

# REPORT OF THE COMMITTEE ON ZONING

## Voting Members:

Ikaika Anderson, Chair; Romy M. Cachola, Vice Chair  
Tulsi Gabbard Tamayo, Breene Harimoto, Ernest Y. Martin

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Committee Meeting Held  
March 29, 2011

Honorable Nestor R. Garcia  
Chair, City Council  
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning, to which was referred Bill 9 (2011), CD1 entitled:

“A BILL FOR AN ORDINANCE TO REZONE LANDS SITUATED AT MOKULEIA,  
NORTH SHORE, OAHU, HAWAII,”

which passed Second Reading at the March 16, 2011, Council meeting, reports as follows:

The purpose of Bill 9 (2011), CD1, is to rezone approximately 40.59 acres of land in Mokuleia from the F-1 Military and Federal Preservation District to the AG-2 General Agricultural District at the request of Ralph Gray (the “Applicant”) to engage in agricultural activities supported with up to five farm dwellings (25-foot height limit).

Your Committee finds that the Planning Commission, after a public hearing held on December 15, 2010, at which one written testimony was received in opposition to the zone change request, voted to recommend approval of the rezoning in concurrence with the recommendation of the Department of Planning and Permitting (DPP) in the Attachment to Departmental Communication No. 93 (2011).

Your Committee finds that at a public hearing held on March 16, 2011, by the City Council, one person testified in opposition to the proposed rezoning.

At your Committee’s meeting on March 29, 2011, representatives of the Applicant stated that they will meet with the Mokuleia Community Association on April 2, 2011, to provide an update on the project. Councilmember Martin stated that he

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON APR 20 2011

COMMITTEE REPORT NO. 89

# REPORT OF THE COMMITTEE ON ZONING

## Voting Members:

Ikaika Anderson, Chair; Romy M. Cachola, Vice Chair  
Tulsi Gabbard Tamayo, Breene Harimoto, Ernest Y. Martin

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Committee Meeting Held  
March 29, 2011  
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is voting for the bill with reservations because as of the date of this Committee meeting, the meeting has not yet transpired.

In Committee Report No. 63, which the Council adopted at its meeting on March 16, 2011, your Committee discussed the conditions recommended by the DPP to be included in a Unilateral Agreement (U/A) for this rezoning, as set forth in the Attachment to Departmental Communication No. 93 (2011). Attached hereto is a proposed Unilateral Agreement (draft dated 03/14/11) submitted by the Applicant. The proposed Unilateral Agreement (U/A) reflects the foregoing.

Your Committee finds that the conditions recommended by the DPP to be included in the Unilateral Agreement for this rezoning are in conformance with the criteria specified in ROH Section 21-2.80 (b) and (c). In particular, your Committee finds that these conditions are necessary to prevent circumstances that may be adverse to public health, safety, and welfare and fulfill needs directly emanating from the proposed project.

Your Committee has prepared a CD2 version of the bill that corrects an error in the reference to the Ordinance number for Zoning Map No. 17.

Your Committee finds that the Department of Planning and Permitting and the Planning Commission have found that the rezoning proposed in this bill is consistent with the vision, policies, principles, and guidelines set forth in the North Shore Sustainable Communities Plan established by Chapter 24, Article 8, Revised Ordinances of Honolulu 1990, as amended.

Your Committee further finds that, pursuant to Chapter 24, Article 8, Revised Ordinances of Honolulu 1990, as amended, responsible City and State agencies have indicated that adequate public facilities and utilities for the proposed development will be available at the time of occupancy, or that conditions to ensure adequacy are otherwise sufficiently addressed.

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## CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON APR 20 2011

COMMITTEE REPORT NO. 89

# REPORT OF THE COMMITTEE ON ZONING

## Voting Members:

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Committee Meeting Held  
March 29, 2011  
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Your Committee finds that the time needed for further consideration of Bill 9 (2011), CD1, could exceed the time limit provided for that consideration. It, therefore, recommends that Bill 9 (2011) be granted a 90-day extension of time subject to receipt of a written request from the Applicant. (Ayes: Anderson, Cachola, Gabbard Tamayo, Harimoto, Martin – 5; Noes: None.)

