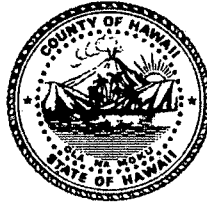


From the office of -  
Council Member  
District 3 - Hilo and Puna



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**SUSAN L.K. LEE LOY**  
25 Aupuni Street, Hilo, Hawai'i 96720

TO: Aaron S.Y. Chung, Chair  
and Members of the Hawai'i County Council

FROM: *PLS for* Sue Lee Loy, Council Member

DATE: April 11, 2019

SUBJECT: Proposed Amendments to Bill No. 47; an Ordinance amending Section 25-8-11(Lālāmilo-Pu'ukapu), Article 8, Chapter 25 (Zoning) of the Hawai'i County Code 1983 (2016 Edition, as amended), by changing the district classification from Agricultural - Forty Acres (A-40a) to Agricultural - Five Acres (A-5a) at Pu'ukapu Homesteads 2nd Series, Waimea, South Kohala, Hawai'i, covered by Tax Map Key: 6-4-017:043.

Please find attached proposed amendments to Bill No. 47. This amendment adds conditions of approval.

The proposed amendments are illustrated below in Ramseyer format with respect to the contents of Bill No. 47. Material to be deleted is bracketed and stricken; new material is underscored.

1. SECTION 2 is amended to read as follows:

“SECTION 2. 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.

2019 APR 11 PM 4:04  
COUNTY CLERK  
COUNTY OF HAWAII

Comm. No. 196.2  
Ref. To: PIP/C  
Ref. Date APR 23 2019

- A. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its “Water Commitment Guidelines Policy” within ninety (90) days from the effective date of this change of zone. The applicant, successors, or assigns are responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
- C. Final Subdivision Approval shall be secured within five (5) years from the effective date of this ordinance.
- D. The driveway connection to Māmalahoa Highway shall conform to Chapter 22, County Streets, of the Hawai‘i County Code. Both lots shall share a single driveway access from Māmalahoa Highway, but any connection through a future extension of Hauhoa Street shall provide sole access to the mauka lot.
- E. The intersection of the proposed driveway access and the Māmalahoa Highway shall be located outside of the AO flood zone. The design of the driveway intersection shall meet with the approval of the Department of Public Works.
- F. A fifteen (15) foot wide future road widening setback along the property’s Māmalahoa Highway frontage shall be delineated on plat maps submitted for the subdivision of the subject property. Upon the request of the Department of Public Works, the applicant, its successors or assigns shall dedicate the land encumbered by the future road widening setback to the County of Hawai‘i, at no cost to the County.
- G. A fifty (50) foot wide future roadway and utility reserve for the future extension of Hauhoa Street to the western boundary of the property (adjoining TMK: 6-4-017:042) shall be delineated on plat maps submitted for the subdivision of the subject property for future roadway extension. All building setbacks shall be taken from the future roadway and utility reserve boundary.
- H. A fifty (50) foot wide future roadway and utility reserve in alignment with Uhiwai Street to the western boundary of the property shall be delineated on plat maps submitted for the subdivision of the subject property for future roadway extension. All building setbacks shall be taken from the future roadway and utility reserve boundary.
- I. Restrictive covenants in the deeds of all the proposed lots shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and

condominium property regimes on each lot. This restriction may be removed by amendment of this ordinance by the County Council. The owners of the property may also impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.

- J. All development generated runoff shall be disposed of onsite and not be directed toward any adjacent properties.
- K. Prior to submittal of a subdivision application for the subject property, the applicant shall, upon consultation with surrounding property owners and other concerned public agencies, prepare and submit a drainage plan relating to the proposed subdivision for review and approval by the Department of Public Works. The approved drainage plan shall reflect all development generated runoff to be retained or disposed of on-site and shall not alter any existing water courses that may be entering or exiting the subject property, or be directed toward any adjacent properties. Furthermore, the approved drainage plan shall be implemented prior to or in conjunction with the issuance of Final Subdivision Approval.
- L. All development shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
- M. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.
- N. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- O. In the unlikely 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, 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 DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

P. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

Q. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:

1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
3. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.
4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
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.

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.”

2. Bill No. 47 is amended to address non-substantive formatting and spacing issues.

A draft copy of the draft 2 of this bill that would result if these proposed amendments are adopted is attached; however, the map marked Exhibit “A” that would be included in draft 2 is intentionally omitted.

