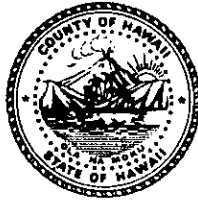


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. **08 179** BILL NO. 390

AN ORDINANCE AMENDING ORDINANCE NO. 95 119, WHICH AMENDED ORDINANCE NO. 91-83, WHICH AMENDED ORDINANCE NO. 87-9, AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA DISTRICTS ZONE MAP) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), AS AMENDED, RECLASSIFYING LANDS FROM AGRICULTURAL – 20 ACRES (A-20a) TO AGRICULTURAL – 3 ACRES (A-3a) AT WAIKA, NORTH KOHALA, HAWAI'I, COVERED BY TAX MAP KEY 5-9-007:003.

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

**SECTION 1.** Section 2 of Ordinance No. 95 119 is amended as follows:

~~“SECTION 2. [This change in district classification is conditioned upon the following:]~~

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 petitioners, successors or its assigns shall be responsible for complying with all of the stated conditions of approval;

B. It shall be demonstrated to the satisfaction of the Planning Director that substantial agricultural activity is being conducted on the lands being considered for subdivision under these change of zone requests. For the purpose of this condition “agriculture” shall be defined as the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber; game propagation; raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use. An agricultural activity will be considered substantial:

1. If such activity is implementing a conservation program for the affected property(ies), as approved by the applicable soil and water conservation district directors and filed with the Soil Conservation service; or
2. If it provides a major source of income to the persons(s) who reside on the property; or
3. If the property is dedicated for Agriculture uses in accordance with applicable Tax Department procedures and that such agriculture dedication shall be made a deed covenant and duly recorded with the State Bureau of Conveyances and with a copy filed with the Planning Department. The execution of a farm dwelling agreement may also suffice in lieu of the above requirements. Each approved lot must comply with one or more of the above requirements to satisfy the conditions of approval of these change of zone requests.

C. ~~[Subdivision plans shall be submitted to the Planning Department within six months from the effective date of approval of this amendment.]~~ Final subdivision approval

shall be secured within ~~[three]~~ five years from the ~~[date of receipt of revised tentative subdivision approval]~~ effective date of this amended ordinance.

- D. A drainage system shall be installed in accordance with the requirements of the Department of Public Works.
- E. ~~[Only one access shall be allowed]~~ Access to the proposed subdivision ~~[from Ala Kahua Drive. Such access]~~ shall comply with the Subdivision Code and meet with the approval of the Department of Public Works.

~~[F. All other applicable rules, regulations and requirements be complied with;~~

- G.] F. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein ~~[may, at the developer's election, be satisfied by performance in accordance with]~~ shall be credited towards the requirements of the Unified Impact Fees Ordinance. ~~[Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate rezoning of the property to its original or more appropriate designation.]~~

- G. To ensure that the goals and policies of the Housing Element of the General Plan are implemented, if applicable, 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 receipt of final subdivision approval;

- H. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological

clearance from the Planning Department when it finds that sufficient mitigative measures have been taken;

I. Comply with all applicable County, State and Federal laws, rules, regulations and requirements;

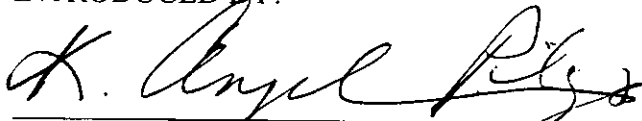
J. If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the Planning Commission and County Council for appropriate action. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate rezoning of the area to its original or more appropriate designation."

