

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

WATTIE ELIZABETH KAIOKALANI GREEN
CHANGE OF ZONE APPLICATION (PL-REZ-2024-000058)

Upon careful review of the request against the guidelines for granting a change of zone, the Planning Director is recommending that a **favorable recommendation for a Change of Zone from Agricultural 20-acre (A-20a) to Family-Agricultural-1 acre (FA-1a) for 4.985 acres of land be forwarded to the County Council.** Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this position. This favorable recommendation is based on the following findings:

The applicants are requesting a Change of Zone from Agricultural 20-acre (A-20a) to Family Agricultural-1 acres (FA-1a) to subdivide the 4.985-acre property into four (4) parcels, consisting of a minimum of one (1) acre each. The property has been in the applicant’s family, and the intention is to divide the parcel so that it can be distributed among family members.

The subdivision process will begin immediately after approval of the Change of Zone request, with the goal of completing final subdivision approval by the end of 2025. The applicants estimate the cost of improvements will be approximately \$50,000.00.

In order to consider an area for any type of zoning designation, the applicable goals, policies and standards of the General Plan must be adequately addressed. It is only through such a comprehensive policy analysis approach that evaluations and decisions can be made to better time and stage developments to achieve growth determined by the General Plan and related planning documents. The implications of these evaluations and decisions must be also considered as they may have an impact on similar areas in the County.

The proposed Change of Zone request from Agricultural (A-20a) to the Family Agricultural (FA-1a) zoned district will conform to the goals, policies, and

standards of the General Plan Economic and Land Use elements. The FA (Family Agricultural) district provides for a blend of small-scale agricultural operations associated with residential activities, characterized by farm estates, small acreage farms, or subsistence lots. The FA district is intended for areas designated within the State land use agricultural district, where public services and infrastructure support the very low-density residential needs of a rural community. It is particularly suitable for areas where a substantial number of parcels are less than five acres in size and where a mix of uses will not conflict with or be detrimental to existing agricultural activities in the surrounding area. The Land Use Pattern Allocation Guide (LUPAG) Map, a component of the General Plan, visually represents the goals and policies for coordinating the County's growth and development. It depicts the spatial relationships between various land uses and establishes the basic urban and non-urban forms for different areas within the County. In this case, the subject property straddles both urban and non-urban areas. The LUPAG Map designates the makai half of the property as Low Density Urban (ldu) and the mauka half as Important Agricultural Land (ial). The ldu designation typically includes low-density residential uses (up to 6 units per acre), community facilities, and convenience commercial uses, such as the nearby Matsuyama Food Mart. While a portion of the property is designated by the LUPAG as ial, conditions on the ground are not suitable for commercial scale agriculture. Soils within the property are identified as Puuikaaka-Lava flows complex, 10 to 20 percent slopes; permeability is rapid and runoff is very high. This soil type is not suitable for cultivation. The Land Study Bureau's Detailed Land Classification System identifies soils of the property as "E" or "Very Poor" soil for agricultural productivity. Lastly, soils in within the subject property as identified as "Other Important Agricultural Land", which include lands other than Prime or Unique Agricultural Land that is also of statewide or local importance for agricultural use.

In this instance, the applicant seeks a zoning change to subdivide the property into four lots for transfer to family members. This transfer can be beneficial as it allows the land to remain within the family and family members may be more likely to engage in cooperative farming practices or small-scale agricultural uses that align with their

interests and capabilities, preserving some level of agricultural activity on the land. Additionally, this approach can provide housing opportunities for family members, supporting multi-generational living arrangements that can enhance family support and community stability.

The Kona Community Development Plan (CDP) also identifies the property as partially in the urban area and partially within the rural area. The CDP has distinct land use policies for each of these areas but for both, the overarching policy is to concentrate new development within existing villages. This approach aims to prevent the historical trend of rural and urban sprawl resulting from subdividing agricultural lands into smaller parcels.

In the urban areas, the policies of the CDP strongly encourage new development within compact villages along proposed primary transit routes known as Transit Oriented Developments (TOD's), or as Traditional Neighborhood Developments (TND's) along secondary transit routes. Infill developments, which are new developments adjacent to existing urban properties, are also encouraged. Rezoning of lands that do not qualify as infill or TOD/TND developments are considered "greenfield" developments, which require an amendment of the CDP before they can be approved (see Policy LU-2.8).

