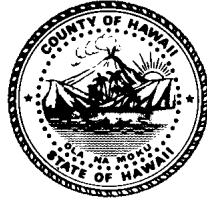


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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

March 3, 2022

Mr. Sidney Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720
VIA EMAIL

Dear Mr. Fuke:

**SUBJECT: Amendment to Change of Zone Ordinance No. 11 73
(REZ 11-000136, PL-REZ-2021-000002)**
Applicant: Cynthia Foster
**Request: Amendment for a Five-Year Time Extension of Condition C
(Time to Secure Final Subdivision Approval)**
Tax Map Key: (3) 6-4-017:042; South Kohala, Hawai'i

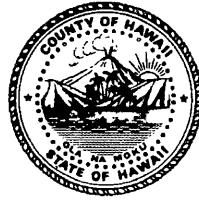
For your information, attached please find Ordinance No. 22 13 effective February 24, 2022, amending Ordinance No. 11 73 that reclassified the subject land at Pu'ukapu, South Kohala, Hawai'i.

Sincerely,
DocuSigned by:
Maija Jackson for
D86CAF078B58431...
Zendo Kern
Planning Director

C:\Users\insauer\Documents\PC\2021 COR\2021-10-21\Ordinances\LCynthiaFosterAmendREZ11-136Ord22-13

Attachment: Ordinance No. 22 13

COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 22 13 BILL NO. 99

AN ORDINANCE AMENDING ORDINANCE NO. 11 73 WHICH RECLASSIFIED LANDS FROM AGRICULTURAL – FORTY ACRES (A-40a) TO AGRICULTURAL – FIVE ACRES (A-5a) AT PU'UKAPU, SOUTH KOHALA DISTRICT, HAWAI'I, COVERED BY TAX MAP KEY: 6-4-017:042.

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

SECTION 1. Section 2 of Ordinance No. 11 73 is amended as follows:

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code 1983 [~~2005 Edition~~] (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, successors, or assigns ("Applicant") 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 is 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 amended ordinance.
- D. The driveway connection to the Māmalahoa Highway shall conform to Chapter 22, County Streets, of the Hawai'i County Code. No more than one lot will be permitted to have a driveway taking direct access from the Māmalahoa Highway. All other proposed lots shall be provided with access via a subdivision roadway that meets the minimum requirements of Chapter 23, Subdivisions, Hawai'i County Code and constructed in a manner meeting with the approval of the Department of Public Works.
- E. The ~~[applicant]~~Applicant shall provide a 15-foot-wide future road widening setback along the entire property frontage of Māmalahoa Highway.
- F. The ~~[applicant]~~Applicant shall provide a 50-foot-wide roadway and utility easement for the future extension of Hauhoa Street to the western boundary of the property (adjoining TMK: 6-4-017:43).
- G. ~~[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 Hawaii 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.]~~ All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.

- H. Any construction within the designated FEMA flood zone shall comply with the requirements of Chapter 27, Floodplain Management, of the Hawai'i County Code. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties. A drainage study, including proposed on-site drainage improvements which may include pervious or porous asphalt, shall be prepared by a licensed civil engineer and submitted to and approved by the Department of Public Works prior to or in conjunction with any building permit or land disturbance permit. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public [works] Works prior to receipt of final occupancy or certificate of occupancy permit, as the case may be.
- I. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- J. ~~[Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources—State Historic Preservation Division (DLNR HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR HPD when it finds that sufficient mitigation measures have been taken.]~~ Prior to the issuance of final subdivision approval, SHPD will have the opportunity to

review and comment on the project pursuant to HRS 6E-42. 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 Applicants 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.

- K. The [~~applicant~~]Applicant shall comply with all applicable County, State and Federal Laws, rules, regulations and requirements.
- L. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the 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 have been satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
- M. [~~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.]~~

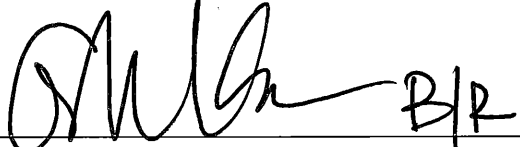
If the Applicant should require an additional extension of time, the Planning Department shall submit the Applicant's request to the County Council for appropriate action. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.

SECTION 3. Material to be deleted is bracketed and stricken. New material is underscored.

SECTION 4. 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 5. This ordinance shall take effect upon its approval.

