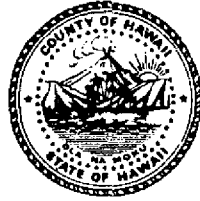


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 322
(Draft 3)

ORDINANCE NO. 09 8

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 ACRES (A-5a) TO SINGLE FAMILY RESIDENTIAL - 7,500 SQUARE FEET (RS-7.5) AT KAPALAALAEA 2ND, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY: 7-7-008:121.

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 Kapalaalaea 2nd, North Kona, Hawai'i, shall be Single Family Residential - 7,500 square feet (RS-7.5):

Beginning at a found 1/2" iron rebar, being the Northwest corner of this herein-described tract of land, being the Southeast corner of Lot No. 2 of White Sands Beach Estates Subdivision (File Plan No. 1480) and the Southwest terminus point of Naniloa Street; the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHELO" being 11,680.76 feet South and 5565.64 feet East, and running by azimuths clockwise, measured from true South:

Thence for the next twenty-three (23) courses following along the middle of stonewall, along Land Commission Award No. 4452, Apana 2 to H. Kalama:

1. 255° 22' 40" 175.85 feet along File Plan No. 1480 to a found "X" in rock;

Thence for the next thirteen (13) courses following along Keauhou View Estates Phase I (File Plan No. 2268) and Phase III (File Plan No. 2275):

2. 253° 26' 00" 46.03 feet to a found nail;

3. 254° 53' 00" 50.09 feet to a found nail;

4. 252° 43' 00" 65.74 feet to a found nail;

5.	256°	34'	00"	69.20	feet to a found nail;
6.	260°	02'	00"	42.91	feet to a found nail;
7.	255°	30'	00"	61.67	feet to a found nail;
8.	252°	41'	00"	24.74	feet to a found ½" iron pipe;
9.	252°	17'	00"	70.94	feet to a found nail;
10.	249°	00'	00"	22.68	feet to a found nail;
11.	245°	53'	00"	36.24	feet to a found nail;
12.	249°	31'	00"	41.22	feet to a found nail;
13.	246°	40'	00"	77.55	feet to a found nail;
14.	253°	11'	00"	60.37	feet to a found nail;

Thence for the next nine (9) courses following along Keauhou View Estates Phase VI (File Plan No. 2316):

15.	253°	11'	00"	42.16	feet to a found nail;
16.	250°	48'	00"	71.12	feet to a found nail;
17.	241°	45'	00"	9.19	feet to a found nail;
18.	249°	05'	00"	11.04	feet to a found nail;
19.	239°	25'	00"	22.98	feet to a found nail;
20.	234°	54'	00"	37.47	feet to a found nail;
21.	237°	03'	00"	34.58	feet to a found nail;
22.	229°	36'	00"	15.00	feet to a found nail;
23.	238°	39'	00"	3.04	feet to a found nail in the West line of Parcel 18, being Kahului-Keauhou Parkway;

Thence for the next two (2) courses following along said Parcel 18, being Kahului-Keauhou Parkway Ali'i Parkway):

24.	354°	55'	57"	47.45	feet to a found nail;
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25. 355° 15' 00" 496.27 feet to a found ½" iron pipe in concrete at the middle of a stone wall;

Thence for the next twenty-six (26) courses following along the middle of a stone wall, along Royal Patent No. 6856, Land Commission Award 7713, Apana 6 to V. Kamāmalu:

26.	70°	06'	21"	35.73	feet to a found nail;
27.	74°	25'	57"	48.88	feet to a found nail;
28.	74°	55'	25"	48.63	feet to a found nail;
29.	74°	22'	26"	34.12	feet to a found nail;
30.	71°	41'	46"	17.54	feet to a found nail;
31.	79°	13'	10"	28.28	feet to a found nail;
32.	70°	50'	19"	17.01	feet to a found nail;
33.	71°	04'	01"	29.36	feet to a found nail;
34.	70°	11'	49"	42.74	feet to a found nail;
35.	65°	24'	10"	16.68	feet to a found nail;
36.	73°	04'	27"	39.19	feet to a found nail;
37.	74°	15'	41"	40.32	feet to a found nail;
38.	73°	52'	16"	85.80	feet to a found nail;
39.	69°	55'	37"	36.94	feet to a found nail;
40.	81°	19'	54"	20.96	feet to a found nail;
41.	71°	59'	42"	13.61	feet to a found nail;
42.	73°	26'	45"	32.81	feet to a found nail;
43.	67°	05'	11"	93.29	feet to a found nail;
44.	73°	03'	53"	24.94	feet to a found nail;
45.	72°	48'	22"	39.75	feet to a found nail;
46.	76°	08'	18"	17.99	feet to a found nail;