Your Committee on Zoning is in accord with the intent and purpose of Bill 9 (2011), CD1, as amended herein, and recommends that, following the Applicant's recordation in the Bureau of Conveyances, and/or the Land Court, as is appropriate, of a Unilateral Agreement that conforms in all material respects to the proposed Unilateral Agreement attached hereto, the bill pass Third Reading in the form attached hereto as Bill 9 (2011), CD2. Pursuant to standard Council practice, the Clerk is directed to attach a copy of the executed and recorded Unilateral Agreement as Exhibit "B" to the bill after transmission of the copy to the Council by the Department of the Corporation Counsel. (Ayes: Anderson, Cachola, Gabbard Tamayo, Harimoto – 4; Ayes with reservations: Martin – 1; Noes: None.)

Respectfully submitted,

  
Committee Chair

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON APR 20 2011

COMMITTEE REPORT NO. 89

DRAFT  
03/14/11  
BILL 9 (2011), CD1  
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

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AFTER RECORDATION, RETURN BY MAIL (X) PICKUP ( ) TO:

Analytical Planning Consultants, Inc.  
928 Nuuanu Avenue, Suite 502  
Honolulu, Hawaii 96817

Page 1 of 8

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TITLE OF DOCUMENT: Unilateral Agreement and Declaration for  
Conditional Zoning

PARTY TO DOCUMENT: Mokuleia Ranch Estates, LLC  
3107 Oahu Avenue  
Honolulu, Hawaii 96822

Coastal View Properties, LLC  
440 W. Whittier Blvd.  
La Habra, California 90631

TAX MAP KEY NO. (1) 6-8-003: 021

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**UNILATERAL AGREEMENT AND  
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this \_\_\_\_\_, 2011, by Mokuleia Ranch Estates, LLC, a Hawaii limited liability company, whose address is 3107 Oahu Avenue, Honolulu, Hawaii 96822 and Coastal View Properties, LLC, a Hawaii limited liability Company, whose address is 440 W. Whittier Blvd., La Habra, California, 90631 (hereinafter referred to as the "Declarants",

**WITNESSETH:**

WHEREAS, the Declarants are the owners in fee simple of those certain parcels of land situated in Mokuleia, consisting of approximately 40.59 acres, described as Tax Map Key No. 6-8-003: 021, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desire to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarants plan to use the Land for agricultural purposes as permitted by the Land Use Ordinance (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from F-1 Military and Federal Preservation District to AG-2 General Agricultural District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 9 (2011), was held by the Council on \_\_\_\_\_ 2011; and

WHEREAS, the Council recommended by its Zoning Committee Report No. \_\_\_\_ that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarants hereby covenant and declare as follows:

1. Prior to obtaining building or grading permits for any farm dwellings or other buildings, the Declarants shall submit an Engineering Slope Hazard Report to the Department of Planning and Permitting for review and approval as defined in Section 14-13.3 ("Definitions") of the Revised Ordinances of Honolulu 1990 as amended. Based on findings of the Report, the Declarants shall either (a) implement all mitigation measures recommended to protect farm dwellings or other buildings located in areas identified by the Report as posing a hazard, or (b) locate such structures in areas the Report deems not hazardous.
2. Prior to grading, grubbing, stockpiling, or building permit

approval, the Declarants shall obtain approval from the State Historic Preservation Division (SHPD) for an archeological inventory study and mitigation. The Declarants shall implement protection and/or mitigative measures as required by SHPD.

