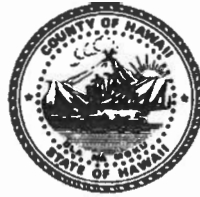


Mitchell D. Roth
Mayor

Deanna S. Sako
Managing Director



Barbara DeFranco, Chair
Mahina Paishon-Duarte, Vice Chair
Dean Au
Michael Dela Cruz
Clement "CJ" Kanuha III

County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

May 08, 2024

Heather Kimball, Council Chair
and Members of the County Council
County of Hawai'i
25 Aupuni Street
Hilo, HI 96720

Dear Chair Kimball and Council Members:

SUBJECT: Change of Zone Amendment Application (PL-REZ-2022-000033)
Amendment to Change of Zone Ordinance No. 02 131
Request: Ten (10)-Year Time Extension to Condition I (Complete
Construction of the First Increment on RM Zoned Lands) and
Amendment to Clarify Condition N (Roadway Standards)
Applicant: Kona Three, LLC
Tax Map Key: (3) 7-6-021:016 and 017, North Kona, Hawai'i

The Leeward Planning Commission (Commission) forwards the above-referenced application, with its inaction, to the County Council in accordance with Section 25-2-42(d)(3) of the Zoning Code, which states that the Commission has ninety (90) days from receipt of the application from the Planning Director, unless a longer period is agreed to by the applicant, to transmit its recommendation to the County Council and that if the Commission fails to act within that period of time, the application shall be considered an unfavorable recommendation by the Commission, and the application shall be transmitted through the Mayor to the County Council with such recommendation.

On June 21, 2022, the Planning Department accepted the subject application from Kona Three LLC to amend Change of Zone Ordinance No. 02 131 to request a 10-year time extension to Condition I (Complete Construction of the First Increment on RM Zoned Lands) and to amend Condition N (Roadway Standards). The Deputy Planning Director provided the application and his recommendation to the Commission on December 1, 2022. The Commission considered this application at its December 15, 2022 hearing and voted to defer action until the County of

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and Members of the County Council
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Hawai'i Cultural Resources Commission (CRC) had the opportunity to review the application. The CRC reviewed the application beginning in March 2023 and completed their review and provided a recommendation on July 21, 2023. The applicant spent eight months assembling additional information in response to the CRC's recommendation and the application was scheduled for a hearing before the Leeward Planning Commission on March 21, 2024. However, this meeting was cancelled on March 8, 2024, due to a lack of quorum.

In their letter dated March 18, 2024, the applicant requested the Commission transmit the application to the County Council with an unfavorable recommendation. Based on this request, and in accordance with Section 25-2-42(d)(3) of the Zoning Code, the Commission has failed to act on this application within the time period prescribed in the Zoning Code and is transmitting the application through the Mayor to the County Council with an unfavorable recommendation. A hardcopy of the draft bill to amend Ordinance No. 02 131, as recommended by the Deputy Planning Director, will be provided to the County Council for their consideration and action.

The Planning Department's background report (including the application) and recommendation report, which includes a draft bill to amend Ordinance No. 02 131, as well as the PowerPoint presentation, public testimony, and the Cultural Resources Commission's recommendation letter are available for review at the following Laserfiche WebLink address:
<https://records.hawaiicounty.gov/WebLink/1/fol/120105/Row1.aspx>

Please be aware that any information received after the December 15, 2022 Leeward Planning Commission meeting was not reviewed or considered by the Commission.

The minutes of the December 15, 2022 hearing are available for review at
<https://records.hawaiicounty.gov/webink/1/doc/122050/Page1.aspx>

Should there be any questions, please feel free to contact Planning Program Manager, Maija Jackson at (808) 961-8159.

Sincerely,

Barbara DeFranco
Barbara DeFranco (May 8, 2024 05:49 HST)

Barbara DeFranco, Chairperson
Leeward Planning Commission

P:\wp60\PC\PCC2024-2\LKonaThreePL-REZ-2022-033

Enclosure: Draft Bill

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and Members of the County Council
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Page 3

cc via email w/draft bill: Daryn Arai, Land Use Planning Consultant
Richard Wheelock, Kona Three, LLC
Jean Campbell, Esq., Deputy Corporation Counsel
Suzanna Tiapula, Esq., Deputy Corporation Counsel
Leeward Planning Commission
Office of Housing and Community Development
Department of Public Works
Department of Water Supply
Department of Environmental Management

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 02-131, WHICH AMENDED ORDINANCE NOS. 97-99, 94-34, 93-26, 91-96, 90-62, 88-4, 84-42, AND 84-23, WHICH RECLASSIFIED CERTAIN LANDS FROM UNPLANNED (U) TO MULTIPLE-FAMILY RESIDENTIAL – 5,000 SQUARE FEET (RM-5) AND SINGLE-FAMILY RESIDENTIAL – 15,000 SQUARE FEET (RS-15) AT HOLUALOA 1 AND 2, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY: 7-6-021:004, 009-013, AND 015-017.

