

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

BENJAMIN AND OLIMPIA LOVE

CHANGE OF ZONE APPLICATION NO. PL-REZ-2025-000093

Upon careful review of the request against the guidelines for granting a change of zone, the Planning Director is recommending that **a favorable recommendation of the Change of Zone request be forwarded to the County Council**. Since this recommendation is made without the benefit of public testimony, the Planning Director reserves the right to modify and/or alter this position based upon additional information presented at the public hearing. This favorable recommendation is based on the following findings:

The applicants are requesting a Change of Zone from an Agricultural–20 Acres (A-20a) zoning district to a Family Agricultural–1 Acre (FA-1a) zoning district for 5.79 acres of land. The FA-1a district has a minimum lot size of one (1) acre and would allow a maximum density of five (5) building sites (lots).

The request is intended to enable a five-lot subdivision consistent with the one (1) acre minimum lot size of the proposed FA-1a district. The subject property includes an existing single-family dwelling, which is currently occupied by the applicants. The applicants state they would retain two (2) lots for family use (including the lot with the existing dwelling) and would sell three (3) lots for estate planning purposes.

Following approval of the rezoning, the applicants intend to proceed with the subdivision process as soon as practicable. The subdivision is tentatively anticipated to be completed by the end of 2026. The estimated cost of infrastructure improvements associated with the subdivision is approximately \$100,000, depending on final design and County requirements.

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 also be considered as they may have an impact on similar areas in the County.

The change of zone request from an A-20a zoning district to a FA-1a zoning district conforms to applicable goals, policies, and standards of the General Plan. The General Plan serves as a policy guide for the coordinated growth and development of the County and establishes goals, policies, and standards to accommodate growth; designate and preserve lands for residential, commercial, visitor, industrial, agricultural, and open space uses; and coordinate land use with County service and circulation systems. The Land Use Element provides the primary basis for directing and guiding the use of publicly and privately owned land resources.

The Land Use Pattern Allocation Guide (LUPAG) Map is the graphic representation of the General Plan's land use goals and policies and establishes the County's basic urban and non-urban form. The subject property is designated Low Density Urban (LDU), with a small portion designated Urban Expansion (UE), on the General Plan LUPAG Map.

The LDU designation provides for residential uses, ancillary community and public uses, and neighborhood and convenience-type commercial uses, with an overall residential density of up to six (6) units per acre. The FA-1a zoning district is intended to provide for a blend of small-scale agricultural operations associated with residential activities and may be characterized by farm estates, small-acreage farms, or subsistence lots. The FA district is intended for areas within the State Land Use Agricultural District where public services and infrastructure are appropriate to support very-low-density rural residential needs; where a substantial number of parcels are less than five (5) acres in size; and where a mix of uses will not conflict with, or be detrimental to, existing agricultural uses in the surrounding area. The FA district is also intended to be primarily composed of agricultural lands less than five (5) acres in area that are not classified as A or B lands under the Land Study Bureau's Master Productivity Rating, nor classified as prime, unique, or other important agricultural lands; however, the district may include lands with these classifications when situated within an urban expansion or other urban

designation on the LUPAG Map.

While the proposed FA-1a zoning district is an agricultural designation, it will allow for a higher density than is currently permitted by the A-20a zoning and will further allow a compatible mix of residential and agricultural uses consistent with the LDU and UE land use pattern designations for the subject property.

The subject property consists of approximately 5.79 acres and is generally trapezoid in shape. The parcel is developed with one existing single-family dwelling constructed in 1991. The remainder of the site is predominantly undeveloped and includes previously cleared areas that are now overgrown, as well as areas planted with fruit trees by the landowners. No additional structures or site improvements are present. Topography across the site is relatively level, with a maximum slope of approximately 3.5 percent.

The surrounding area includes a mix of A-20a and RS-20 zoning, with primarily single-family residential, community facility, and school uses. RS-20 parcels to the south and east are generally 1 to 4.5 acres in size (except the 5-acre 'Kurtistown Village' parcel, divided into ten CPR units of about 16,000 to 37,000 square feet). The A-20a zoned parcels to the west and north range from about 2 acres to the 302-acre Kamehameha Schools campus. The proposed FA-1a zoning and family-agricultural subdivision would be generally consistent with the area's mix of agricultural and residential development.

