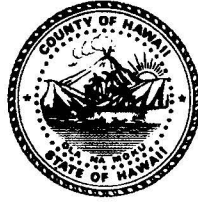


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 10 77 BILL NO. 265

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 – FIVE ACRES (A-5a) TO FAMILY AGRICULTURAL – TWO ACRES (FA-2a) AT HONOKŌHAU 2<sup>ND</sup>, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-4-006:022.

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 Honokōhau 2<sup>nd</sup>, North Kona, Hawai'i, shall be Family Agricultural – Two Acres (FA-2a):

Beginning at the Northeasterly corner of this parcel of land, being also the Southeasterly corner of Lot 1 and being a point on the Westerly side of Māmalahoa Highway, the coordinates of said point of beginning referred to Hawai'i State Plan Coordinate System Zone 1 (NAD 27) being 309,376.52 feet North and 336,834.13 feet East and running by azimuths measured clockwise from True South:

- 1. 342° 53' 50.00 feet along the Westerly side of Māmalahoa Highway to a point;

Thence, for the next nine (9) courses following along Royal Patent 5231, Land Commission Award 7396 to Kekipi:

- 2. 62° 02' 12.82 feet to a point;
- 3. 42° 35' 16.30 feet to a point;
- 4. 338° 22' 11.60 feet to a point;

- |     |          |        |                  |
|-----|----------|--------|------------------|
| 5.  | 295° 10' | 22.60  | feet to a point; |
| 6.  | 340° 53' | 50.40  | feet to a point; |
| 7.  | 35° 40'  | 29.70  | feet to a point; |
| 8.  | 56° 24'  | 113.00 | feet to a point; |
| 9.  | 343° 55' | 29.50  | feet to a point; |
| 10. | 352° 23' | 119.10 | feet to a point; |

Thence, for the next three (3) courses following along the remainder of Royal Patent 6855, Land Commission Award 9971, Apana 9 to W. P. Leleiohoku;

- |     |              |        |  |
|-----|--------------|--------|--|
| 11. | 72° 36' 47"  | 719.21 | feet along Lots 3-B, 3-C, 3-D and 3-E to a point;  |
| 12. | 165° 38' 36" | 259.52 | feet along Lot 2 to a point;   |
| 13. | 247° 40' 36" | 869.76 | feet along Lots 5 and 1 to the point of beginning and containing an area of 5.341 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 applicant(s), 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. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within one hundred and eighty (180) days from the effective date of this ordinance. The applicant shall construct necessary water system improvements (including but not limited to installation of a service lateral to accommodate a 5/8-inch meter for the proposed additional lot) and remit the prevailing facilities charge, as determined by the Department of Water Supply and convey these improvements to the County Water Board prior to Final Subdivision Approval.
- D. The applicant shall either a) subdivide the subject property into two lots with access to the makai lot from Māmalahoa Highway through the mauka lot, or b) consolidate the subject property with either TMK 7-4-06:42 or 43 and re-subdivide into two or three lots meeting minimum lot size requirements of the Zoning Code and Subdivision Code requirements. Final Subdivision Approval shall be secured from the Planning Director within five (5) years from the effective date of this change of zone ordinance.
- E. 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.

- F. To provide for future road widening improvements, a ten (10)-foot wide road widening setback along the subject property's Māmalahoa Highway frontage shall be delineated on subdivision plans. The future road widening setback shall be dedicated to the County of Hawai'i upon its request, at no cost to the County.
- G. Any new driveway connections to Māmalahoa Highway shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
- H. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. If required, a drainage study shall be prepared and submitted to the Department of Public Works prior to submittal of plans for subdivision review. Any required drainage improvements shall be constructed, meeting the approval of the Department of Public Works, prior to Final Subdivision Approval.
- I. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
- J. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activities.

- K. The method of sewage disposal shall meet with the requirements of the Department of Health.
- 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 Resources - 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. The applicant, successors or assigns shall make their fair share contribution to mitigate the potential regional impacts of the proposed subdivision with respect to parks and recreation, fire, police, solid waste disposal facilities and roads for the one additional lot to be created. The fair share contribution shall become due and payable prior to receipt of Final Subdivision Approval. The fair share contribution for the lot shall be based on the actual number of residential units developed. 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 combined value of **\$12,059.55** 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:
1. **\$5,815.33** per single family residential unit to the County to support park and recreational improvements and facilities;

2. **\$280.53** per single family residential unit to the County to support police facilities;
3. **\$554.09** per single family residential unit to the County to support fire facilities;
4. **\$242.59** per single family residential unit to the County to support solid waste facilities; and
5. **\$5,167.02** 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.

