

COUNTY OF HAWAI‘I PLANNING DEPARTMENT RECOMMENDATION

KELVIN P. JARNESKI

CHANGE OF ZONE APPLICATION (PL-REZ-2024-000060)

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 applicant is requesting a Change of Zone from an Agricultural-40 acre (A-40a) to a Residential Agricultural-0.5 acre (RA-.5a) zoning district for 1.997 acres of land. The applicant has submitted a concurrent request for a State Land Use District Boundary Amendment from Agricultural to Rural for 1.997 acres of land.

The land area proposed for RA-0.5a zoning would allow a maximum density of 3 lots with a minimum lot size of 0.5 acres. If the requested land use entitlement changes are approved, the applicant proposes to immediately subdivide the property into two lots consisting of a half-acre (0.5) and just less than one and one-half acre (1.5) in size. The applicant’s intention is to create a third lot in a subsequent subdivision and convey one lot to a family member.

According to the applicant, a subdivision application would be filed immediately after all land use entitlement approvals have been secured, with little, if any, expected costs.

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

The change of zone request from an Agricultural-40 acre (A-40a) to a Residential Agricultural-0.5 acre (RA-.5a) zoning district conforms to applicable goals, policies and standards of the General Plan and the South Kohala Community Development Plan. The 1.997-acre subject property is roughly square in shape and is improved with one existing single-family dwelling and related improvements. The subject property also has extensive landscaping, yards, orchards, chicken coops and structures related to its residential and agricultural uses. The property is in the Pu‘ukapu Homesteads and borders Alanui ‘Ohana Place on the east, which is privately maintained, and Māmalahoa Highway to the south. The property is fairly level with a very slight slope in a northerly to southerly direction. According to the applicant, the site is dominated by kikuya grass and ornamental plants and is used for the raising of chickens.

Surrounding lands are located within the State’s Agricultural (A) Districts, and the County’s Agricultural (A-40a, A-10a, A-5a) zoned districts. The parcels immediately surrounding the subject property are zoned A-40a. The surrounding area includes a mix of agricultural and residential uses.

The Residential and Agricultural (RA) zoning district provides for activities or uses characterized by low density residential lots in rural areas where “city-like” concentrations of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots. The RA district is intended to be only within areas designated as being in the State land use rural or urban districts.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document’s goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County.

The proposed RA-0.5a zoning conforms to the LUPAG Map which designates the subject property as Rural. According to the General Plan, the Rural designation includes

existing subdivisions in the State Land Use Agricultural district that have a significant residential component. Typical lot sizes vary from 9,000-square feet to two (2) acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses with these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The proposed RA zoning will allow for a subdivision with minimum lots sizes of 0.5 acres.

Based on the preceding, the proposed RA-0.5a zoning would effectuate an increase in density that would be consistent with the Rural LUPAG designation.

In addition, the proposed RA-0.5a zoning is consistent with the following Land Use goals, policies, and standards of the General Plan:

- *Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.*
- *Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.*
- *Zoning requests shall be reviewed with respect to General Plan designation, district goals, regional plans, State Land Use District, compatibility with adjacent zoned uses, availability of public services and utilities, access, and public need.*

According to the South Kohala Community Development Plan (SKCDP), Waimea Policy 1, the overarching land use policy for the area is to preserve Waimea's sense of place. Given the small scale of the proposed development, the continued residential and agricultural uses, and the fact that the subject property has no specific designation depicted on the Waimea Town Conceptual Plan, the proposal will be consistent with the SKCDP.

All essential utilities and services are available to the site. Access to the subject property is from Alanui 'Ohana Place, a privately owned and maintained roadway that takes access from Māmalahoa Highway, a two-lane, State-owned, paved roadway with an approximate 40-foot-wide pavement within a 60-foot right-of-way in this area. The subject property currently has a 50-foot-wide powerline right-of-way located on the south side of the property, in favor of Hilo Electric Light Co, Ltd. Since the section of

Māmalahoa Highway fronting the subject property was transferred from County to State ownership, the applicant will be required to comply with State Department of Transportation requirements. A condition of approval will be included to address the preceding.

