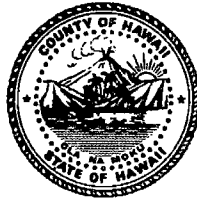


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 108

ORDINANCE NO. 15 116

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 – TWENTY ACRES (A-20a) TO FAMILY AGRICULTURAL – ONE ACRE (FA-1a) AT KALAOA 5TH, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY: 7-3-004:012.

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 Kalaoa 5th, North Kona, Hawai'i, shall be Family Agricultural – One Acre (FA-1a):

Beginning at a pipe in concrete at the northwest corner of this parcel of land, and on the easterly side of Māmalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHEA" being also 7,944.37 feet south and 8,171.07 feet west, thence running by azimuths measured clockwise from true South:

- |    |              |          |   |
|----|--------------|----------|---|
| 1. | 268° 45' 10" | 1,234.02 | feet along Lot 2, along remainder of Grant 1609 to Kama, to a pipe in concrete; |
| 2. | 352° 05'     | 211.30   | feet along Government Land, to a pipe in concrete;                              |

3.	88° 45'	10"	1,235.72	feet along Lot 4, along remainder of Grant 1609 to Kama, to a pipe in concrete;
4.	174° 25'		21.59	feet along the easterly side of Māmalahoa Highway, to a pipe in concrete;
5.	176° 52'	30"	60.71	feet along same, to a pipe in concrete;
6.	172° 18'		92.19	feet along same, to a pipe in concrete;
7.	164° 57'	30"	37.13	feet along same, to the point of beginning and containing an area of 5.9325 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, successors or assigns shall be responsible for complying with all of the stated conditions of approval.

- B. The applicant, 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 for the proposed development shall be secured within five (5) years from the effective date of this ordinance. The applicant is encouraged to follow the Clustered Rural Subdivision Guidelines in the Kona Community Development Plan when creating the subdivision layout. The intent of the guidelines is to minimize grading, preserve the natural appearance of the land to the maximum extent possible, ensure agriculture use in the State Land Use Agricultural District, and create a rural setting for residences.
- D. Should a water variance from the Subdivision Code be required, as represented by the applicant, the applicant shall install a private pump and storage system to increase water pressure for each of the proposed lots and, if required by the Department of Water Supply, execute an out-of-bounds agreement and elevation agreement for the newly created lots.
- E. To protect the endangered Hawaiian hoary bat during breeding and pup-rearing season, woody vegetation greater than 15 feet in height shall not be removed or trimmed between June 1 and September 15, and barbed wire fencing shall not be used on the property.
- F. To protect the endangered Hawaiian hawk, the use of powered heavy equipment or vegetation clearing during breeding season of March to September, shall be prohibited. This restriction can be waived by the Planning Director upon submittal of a survey by a qualified avifaunal professional noting the absence of any active

Hawaiian hawk nests within and up to 100 meters from the perimeter of the subject property. The applicant shall coordinate the protection of found nests with the U.S. Fish and Wildlife Service.

- G. To protect the endangered Blackburn's sphinx moth that may be in the area, the applicant shall make a good faith effort to retain any vegetation on the property that moths feed on such as beach morning glory, 'ilie'e, maiapilo, tree tobacco, and 'aiea. A qualified biologist shall survey the areas of proposed construction activities for the moth and its host plants prior to work initiation as recommended by the U.S. Fish and Wildlife Service. The surveys shall be conducted during the wettest portion of the year and immediately prior to construction.
  
- H. Access to Old Government Road, including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works. Driveways shall conform to Chapter 22 (County Streets), Hawai'i County Code. Intersection sight distances shall meet the requirements of the Hawai'i Statewide Uniform Design Manual and the AASHTO Standards.
  
- I. Prior to the issuance of Final Subdivision Approval and for the purpose of mitigating the substandard width and roadside hazard clearances of Old Government Road, the applicant shall construct a paved vehicular pull-out fronting the subject property within the existing right-of-way and/or portions of the subject property, meeting with the approval of the Department of Public Works. All improvements and land within the subject property used for this pullout shall be subdivided and submitted for dedication to the county, at no cost, in conjunction with the Final Subdivision Approval process.

- J. Prior to Final Subdivision Approval, the applicant shall remove any encroachments or obstructions within that portion of the Old Government Road right-of-way directly fronting the project site.
- K. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- L. All earthwork activity, including grubbing and grading, shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
- M. An individual wastewater system containing an aerobic unit with disinfection or a non-discharge disposal system, meeting with the approval of the Department of Health, shall be installed for the proposed development.
- N. Prior to Final Subdivision Approval, the applicant shall submit and receive approval from SHPD for a revised Archeological Inventory Survey and Preservation Plan. The Preservation Plan shall be implemented and the SHPD-approved preservation buffer for the modified lava tube (SIHP 30295) shall be delineated on the plats submitted for subdivision approval.
- O. 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 mitigation measures have been taken.

P. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the development with respect to parks and recreation, fire, police, solid waste disposal facilities and transportation facilities. The fair share contribution shall become due and payable prior to receipt of Final Subdivision Approval. The fair share contribution for each newly created lot shall be based on the actual number of residential units developed. 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 **\$13,506.70** 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. **\$6,513.17** per single family residential unit to the County to support park and recreational improvements and facilities;
2. **\$314.20** per single family residential unit to the County to support police facilities;
3. **\$620.58** per single family residential unit to the County to support fire facilities;
4. **\$271.70** per single family residential unit to the County to support solid waste facilities; and
5. **\$5,787.06** 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.

- Q. 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.
- R. The applicant, successors or assigns shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- S. 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 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.

