings and related improvements or other substantial buildings within areas designated "A" or "AE" by the Flood Insurance Rate Maps (FIRM). Restrictive covenants in the deeds of lots that contain the flood zone 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.

- O. The method of sewage disposal shall meet with the requirements of the State Department of Health. The RM-3.5 zoned area shall be connected to the County sewer system.
- P. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Subdivision Approval. Approved recommendations and mitigation measures shall be implemented in a manner meeting with the approval of the Department of Environmental Management.
- Q. An Archaeological Data Recovery and Preservation Plan shall be submitted for the review and approval of the Department of Land and Natural Resources - Historic Preservation Division (DLNR-HPD). A copy of the approved final plan shall be submitted to the Planning Director prior to the issuance of tentative subdivision approval or the issuance of any land alteration permits, whichever occurs first. A copy of the archaeological inventory survey shall be given to buyers of lots that have sites shown on the survey. The seller shall encourage the buyer to protect the sites.
- R. Should any undiscovered or unidentified 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-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigation measures have been taken.

S. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the properties 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 lot 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 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 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 and \$6,411.25 per multiple-family residential unit**. Based upon the applicant's representation of intent to develop a total of 57 single-family residential units and 16 multiple-family residential units, the indicated total of fair share contribution is **\$559,507.20 for the single family residential units and \$96,168.75 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 single family residential unit and multiple family residential unit shall be allocated as follows:

1. **\$4,817.93** per single family residential unit and **\$3,162.49** per multiple family residential unit to the County to support park and recreational improvements and facilities;
2. **\$232.42** per single family residential unit and **\$99.95** per multiple family residential unit to the County to support police facilities;

3. **\$459.06** per single family residential unit and **\$307.46** per multiple family residential unit to the County to support fire facilities;
4. **\$200.98** per single family residential unit and **\$137.04** per multiple family residential unit to the County to support solid waste facilities; and
5. **\$4,280.82** per single family residential unit and **\$2,704.31** per multiple 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.

- T. 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 Plan Approval and/or Final Subdivision Approval, whichever occurs first.
- U. There shall be no occupancy of any structures in the project area until the signalization of the Queen Kaahumanu Highway – Malulani Drive intersection is completed.
- V. 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.

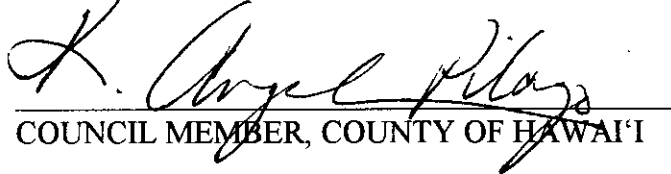
- W. The applicant shall comply with all applicable Federal, State and County laws, rules and regulations.
- X. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval have been 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.
- Y. 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, 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).

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.

