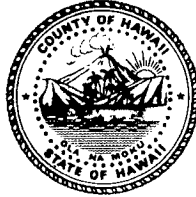


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 135

ORDINANCE NO. 09 129

AN ORDINANCE AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA 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) TO FAMILY-AGRICULTURAL – 3 ACRES (FA-3a) AT KAHUĀ AND WAIKA, NORTH KOHALA, HAWAI'I, COVERED BY TAX MAP KEY: 5-9-005:004 AND 005.

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

SECTION 1. Section 25-8-7, 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 Kahuā and Waika, North Kohala, Hawai'i, shall be Family-Agricultural – 3 acres (FA-3a):

Beginning at the Northeasterly corner of this parcel of land, being also the Northwesterly corner of Lot 11 as shown on Map 3 of Land Court Consolidation 117 and being a point on the Southerly side of Ala Kahuā Drive, and running by azimuths measured clockwise from True South:

- |    |             |          |  |
|----|-------------|----------|--|
| 1. | 324° 47'    | 2,050.83 | feet along Lot 11 as shown on Map 3 of Land Court Consolidation 117 to a point;                                |
| 2. | 46° 24' 40" | 1,010.78 | feet along Hawaiian Home Lands to a point;   |
| 3. | 144° 47'    | 1,977.27 | feet along Lots 791, 792, 793, 794 as shown on Map 116, Lots 603, 602, 601, 600 and 599 as shown on Map 60 and |

Lot 799 as shown on Map  
122 of Land Court  
Consolidation 117 to a point;

Thence, from a tangent azimuth of 256° 11' 24" following along the Southerly side of Ala Kahuā Drive on a curve to the left with a radius of 540.00 feet, the chord azimuth and distance being:

- |    |      |     |     |        |  |
|----|------|-----|-----|--------|--|
| 4. | 235° | 28' | 12" | 382.11 | feet to a point;   |
| 5. | 214° | 45' |     | 657.73 | feet along the Southerly side of Ala Kahuā Drive to the point of beginning and containing an area of 45.011 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:

Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or

- (1) 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 applicants, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The applicants, successors or assigns shall be responsible for complying with all requirements of Chapter 205, Hawai'i Revised Statutes, relating to permissible uses within the State Land Use Agricultural District.

- C. Final Subdivision Approval of the proposed subdivision development shall be secured within five (5) years from the effective date of this change of zone ordinance.
- D. Restrictive covenants in the deeds of all proposed lots within the 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 owner of the property may also, in addition, impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State 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.
- E. All driveway connections to Ala Kahua Drive shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
- F. All grading and grubbing activities and drainage improvements shall meet with the approval of the Department of Public Works.
- G. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works. The recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works, prior to the issuance of Final Subdivision Approval.
- H. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.

- I. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
- J. The method of sewage disposal shall meet with the requirements of the Department of Health.
- K. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Subdivision Approval.
- L. 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 Resource - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
- M. 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. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to Final Subdivision Approval.
- N. 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 shall be credited towards the requirements of the Unified Impact Fees Ordinance.

- O. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
  
- P. 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).
  - 5. If the applicant should require an additional extension of time, the Planning Department 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 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:

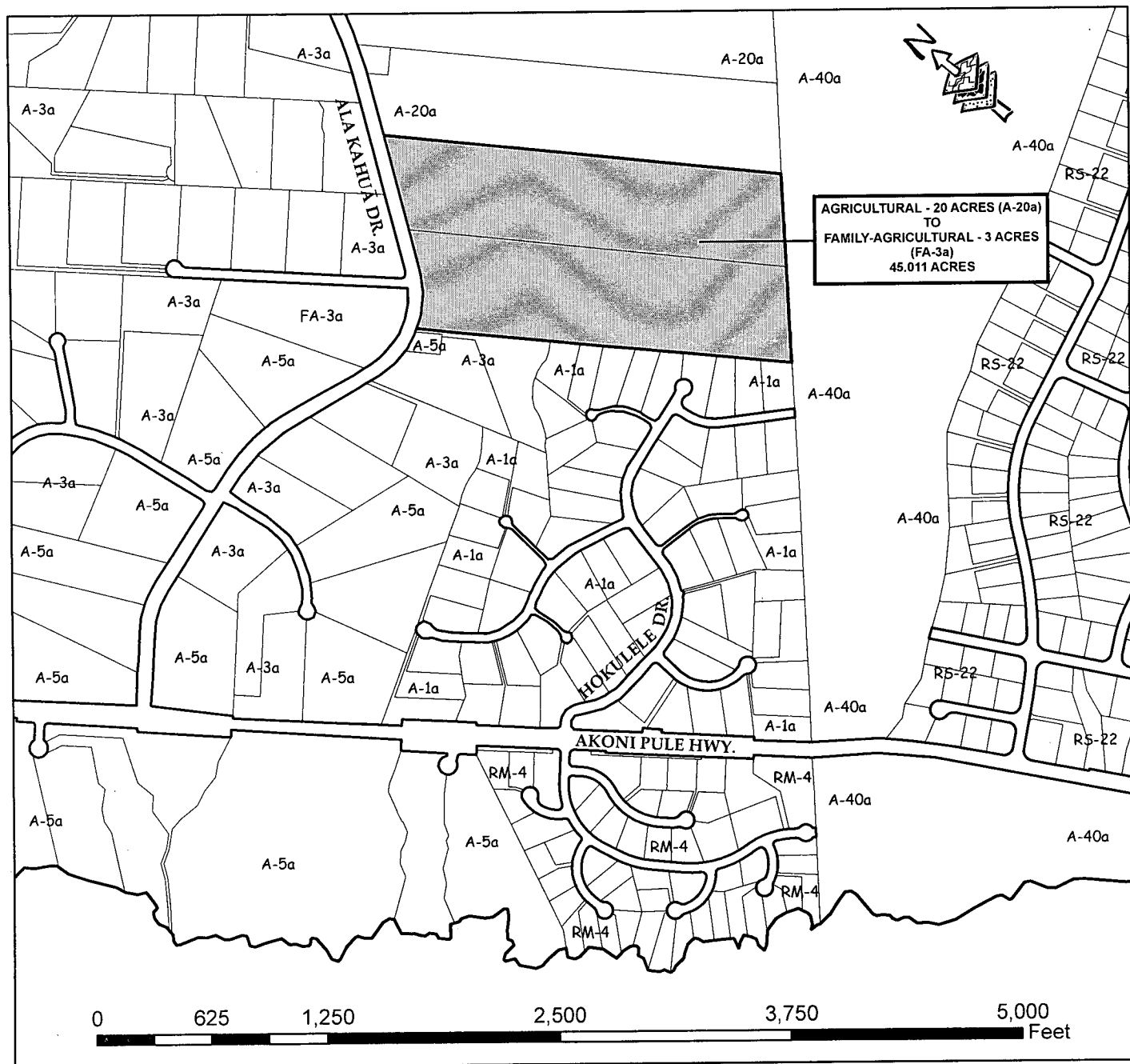


COUNCIL MEMBER, COUNTY OF HAWAI'I

          Kona          , Hawai'i

Date of Introduction: September 16, 2009  
Date of 1st Reading: September 16, 2009  
Date of 2nd Reading: October 7, 2009  
Effective Date: October 20, 2009

REFERENCE: Comm. 493



AGRICULTURAL - 20 ACRES (A-20a)  
TO  
FAMILY-AGRICULTURAL - 3 ACRES  
(FA-3a)  
45.011 ACRES

# **AMENDMENT TO THE ZONING CODE**

AMENDING SECTION 25-8-7 (NORTH AND SOUTH KOHALA ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL - 20 ACRES (A-20a) TO FAMILY-AGRICULTURAL - 3 ACRES (FA-3a) AT KAHUĀ AND WAIKA, NORTH KOHALA, HAWAII

MAP PREPARED BY:  
COUNTY OF HAWAII, PLANNING DEPARTMENT

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

RECEIVED

Introduced By: Donald Ikeda  
 Date Introduced: September 16, 2009  
 First Reading: September 16, 2009  
 Published: N/A

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

Second Reading: October 7, 2009  
 To Mayor: October 15, 2009  
 Returned: October 21, 2009  
 Effective: October 20, 2009  
 Published: October 28, 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			
	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			
	7	0	2	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 OCT 15 2009

[Signature]  
 COUNCIL CHAIRMAN

[Signature]  
 COUNTY CLERK

Bill No.: 135  
 Reference: C-493/PC-43  
 Ord No.: 09 129

Approved/Disapproved this 20th day  
[Signature]  
 of October, 2009  
[Signature]  
 MAYOR, COUNTY OF HAWAII