**SECTION 2.** Material to be deleted is bracketed and stricken. New material is underscored.

**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:

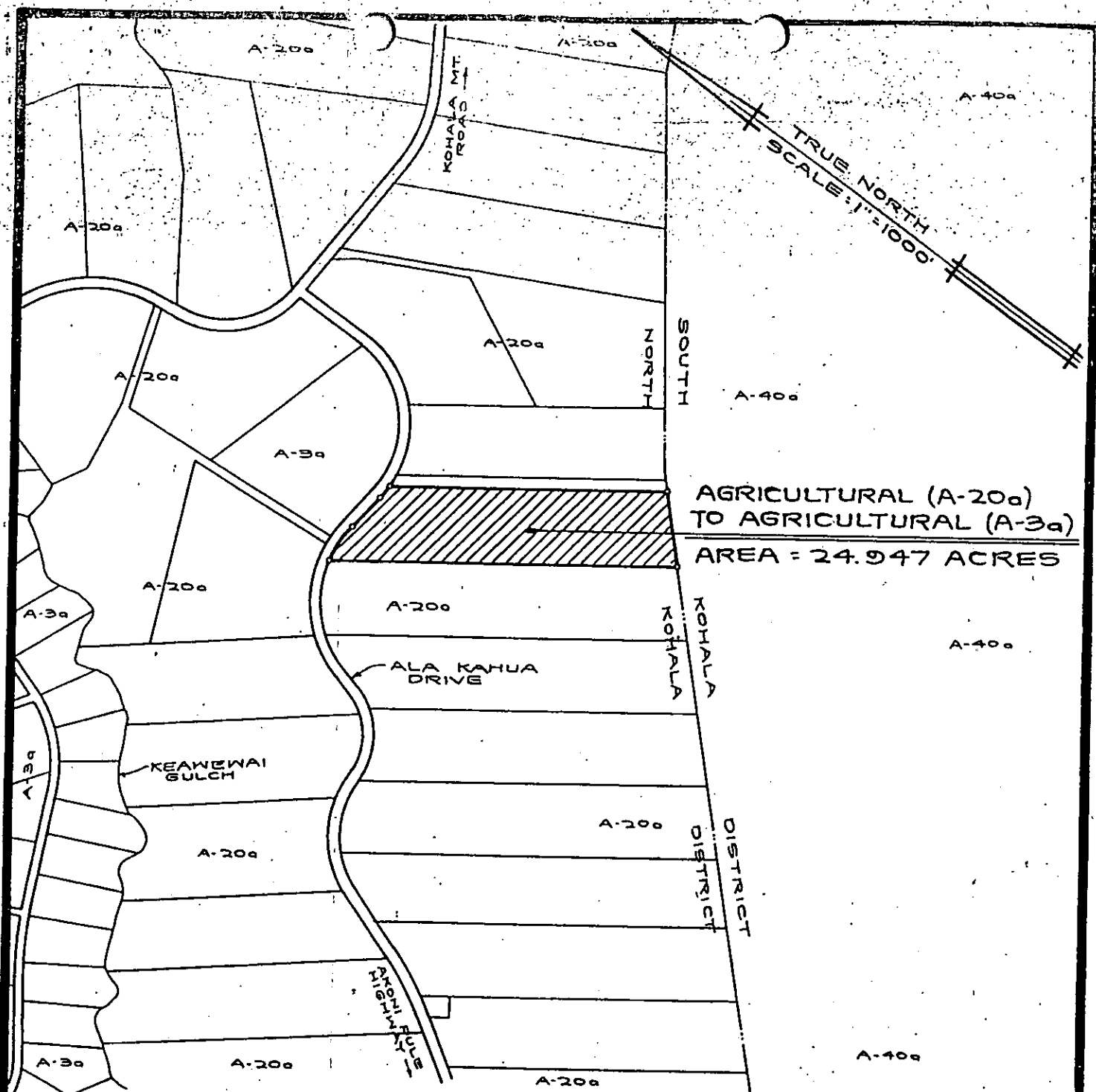


COUNCIL MEMBER, COUNTY OF HAWAII

Kona, Hawai'i

Date of Introduction: ~~November~~ 21, 2008  
Date of 1st Reading: ~~November~~ 21, 2008  
Date of 2nd Reading: ~~December~~ 17, 2008  
Effective Date: ~~December~~ 31, 2008

REFERENCE: Comm. 1539



## AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-95A (NORTH AND SOUTH KOHALA DISTRICTS ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO AGRICULTURAL (A-3a) AT KAHUA 1ST AND WAIKA, NORTH KOHALA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT  
COUNTY OF HAWAII

TMK : 5-9-07:3

NOV. 24, 1986

EXHIBIT "A"

FOR REFERENCE ONLY

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

RECEIVED

File 3 pm By Stones  
Date 12/31/08  
County Council

Introduced By: K. Angel Pilago  
Date Introduced: November 21, 2008  
First Reading: November 21, 2008  
Published: N/A

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

Second Reading: December 17, 2008  
To Mayor: December 26, 2008  
Returned: December 31, 2008  
Effective: December 31, 2008  
Published: January 10, 2009

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			
	8	0	1	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann	X			
Ikeda	X			
Naeole	X			
Onishi	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:

[Signature]  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date DEC 30 2008

[Signature]

COUNCIL CHAIRPERSON

[Signature]

COUNTY CLERK

Approved/Disapproved this 31st day  
of December, 2008  
[Signature]  
MAYOR, COUNTY OF HAWAII

Bill No.: 390  
Reference: C-1539/PC-101  
Ord No.: 08 179