47.	61°	33'	46"	20.42	feet to a found nail;
48.	62°	19'	19"	36.10	feet to a found nail;
49.	65°	46'	32"	13.81	feet to a found nail;
50.	82°	14'	49"	19.81	feet to a found nail;
51.	65°	04'	39"	14.87	feet to a found nail;

Thence for the next three (3) courses following along Lot No. 3-C, being the West line of this herein-described tract:

52.	150°	00'	00"	456.55	feet to a found ½" rebar with cap;
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Thence, following a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being:

53.	160°	31'	00"	54.76	feet to a found ½" rebar with cap;
54.	171°	02'	00"	15.00	feet to the point of beginning and containing an area of 11.05 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, its successor or assigns shall be responsible for complying with all 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 180 days from the effective date of this ordinance.

- C. The applicant shall provide a recreational area of at least 5,000 square feet at the Naniloa Street end of the proposed subdivision, which shall be maintained by the proposed subdivision's owners' association. Additionally, the applicant shall provide the recreational area with its own water meter and adequate water to serve park visitors, and support grass and landscaping. This recreational area shall not diminish the applicant's commitment to provide additional recreational areas and the requirements under Condition U herein. The applicant shall provide a minimum of a three-acre, public neighborhood park sufficient in size and quality to create a playing field for team sports such as baseball, football, and/or soccer on another parcel of land within one-quarter mile of this proposed project and all attributes and location of the neighborhood park shall be at the sole discretion of the Department of Parks and Recreation, and an additional two acres of mews on the same parcel as the three-acre, public neighborhood park. The mews may be private park area and shall be owned and maintained by the owner's association.
- D. The applicant shall implement and/or require implementation of water and energy conservation measures in the development of the houses within the proposed subdivision, utilizing measures similar to the LEED Standards of the U.S. Green Building Council, which shall be binding on the owners of the association and owners of all lots in the proposed subdivision. Compliance with this condition shall be verified by a LEED certified architect.
- E. Final subdivision approval for the first subdivision phase shall be secured within five (5) years from the effective date of this ordinance. The first subdivision phase shall be defined as consisting of up to fifty (50) lots.
- F. Access to the development shall meet with the approval of the Department of Public Works. Access to the future Kahului-Keauhou Parkway shall not be allowed unless approved the Department of Public Works. Vehicular access to individual lots shall not be permitted from the Kahului-Keauhou Parkway. A gated vehicular emergency egress to the Kahului-Keauhou Parkway may be installed if allowed by the Department of Public Works. The applicant shall construct a pedestrian pathway connecting a street within the project to the multipurpose path on the Kahului-Keauhou Parkway.
- G. During the construction of the proposed subdivision, the applicant shall cause vehicular construction traffic to utilize an access route across the property to the west and/or south.
- H. The applicant shall provide road and traffic improvements as follows:

Alternative 1: Construct a new alternate access road from Ali'i Drive to the project through currently vacant property to the west or south, meeting with the approval of the Department of Public Works. The road may be constructed as a

minor or local street and may allow direct access from individual lots, and shall be dedicated to the County upon completion. It shall include a dedicated left turn lane at the Ali'i Drive intersection. The road shall connect with a street in the project that provides a further stubout to the adjacent property to the south (TMK: 7-8-010:004). All construction required in Alternative 1 herein shall be completed or bonded before final subdivision approval for the first phase of the proposed project, or

Alternative 2: Provide concrete curbs, gutters, sidewalks, and appropriate drywells for drainage control from the proposed development along the mauka side of Naniloa Street to Queen Kalama Street and then from Naniloa Street along the south side of Queen Kalama Street to Ali'i Drive. These improvements shall include any necessary pavement widening retaining structures, signs, traffic markings, and streetlights, drainage improvements, and relocation of utilities meeting with the approval of the Department of Public Works. All construction required in Alternative 2 herein shall be completed or bonded before final subdivision approval for the first phase of the proposed project.

- I. Within the project area, the applicant shall provide:
 - (1) A connection to Naniloa Street to the north.
 - (2) One road stubout to the adjoining property to the south (TMK: 7-8-010:004). This stubout shall be sufficiently mauka in the proposed subdivision to avoid the Historical Preserve Area on TMK: 7-8-010:004. This stubout shall eventually connect to a mauka-makai connector road within TMK: 7-8-010:004 that shall intersect with the Kahului-Keauhou Parkway. This stubout shall be completed with the first subdivision phase of the proposed project even if insufficient water commitments are available to complete the entire project.
 - (3) One stubout to the adjoining property to the west (TMK: 7-7-008:001) unless the applicant chooses to build Alternate 1 under Condition H.
 - (4) Concrete curbs, gutters, appropriate drywells, and sidewalks for all streets within the proposed project which shall meet the County dedicable standards of the Department of Public Works.
 - (5) Streets and stubouts within the proposed project that shall be constructed to County dedicable standards and shall be dedicated to, and accepted by, the County upon completion; and
 - (6) Crosswalk(s) as determined by the Department of Public Works.
- J. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- K. 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 receipt of Final Subdivision Approval. The drainage study shall include potential impacts from the Kahului-Keauhou Parkway culverts.