SL/ps  
Att.

**AN ORDINANCE AMENDING SECTION 25-8-11(LĀLĀMILO-PU‘UKAPU), ARTICLE 8, CHAPTER 25 (ZONING) OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – FORTY ACRES (A-40a) TO AGRICULTURAL – FIVE ACRES (A-5a) AT PU‘UKAPU HOMESTEADS 2ND SERIES, WAIMEA, SOUTH KOHALA, HAWAI‘I, COVERED BY TAX MAP KEY: 6-4-017:043.**

**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 Pu‘ukapu Homesteads 2<sup>nd</sup> Series, Waimea, South Kohala, Hawai‘i, shall be Agricultural-5 acres (A-5a):

Beginning at the southwest corner of this parcel of land, and on the north side of Māmalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station “EAST BASE” being 5,945.26 feet North and 1,224.92 feet West and running by azimuths measured clockwise from True South:

- |    |          |         |  |
|----|----------|---------|--|
| 1. | 166° 10' | 3174.90 | feet along Lots 99-A and 99-B, being reminders of Grant 6857 to John Cheseborg of Pu‘ukapu Homesteads-Second Series; |
| 2. | 256° 10' | 150.05  | feet along Lot 4 Pu‘ukapu Pasture Lots;  |
| 3. | 346° 10' | 3177.00 | feet along the reminder of Grant 6857 to John Cheseborg of Pu‘ukapu Homesteads-Second Series;                        |
| 4. | 76° 58'  | 150.06  | feet along the north side of Māmalahoa Highway to the point of beginning and containing an area of 10.940 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 25-2-44, 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 applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
  - B. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its “Water Commitment Guidelines Policy” within ninety (90) days from the effective date of this change of zone. The applicant, successors, or assigns are responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
  - C. Final Subdivision Approval shall be secured within five (5) years from the effective date of this ordinance.
  - D. The driveway connection to Māmalahoa Highway shall conform to Chapter 22, County Streets, of the Hawai‘i County Code. Both lots shall share a single driveway access from Māmalahoa Highway, but any connection through a future extension of Hauhoa Street shall provide sole access to the mauka lot.
  - E. The intersection of the proposed driveway access and the Māmalahoa Highway shall be located outside of the AO flood zone. The design of the driveway intersection shall meet with the approval of the Department of Public Works.
  - F. A fifteen (15) foot wide future road widening setback along the property’s Māmalahoa Highway frontage shall be delineated on plat maps submitted for the subdivision of the subject property. Upon the request of the Department of Public Works, the applicant, its

successors or assigns shall dedicate the land encumbered by the future road widening setback to the County of Hawai'i, at no cost to the County.

- G. A fifty (50) foot wide future roadway and utility reserve for the future extension of Hauhoa Street to the western boundary of the property (adjoining TMK: 6-4-017:042) shall be delineated on plat maps submitted for the subdivision of the subject property for future roadway extension. All building setbacks shall be taken from the future roadway and utility reserve boundary.
- H. A fifty (50) foot wide future roadway and utility reserve in alignment with Uhiwai Street to the western boundary of the property shall be delineated on plat maps submitted for the subdivision of the subject property for future roadway extension. All building setbacks shall be taken from the future roadway and utility reserve boundary.
- I. Restrictive covenants in the deeds of all the proposed lots shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and condominium property regimes on each lot. This restriction may be removed by amendment of this ordinance by the County Council. The owners of the property may also impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
- J. All development generated runoff shall be disposed of onsite and not be directed toward any adjacent properties.
- K. Prior to submittal of a subdivision application for the subject property, the applicant shall, upon consultation with surrounding property owners and other concerned public agencies, prepare and submit a drainage plan relating to the proposed subdivision for review and approval by the Department of Public Works. The approved drainage plan shall reflect all development generated runoff to be retained or disposed of on-site and shall not alter any existing water courses that may be entering or exiting the subject property, or be directed toward any adjacent properties. Furthermore, the approved drainage plan shall be implemented prior to or in conjunction with the issuance of Final Subdivision Approval.
- L. All development shall comply with Chapter 27, Floodplain Management, of the Hawai'i

County Code.

- M. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.
- N. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- O. In the unlikely 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, 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 DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- P. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- Q. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:
  - 1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - 2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - 3. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone.
  - 4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
  - 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.

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 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.