Soils on the property are designated as Panaewa very cobbly hydrous loam, 2 to 10 percent slopes. The soil is moderately well drained, runoff is high, and permeability is low to moderately low. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) map identifies the property as Prime Agricultural Land and the Land Study Bureau's Detailed Land Classification System largely identifies soils on the property as "C" (Fair Soils) and "D" (Poor Soils) for agricultural productivity. The requested FA-1a zoning would allow continued agricultural use while accommodating a modest increase in rural residential density consistent with the site's LUPAG designations.

The rezone area is within the Puna Community Development Plan (PCDP) planning area. The PCDP provides guidance for managing growth and preserving

agricultural lands while accommodating appropriate residential development. The proposed FA-1a zoning would provide a compatible transition between surrounding residential and agricultural uses and support small-scale agricultural activities consistent with PCDP goals.

Based on the preceding, the proposed rezoning and five (5)-lot subdivision would increase the number of buildable lots in compliance with applicable Zoning and Subdivision Codes and conditions in the rezone ordinance, ensuring adequate public infrastructure. The proposed FA-1a zoning is compatible with the surrounding development pattern and supports small-scale agricultural use, thereby maintaining the area's agricultural potential. Accordingly, the request is consistent with the applicable goals, policies, and standards of the Hawai'i County General Plan.

All essential utilities and services are available to the site. The subject property has roadway frontage along North Road at the northern boundary and Kua'āina Road at the southern boundary. An undeveloped road reserve is located east of the subject property and is currently overgrown. Primary access to the existing single-family dwelling and the proposed subdivision will be from Kua'āina Road, a County-owned and maintained roadway with 18-foot-wide pavement within an approximately 32-foot-wide right-of way. Kua'āina Road connects directly to Volcano Road (Highway 11) approximately 1,100 feet east of the subject property; turning movements at the intersection are stop-controlled. No access to the subdivision is proposed from North Road. North Road's roadway configuration in this area is associated with Subdivision 5521 (approved in 1987). Available records indicate that the portion of North Road located within the subject parcel was not conveyed as part of the private road lot and remains within TMK (3) 1-7-016:010, subject to a nonexclusive access and utility easement. The easement was originally granted in 1983 as a 30-foot-wide easement and subsequently corrected in 1986. The corrected easement description identified the easement with varying widths of approximately 39.06 feet and 37.79 feet. In 1995, Puna Sugar conveyed easement rights to the current landowner of North Road, Dillow Group.

In an email to the Planning Department, the Applicant indicated they are agreeable to transferring the easement area to Dillow Group. Accordingly, conditions of

approval will require the easement area along North Road to be delineated on the subdivision map and maintained as a roadway setback/building restriction area.

Access to the proposed lots is anticipated to be provided via a new 20-foot-wide private roadway lot extending mauka along the western side of the property from Kuaʻāina Road. Conditions of approval will require the new subdivision roadway to be constructed meeting with the requirements of Hawaiʻi County Code Chapter 23 (Subdivision Code) and access from the proposed subdivision to Kuaʻāina Road will be required to comply with Chapter 22 (County Streets).

Pursuant to Section 25-5-46(d)(1) of the County's concurrency provisions, a Traffic Impact Analysis Report (TIAR) is required for rezoning applications when the projected use would generate 50 or more peak-hour trips. Based on the small scale of the proposed five-lot subdivision (one existing dwelling and the potential for four additional lots and dwellings), a TIAR was not required. Furthermore, neither the County Police Department nor the State Department of Transportation (DOT) anticipate the project to significantly impact traffic operations on Kuaʻāina Road or at the Kuaʻāina Road and Volcano Road intersection.

The parcel is currently served by DWS via an existing 5/8-inch water meter (400 gpd), adequate for one (1) dwelling (limited to an average 400 gallons per day). DWS indicates additional service for the proposed subdivision can be made available from the existing 6-inch water main within Kuaʻāina Road; however, service is subject to DWS conditions and securing water commitments (Rule 5), and DWS' comment letter is not a commitment. To obtain subdivision approval and provide domestic service and fire protection, the applicant may be required to extend the waterline within the proposed road lot to service each newly created lot and install related improvements (e.g., laterals/meters and hydrants), which may be costly, and pay applicable fees. The preceding will be added as a condition of approval.

The subject property is not served by the County sewer system. Existing and future development will rely on Individual Wastewater Systems (IWS) that meet State Department of Health (DOH) requirements. The preceding will be added as a condition

of approval.

Solid waste will be handled by the individual lot owners or a commercial hauler and disposed of at authorized facilities. Police, fire, and medical services are available within the greater Hilo/Kea'au area.