- L. The proposed subdivision shall connect to the County sewer system. Any new sewer extension to the public sewer system requires the submittal of a sewer study by the applicant to the County of Hawai'i Wastewater Division (COH-WWD). The sewer study is intended to define the wastewater flow contribution from the proposed site, evaluate the impact to the existing sewer system, and propose an appropriate sewer extension alignment based on the results of the sewer study. The sewer study shall be prepared in accordance with the City & County of Honolulu Design Standards. Design plans for construction of a proposed sewer extension shall also be submitted to the COH-WWD for review and approval. Documents shall be prepared in accordance with Hawai'i County Code, Chapter 21 – Sewers, Hawai'i Administrative Rules, Title 11, Chapter 62 – Wastewater Systems, and COH-WWD Sewer Standards.
- M. The applicant and its successors in interest shall be responsible for any noise abatement measures for the subject property, which may be required to qualify the Kahului-Keauhou Parkway for Federal funding. Until the completion of the Kahului-Keauhou Parkway through the subject property, covenants in all deeds to 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 Kahului-Keauhou Parkway within a right-of-way shown on the attached map. The Kahului-Keauhou Parkway will be a major highway that is expected to carry a high volume of traffic. The County of Hawai'i has determined that the construction of this highway is important to the proper development of Kona as a whole. The construction of the Kahului-Keauhou 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 Kahului-Keauhou 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 Kahului-Keauhou 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 Kahului-Keauhou Parkway project for Federal funding, the residential owners would be required to pay for the noise abatement.” 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.
- N. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
- O. During construction, measures shall be taken to minimize the potential of both

fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i

- P. Earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
- Q. A Data Recovery Plan for the two sites recommended for preservation (Sites 24842 and 24534) shall be submitted to the DLNR-HPD for review and approval. A landscaped buffer shall be constructed around the sites.
- R. A Burial Treatment Plan for Site 24842 shall be submitted for the review and approval of the Planning Director in consultation with the DLNR-HPD and Hawai'i Island Burial Council. The proposed mitigation treatment for the burial site shall be approved by the Hawai'i Island Burial Council before detailed mitigation plans are finalized. A copy of the approved Burial Treatment Plan shall be submitted to the Planning Director prior to the issuance of any land alteration permits.
- S. Should any undiscovered 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 mitigation measures have been taken.
- 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, Hawai'i County Code relating to Affordable Housing Policy. Prior to final subdivision approval, applicant shall have entered into an agreement with the county in a form approved by the Administrator of the Office of Housing and Community Development for satisfaction of its requirement under Chapter 11 and shall have provided security to the county, which security shall be in a form that is acceptable to the county in its sole discretion, for full satisfaction of its affordable housing requirement.
- U. 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 lot counts are adjusted. The fair share contribution shall become due and payable prior to receipt of Final Subdivision Approval or within five years from the effective date of this amended 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 may be adjusted annually beginning three years after the effective date of the amendment to the ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of \$11,506.13 per single-family residential unit. The total amount shall be determined 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 shall be allocated as follows:

- \$5,548.46 per single-family residential unit to the County to support park and recreational improvements and facilities;
- \$267.66 per single-family residential unit to the County to support police facilities;
- \$528.66 per single-family residential unit to the County to support fire facilities;
- \$231.45 per single-family residential unit to the County to support solid waste facilities;
- \$4,929.90 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. The applicant shall receive a credit against the fair share contribution required for road and traffic improvements outside of the proposed subdivision in the amount of the costs of construction as described in Condition H herein.

- 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 County, State and Federal laws, rules, regulations and requirements.
- X. An annual progress report shall be submitted to the Planning Director prior to the effective date of the ordinance. The report shall include, but not be limited to, the status of the development and compliance with the conditions of approval. 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 this 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 property 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.