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

SECTION 1. Section 2 of Ordinance No. 02-131 is amended as follows:

“SECTION 2. The following amendments to Ordinance No. 02-131 shall apply only to Tax Map Key Nos. 7-6-021:016 and 017, consisting of a total land area of 67.162 acres. In accordance with Section 25-2-44, 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.

- ~~[(A) — the zoning for the property shall be effective only after: (1) there are assurances satisfactory to the Departments of Water Supply and Planning, upon consultation with the State Department of Health, and the Division of Water and Land Development of the State Department of Land and Natural Resources, that a water source of sufficient quality and quantity has been established within two years from the effective date of this ordinance; provided that a maximum one-year extension to the two-year time limit may be granted by the Planning Director with reasonable and sufficient justification; and (2) an agreement, accompanied by an appropriate surety bond or other acceptable security, is executed with the Department of Water Supply for the actual development of a proven water source and its water transmission and distribution system within one year from the official date of compliance with condition A (1); provided that a one-year extension to the one-year time limit may be granted by the Planning Director with reasonable and sufficient justification; or (3) the Department of Water Supply issues a water commitment for the proposed development;~~
- ~~(B) — no subdivision or development of any portion of the land shall occur unless and until condition A has been complied with;~~
- ~~(C) — the Planning Director shall be mandated to initiate action for the repeal of this ordinance if conditions A or B have not been complied with;~~
- ~~(D) — the petitioner, its assigns or successors, shall be responsible for complying with all conditions of approval;~~
- ~~(E) — the zoning for the 49± acres designated by the State Land Use Commission as its second zoning increment shall not become effective until that land is certified by that commission to be within the Urban District;~~
- ~~(F) — the RS-zoned area shall be developed in two increments. The first increment shall consist of a maximum of 59.5± contiguous acres, and the second, the remaining~~

~~area. The effective date of zoning for the second increment shall be after development has occurred in the first increment, as determined by the Planning Director. "Development" means the applicant has completed the on-site and off-site improvements within the first increment of the RS-zoned area and has dedicated the roadway to the County;~~

~~(G) — subdivision plans for the first increment of the RS-zoned area shall be submitted within one year from the effective date of the zoning. Final subdivision approval shall be secured within two years from the effective date of this amendment;~~

~~(H) — the RM-zoned area shall be developed in two increments. The first increment shall consist of a maximum of 42 acres of the Multiple Family Residential-zoned land and the second increment, the remaining area. The effective date of zoning for the second increment shall be after the applicant has completed the on-site and off-site improvements of the first increment of the RM-zoned area and has dedicated the improvements to the County;~~

~~(I) — plans for the development within the first increment of the RM-zoned area shall be submitted to the Planning Department and final plan approval secured within five years from the effective date of this sixth amendment. Construction shall commence within one year from the date of receipt of final plan approval and be completed within three years thereafter;~~

~~(J) — 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;~~

~~(K) — housing opportunities for Hawaii residents shall be provided in accordance with the condition imposed by the State Land Use Commission. The number of units and~~

manner in which they are to be provided shall meet with the approval of the Hawaii County Housing Agency;

~~(L) — improvements to the intersections with Kuakini Highway and the Kuakini Highway Extension shall be constructed meeting with the approval of the State Department of Transportation, Highways Division. The intersection improvements shall be constructed concurrently with the development of the first increment of the RS or RM zoned areas, whichever occurs first;~~

~~(M) — no direct access shall be provided for the lots within the RS zoned area from the mauka-makai collector road;~~

~~(N) — the roadways and stubout within the RM zoned area shall be constructed to dedicable standards with curbs, gutters, and sidewalks meeting with the approval of the Department of Public Works and shall be dedicated to the County of Hawaii upon completion. Where a roadway crosses a zone line or if a zone line should divide a roadway, the curbs, gutters, and sidewalks shall be provided for the entire right of the way and shall continue to the nearest intersection in order to avoid telescoping and to provide consistent improvement;~~

~~(O) — at a minimum, roadways and stubouts within the RS zoned area shall be provided with paved shoulders and paved swales meeting with the approval of the Department of Public Works and shall be dedicated to the County of Hawaii upon completion;~~

