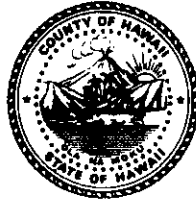


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 07 174 BILL NO. 182
(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 – 5 ACRE (A-5a) TO MULTIPLE-FAMILY RESIDENTIAL – 1,000 SQUARE FEET (RM-1) AT O'OMA 1ST, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY: 7-3-010:003.

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 O'oma 1st, North Kona, Hawai'i, shall be Multiple-Family Residential – 1,000 square feet (RM-1):

Beginning at the Northwest corner of this parcel of land, at the Southwest corner of Lot 4 of Lokahi Ka'u, being a portion of Grant 5472 to William Keanaaina, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA", being 8,907.34 feet South and 20,630.38 feet West, and running by azimuths measured from true South:

1. 270° 00' 00" 465.27 feet along Lot 4 of Lokahi Ka'u, being also along the remainder of Lot 13-A of Kalaoa-O'oma Homesteads, same being also along the remainder of Grant 5472 to William Keanaaina;
2. 359° 57' 40" 944.49 feet along Lot 13-B of Kalaoa-O'oma Homesteads, being also along the remainder of Grant 5472 to William Keanaaina;
3. 97° 28' 30" 147.54 feet along the middle of a stonewall, being also along Government Land;
4. 95° 34' 30" 136.56 feet along the middle of a stonewall, being

- also along Government Land;
- | | | | | | |
|----|------|-----|-----|--------|---|
| 5. | 97° | 10' | 00" | 280.03 | feet along the middle of a stonewall, being also along Government Land; |
| 6. | 98° | 09' | 20" | 4.59 | feet along the middle of a stonewall, being also along Government Land; |
| 7. | 195° | 56' | 00" | 339.84 | feet along Lot 5 of Lokahi Ka'u, being also along the remainder of Lot 13-A of Kalaoa-O'oma Homesteads, same being also along the remainder of Grant 5472 to William Keanaaina; |

Thence along Lot 5 of Lokahi Ka'u, being also along the remainder of Lot 13-A of Kalaoa-O'oma Homesteads, being also along the remainder of Grant 5472 to William Keanaaina on a curve to the left with a radius of 850.00 feet, the chord azimuth and distance being:

- | | | | | | |
|----|------|-----|-----|--------|--|
| 8. | 185° | 07' | 30" | 318.79 | feet; |
| 9. | 174° | 19' | 00" | 233.29 | feet along Lot 5 of Lokahi Ka'u, being also along the remainder of Lot 13-A of Kalaoa-O'oma Homesteads, same being also along the remainder of Grant 5472 to William Keanaaina to the point of beginning and containing an area of 10.001 Acres, more or less. |

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. Within three years from the enactment of the ordinance the applicant shall provide assurance satisfactory to the Department of Water Supply and the Planning Director, upon consultation with the Department of Health and the Department of Land and Natural Resources, that a water source(s) of sufficient quality, quantity, and related transmission and storage system can be established.

- C. 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, Hawai'i County Code relating to Affordable Housing Policy, provided further that, as represented by the applicant, all units (100% of the entire project), shall be rented at a rate affordable to families earning not more than 60% of the median income, as determined by the Office of Housing and Community Development. In accordance with section 11-11, Hawai'i County Code, all units shall remain at this affordable rental rate (60% of the median income) for a period of not less than twenty years, or a longer period as mutually agreed between the applicant and the Administrator of the Office of Housing and Community Development. Affordable housing credits in excess of the basic requirements of Chapter 11, Article 1, Hawai'i 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.

- D. The actual development of the water source and its water transmission, storage,

and distribution system shall be developed in conjunction with Final Plan Approval or Final Subdivision Approval, whichever occurs first. In lieu of actual construction of these improvements, the applicant may enter into an agreement with the County to assure that the infrastructure improvements will be constructed together with the appropriate bond, surety or other security deemed acceptable by the County. Upon execution of such agreement and filing of the security with the County, Final Plan Approval or Final Subdivision Approval shall be granted prior to the actual construction of required improvements, provided occupancy of residential structures shall not be issued until the approved water source is developed and its transmission, storage, and distribution system for such source to the subject property has been constructed and accepted for dedication to the Water Board.