In the rural areas, the CDP policies promote new development within the existing rural areas of Hōlualoa, Honalo, Kainaliu, Kealahou, Captain Cook, Hōnaunau, Nāpo'opo'o, Keālia and Miloli'i. While Kalaoa is not included as a rural village in the CDP, possibly due to the lack of a clear commercial center or because the Kalaoa mauka area is viewed as an extension of the Kona urban area rather than a distinct village and is identified as a general location of a TOD. The land use policies for rural areas in the CDP are less clear than those for urban area and in some cases policies directly conflict one another or do not clearly indicate whether they are suggestions or requirements. For example, the following sections of the Kona CDP support a rural clustered land use pattern for all lands outside the rural villages (emphasis added):

- Overall Land Use Strategy 4.2.2 states "Any development outside of the rural towns and villages should be directed to suitable areas that are not important for

agriculture, in clustered patterns that will optimize the preservation of rural open space.”

- Land Use Policy LU-3.4 states “the Clustered Rural Subdivision Guidelines in Attachment C apply to proposed subdivisions outside the Kona Urban Area.”
- The “Applicability” section of the Guidelines state that they apply to “a special type of “Planned Unit Development” (PUD) for North and South Kona for lands outside the Urban Area zoned Agricultural, Intensive Agricultural, Family Agricultural, or Rural Agricultural.”
- Land Use Policy LU-3.8 states “Rezoning of areas currently zoned agricultural, outside of the Urban and Rural TOD areas shown on Figure 4-7 Official Kona Land Use Map, and outside of urban designations on the General Plan LUPAG, shall not be allowed, except in the following limited circumstances: (1) the rezoning allows only a small number of additional lots, consistent in scale with the transfer of lots to family members,”

Whereas these polices encourage the use of Clustered Rural Subdivision Guidelines for development of lands outside the Kona urban area, this is not a strict requirement and, in this case, would be difficult to apply given the specific characteristics of the subject property. Specifically, only half of the property is situated outside of the Kona Urban Area, thus the Clustered Rural Subdivision Guidelines would not apply to the whole property. Furthermore, the property is nearly bisected by an adjacent DWS reservoir property, making the layout of a clustered rural subdivision very difficult. Finally, as stated above, the property is not well suited for commercial agricultural use, lessening the need for such a clustered layout.

Land Use Policy LU-3.8 allows for rezoning of agricultural lands outside of the urban and rural TOD’s, which correspond to the existing villages, if it is to create only a small number of additional lots, provided that the scale is consistent with the transfer of lots to family members. The current zoning change request aligns with this policy, as the applicant proposes to rezone the property in order to create a four-lot subdivision for conveyance to family members. Based on the preceding, the proposed change of zone is consistent with the General Plan and KCDP.

All utilities and services are available to the site. Primary access to the subject property is from Old Government Road, a County-maintained roadway having a pavement width of 10 feet with narrow shoulders, within a variable right-of-way. Currently, a 12-foot-wide concrete paved driveway connects Old Government Road to the property. The requested rezoning and subsequent four lot subdivision will increase residential density on this substandard road. According to the Department of Public Works (DPW), all driveway connections and construction within the County right-of-way shall conform to Chapter 22, County Streets, of the Hawai'i County Code and must include the provisions for adequate site distances, meeting with the approval of the DPW-Engineering Division. This requirement will be added as a condition of approval.

Section 25-2-46(d)(1) of the concurrency provision mandates a Traffic Impact Analysis Report (TIAR) for any rezoning application where the projected use is expected to generate 50 or more peak hour trips. The proposed four lot subdivision is only expected to increase peak hour trips to 4, thus does not trigger the need for a TIAR and should not have a significant adverse impact to traffic along Old Government Road.

According to the Department of Water Supply (DWS), the subject property is currently served with one existing 5/8th inch meter which is limited for one (1) unit of water. There are three (3) units of water available from an agreement to the subject parcel; however, the subject parcel does not front the Department's existing waterline and is located at an elevation where adequate pressure cannot be provided. DWS has stated that extensive improvements and additions, which may include, but not limited, to storage, booster pumps, and distribution facilities, would be required. DWS does not foresee any upgrades to its existing water system facilities that would possibly provide the property with adequate pressure and volume meeting subdivision water system standards. In response, on July 10, 2024, the Applicant acknowledged the responsibility for constructing required improvements and executing an elevation agreement with DWS to access the additional water units. A condition of approval will be included to address the preceding.