~~(P) — the method of sewage disposal shall meet with the approval of the appropriate governmental agencies;~~

~~(Q) — a drainage master plan shall be submitted to the Department of Public Works for review and approval prior to issuance of any subdivision or plan approvals. The plan~~

shall include, as a minimum, hydrological and hydraulic calculations for all components of the drainage system, a construction timetable for all elements of the system, and an analysis of downstream impacts. Further, mitigating measures as approved by the Department of Public Works shall be taken to eliminate any downstream impacts;

(R) — an intensive archaeological survey shall be conducted for the entire property and a report shall be submitted to the Planning Department prior to issuance of any subdivision or plan approvals;

(S) — should any unanticipated archaeological sites be found during land preparation activities, work shall immediately stop and the Planning Department notified. Work shall not resume in the affected area until clearance is given by the Planning Department;

(T) — prior to the Final Approval of the second increment, the applicant, its successors or assigns shall pay for any additional real property taxes owed for the new residential assessed value of the subject property which was previously taxed at the agricultural rate; and

(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:

a. — the non performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence;

b. — granting of the time extension would not be contrary to the general plan or zoning code;

- ~~e. — granting of the time extension would not be contrary to the original reasons for the granting of the change of zone;~~
- ~~d. — 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); and~~
- ~~e. — 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. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director initiate rezoning of the area to its original or more appropriate designation.]~~

- A. The applicant(s), its successor(s), or assign(s) ("Applicant") shall be responsible for complying with all of the stated conditions of approval.
- B. The Applicant shall comply with all conditions of approval of the State Land Use Commission's Decision and Order (Docket No. A83-549) dated January 26, 1984.
- C. 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.
- D. Prior to receipt of Final Plan Approval for each phase of the development, the Applicant shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i to the Department of Water Supply (DWS) to ensure that total water usage will not exceed its allocation.

- E. The Applicant is required to submit water system construction plans prepared by a professional engineer, registered in the State of Hawai'i, for Department of Water Supply (DWS) review and approval. Furthermore, the Applicant is required to construct applicable water system improvements designed to deliver water at adequate pressure and volume under peak-flow and fire-flow conditions in accordance with the Water System Standards and the Rules and Regulations of the DWS.
- F. The Applicant shall implement any improvements required by the Fire Department and/or Department of Water Supply to ensure that fire protection requirements can be met for RM zoning.
- G. Construction of all phases of the proposed development, as substantially represented by the Applicant, shall be completed within ten (10) years from the effective date of this ordinance. Prior to commencing construction of each phase, the Applicant 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 proposed structures, fire protection measures, landscaping, signage, paved driveway access and paved parking stalls, outdoor lighting (if any), and other improvements associated with the proposed development. Landscaping shall 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). The Applicant shall comply with landscaping requirements for RM zoning.
- H. Sewer lines shall be installed within the development to connect with the County's sewer system, meeting with the approval of the Department of Environmental Management, and prior to the issuance of a Certificate of Occupancy for each phase.

- I. 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.
- J. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. Prior to receipt of Final Plan Approval, that applicant shall submit a drainage master plan to the Department of Public Works for review and approval. The plan shall include, as a minimum, hydrological and hydraulic calculations for all components of the drainage system, a construction timetable for all elements of the system, and an analysis of downstream impacts. Further, mitigating measures as approved by the Department of Public Works shall be taken to eliminate any downstream impacts. Any recommended drainage improvements shall be constructed meeting with the approval of the Department of Public Works prior to issuance of a Certificate of Occupancy for the first phase.
- K. The Applicant shall comply with Chapter 27, Flood Control, of the Hawai'i County Code.
- L. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
- M. Access to the Queen Ka'ahumanu Highway (Route 11) shall be limited to a single access point consisting of a full movement channelized intersection, the location and construction of which shall meet with the approval of the State Department of Transportation prior to the issuance of Certificate of Occupancy for the first phase. Furthermore, the applicant shall coordinate with the State Department of Transportation and provide any mitigation measures that may be required, including any pro-rata contributions, related to the state highway improvements directly related to traffic generated by development of the property. Part of this coordination shall include providing the Department of Transportation with a 10-year development

schedule showing the phases, number of units, and the associated transportation improvements to be completed before occupancy of each phase.