3. Declarants shall disclose to all prospective purchasers, tenants, lessees, and occupants of the property of the potential noise impacts of civilian and/or military aircraft and training activities that utilize Dillingham Airfield during the day and night. Language of the disclosure document shall be coordinated and concurred with by the State Department of Transportation (DOT) prior to execution of sales or lease documents, a copy of the disclosure document shall be provided to the Department of Planning and Permitting (DPP) for their records.
4. There shall be no further subdivision of the Land's existing three parcels of record except for the purposes of parcel consolidation and/or for access and utility easements.
5. The number of farm dwellings shall be limited to five within the total Land area of approximately 40.59 acres.
6. On an annual basis, the Declarants shall submit a written status report to the DPP documenting their satisfaction of and/or describing their progress toward complying with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied. Failure to do so may result in delays in processing of further permits.
7. The Declarants acknowledge that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarants shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.
8. In the event of noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to Project. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarants hereby make the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarants and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarants or their successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANTS:

MOKULEIA RANCH ESTATES, LLC  
a Hawaii Limited Liability Company

By \_\_\_\_\_  
Ralph S. Gray, Agent

COASTAL VIEW PROPERTIES, LLC  
a Hawaii Limited Liability Company

By \_\_\_\_\_  
Greg Jones, Manager

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared Ralph S. Gray, in his capacity as an Agent for Mokuleia Ranch Estates, LLC., a Hawaii Limited Liability Company, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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STATE OF CALIFORNIA

CITY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared Gregory Jones, in his capacity as Manager for Coastal View Properties, LLC., a Hawaii Limited Liability Company, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_

EXHIBIT "A"

First:

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Grant Number 231 to Namomoku and Paele) situate at Mokuleia, District of Waialua, City and County of Honolulu, State of Hawaii, being PARCEL 2-A, being Tract MF-58 of Dillingham Air Force Base, U. S. Civil 539 containing an area of 0.70 acres, more or less.

Second:

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Grant Number 270 to Pine, Pao and Mahiai) situate at Mokuleia, District of Waialua, City and County of Honolulu, State of Hawaii, being PARCEL 2-C, being also Tract MF-57 of Dillingham Air Force Base, U. S. Civil 539 containing an area of 19.21 acres, more or less.

Third:

All of that certain parcel of land situate at Mokuleia, District of Waialua, City and County of Honolulu being LOT 2-B, area 20.68 acres, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 824 of Mokuleia Ranch and Land Company, Limited.

Being the same premises conveyed by Warranty Deed dated July 2, 2007, recorded in said Office as Land Court Document No. 3624117, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-121000, and noted on Transfer Certificate of Title No. 866101.



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**A BILL FOR AN ORDINANCE**

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TO REZONE LANDS SITUATED AT MOKULEIA, NORTH SHORE, OAHU, HAWAII.

BE IT ORDAINED by the People of the City and County of Honolulu.

SECTION 1. Zoning Map No. 17, Mokuleia-Waiialua-Haleiwa, Ordinance 86-134, is hereby amended as follows: Land situated at Mokuleia, North Shore, Oahu, Hawaii, hereinafter described, is hereby rezoned from F-1 Military and Federal Preservation District to AG-2 General Agricultural District. The boundaries and area of said District shall be described as shown on the map attached hereto, marked Exhibit "A" and made a part hereof, and further identified as Tax Map Key 6-8-003:021.

SECTION 2. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.



A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Nestor Garcia (BR)

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\_\_\_\_\_  
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DATE OF INTRODUCTION:

February 17, 2011  
Honolulu, Hawaii

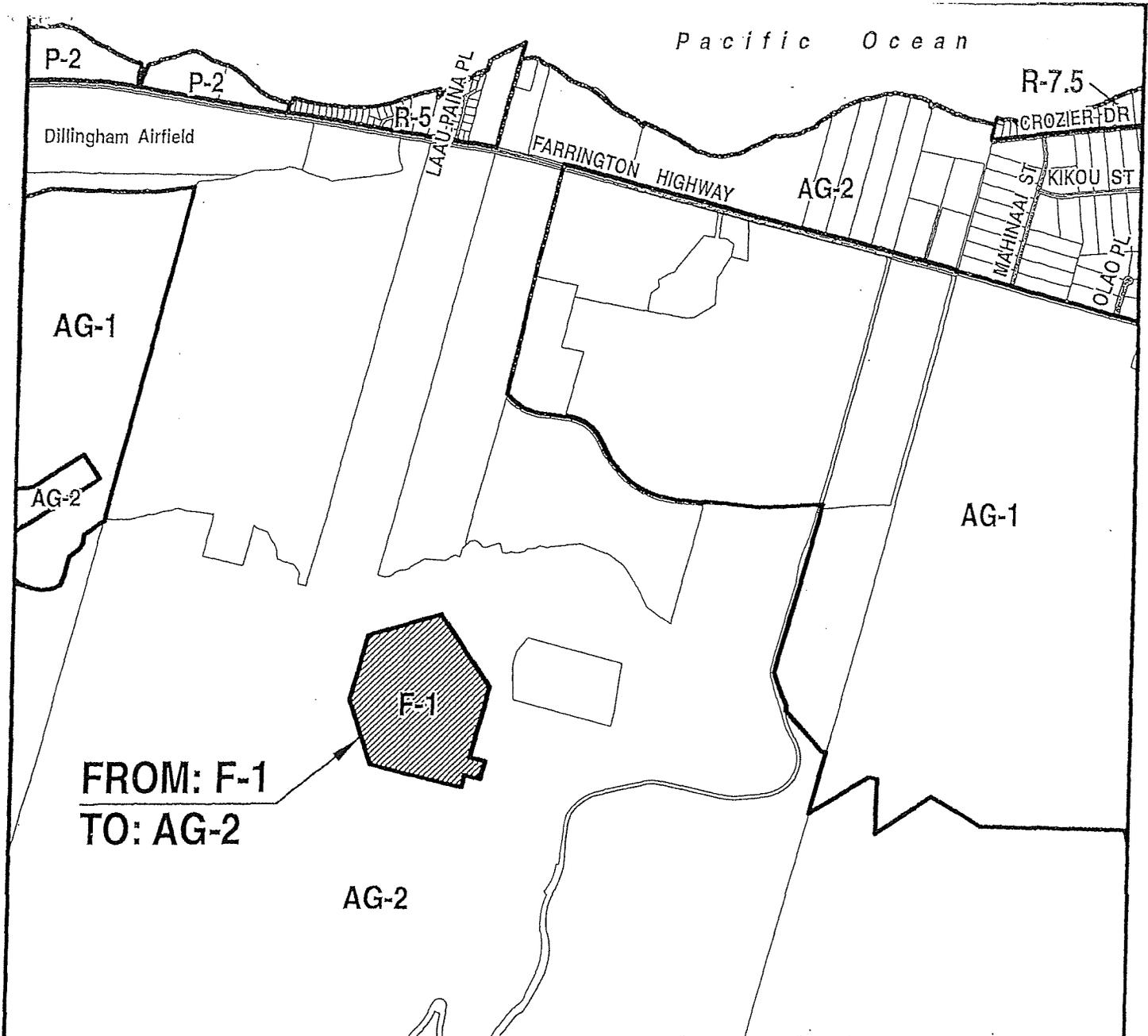
\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

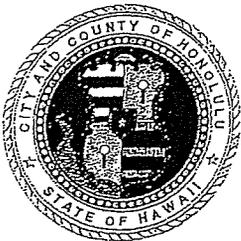
\_\_\_\_\_  
PETER B. CARLISLE, Mayor  
City and County of Honolulu



PORTION OF  
**ZONING MAP NO. 17**  
 (MOKULEIA - WAIALUA - HALEIWA)



0 750 1,500  
 Scale in Feet



APPLICANT: RALPH GRAY

TAX MAP KEY(S): 6-8-003: 021

FOLDER NO.: 2010/Z-3

LAND AREA: 40.59 Ac.

PREPARED BY: DEPARTMENT OF PLANNING & PERMITTING  
 CITY AND COUNTY OF HONOLULU

PUBLIC HEARING

PLANNING COMMISSION

CITY COUNCIL

DEC 15 2010

ORD. NO.

EFF. DATE:

EXHIBIT A

BILL 9 (2011), CD2

2010/Z-3