The subject property is not currently serviced by the County sewer system. According to the applicant, wastewater will be disposed of by a septic system meeting the

requirements of the Department of Health regulations. There are no municipal waste collection services in the County. Solid waste will be taken by the individual lot owners or a private hauling service to a designated transfer station or the West Hawai'i Sanitary Landfill. All other essential utilities and services are or will be made available to the site. A condition of approval will require the applicant or successor to pay a fair share contribution to mitigate potential regional impacts of the proposed change of zone.

There are no severe geological or topographical problems which cannot be properly rectified, or which would render the land unusable. According to the Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA), the property is mainly located within Flood Zone "X", which is an area outside of the 500-year flood plain. There is a portion of the property which is within Flood Zone "D", which is an unstudied area where flood hazards are undetermined, but possible. The subject property is situated over four (4) miles from the shoreline and thus not situated within the tsunami inundation area or evacuation area.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. The property is not located in the Special Management Area. The site is located over 4 miles mauka of the shoreline and therefore will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, or marine resources on the subject property.

In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: According to the applicant, no archaeological survey of the site was conducted as part of the application. The property is not listed as a historic site on the State or National Register of Historic Places.

The valued cultural, historical, and natural resources found in the rezoning area: The Department is not aware of any cultural or historic resources on the property. According to the applicant, there is no evidence of any traditional and customary Native Hawaiian rights

being practiced on the property. By letter dated August 2, 2024, the Department of Land and Natural Resources-State Historic Preservation Division determined that there was insufficient information to determine the potential of the proposed project to impact on historic properties. SHPD requested that an archaeological field inspection to be completed of the subject property to determine if undocumented historic properties exist in the project area. Based on the preceding, a condition of approval has been added to require that the applicants complete an archaeological field inspection, including proposed mitigation measures will need to be submitted to SHPD prior to any ground disturbance.

No professional surveys were conducted of the flora/fauna resources on the property. No comments were received by the State Department of Land and Natural Resources Division of Forestry and Wildlife (DOFAW), however staff notes that the subject property borders the Makaula O'oma Tract which is located within the Honua'ula Forest Reserve. The Makaula O'oma Tract is an ōhi'a and hāpu'u fern dominated forest located to the east of the subject property. Given the rezone area's previous ground disturbance and historical agricultural uses, it is unlikely that there are any threatened or endangered plant or animal species located thereon. It is possible that threatened or endangered species (e.g., Hawaiian Hoary bat, Hawaiian Hawk, Hawaiian Short-eared Owl, and migratory seabirds could traverse or be found within the rezone area. Based on the preceding, a condition of approval will require the applicant to implement mitigation measures recommended by DOFAW should any threatened or endangered species be encountered.

Possible adverse effect or impairment of valued resources: There is no evidence of any possibly adverse effects or impairment will occur to any valued resources.

Feasible actions to protect native Hawaiian rights: While there is no evidence of any traditional or customary Native Hawaiian rights being practices on the property, a condition of approval will require that construction ceases until SHPD provides approval to continue work, if any historic or cultural resources are inadvertently discovered during ground alteration and construction.

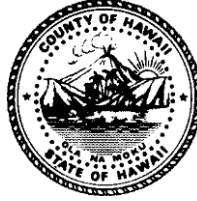
This favorable recommendation is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements

in connection with uses permitted within the Agricultural zoning district, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this favorable recommendation; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, approval of the Change of Zone request from Agricultural (A-20a) to the Family-Agricultural (FA-1a) zoned district would result in an appropriate land use pattern that will further the public necessity and convenience and the general welfare.

The accompanying draft bill to amend Section 25-8-3 (North Kona District Zone Map) is provided for your favorable consideration. Please note the proposed conditions of approval attached to the draft bill.

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. _____

ORDINANCE NO. _____ (PLANNING DEPARTMENT)

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983(2016 EDITION, AS AMENDED) BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – 20 ACRES (A-20a) TO FAMILY – AGRICULTURAL – 1 ACRES (FA-1a) AT NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY: 7-3-004:011.