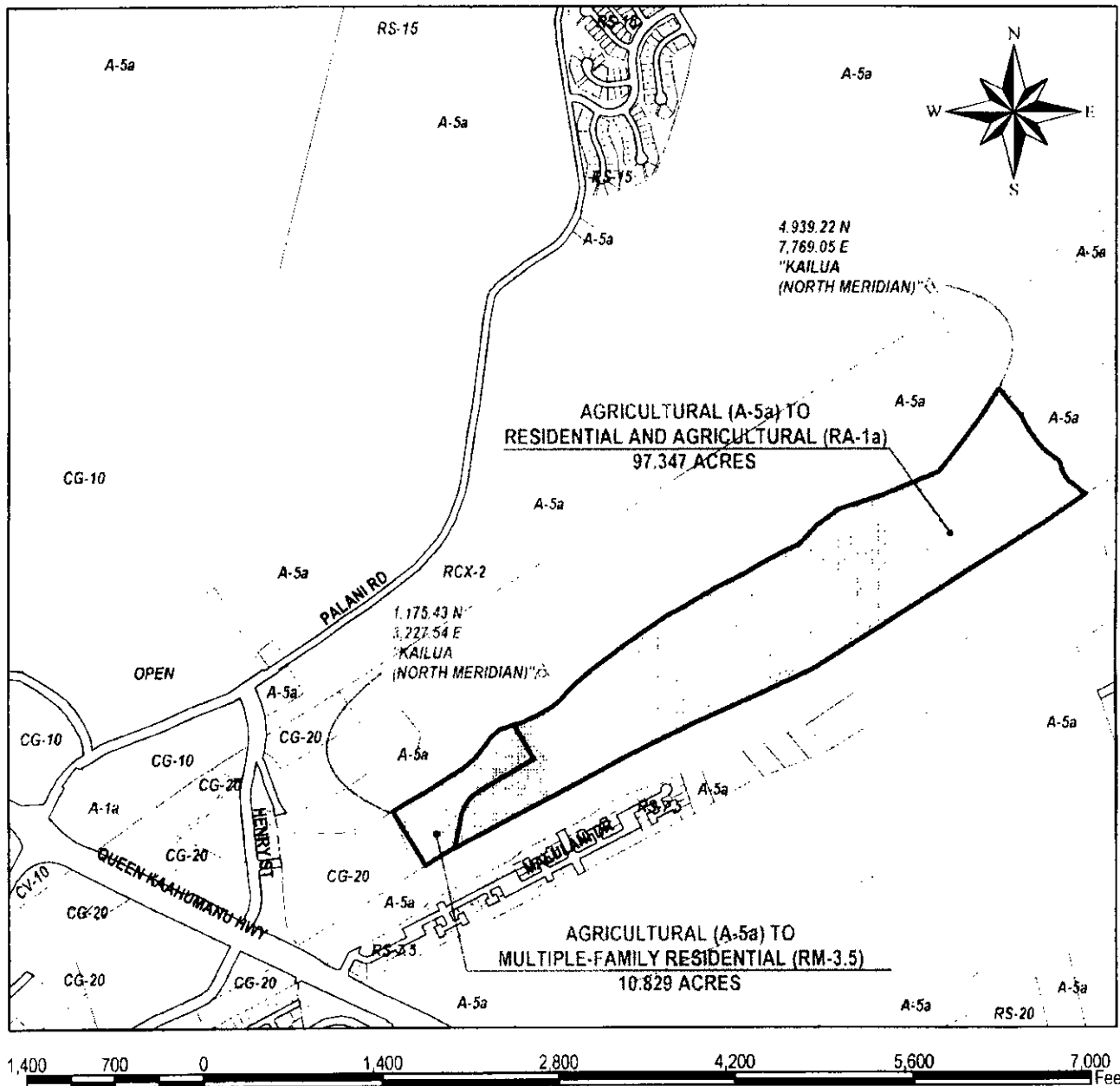
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: May 17, 2006
Date of 1st Reading: November 15, 2006
Date of 2nd Reading: November 29, 2006
Effective Date: December 13, 2006

REFERENCE: Comm. 766.5



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
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION
 FROM AGRICULTURAL (A-5a)
 TO RESIDENTIAL AND AGRICULTURAL (RA-1a) AND
 MULTIPLE-FAMILY RESIDENTIAL (RM-3.5)
 AT MOEAUOA 2nd, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

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

Introduced By: K. Angel Pilago
Date Introduced: May 17, 2006
First Reading: November 15, 2006
Published: November 26, 2006

REMARKS: May 17, 2006 - Postponed
June 21, 2006 - Postponed
October 31, 2006 - Postponed
November 9, 2006 - Public Hearing

Second Reading: November 29, 2006
To Mayor: December 1, 2006
Returned: December 14, 2006
Effective: December 13, 2006
Published: December 22, 2006

REMARKS: _____

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



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			
	7	2	0	0

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

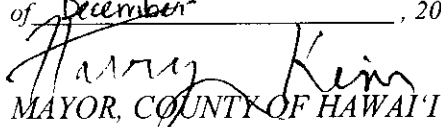
APPROVED AS TO
FORM AND LEGALITY:


DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date DEC 01 2006


COUNCIL CHAIRMAN

COUNTY CLERK

Bill No.: 251 (Draft 2)
Reference: C-766.5/PC-67
Ord No.: 06 152

Approved/Disapproved this 13th day
of December, 2006

MAYOR, COUNTY OF HAWAII