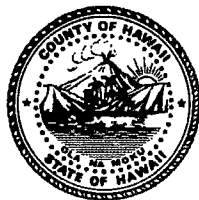


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 15 104 BILL NO. 91

AN ORDINANCE AMENDING ORDINANCE NO. 05 74 WHICH RECLASSIFIED LANDS FROM AGRICULTURAL – 1 ACRE (A-1a) AND RESORT-HOTEL – 1,250 SQUARE FEET (V-1.25) TO MULTIPLE FAMILY RESIDENTIAL – 2,500 SQUARE FEET (RM-2.5) AT AUHAUKEAE 1<sup>ST</sup>, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-5-009:067 (PREVIOUSLY INCLUDED A PORTION OF PARCEL 54).

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

**SECTION 1.** Ordinance No. 05 74 is amended as follows:

“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:

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, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this ordinance. The applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
- C. Construction of the proposed development shall be completed within [~~five (5)~~]ten (10) years from the effective date this amended ordinance. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).
- D. The applicant shall realign and provide full improvements to the entire frontage along Hualalai Road consisting of, but not limited to, right-of-way and pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any relocation of utilities meeting with the approval of the Department of Public Works. Pavement transitions, streetlights, signs and markings, drainage improvements, and relocation of utilities may be required. The applicant shall construct and dedicate to the County upon request, the widened street with improvements, at no cost to the County. An approach for the commercial zoned property fronting the opposite side of Hualalai Road (TMK: 7-5-10:13) is required

under Ordinance [95-118]09-049 and 09-050 or successor ordinances, to include turning lanes on Hualalai Road. The widened area to be dedicated to the County shall, if required by DPW, allow for realignment and improvements required by Ordinance [95-118]09-049 and 09-050 or successor ordinances. The required widening area shall not exceed the equivalent of a five foot width along the entire frontage, which is approximately one-half the difference between the existing right-of way width and 60 feet.

- E. As represented by the applicant, a non-gated access to Hualalai Road shall be limited to one approach and may include an additional access which shall be barricaded and used for emergency purposes only. The approaches shall conform to Chapter 22, Streets and Sidewalks, of the Hawai'i County Code. A licensed civil engineer shall evaluate the proposed active approach to the subject property for safe ingress and egress, sight distance and conflicts with the proposed turn lane and entry in TMK: 7-5-10:13. The evaluation shall be submitted for approval by the DPW prior to plan approval. If recommended, the applicant shall provide a left storage lane on Hualalai Road to the subject property prior to the issuance of a certificate of occupancy. All sight distances to the approach shall meet with the requirements of the Hawai'i Statewide Uniform Design Manual or AASHTO.
  
- F. Any emergency vehicular security gate shall be located in a location approved by the Department of Public Works.
  
- G. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and submitted to the Department of Public Works prior to issuance of any construction permit. Recommended drainage improvements shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a certificate of occupancy.

- H. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
- I. The applicant shall connect to the County sewer system according to the requirements of the Department of Environmental Management.
- J. An Archaeological Preservation and Burial Treatment Plan shall be submitted for the review and approval of the Planning Director, in consultation with the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD). The Preservation Plan shall incorporate appropriate mitigation measures resulting from the impact of any fence and/or wall constructed along the boundaries of the subject site subject to the archaeological and cultural features of the adjoining properties identified by TMK: 7-5-9:55 and portion of 54. Proposed mitigation treatment for the burial sites within the subject property shall be approved by the SHPD's Hawai'i Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Archaeological Preservation and Burial Treatment Plan shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval review or prior to the issuance of any land alteration permits, whichever occurs first. Appropriate interim preservation buffers and measures acceptable to the Planning Director shall be installed between any historic sites in the zoned areas before any land disturbance occurs on the property. A separate Preservation Plan for the portion of 7-5-9:54 that is zoned A-1a shall be submitted to SHPD prior to any mechanical disturbance or issuance of any land disturbance permit of that area.
- K. Prior to submittal of plans for a building permit or within 6 months of the effective date of this ordinance, whichever is sooner, the applicant or its

successors and assigns, shall submit a proposed covenant to be recorded with the State of Hawai'i Bureau of Conveyances to the Planning Director for review and approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances. Said restrictive covenant, recorded against TMK: 7-5-09: 54 that is zoned A-1a, shall acknowledge that the applicant or its successors or assigns has consented to a County-initiated rezoning of the A-1a zoned area into the Open district and the prohibition of any development or improvement of that area in such a way as to interfere with or negatively affect the archaeological and historic features of such area, as determined by the State Historic Preservation Office. Furthermore, no mechanical disturbance or land disturbance permit for the parcel shall occur or be issued until the covenant has been duly recorded.