According to the Department of Water Supply (DWS), there are two existing water services fronting the subject property and water can be made available for the proposed third lot. DWS notes that several improvements must be complied with for subdivision approval, including installation of a new 6-inch water line, installation of a fire hydrant, cutting and plugging the existing service lateral and installation of a reduced pressure type backflow prevention assembly. The proposed lots will utilize individual wastewater systems meeting with approval by the State Department of Health (DOH). Conditions of approval will be included to address the preceding.

An Additional Farm Dwelling (AFD) Agreement was issued for the subject property, and it included a condition requiring the applicant to secure a building permit for the additional farm dwelling within 2 years. The building permit for the additional dwelling was issued in 2004 but was expired in 2022 by the Department of Public Works. Should this change of zone and concurrent state land use boundary district amendment request be approved the AFD Agreement will need to be cancelled because single-family dwellings located in the RA zoning district and SLU Urban district are not required to be farm dwellings. In comments dated July 30, 2024, the applicant noted that they understand the building permit has expired and that they will need to cancel the existing AFD Agreement. A condition of approval will be included to address the preceding.

Although the aforementioned building permit for a second dwelling (AFD) was expired, the applicant has requested that the fair share contribution requirement be forgiven for an “allowable but not constructed” dwelling. As such, the Planning Director recommends that fair share contributions be based on the number of newly created lots, excluding those with a dwelling or previously authorized dwelling. A condition of approval will be included to address the preceding.

Police, fire, and emergency services are available nearby in Waimea, approximately 3.5 miles from the subject property. In sum, all essential utilities and infrastructure are available to the subject property, to support the requested rezone.

There are no severe geological or topographical problems for the property that cannot be properly rectified, or which would render the land unusable. According to the Federal Emergency Management Agency the subject property is in an area designated as Zone X, an area determined to be outside the 500-year floodplain. The property is located over five miles from the nearest shoreline and thus is not situated within the Special Management Area, the tsunami inundation area or evacuation area.

Conditions of approval will require that all development generated runoff will be disposed of on-site and not directed toward any adjacent properties. All earthwork activity, including grading and grubbing, will conform to Hawai‘i County Code for Erosion and Sedimentation Control and Flood Control.

The request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management Area. As mentioned previously, the subject property is located over five miles from the nearest shoreline, is not situated within the Special Management Area and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources or public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources, or historic resources in the area. Thus, the proposed request and use of the property will not adversely impact those resources.

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‘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: There were no professional surveys conducted of the floral or faunal resources of the subject property as the property has been developed for residential and agricultural uses, however, the applicant reports that dominant plants on the property are Kikuya grass and ornamental plants. Animal

species present include common bird species such as the Spotted Dove, Japanese White-eye, House Finch, Common Myna, as well as domestic cats, dogs and chickens.

- The valued cultural, historical, and natural resources found in the rezoning area: The subject property is currently improved with one single-family dwelling. The remainder of the property has extensive landscaping, yards, orchards, chickens and structures related to its residential and agricultural uses. According to comments from the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), the project area has been impacted by residential and agricultural development, no archaeological inventory survey has been conducted and no historic properties have been identified previously in the project area. As such, SHPD stated no objections to the proposed State Land Use Boundary Amendment and Change of Zone. Additionally, the Planning Department has no records of historic resources on the property, and the property is not listed on the State or National Registers of Historic Places.
- Possible adverse effect or impairment of valued resources: There is no evidence of any possible adverse effects or impairments that will occur to valued resources.
- Feasible actions to protect native Hawaiian rights: No known gathering is taking place on the subject property. Thus, to the extent which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights. However, a condition of approval will be added for the protection of inadvertent finds should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered.

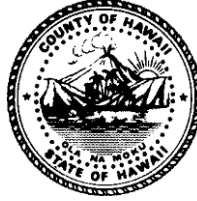
Lastly, this recommendation is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code and Building Code 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 to rezone the property from an Agricultural-40 acre (A-40a) to a Residential Agricultural-0.5 acre (RA-.5a) zoning district for 1.997 acres of land would result in an appropriate land use pattern that would further benefit the general public.