- 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 Planning 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:

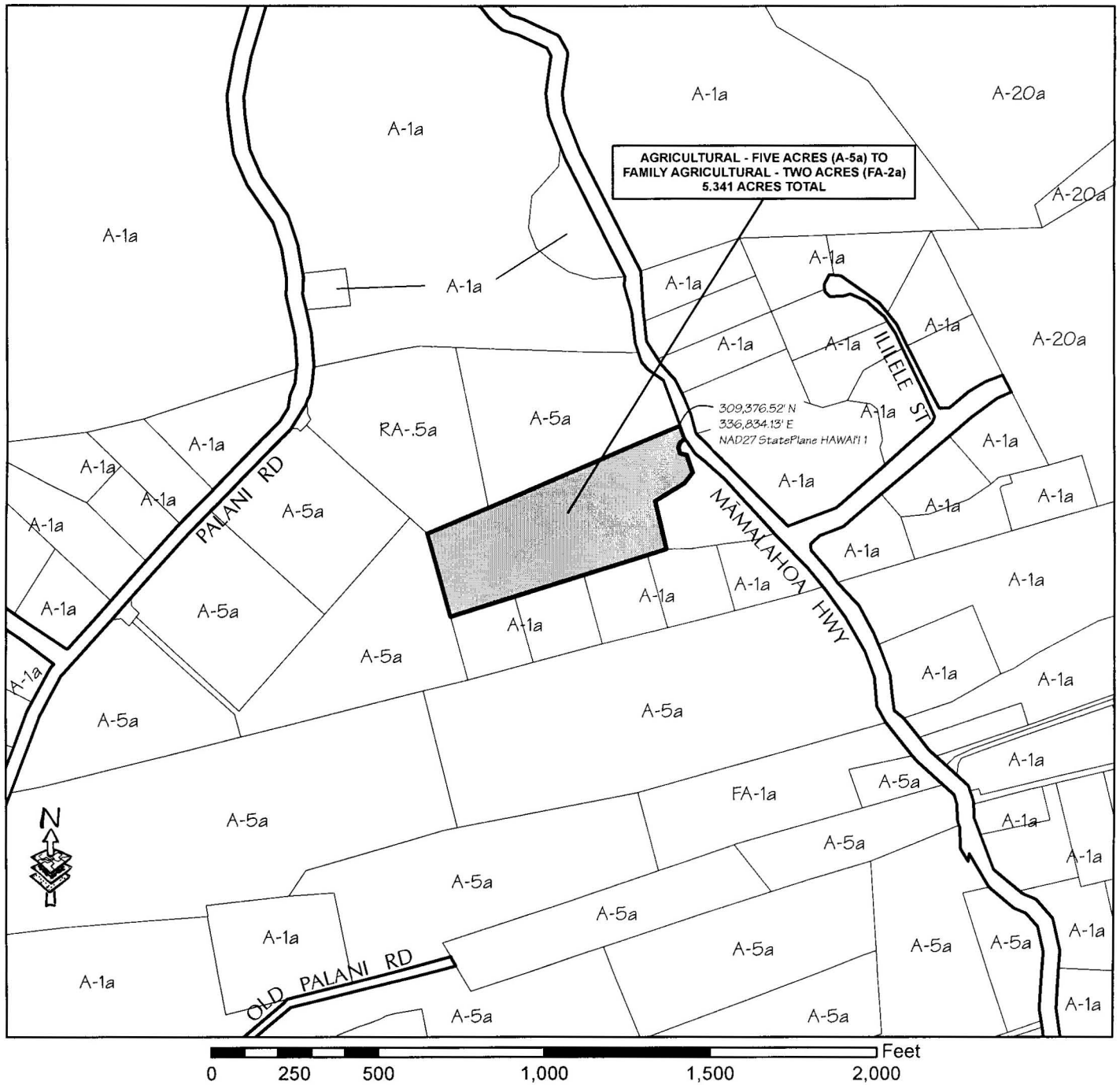


COUNCIL MEMBER, COUNTY OF HAWAII

          Kona          , Hawai'i  
Date of Introduction: August 3, 2010  
Date of 1st Reading: August 3, 2010  
Date of 2nd Reading: August 18, 2010  
Effective Date: September 2, 2010

REFERENCE: **Comm.**           859





# **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 - FIVE ACRES (A-5a)  
TO FAMILY AGRICULTURAL - TWO ACRES (FA-2a)  
AT HONOKŌHAU 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

Introduced By: Donald Ikeda  
 Date Introduced: August 3, 2010  
 First Reading: August 3, 2010  
 Published: August 13, 2010

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
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Second Reading: August 18, 2010  
 To Mayor: August 30, 2010  
 Returned: September 2, 2010  
 Effective: September 2, 2010  
 Published: September 14, 2010


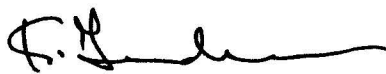
REMARKS: \_\_\_\_\_  
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2010 SEP 2 AM 10:00 ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole-Beason	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	8	1	0	0


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			
	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:  
  
 DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII  
 Date SEP - 1 2010

  
 COUNCIL CHAIRMAN  
  
 COUNTY CLERK

Bill No.: 265  
 Reference: C-859/PC-87  
 Ord No.: 10 77

Approved/Disapproved this 2nd day  
 of September, 2010  
  
 MAYOR, COUNTY OF HAWAII