T. 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.

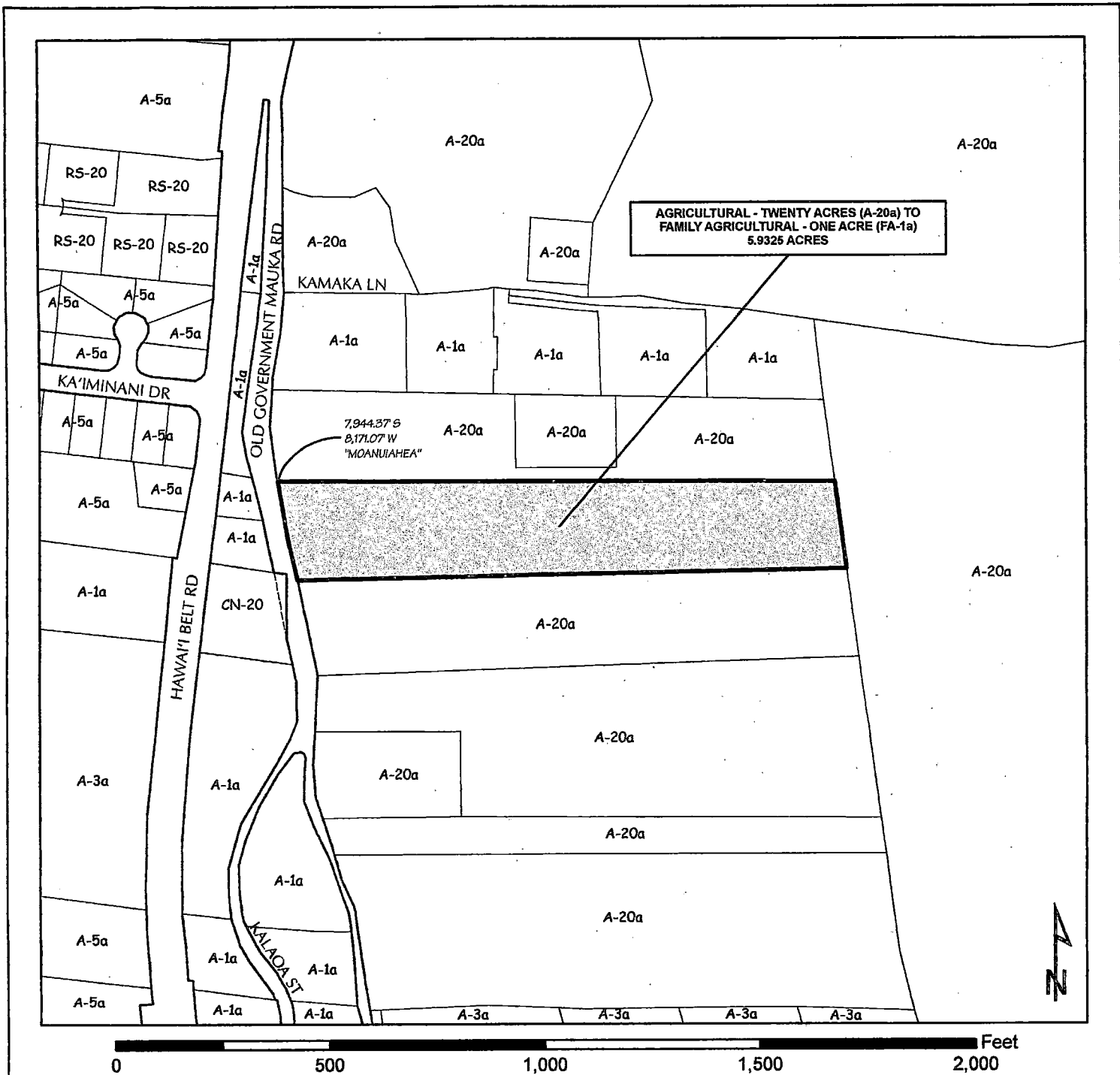
INTRODUCED BY:

 (B/R)  
\_\_\_\_\_  
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i  
Date of Introduction: November 18, 2015  
Date of 1st Reading: November 18, 2015  
Date of 2nd Reading: December 2, 2015  
Effective Date: December 22, 2015

REFERENCE Comm. 523





# **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 - TWENTY ACRES (A-20a) TO  
 FAMILY AGRICULTURAL - ONE ACRE (FA-1a)  
 AT KALAOA 5th, NORTH KONA, HAWAII

MAP PREPARED BY:  
 COUNTY OF HAWAII, PLANNING DEPARTMENT

TMK: (3) 7-3-004:012

DATE: JULY 13, 2015

**EXHIBIT "A"**

Ritchie  
 Map: 1361

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

2015 DEC 23 PM 4: 23

Introduced By: Greggor Ilagan (B/R)  
 Date Introduced: November 18, 2015  
 First Reading: November 18, 2015  
 Published: November 28, 2015

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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Second Reading: December 2, 2015  
 To Mayor: December 10, 2015  
 Returned: December 23, 2015  
 Effective: December 22, 2015  
 Published: January 9, 2016

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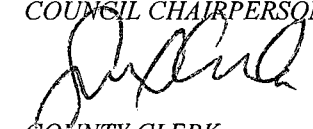
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Ilagan	X			
Kanuha	X			
Onishi	X			
Paleka	X			
Poindexter	X			
Wille	X			
	9	0	0	0

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			
	8	0	1	0

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

Approved/Disapproved this 22<sup>nd</sup> day  
 of December, 2015

  
 MAYOR, COUNTY OF HAWAI'I

  
 COUNCIL CHAIRPERSON  
  
 COUNTY CLERK

Bill No.: 108  
 Reference: C-523/PC-34  
 Ord No.: 15 116