The accompanying draft bill to amend Section 25-8-11 (Lālāmilo-Pu‘ukapu Zone Map), Article 8, Chapter 25 (Zoning Code) 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

BILL NO. _____

ORDINANCE NO. _____(PLANNING DEPARTMENT)

AN ORDINANCE AMENDING SECTION 25-8-11 (LALAMILO-PU‘UKAPU 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 – 40 ACRES (A-40a) TO RESIDENTIAL – AGRICULTURAL – 0.5 ACRES (RA-.5a) AT PU‘UKAPU, WAIMEA, HAWAI‘I, COVERED BY TAX MAP KEY: 6-4-017:001.

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

SECTION 1. Section 25-8-11, 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, Waimea, Hawai‘i, shall be Residential-Agricultural-0.5 acres (RA-.5a):

Beginning at a 1-inch pipe (found) at the Southeasterly corner of this parcel of land, being also the Southwesterly corner of Grant 6820 to John McCoy and a point on the Northerly side of Māmalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station “EAST BASE” being 7,409.10 feet North and 4,439.40 feet East and running by azimuths measured clockwise from True South:

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|----|----------|--------|---|
| 1. | 73° 50' | 280.00 | feet along the Northerly side of Māmalahoa Highway to a point; |
| 2. | 166° 10' | 311.00 | feet along the Easterly side of Alanui ‘Ohana Place to a 1-inch pipe (found); |

- | | | | |
|----|----------|--------|--|
| 3. | 253° 50' | 280.00 | feet along Lot M and along the remainder of Grant 6935 to Theodore Vredenberg to a 1-inch pipe (found); |
| 4. | 346° 10' | 311.00 | feet along the Grant 6820 to John McCoy to the point of beginning and containing an area of 1.997 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.

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:

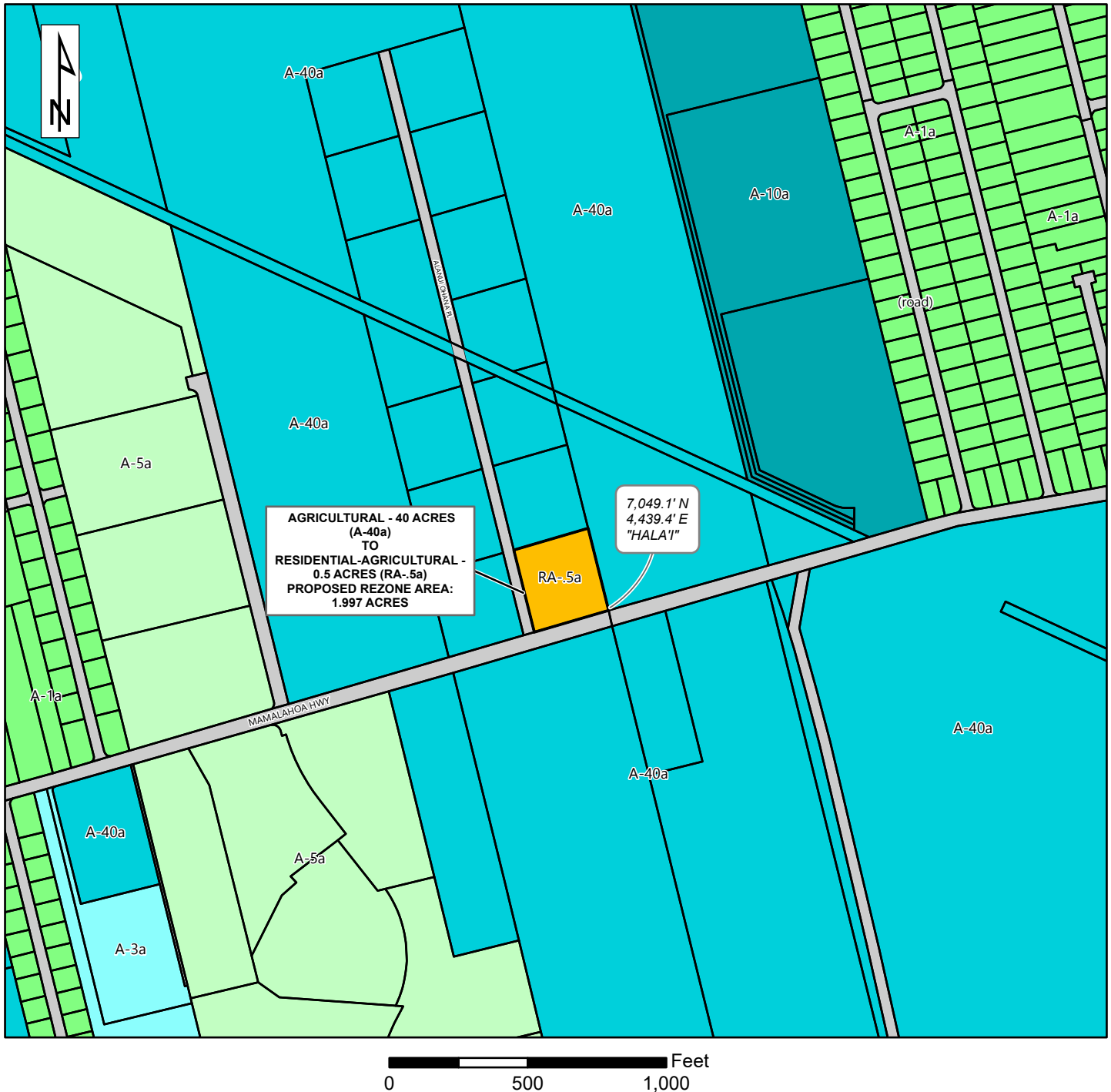
KELVIN P. JARNESKI
CHANGE OF ZONE APPLICATION (PL-REZ-2024-000060)
CONDITIONS OF APPROVAL