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 (2016 Edition, as amended) is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at North Kona, Hawai'i, shall be Family-Agricultural-1 acres (FA-1a):

Beginning at a 1/2 inch pipe (found) at the Southeasterly corner of this parcel of land, being also the Northwesterly corner of Lot 3-A and being a point on the Easterly side of Mamalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIHEA" being 7,944.37 feet South and 8,7171.07 feet West and running by azimuths measured clockwise from True South:

Thence, for the next four (4) course following along the Easterly side of Mamalahoa Highway:

- | | | | |
|----|--------------|--------|--------------------------|
| 1. | 164° 57' 30" | 62.92 | feet to a spike (found); |
| 2. | 155° 10' | 25.65 | feet to a point; |
| 3. | 166° 28' 30" | 106.61 | feet to a point; |

4.	184° 31'	18.21	feet to a 1/2 inch pipe (found):
5.	268° 45' 10"	595.92	feet long Lot 1, Lot 2-A and Lot 3 and along the remainder of Grant 1609 to Kama to a point;
6.	358° 45' 10"	181.90	feet along Lot A-2 and along the remainder of Grant 1609 to Kama to a point;
7.	268° 45' 10"	226.88	feet along Lot A-2 and along the remainder of Grant 1609 to Kama to a point;
8.	178° 45' 10"	181.90	feet along A-2 and along the remainder of Grant 1609 to Kama to a point;
9.	268° 45' 10"	433.14	feet along Lot 4 and Lot 5 and along the remainder of Grant 1609 to Kama to a point;
10.	352° 04'	208.31	feet along Makaula-Ooma Mauka Tract (State of Hawaii- Owner) to a point;
11.	88° 45' 10"	1,234.02	feet along Lot 3-A and along the remainder of Grant 1609 to Kama to the point of beginning and containing an area of 4.985 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 25-8-11, Hawai'i County Code 1983 (2016

Edition, as amended), 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.

SEE ATTACHED CONDITIONS

SECTION 3. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

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

INTRODUCED BY:

COUNCIL MEMBER, COUNTY OF HAWAI'I

_____, Hawai'i

Date of Introduction:

Date of 1st Reading:

Date of 2nd Reading:

Effective Date:

WATTIE ELIZABETH KAIOKALANI GREEN
CHANGE OF ZONE APPLICATION (PL-REZ-2024-000058)
CONDITIONS OF APPROVAL

- A. The applicant, successors or assigns (“Applicant”) shall be responsible for complying with all of the stated conditions of approval.
- B. The Applicant 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.
- D. The applicant shall execute any agreements and construct any water system improvements required by the Department of Water Supply to provide water to each proposed lot, which may include, but not be limited to, storage, booster pumps and distribution facilities.
- E. An Archaeological Field Inspection, including proposed mitigation measures, shall be submitted for the review and approval of the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD) prior to the issuance of any land alteration permits or the submittal of plans for Final Subdivision Approval, whichever occurs first. If DLNR-SHPD requires that an Archaeological Inventory Survey (AIS) be completed, the applicant shall complete and submit an AIS to DLNR-SHPD for review and approval. The applicant shall comply with any proposed recommendations from DLNR-SHPD prior to the issuance of any land alteration permits or the submittal of plans for Final Subdivision Approval, whichever occurs first.
- F. 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.
- G. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai‘i County Code.
- H. A National Pollutant Discharge Elimination System (NPDES) permit and an

Underground Injection Control (UIC) permit, if required, shall be secured from the State Department of Health before the commencement of construction activities.

- I. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties. A drainage study shall be prepared for review and approval by the Department of Public Works, prior to submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed in a manner meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.
- J. The method of sewage disposal shall meet with the requirements of the Department of Health.
- K. Should any state or federally listed or endangered species be found on the subject property, the Applicant shall comply with all applicable requirements of Department of Land and Natural Resources- Division of Forestry and Wildlife and/or the United States Fish and Wildlife Service.
- L. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- M. 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 become due and payable prior to receipt of Final Subdivision Approval. The fair share contribution for each lot shall be based on the number of lots created. 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