- L. Within one (1) year of the effective date of this amendment, the applicant shall identify an entity that would be responsible for the management and care of the archaeological/cultural features on that portion of TMK: 7-5-09:54 that is not covered by this ordinance. Prior to its designation, the applicant shall solicit the input of the native Hawaiian community and the County Council. Within 60 days of the identification of this entity, this area, with the concurrence of the County Council, shall be conveyed via lease or fee to the identified entity for \$1.00.
- M. The applicant shall prepare and submit a landscaping plan for the subject site in conjunction with the Plan Approval process. Said plan shall reflect, where feasible, the use of native and water-conserving plants to comply with the guidelines outlined in Planning Department Rule No. 17 relating to landscaping.
- N. 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 the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.

- O. 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 apply to, as represented by the applicant, 40% of all residential units in excess of the entitled eighty (80) units on TMK: 7-5-9:67.
- P. The project shall be developed in a minimum of two phases. The first phase shall consist of no more than forty-five (45) units, which shall include all of the required affordable housing units approved in accordance with Condition O above. Final occupancy permit for the first phase shall be issued no earlier than June 30, 2006, which is the scheduled completion of the on-going Kuakini Highway improvements. Occupancy permit for the remaining units shall be issued upon completion of the aforementioned Highway improvements.
- Q. As represented by the applicant, the applicant shall include appropriate restrictive covenants in the deeds of all proposed units within the subject property so as to minimize enforcement by public agencies of any violation of any applicable State and County ordinances or rules and regulations relating to land use and noise.
- R. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- S. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject project with respect to parks and recreation, fire, police and solid waste disposal facilities and roads. The amount of the fair share contribution shall be the sum which is the product of multiplying the number of

additional multiple family residential units proposed to be developed by the amounts allocated herein below for each such unit, and shall become, with the exception of the parks and recreation fees, due and payable prior to the issuance of the Certificate of Occupancy for any unit on the subject property. The parks and recreation fees shall be due and payable prior to the issuance of a building permit.

The fair share contribution, in a form of cash, land, facilities or any combination thereof, acceptable to the director in consultation with the affected agencies, shall be determined by the County Council. The fair share contribution shall have a maximum combined value of [~~\$6,206.06~~]\$8,667.10 per multiple-family residential unit. Based upon the applicant's representation of intent to develop a total of twelve (12) additional multiple-family residential units, the indicated total of fair share contribution is [~~\$74,472.72~~]\$104,005.20 for the additional multiple-family residential units. However, the total amount shall be increased or reduced in proportion with the actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution shall be allocated as follows:

1. [~~\$3,061.27~~]\$4,275.24 per multiple family residential unit for an indicated total of [~~\$36,735.24~~]\$51,302.88 to the County or, if the County Council so agrees, directly to the entity so designated under Condition L to further the objectives of Condition L and to support park, cultural, and recreational improvement and facilities;
2. [~~\$96.75~~]\$135.12 per multiple family residential for an indicated total of [~~\$1,161.00~~]\$1,621.44 to the County to support police facilities;
3. [~~\$297.62~~]\$415.64 per multiple family residential unit for an indicated total of [~~\$3,571.44~~]\$4,987.68 to the County to support fire facilities;

4. ~~[\$132.65]~~\$185.25 per multiple family residential unit for an indicated total of ~~[\$1,591.80]~~\$2,223.00 to the County to support solid waste facilities;
5. ~~[\$2,617.77]~~\$3,655.85 per multiple family residential unit for an indicated total of ~~[\$31,413.24]~~\$43,870.20 to the State or County to support road and traffic improvements.

The fair share contributions described above shall be adjusted annually beginning three years after the effective date of the change of zone, based on the percentage change in the Honolulu Consumer Price Index (HCPI). In lieu of paying the fair share contribution, the applicant may construct such facilities related to park, fire, police and solid waste disposal facilities subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the Hawai'i County Council.

- T. 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.
- U. ~~[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).]~~If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.


V. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the subject area to its original or more appropriate designation.”