- N. Prior to the issuance of a Certificate of Occupancy for any dwelling units within the development, the Applicant shall construct the following roadway improvements to County dedicable standards for a minor collector road and dedicate the improvements to the County: 1) the segment of Leilani Street situated within the project site, which will stub out at both the north and south project boundaries; 2) extend Kekūanāʻa Place from its existing terminus within the Kona Vistas Subdivision northward to stub out at the northern project boundary; and 3) a mauka-makai roadway from Queen Kaʻahumanu Highway to the Kekūanāʻa Place extension. Unless otherwise allowed by the Department of Public Works to address topographical and drainage constraints within the project site, the mauka-makai collector road shall be constructed as a continuous linear roadway.
- O. The following plans/documentation shall be submitted for the review and approval of the State Department of Land and Natural Resources – State Historic Preservation Division and implemented prior to the issuance of any land alteration permits: 1) An archaeological monitoring plan for all initial ground disturbing activities that meets the requirements of HAR §13-279-4; 2) An archaeological preservation plan for Site 50-10-37-30592 and Site 50-10-37-31254 that meets the requirements of HAR §13-277; and 3) Written and photographic documentation verifying implementation of interim protection measures for Sites 50-30-37-30592 and 50-10-37-31254. Any interim and permanent buffers associated with preservation plan shall be depicted on any site plans for Final Plan Approval or other land alteration permits.
- P. The Applicant shall implement all requirements of the Burial Site Component of a Preservation Plan accepted by the State Historic Preservation Division on August 19, 2022. All interim and permanent buffers associated with the burial site shall be depicted on any site plans for Final Plan Approval or other land alteration permits. Interim

preservation measures shall be in place prior to the initiation of any construction or land disturbance activity in the project site.

- Q. The former burial site (Site 50-10-37-10012) shall be flagged for preservation in the form of avoidance and the previous site location shall be monitored if construction activities occur near that location. The former burial site shall be depicted on any site plans for Final Plan Approval or other land alteration permits.
- R. 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 State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from the State Historic Preservation Division when it finds that sufficient mitigation measures have been taken.
- S. To address potential impacts to endangered or threatened species that may traverse the project site, the Applicant shall implement mitigation measures recommended in the Botanical Survey and Vertebrate Fauna Assessment, TMK 3-7-6-21: parcels 16, 17, 18 & 19 (78.324 acres) North Kona District, Island of Hawai‘i, included as part of the environmental assessment for the project.
- T. Pursuant to Hawai‘i County Code, Section 25-2-46(o) (Concurrency Requirements) the applicant shall provide a civil defense siren and associated maintenance access easements within the project site if required by the State Civil Defense/State of Hawai‘i Emergency Management Agency (HIEMA) prior to issuance of a Certificate of Occupancy for any phase of the project.

U. The Applicant(s) 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 or Final Plan Approval, whichever is applicable. The fair share contribution shall be based on the actual number of residential units or lots 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 maximum combined value of \$10,033.83 per multiple family residential unit and \$15,636.59 per single family residential unit). The total amount shall be determined by the actual number of units or lots according to the calculation and payment provisions set forth in this condition. The fair share contribution per multiple family residential unit (single family residential units) shall be allocated as follows:

1. \$4,949.40 per multiple family residential unit and \$7,540.24 per single family residential unit) to the County to support park and recreational improvements and facilities;
2. \$156.43 per multiple family residential unit and \$363.74 per single family residential unit) to the County to support police facilities;
3. \$481.18 per multiple family residential unit and \$718.44 per single family residential unit) to the County to support fire facilities;
4. \$214.47 per multiple family residential unit and \$314.54 per single family residential unit) to the County to support solid waste facilities; and

5. \$4,232.35 per multiple family residential unit and \$6,699.63 per single family residential unit) 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. The cost of the highway intersection improvements required in Condition M shall be credited against the sum specified in Condition U for road and traffic improvements.

V. 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.

W. The Applicant shall comply with Condition A of the State Land Use Commission's Decision and Order (Docket No. A83-549) dated January 26, 1984. To meet this condition the Applicant shall provide ten percent (10%) of the total dwelling units constructed onsite (inclusive of 215 units in Kona Vistas Subdivision and any additional units to be developed on the project site) at affordable rates pursuant to an affordable housing agreement with the Office of Housing and Community Development unless the Decision and Order is amended. Units developed pursuant to this condition shall be applied towards satisfaction of Condition X.

X. 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 the Affordable Housing Policy for the subject 67.162-acre project site. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to

issuance of Plan Approval and the affordable housing agreement shall be implemented prior to occupancy of any unit in each phase.

Y. The Applicant shall comply with all applicable County, State, and Federal codes, laws, rules, regulations, and requirements for the proposed development.

Z. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the enactment of this amended ordinance. The report shall include, but not be limited to, 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 Director, acknowledges that further reports are not required.

AA. 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.

BB. 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 2. Material to be deleted is bracketed and stricken. New material is underscored.