Conditions of approval will require compliance with all applicable County, State, and Federal laws, rules, regulations, and requirements. Furthermore, a condition of approval will require the applicant will be to make a fair share contribution to mitigate regional impacts to parks and recreation, fire, police, solid waste, and roads, prior to receipt of final subdivision approval for any new lots created.

There are no severe geological or topographical problems for the property that cannot be properly rectified, or which would render the land unusable. The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) designates the subject property as Zone "X", an area determined to an area of minimal flood hazard. Conditions of approval will require that all development generated runoff will be disposed of on-site and not directed toward any adjacent properties and all earthwork activity, including grading, grubbing, and stockpiling, and the project will conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area. The subject property is located approximately 5 miles from the nearest shoreline, is not situated within the Special Management Area and will not be impacted by coastal hazards and beach erosion. There is no designated public access to the mountains or the shoreline that runs through the property. The proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Āina*" 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: No formal archaeological or cultural studies have been conducted for the subject property because the parcel has been previously cleared and historically used for sugar cane cultivation, a land use typically associated with substantial ground disturbance and disruption of any surface cultural resources.
- The valued cultural, historical, and natural resources found in the rezoning area: No known archaeological sites or historic properties have been identified on the subject parcel, and the property is not listed on the State or National Register of Historic Places. In a letter dated November 19, 2025, the State Historic Preservation Division (SHPD), indicates that no historic properties are likely to be affected by the proposed action.

The property is also located approximately five miles from the shoreline and therefore does not affect shoreline access or marine gathering rights.
- Feasible actions to protect native Hawaiian rights: The proposed action is not anticipated to result in significant adverse impacts to traditional and customary Native Hawaiian rights. However, to ensure protection of potential subsurface cultural resources, a condition of approval will require that work cease, and appropriate agencies be notified if archaeological materials or human remains are encountered during any future development. The applicant has further indicated a willingness to accommodate legitimate gathering practices, including providing appropriate legal access where applicable.

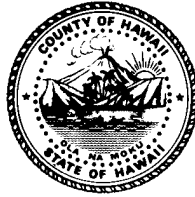
Lastly, this recommendation is made with the understanding that the applicants remain responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, 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 approval; 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 preceding findings, the request for a change of zone from an Agricultural 20-acre (A-20a) zoning district to Family-Agricultural 1-acre (FA-1a) zoning district would result in an appropriate land use pattern that would further benefit the general public.

The accompanying draft bill to amend Section 25-8-22 (Puna District Zone Map), Article 8, Chapter 25 (Zoning) of the Hawai'i County Code, 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

ORDINANCE NO. _____ BILL NO. _____
(Planning Department)

AN ORDINANCE AMENDING SECTION 25-8-22 (PUNA DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE (2016 EDITION, AS AMENDED), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – 20 ACRES (A-20a) TO FAMILY AGRICULTURAL – 1 ACRE (FA-1a) AT 'ŌLA'A, PUNA, HAWAI'I, COVERED BY TAX MAP KEY NO. 1-7-016:010.

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

SECTION 1. Chapter 25, Article 8, Section 25-8-22, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by changing the district classification of the land situated at 'Ōla'a, Puna, Hawai'i, as more particularly depicted on Exhibit A and described in Exhibit B, both of which are attached hereto and made a part hereof, from Agricultural – 20 acres (A-20a) to Family Agricultural – 1 acre (FA-1a).

SECTION 2. In accordance with Chapter 25, Article 2, Section 25-2-44, of the Hawai'i County Code 1983 (2016 Edition, as amended), the County Council finds that 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:

BENJAMIN AND OLIMPIA LOVE
CHANGE OF ZONE APPLICATION NO. PL-REZ-2025-000093
CONDITIONS OF APPROVAL

- A. The applicant(s), its successor(s), or assign(s) ("Applicant") shall be responsible for complying with all 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 shall be secured within ten (10) years from the effective date of this ordinance. The time during which required plans, reports, studies, or relevant permit applications are under review for approvals by government agencies shall not count towards the deadline established in the ordinance. To justify this tolling, the Applicant shall provide evidence of the excluded time period to the planning department for its review and approval, which shall consist of dates obtained from a government agency website, permitting program, or office indicating when the required plans, reports, studies, or permit applications were submitted, approved, denied, or returned by the government agency.
- D. The Applicant shall remit the required water commitment payment for the additional lots 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 is responsible for maintaining valid water commitments to support the proposed development until such time that required water facilities charges are paid in full.
- E. Prior to issuance of Final Subdivision Approval, the Applicant shall construct necessary water system improvements meeting with the approval of the Department of Water Supply.