- E. The proposed dwelling units shall not exceed the number of units of water that are available and have been committed to the subject property by the Department of Water Supply or other approved water source. 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 the Certificate of Occupancy for any residential unit.

- F. Construction of the proposed development shall be completed within five (5) years from the effective date 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), Hawai'i 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). The applicant shall include native species among the plants used for landscaping.

- G. Applicant shall construct a minimum of 460 parking stalls for use by tenants of the project, calculated on the basis of one and one-half spaces per unit. In addition, applicant shall explore additional means of increasing parking for the project, including but not limited to assigned stalls, an on-site shared parking program, and other measures that meet with the approval of the Planning Department.
- H. Applicant shall incorporate energy efficient appliances and practices in the project's individual apartments and common areas including solar water heating, low flow plumbing fixtures, energy efficient light fixture/compact fluorescent light bulbs, drought tolerant landscaping and, to the extent feasible, photovoltaic solar panels.
- I. All driveway connections to Kakahiaka Street shall conform to Chapter 22, Streets and Sidewalks, of the Hawai'i County Code.
- J. The applicant shall construct the extension of Kakahiaka Street to the project entrance to dedicable standards and dedicate all improvements to the County upon request. The remainder of Road Lot 5 to the southern boundary of the property shall be set aside as a future road reserve, along with any necessary construction easements, and improved to dedicable standards by the applicant, successors or assigns, when the Planning Director determines that this road will serve a useful function. When required by the Director, the road shall be constructed in the manner specified by the Department of Public Works and shall be on an alignment meeting with the approval of the Planning Director in consultation with the Department of Public Works. The obligation to build the road and the County's right to recover all costs and expenses to enforce the obligation shall be secured

by a covenant running with the land recorded against at least one of the parcels created by Subdivision No. 02-000051, or the applicant may build the road or bond its construction. Said covenant shall grant the County the power to foreclose upon the encumbered property to satisfy costs of building the road under public procurement procedures, which costs and procedures shall be as determined by the Director of Public Works.

- K. Access through the Lokahi project (TMK: 7-3-10:48) to the Midlevel Road (a street connecting to Ka'imini Drive from the south, makai of the Kona Palisades subdivision) by and through the mauka portion of the Lokahi subdivision to Kapuahi Street and on any privately-owned portion of Kakahiaka Street, shall be allowed by the applicant as long as the roads are in private ownership.
- L. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works. The recommended drainage improvements shall be constructed, meeting with the approval of the Department of Public Works prior to the receipt of a Certificate of Occupancy.
- M. Install streetlights, signs, and markings meeting with the approval of the Department of Public Works, Traffic Division prior to the issuance of a Certificate of Occupancy.
- N. All earthwork activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.
- O. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage master plan shall be prepared and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Any drainage improvements shall be constructed meeting with the

approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.

- P. The new sewer treatment plant shall meet the specifications and requirements of the Department of Health.
- Q. 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.
- R. As identified in the approved Archaeological Mitigation Plan (Appendix C), Site 23417 shall be preserved. A barrier shall be constructed around the site during construction. Upon completion, buffers shall be established around the site and cautionary and interpretive signs shall be posted.
- S. 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.
- T. The applicant shall include an area for a bus stop, and shall construct a shelter for bus passengers. This condition may be met either within the property, adjacent property, or along Kakahiaka Street.
- U. The applicant shall provide four active recreational areas within the project site, the cumulative area of which will be approximately one-half (.5) acre of land and shall include facilities such as a half size basketball court, a volleyball court, exercise pavilion, and playground equipment for children.