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

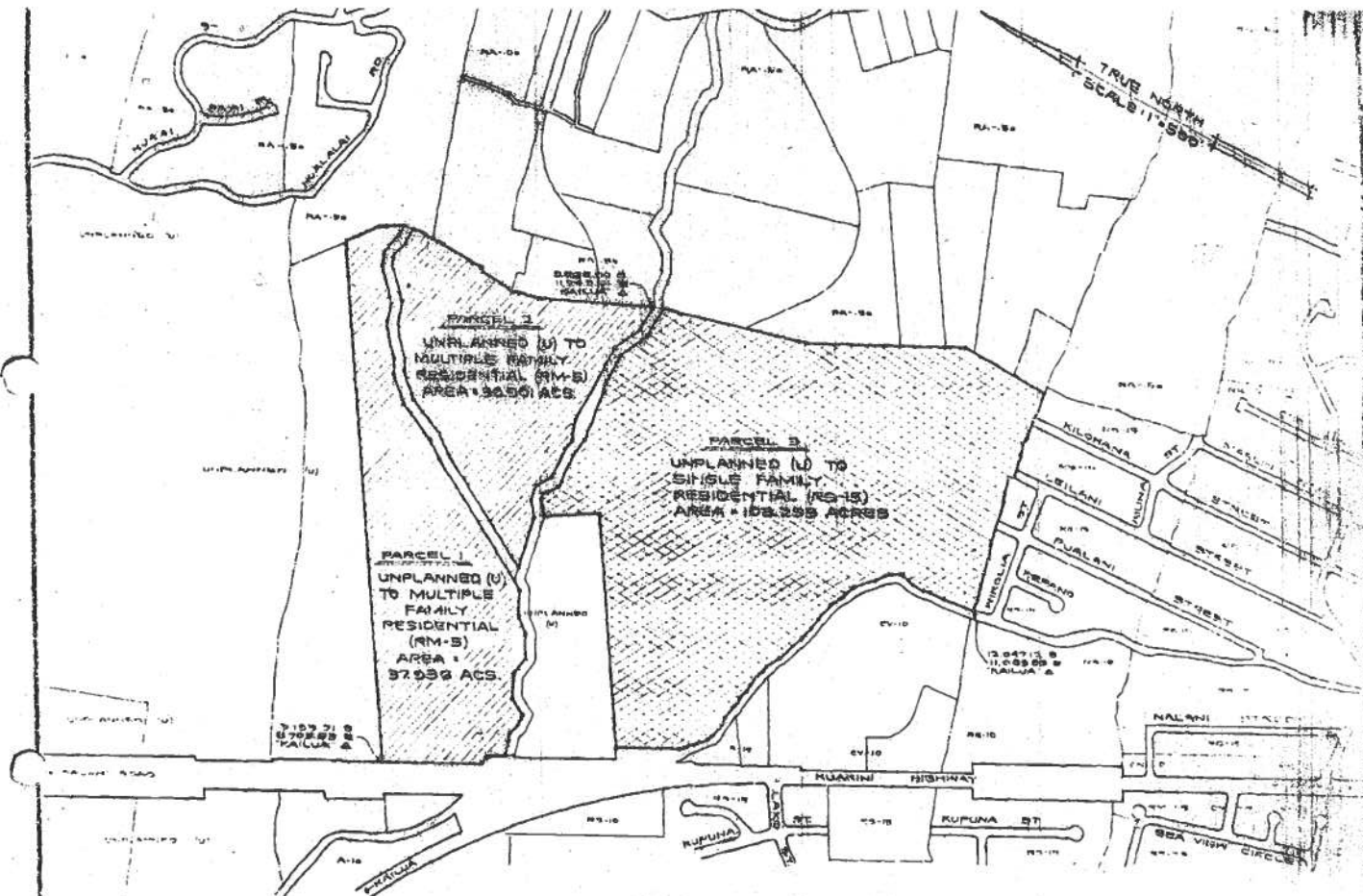
_____, Hawai'i

Date of Introduction:

Date of 1st Reading:

Date of 2nd Reading:

Effective Date:



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-27 (NORTH KONA ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM UNPLANNED (U) TO MULTIPLE FAMILY RESIDENTIAL (RM-5) AND SINGLE FAMILY RESIDENTIAL (RS-1S) AT HOLUALA 1 AND 3, NORTH KONA, HAWAII.

FOR REFERENCE ONLY

PREPARED BY:
PLANNING DEPARTMENT
COUNTY OF HAWAII

TAX MAP KEY: 7-8-21, 4, 9-13, 15-17