**SECTION 2.** Material to be deleted is bracketed and struck through and material to be added is underscored.

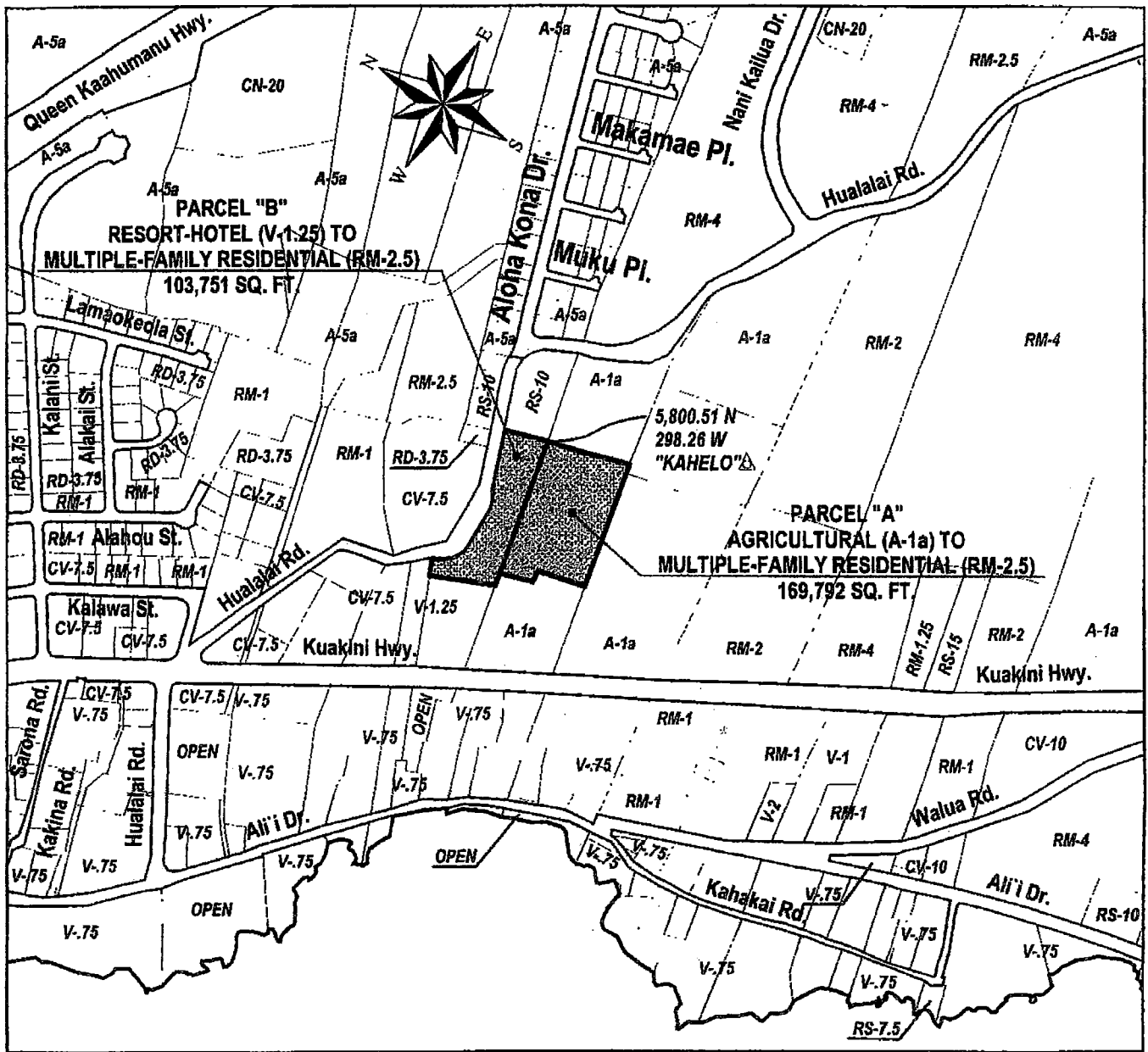
**SECTION 3.** In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

**SECTION 4.** This ordinance shall take effect upon its approval.

INTRODUCED BY:

 B/R  
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i  
Date of Introduction: October 20, 2015  
Date of 1st Reading: October 20, 2015  
Date of 2nd Reading: November 3, 2015  
Effective Date: November 20, 2015



# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP)  
 AND 25-8-5 (KAILUA URBAN ZONE MAP) ARTICLE 8,  
 CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE,  
 BY CHANGING THE DISTRICT CLASSIFICATION  
 FROM RESORT-HOTEL (V-1.25) AND AGRICULTURAL (A-1a)  
 TO MULTIPLE-FAMILY RESIDENTIAL (RM-2.5)  
 AT AUHAUKEAE 1st, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT  
 COUNTY OF HAWAII

TMK: 7-5-009:067 & POR. 054

Date: December 14, 2004

EXHIBIT "A"

(Kona Hale Ali'i, LLC:1147)

Kukui Development, LLC

FOR REFERENCE ONLY

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

COUNTY CLERK  
COUNTY OF HAWAII

2015 NOV 20 AM 3:44

Introduced By: Greggor Ilagan (B/R)  
Date Introduced: October 20, 2015  
First Reading: October 20, 2015  
Published: October 31, 2015

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

Second Reading: November 3, 2015  
To Mayor: November 12, 2015  
Returned: November 20, 2015  
Effective: November 20, 2015  
Published: November 28, 2015

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Ilagan	X			
Kanuha			X	
Onishi	X			
Paleka	X			
Poindexter			X	
Wille	X			
	7	0	2	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Ilagan	X			
Kanuha	X			
Onishi	X			
Paleka	X			
Poindexter	X			
Wille	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

Approved/Disapproved this 20<sup>th</sup> day  
of November, 2015

  
MAYOR, COUNTY OF HAWAII

  
COUNCIL CHAIRPERSON  
  
COUNTY CLERK

Bill No.: 91  
Reference: C-467/PC-28

Ord No.: 15 104