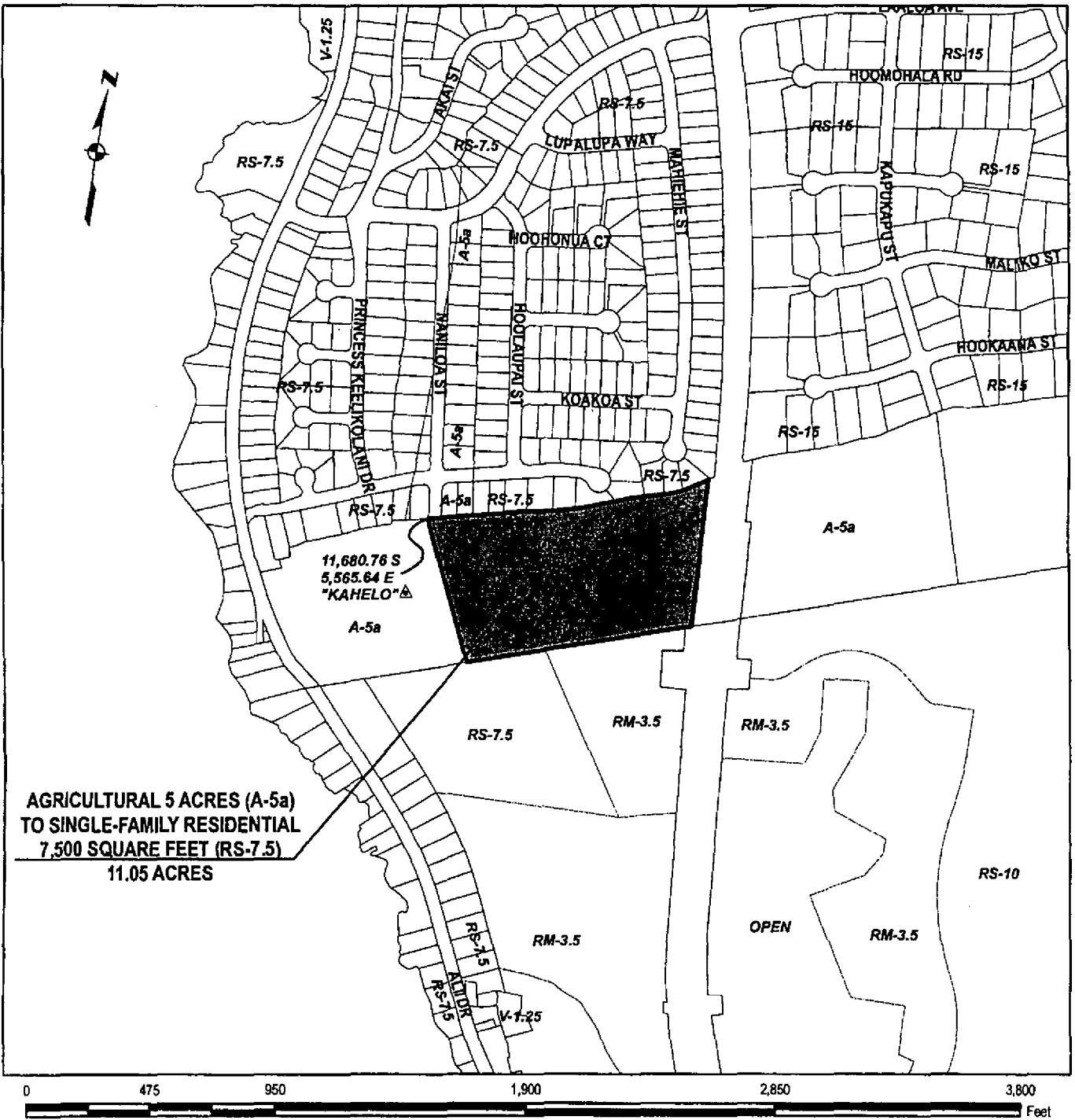
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

 Kona , Hawai'i

Date of Introduction: January 7, 2009
Date of 1st Reading: January 7, 2009
Date of 2nd Reading: January 23, 2009
Effective Date: February 9, 2009

REFERENCE: Comm. 62.12



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 ACRES (A-5a)
TO SINGLE-FAMILY RESIDENTIAL 7,500 SQUARE FEET (RS-7.5)
AT KAPALAALEA 2ND, NORTH KONA, HAWAII

MAP PREPARED BY:
COUNTY OF HAWAII, PLANNING DEPARTMENT

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

RECEIVED
 Time 2:44 pm By DT
 Date 2/09/09
 County Council

(Draft 2)

Introduced By: Donald Ikeda
 Date Introduced: January 7, 2009
 First Reading: January 7, 2009
 Published: January 16, 2009

REMARKS: _____

Second Reading: January 23, 2009
 To Mayor: February 2, 2009
 Returned: February 9, 2009
 Effective: February 9, 2009
 Published: February 19, 2009

REMARKS: _____

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			
	5	3	1	0

(Draft 3)

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	1	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:

[Signature]
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date FEB 3 2009

[Signature]

COUNCIL CHAIRPERSON

[Signature]

COUNTY CLERK

Approved/Disapproved this 9th day
 of February 2009

MAYOR, COUNTY OF HAWAII

Bill No.: 322 (Draft 3) (2006-2008)
 Reference: C-62.12/PC-2
 Ord No.: 09 8