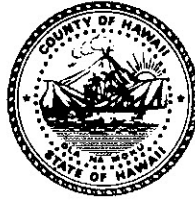


COUNTY OF HAWAI‘I



STATE OF HAWAI‘I

ORDINANCE NO. 10 2 BILL NO. 163
(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 ACRES (A-5a) TO SINGLE FAMILY RESIDENTIAL – 10,000 SQUARE FEET (RS-10) AT KAHULUI 2ND, NORTH KONA, HAWAI‘I, COVERED BY TAX MAP KEY: 7-5-017:042.

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 Kahului 2nd, North Kona, Hawai‘i, shall be Single Family Residential – 10,000 square feet (RS-10):

Beginning at the Southwesterly corner of this parcel of land, being also the Southeasterly corner of Lot C and a point on the Northwesterly side of Royal Patent 6716 Land Commission Award 4887, Apana 2 to Thomas Sams the coordinates of said point of beginning referred to Government Survey Triangulation Station “KAHELO” being 1,620.97 feet North 5,817.15 feet East and running by azimuths measured clockwise from True South:

Thence, for the next five (5) courses along Lot C, and the remainder of Royal Patent 1669, Land Commission Award 8516-B, Apana 3 to Kamaikui:

- 1. 155° 19’ 50” 720.66 feet to a point;
- 2. 243° 44’ 29” 221.15 feet to a point;
- 3. 268° 09’ 17” 195.04 feet to a point;
- 4. 257° 27’ 50” 239.26 feet to a point;
- 5. 170° 04’ 30” 59.16 feet to a point;

Thence, for the next seven (7) courses along the Southerly side of Hualālai Road:

6.	246°	45'	30"	2.79	feet to a point;
7.	260°	04'	30"	46.36	feet to a point;
8.	255°	58'	30"	36.15	feet to a point;
9.	256°	57'	30"	44.68	feet to a point;
10.	252°	02'	00"	31.42	feet to a point;
11.	252°	59'	30"	70.91	feet to a point;
12.	250°	07'	30"	33.72	feet to a point;

Thence, following along Lot E, and the remainder of Royal Patent 1669, Land Commission Award 8516-B, Apana 3 to Kamaikui:

13.	338°	16'	12"	715.98	feet to a point;
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Thence for the next sixteen (16) courses along the middle of a stonewall; along Royal Patent 6716, Land Commission Award 4887, Apana 2 to Thomas Sams and partially along Lot 131 and Lot C Pualani Estates Subdivision:

14.	85°	56'	30"	65.91	feet to a point;
15.	72°	13'	00"	138.54	feet to a point;
16.	72°	29'	10"	30.29	feet to a point;
17.	69°	34'	14"	121.45	feet to a point;
18.	71°	11'	30"	111.11	feet to a point;
19.	74°	31'	25"	38.40	feet to a point;
20.	68°	46'	06"	54.35	feet to a point;
21.	70°	11'	27"	56.27	feet to a point;
22.	82°	34'	25"	44.90	feet to a point;
23.	78°	04'	49"	47.37	feet to a point;
24.	70°	42'	35"	15.48	feet to a point;
25.	64°	13'	33"	12.84	feet to a point;
26.	59°	16'	06"	21.06	feet to a point;
27.	55°	06'	36"	33.16	feet to a point;
28.	76°	04'	15"	40.32	feet to a point;
29.	63°	16'	48"	55.43	feet to a point of beginning and containing an area of 14.437 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:

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 applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
 - B. The applicant shall comply with the November 6, 2007 Water Development Agreement (South Waiaha Water System Agreement) executed with the Waiaha System LLC or shall otherwise obtain the issuance of the necessary water commitment for the proposed project from the Department of Water Supply within 180 days from the effective date of this ordinance.
 - C. Final Subdivision Approval for the proposed development shall be secured from the Planning Director within five (5) years from the effective date of this 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. Access to the property from Hualālai Road and Paulehia Street shall meet with the approval of the Department of Public Works. The applicant shall realign the right-of-way property line along the entire subject property frontage of Hualālai Road to provide an alignment meeting with the approval of the Department of Public Works and dedicate additional right-of-way to the County equal to one-half the difference between the existing right-of-way and the realigned 50-foot wide right-of-way. An additional 5-foot wide future road widening setback easement shall be provided along the property frontage and dedicated to the County upon request, at no cost to the County.
- F. The applicant shall provide improvements to the entire property frontage along Hualālai Road, consisting of, but not limited to, grading, pavement widening, drainage improvements, and any relocation of utilities, meeting with the approval of the Department of Public Works.
- G. Install street lights, signs and markings on Hualālai Road, meeting with the approval of the Department of Public Works, Traffic Division.
- H. Roadway connections to adjoining parcels (TMK: 7-5-17: 41, 44, and 43) shall be provided.
- I. The applicant shall construct a north-south connector road between Paulehia Street and Hualālai Road which shall be constructed to “Minor Street” dedicable standards and dedicated to the County at no cost. Concrete curb, gutters and sidewalks shall be provided in areas of pedestrian traffic in conformance with adjoining development and the Department of Public Works’ policy. No security gate shall be installed on any roadway of or entrance to this project. The developer, the homeowner, and/or the

homeowner's association shall be responsible for any landscaping within the right-of-way, meeting with the approval of the Department of Public Works, and shall provide repair to any public facility damaged by the landscaping.

- J. Vehicular access to individual lots shall not be allowed from Hualālai Road.
- K. All development-generated runoff shall be disposed of on-site and not be directed toward any adjacent properties.
- L. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Subdivision Approval.
- M. If required, 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 Final Subdivision Approval.
- N. Planned subdivisions within 300 lineal feet of an existing sewer system shall install a sewer extension to connect to the county sewer system. Any new sewer extension to the county 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.

- 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 Hawai'i County Code.
- Q. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
- R. 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.
- S. 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.
- T. 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. 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 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 may receive a credit against the fair share contribution required for the road and traffic improvements in the amount of the costs of land and construction of the improvements to Hualālai Road and the north-south connector road described in Conditions D, E and H

respectively herein.

- U. 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.
- V. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- W. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this amendment. The report shall address the status of the development and the extent to which the conditions of approval are being 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.
- X. 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.

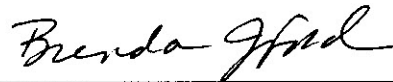
4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
5. If the applicant(s) should require an additional extension of time, the Planning Department 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 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:

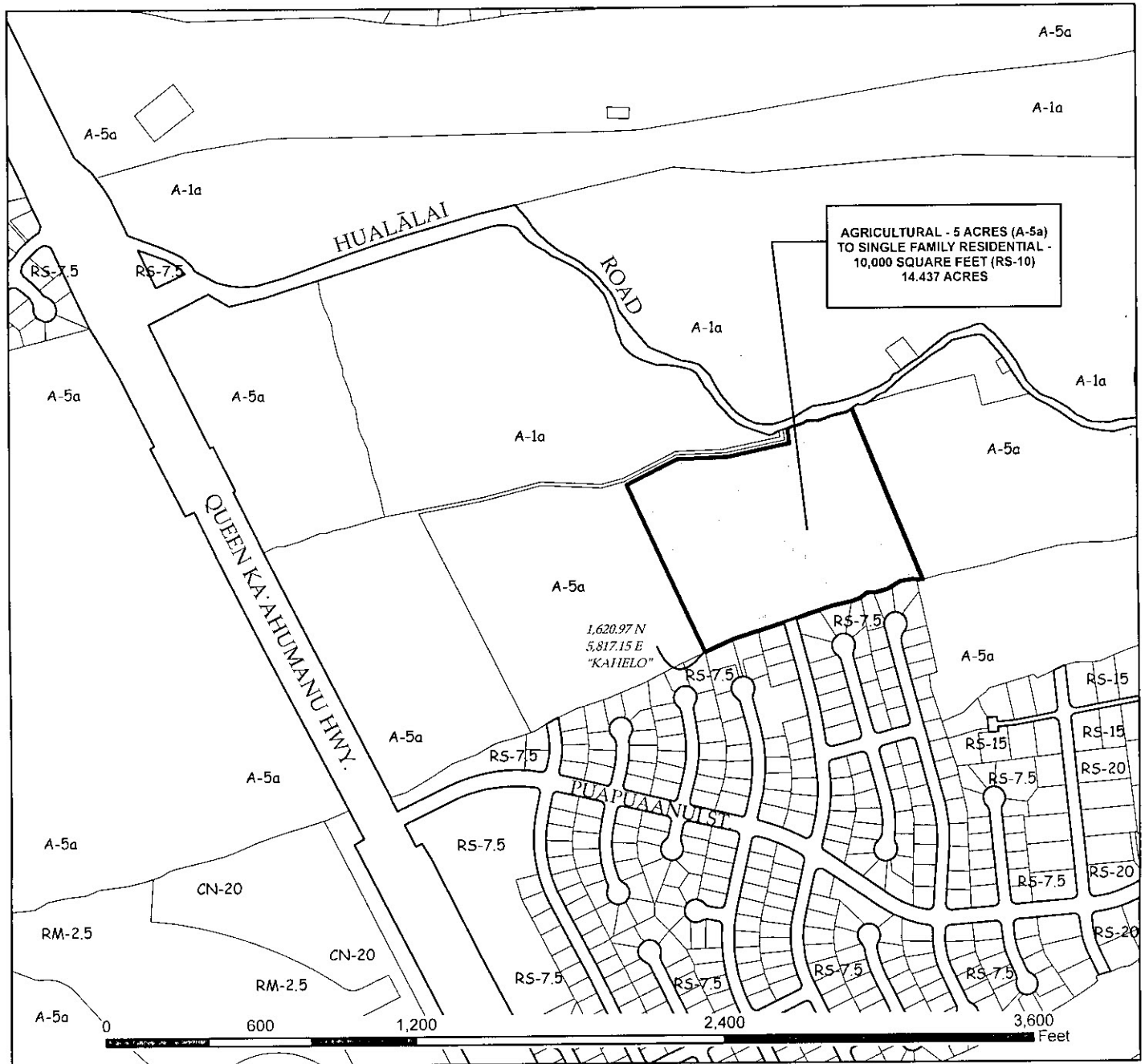


COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i

Date of Introduction: January 6, 2010
Date of 1st Reading: January 6, 2010
Date of 2nd Reading: January 22, 2010
Effective Date: February 1, 2010

REFERENCE: Comm. 578.3



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 - 10,000 SQUARE FEET (RS-10) AT KAHULUI 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

2010⁰²
 FEB 10 PM 3 43

Introduced By: Brenda Ford
 Date Introduced: January 6, 2010
 First Reading: January 6, 2010
 Published: January 16, 2010

REMARKS: _____

Second Reading: January 22, 2010
 To Mayor: February 1, 2010
 Returned: February 10, 2010
 Effective: February 1, 2010
 Published: February 23, 2010

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole-Beason	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	8	1	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford			X	
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole-Beason	X			
Onishi			X	
Yagong	X			
Yoshimoto	X			
	6	1	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:

DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date FEB 3 2010

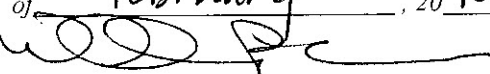


COUNCIL CHAIRMAN



COUNTY CLERK

Bill No.: 163 (Draft 2)
 Reference: C-578.3/PC-60
 Ord No.: 10 2

Approved/Disapproved this 1ST day
 of February, 2010

 MAYOR, COUNTY OF HAWAII