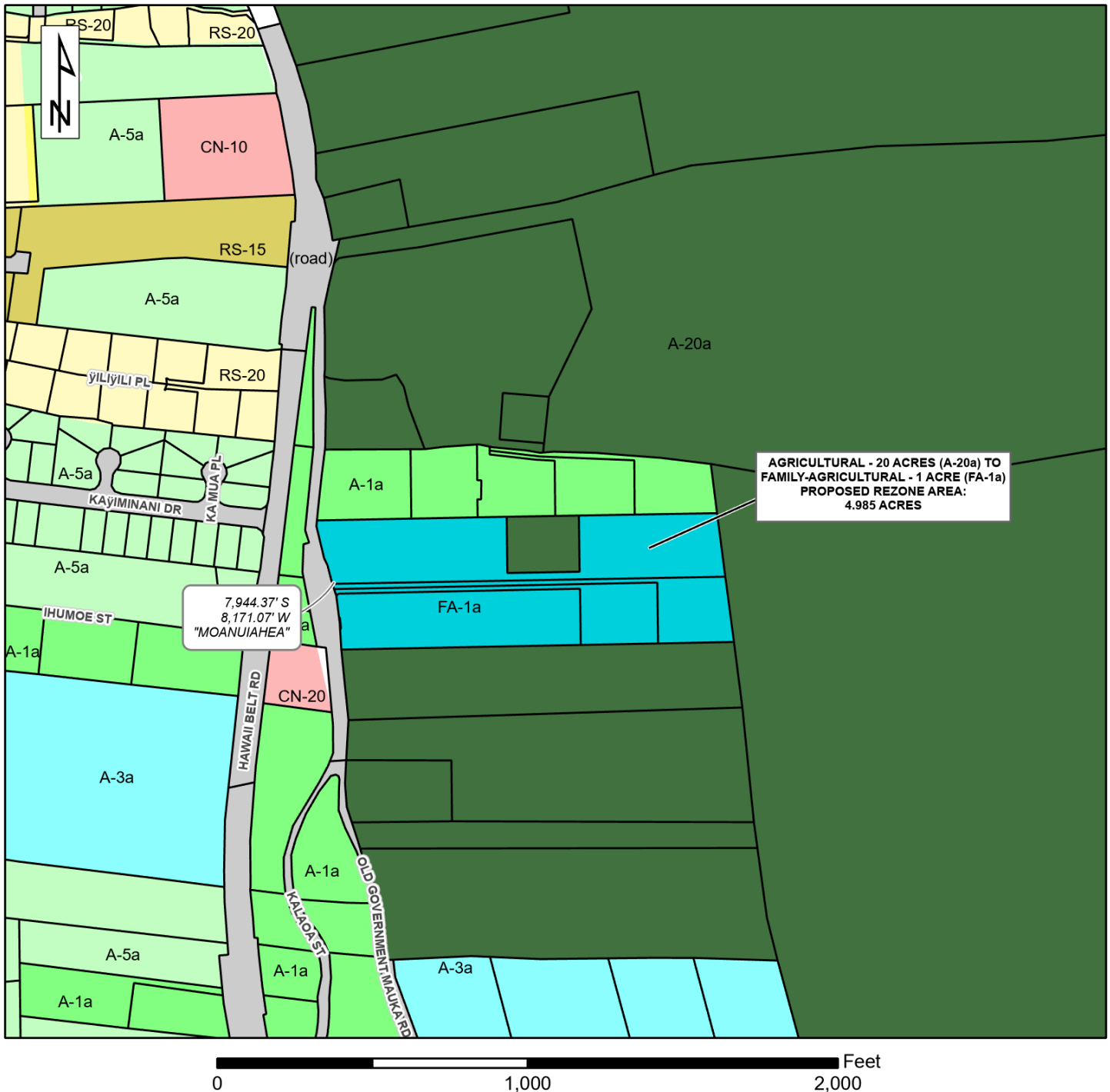
Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of **\$17,171.49** per single family residential lot. The fair share contribution per single family residential lot shall be allocated as follows:

1. **\$8,280.39** per single family residential lot to the County to support park and recreational improvements and facilities;
2. **\$399.45** per single family residential lot to the County to support police facilities;
3. **\$788.96** per single family residential lot to the County to support fire facilities;
4. **\$345.41** per single family residential lot to the County to support solid waste facilities; and
5. **\$7,357.27** per single family residential lot to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the Applicant(s) 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 pursuant to Section 2-162.1(a) of Hawai'i County Code.

- 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, successors or assigns 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 this ordinance may be requested in accordance with Section 25-2-44, subsections (c) and (d), of the Hawai'i County Code.
- Q. If the applicant fails to fulfill any conditions of the zone change within the specified time limitations, the Planning Director or County Council may initiate the process for enactment of an ordinance reverting the affected property back to

its original zoning designation or a more appropriate zoning designation in accordance with Section 25-2-43 of the Hawai‘i County Code.



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 (2016 EDITION, AS AMENDED),
BY CHANGING THE DISTRICT CLASSIFICATION FROM
AGRICULTURAL - 20 ACRES (A-20a)
TO FAMILY-AGRICULTURAL - 1 ACRE (FA-1a)
AT NORTH KONA, HAWAII

MAP PREPARED BY:
COUNTY OF HAWAII, PLANNING DEPARTMENT

TMK: (3) 7-3-004:011

DATE: July 17, 2024

EXHIBIT "A"

Wattie Elizabeth Kaiokalani Green
Map: 1463