- A. The applicant, its successors or assigns (“Applicant”) shall comply with all of the stated conditions of approval.
- B. Prior to issuance of Final Subdivision Approval, the Applicant shall construct, or cause to be constructed, necessary water improvements meeting with the approval of the Department of Water Supply.
- C. Prior to Final Subdivision Approval, the Applicant shall cancel the existing Additional Farm Dwelling Agreement with the Planning Department.
- D. Final Subdivision Approval shall be secured within five (5) years from the effective date of this ordinance.
- E. Access to Māmalahoa Highway and/or any construction within the road right-of-way shall meet with the approval of the State Department of Transportation.
- F. 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 licensed civil engineer and submitted to the Department of Public Works (DPW). Any recommended drainage improvements, if required, shall be constructed meeting with the approval of DPW prior to the issuance of Final Subdivision Approval.
- G. All development shall comply with Chapter 27, Flood Control, of the Hawai‘i County Code.
- H. All earthwork activities including grading, grubbing, and stockpiling shall conform to Chapter 10, Erosion and Sedimentary Control, of the Hawai‘i County Code.
- I. The Applicant shall comply with the Department of Health, Hawai‘i Administrative Rules (HAR) Chapter 11-55, regarding Water Pollution Control, which requires an NPDES permit for certain construction activities.
- J. The method of sewage disposal shall meet with the requirements of the State Department of Health.

- K. 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 DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- L. 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 newly created lots, excluding those with a dwelling or previously authorized dwelling. 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** 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.

- M. 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.
- N. The Applicant shall comply with all applicable County, State and Federal codes, laws, rules, regulations, and requirements for the proposed development.
- O. 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.
- P. 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 25-8-11 (LALAMILO-PU'UKAPU ZONE MAP)
 ARTICLE 8, CHAPTER 25
 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1996 (2016 EDITION, AS AMENDED),
 BY CHANGING THE DISTRICT CLASSIFICATION FROM
 AGRICULTURAL - 40 ACRES (A-40a)
 TO RESIDENTIAL-AGRICULTURAL - 0.5 ACRES (RA-.5a)
 AT PU'UKAPU, WAIMEA, SOUTH KOHALA, HAWAI'I

MAP PREPARED BY:
 COUNTY OF HAWAI'I, PLANNING DEPARTMENT

TMK: (3) 6-4-017:001

DATE: April 24, 2024

EXHIBIT "A"

Kelvin P. Jarneski
 Map: 1462