- V. The applicant(s) shall comply with all applicable laws, rules, regulations and requirements.
- W. 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 unit 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 **\$6,653.40** per multiple family residential unit. Based upon the applicant's representation of intent to develop a total of 306 multi-family residential units, the indicated total of fair share contribution is **\$2,035,940.40** for the multi-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 ~~[P]~~W. The fair share contribution shall be allocated as follows:

1. **\$3,281.93** per multiple family residential unit for the 306-unit multi-family development for an indicated total of **\$1,004,270.50** to the County to support park and recreational improvements and facilities;

2. **\$103.73** per multiple family residential unit for the 306-unit multi-family development for an indicated total of **\$31,741.38** to the County to support police facilities;
3. **\$319.07** per multiple family residential unit for the 306-unit multi-family development for an indicated total of **\$97,635.42** to the County to support fire facilities;
4. **\$142.21** per multiple family residential unit for the 306-unit multi-family development for an indicated total of **\$43,516.26** to the County to support solid waste facilities;
5. **\$2,806.46** per multiple family residential unit for the 306-unit multi-family development for an indicated total of **\$858,776.76** to the State or 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. Applicant's obligation to pay fair share contributions shall be inapplicable and waived when applicant implements the affordable housing rental program set forth in Condition C above, which provides that all units (100% of the entire project) shall be rented at a rate affordable to families earning not more than 60% of median annual income in Hawai'i County, as certified by the Office of Housing and Community Development.

- X. 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.

- Y. 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 with and sales records for the project identifying amount units were sold for and proof that units were sold to owner-occupants. The annual report shall also provide documentation satisfactory to the Planning Director to evidence the actual sales prices of the units sold. 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.
- Z. 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 Planning Commission and 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:

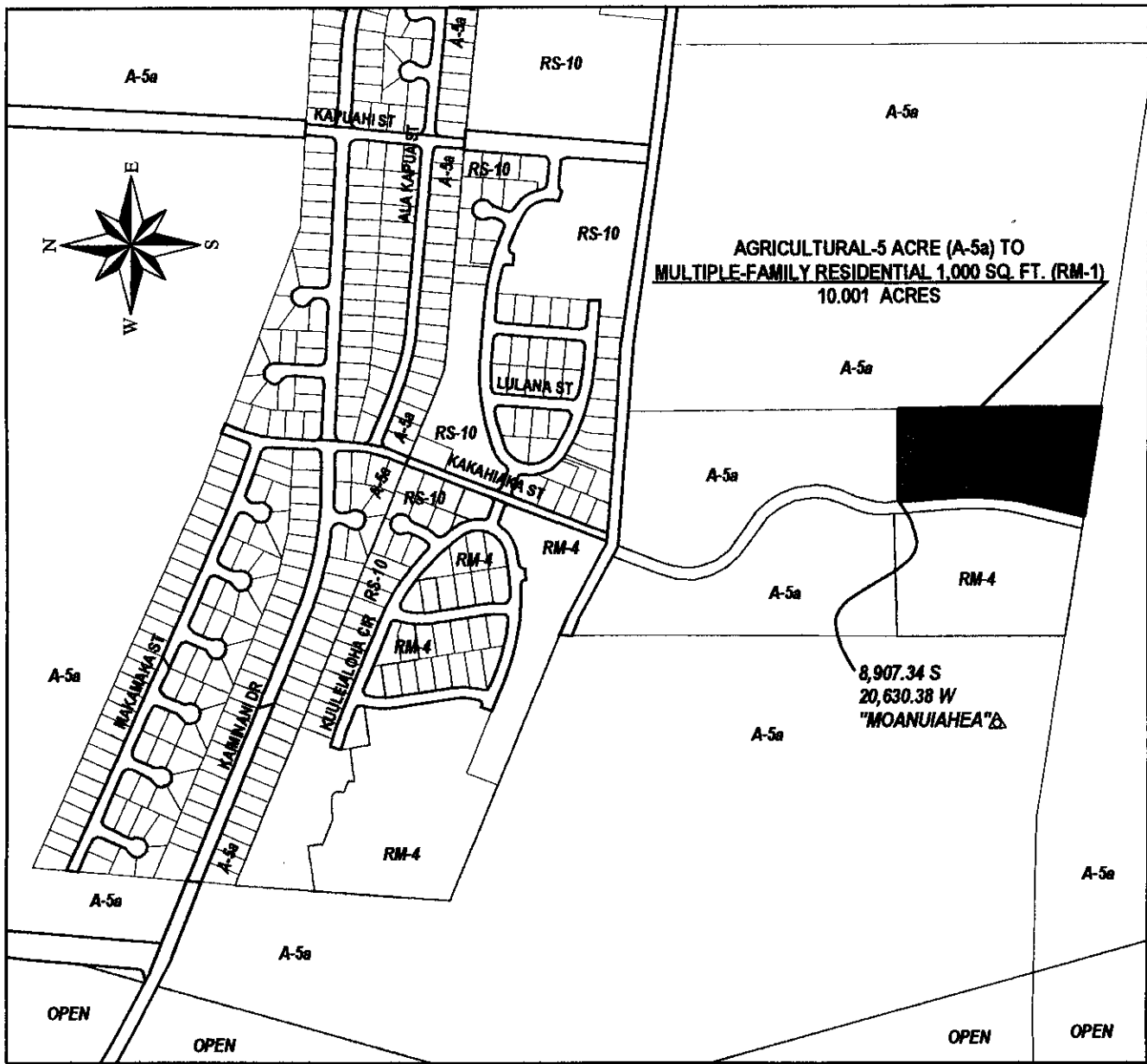


COUNCIL MEMBER, COUNTY OF HAWAI'I

 Kona , Hawai'i

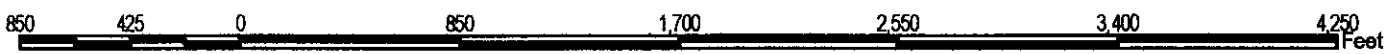
Date of Introduction: November 7, 2007
Date of 1st Reading: November 7, 2007
Date of 2nd Reading: November 20, 2007
Effective Date: December 4, 2007

REFERENCE: Comm. 700.8



AGRICULTURAL-5 ACRE (A-5a) TO
 MULTIPLE-FAMILY RESIDENTIAL 1,000 SQ. FT. (RM-1)
 10.001 ACRES

8,907.34 S
 20,630.38 W
 "MOANUIAHEA"△



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-5 ACRE (A-5a)
 TO MULTIPLE-FAMILY RESIDENTIAL 1,000 SQUARE FEET (RM-1)
 AT O'OMA 1st, NORTH KONA, HAWAII
 PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

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

(Draft 2)

Introduced By: K. Angel Pilago
 Date Introduced: November 7, 2007
 First Reading: November 7, 2007
 Published: November 16, 2007

REMARKS: _____

Second Reading: November 20, 2007
 To Mayor: November 29, 2007
 Returned: December 4, 2007
 Effective: December 4, 2007
 Published: December 20, 2007

REMARKS: _____

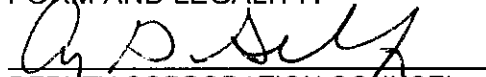
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong	X			
Yoshimoto	X			
	9		0	0

RECEIVED
 2007 DEC 4 PM 4 27
 COUNTY CLERK
 COUNTY OF HAWAII

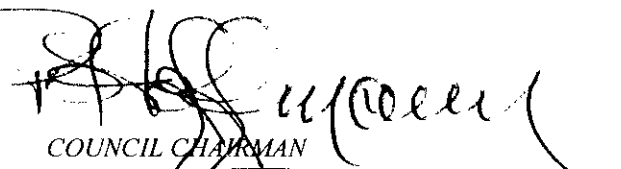
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong			X	
Yoshimoto	X			
	8	0	1	0

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

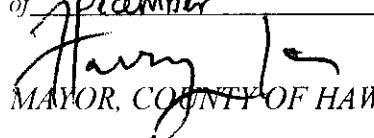
APPROVED AS TO
 FORM AND LEGALITY:


 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date NOV 30 2007


 COUNCIL CHAIRMAN


 COUNTY CLERK

Approved/Disapproved this 4th day
 of December, 2007

 MAYOR, COUNTY OF HAWAII

Bill No.: 182 (Draft 2)
 Reference: C-700.8/PC-51
 Ord No.: 07 174