- F. Access to the proposed lots shall be from Kuaʻāina Road via a private subdivision roadway meeting with the requirements of Hawaiʻi County Code Chapter 23 (Subdivisions), including but not limited to a minimum 16-foot-wide pavement within a 20-foot-wide right-of-way and with any applicable Department of Public Works roadway standards.
- G. All driveway connections to Kuaʻāina Road shall conform to Chapter 22, County Streets, of the Hawaiʻi County Code.
- H. Prior to Final Subdivision Approval, the Applicant shall delineate the existing nonexclusive access and utility easement associated with North Road on the subdivision map and all applicable subdivision exhibits, consistent with the Correction Grant of Easement recorded in Bureau of Conveyance Document 86-45263, Exhibit "A." No structures, walls, fences, or other improvements shall be constructed within the easement area. Structural setbacks shall be measured from the easement boundary.
- I. 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 by a professional civil engineer licensed in the State of Hawaiʻi and submitted to the Department of Public Works. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of Final Subdivision Approval.
- J. All earthwork and grading activity shall conform to Hawaiʻi County Code Chapter 10, Erosion and Sedimentary Control, and Chapter 27 Flood Control.
- K. The method of sewage disposal shall meet the requirements of the State Department of Health.
- 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.

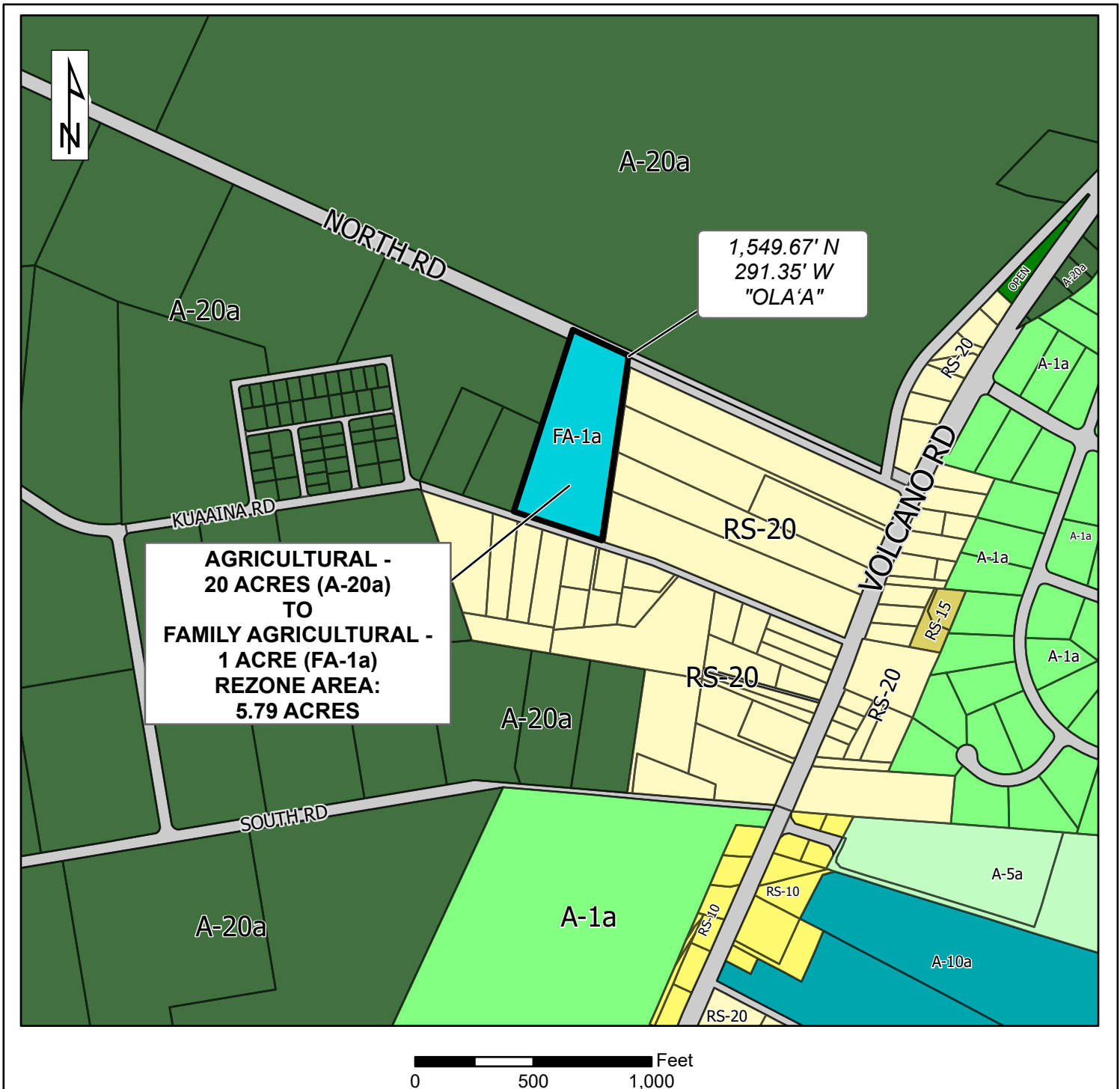
- M. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the Applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development as evidenced by an executed and recorded affordable housing agreement which shall be provided to the Planning Department by the Applicant prior to Final Subdivision Approval. Fair share requirements under Condition M shall be conditionally waived for affordable housing units or lots, if the Applicant executes an affordable housing agreement to provide fifty (50) to one hundred (100) percent of the development as affordable housing units or lots. If the affordable housing units or lots are not produced and sold or rented in accordance with the affordable housing agreement, any fair share requirements under Condition M that were waived will become due and payable.
- N. The Applicant(s) shall make their 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 roads. The fair share contribution shall become due and payable prior to receipt of Final Subdivision Approval and shall be based on the actual number of additional lots created. 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 \$17,921.82 per single family residential unit. The fair share contribution per single family residential unit shall be allocated as follows:

1. \$8,642.22 per single family residential unit to the County to support park and recreational improvements and facilities ;
2. \$416.90 per single family residential unit to the County to support police facilities;
3. \$823.43 per single family residential unit to the County to support fire facilities
4. \$360.51 per single family residential unit to the County to support solid waste facilities; and
5. \$7,678.76 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 pursuant to Section 2-162.1(a) of Hawai'i County Code.

- O. 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.
- P. The Applicant shall comply with all applicable County, State and Federal codes, laws, rules, regulations, and requirements.
- Q. 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.
- R. If any conditions have not been completed by the deadline, or if a time extension request has not been submitted in accordance with section 25-2-44(c), the planning department shall inform the applicant that the ordinance is null and void without further action by the County. In that event, the zoning designation of the property(s)

affected by the ordinance shall automatically revert to its immediate prior zoning designation.



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-22 (PUNA DISTRICT ZONE MAP) ARTICLE 8,
CHAPTER 25 (ZONING) OF THE HAWAII COUNTY CODE 1983 (2016 EDITION, AS AMENDED),
BY CHANGING THE ZONE MAP CLASSIFICATION FROM
AGRICULTURAL - 20 ACRES (A-20a) TO
FAMILY AGRICULTURAL - 1 ACRE (FA-1a)
AT KURTISTOWN, PUNA, HAWAII

MAP PREPARED BY:
COUNTY OF HAWAII, PLANNING DEPARTMENT

EXHIBIT "B"

TMK(3) 1-7-016-010

A Portion of R.P. Grant 7223,
L.C.Aw. 8500-B Apana 16 to
William C. Lunalilo

All of that certain parcel of land situate approximately 1,300 feet westerly of Volcano Road at Keaau, Puna, Island and County of Hawaii, State of Hawaii, being a portion of Royal Patent 7223, Land Commission Award 8500-B, Apana 16 to William C. Lunalilo, being more particularly described as follows:

Beginning at a ½ inch pipe (set) at the northeasterly corner of this parcel of land, begin also the northwesterly corner of an existing road reserve and point of the southerly side of north road, the coordinates of said point of beginning referred to government survey triangulation station "OLAA" being 1,549.67 feet north and 291.35 feet west and running by azimuths measured clockwise from true south:

1. 8°15'00" 785.18 ft. along an existing road reserve to a 1/2 inch pipe (set), thence;
2. 107°51'30" 387.10 ft. along an existing road reserve to a 1/2 inch pipe (set), thence;
3. 197°59'00" 804.98 ft. along Lots 29 and 28 and the remainder of North Road as shown on the subdivision approved, October 23, 1996 as SUB 6772-r, thence;
4. 294°46'00" 256.15 ft. along the southerly side of North Road to the point of beginning and enclosing an area of 5.790 acres, more or less.



This description was prepared by
me or under my direction.

Daniel Berg

Daniel L. Berg,
PLS 11245