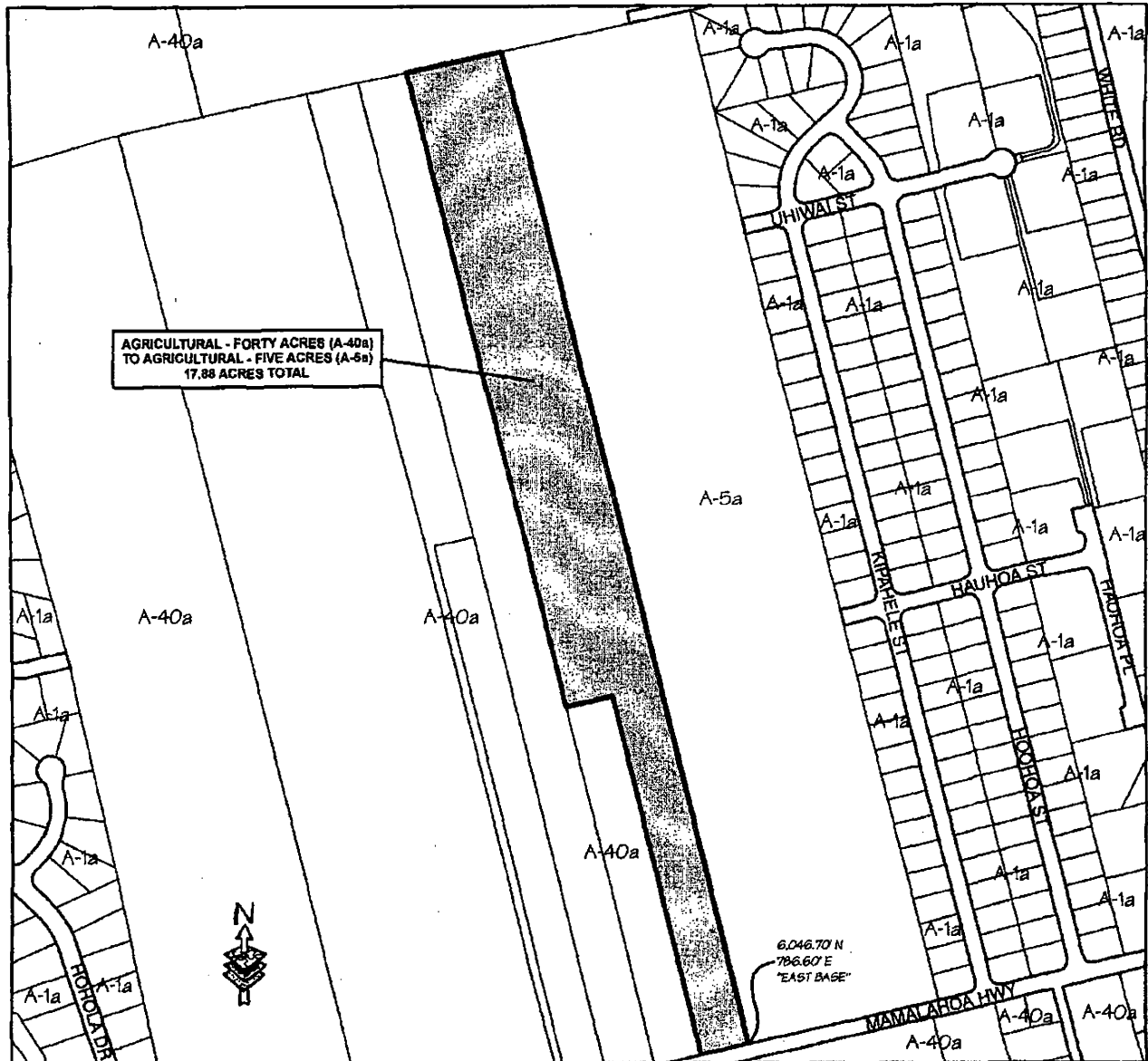
INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'M. G. B. R.', written over a horizontal line.

COUNCIL MEMBER, COUNTY OF HAWAI'I

 Hilo , Hawai'i
Date of Introduction: January 19, 2022
Date of 1st Reading: January 19, 2022
Date of 2nd Reading: February 9, 2022
Effective Date: February 24, 2022

REFERENCE Comm. 548



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-11 (LALAMILO-PUUKAPU ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL - FORTY ACRES (A-40a) TO AGRICULTURAL - FIVE ACRES (A-5a) AT PU'UKAPU, SOUTH KOHALA DISTRICT, HAWAII

MAP PREPARED BY:
COUNTY OF HAWAII, PLANNING DEPARTMENT

TMK: 6-4-017:042

DATE: Feb. 08, 2011

EXHIBIT "A"

Cynthia Foster
Map 1307

FOR REFERENCE ONLY

OFFICE OF THE COUNTY CLERK
 County of Hawai'i
 Hilo, Hawai'i

COUNTY CLERK
 COUNTY OF HAWAII
 2022 FEB 25 AM 11:52

Introduced By: Ashley L. Kierkiewicz (B/R)
 Date Introduced: January 19, 2022
 First Reading: January 19, 2022
 Published: February 4, 2022

REMARKS: _____

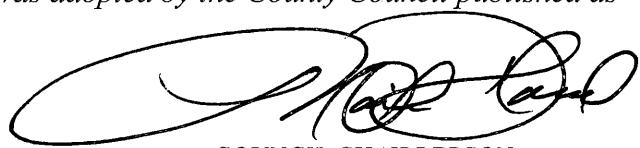
Second Reading: February 9, 2022
 To Mayor: February 17, 2022
 Returned: February 25, 2022
 Effective: February 24, 2022
 Published: March 22, 2022

REMARKS: _____

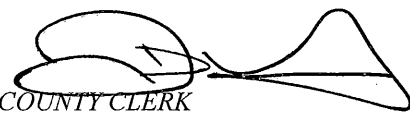
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Inaba	X			
Kāneali'i-Kleinfelder	X			
Kierkiewicz	X			
Kimball	X			
Lee Loy	X			
Richards	X			
Villegas	X			
	9	0	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Inaba	X			
Kāneali'i-Kleinfelder	X			
Kierkiewicz			X	
Kimball	X			
Lee Loy	X			
Richards			X	
Villegas			X	
	6	0	3	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.



COUNCIL CHAIRPERSON



COUNTY CLERK

Approved/Disapproved this 24th day
 of February, 2022



MAYOR, COUNTY OF HAWAII

Bill No.: 99
 Reference: C-548/PC-39
 Ord No.: 22 13