

# REPORT OF THE COMMITTEE ON ZONING AND PLANNING

## Voting Members:

Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;  
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

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Committee Meeting Held  
August 22, 2013

Honorable Ernest Y. Martin  
Chair, City Council  
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Planning, to which was referred Bill 49 (2013) entitled:

"A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT MOKULEIA, OAHU, HAWAII,"

transmitted by Departmental Communication No. 546 dated July 15, 2013, and which passed First Reading at the August 7, 2013 Council meeting, reports as follows:

The purpose of Bill 49 (2013) is to rezone approximately 13.1 acres of land situated in Mokuleia from the P-2 General Preservation to the AG-1 Restricted Agricultural District at the request of Kealia Farms, LLC (the "Applicant"), to permit development of a farm and farm dwellings. The Applicant applied to rezone the site to the AG-2 General Agricultural District in order to build 4 dwellings; however, the Department of Planning and Permitting (DPP) recommended that the site be rezoned to the AG-1 District as nearby agricultural zoned lots are larger than five acres in size, thus making the proposal more consistent with guidelines for the AG-1 District.

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

ADOPTED ON

SEP 11 2013

COMMITTEE REPORT NO. 261

# REPORT OF THE COMMITTEE ON ZONING AND PLANNING

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Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;  
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

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Committee Meeting Held  
August 22, 2013  
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Your Committee finds that the Planning Commission, after a public hearing held on July 10, 2013, at which one person testified and at which no written testimony was received, voted to recommend approval of the Applicant's original request for AG-2 zoning, with the conditions recommended by the Director of the DPP in the Attachment to Departmental Communication No. 546 (2013), plus an additional condition in the Unilateral Agreement that there be no more than four dwellings on the two parcels.

Your Committee has prepared a CD1 version of the Bill that makes the following changes:

- A. Amends the Bill text and the attached Exhibit A to provide for a zone change from the P-2 General Preservation District to the AG-2 General Agricultural District, as requested by the Applicant and recommended by the Planning Commission, rather than the AG-1 Restricted Agricultural District, as recommended by the DPP; and
- B. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee has reviewed the conditions recommended by the DPP to be included in a Unilateral Agreement for this rezoning, as set forth in the Attachment to Departmental Communication No. 546 (2013), and the additional condition discussed below, and finds that they appear to be in conformance with the criteria specified in Section 21-2.80 (b) and (c), Revised Ordinances of Honolulu 1990, as amended (ROH). In particular, your Committee finds that the conditions appear to be necessary to prevent circumstances that may be adverse to public health, safety and welfare and fulfill needs directly emanating from the proposed project.

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

ADOPTED ON SEP 11 2013

COMMITTEE REPORT NO. 261

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Committee Meeting Held  
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Attached hereto is a proposed Unilateral Agreement (draft dated 08/15/13) submitted by the Applicant. The proposed Unilateral Agreement (U/A) reflects the DPP's recommended conditions, and also adds a condition providing that no more than four farm dwellings may be developed on the site, as recommended by the Planning Commission. Representatives of the Applicant testified that it agrees with the limit on farm dwellings.

Your Committee finds that the rezoning proposed in this Bill appears to be consistent with the General Plan and Development Plan of the City and in the best interests of the people of the City and County of Honolulu. Your Committee plans to consider this matter further following the receipt of public testimony at the public hearing thereon to be held as required by law.

Your Committee finds that the time needed for further consideration of Bill 49 (2013) could exceed the time limit provided for that consideration. It, therefore, recommends that Bill 49 (2013) be granted a 90-day extension of time subject to receipt of a written request from the Applicant. (Ayes: Anderson, Harimoto, Kobayashi, Menor, Pine – 5; Noes: None.)

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

ADOPTED ON SEP 11 2013

COMMITTEE REPORT NO. 261

# REPORT OF THE COMMITTEE ON ZONING AND PLANNING

## Voting Members:

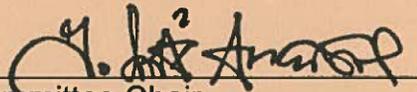
Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;  
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

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Committee Meeting Held  
August 22, 2013  
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Your Committee on Zoning and Planning further recommends that Bill 49 (2013) pass Second Reading in the form attached hereto as Bill 49 (2013), CD1, be scheduled for public hearing, and be referred back to Committee. (Ayes: Anderson, Harimoto, Kobayashi – 3; Ayes with reservations: Menor, Pine – 2; Noes: None.)

Respectfully submitted,

  
\_\_\_\_\_  
Committee Chair

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

ADOPTED ON SEP 11 2013

COMMITTEE REPORT NO. 261



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**A BILL FOR AN ORDINANCE**

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TO REZONE LAND SITUATED AT MOKULEIA, OAHU, HAWAII.

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

SECTION 1. Zoning Map No. 17 (Mokuleia – Waialua – Haleiwa), Ordinance No. 86-134, is hereby amended as follows: Land situated at Mokuleia, Oahu, Hawaii, hereinafter described, is hereby rezoned from the P-2 General Preservation District to the AG-2 General Agricultural District. The boundaries 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 Keys 6-8-002: 010 and 014.

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:

Ikaika Anderson (BR)

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DATE OF INTRODUCTION:

July 26, 2013  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

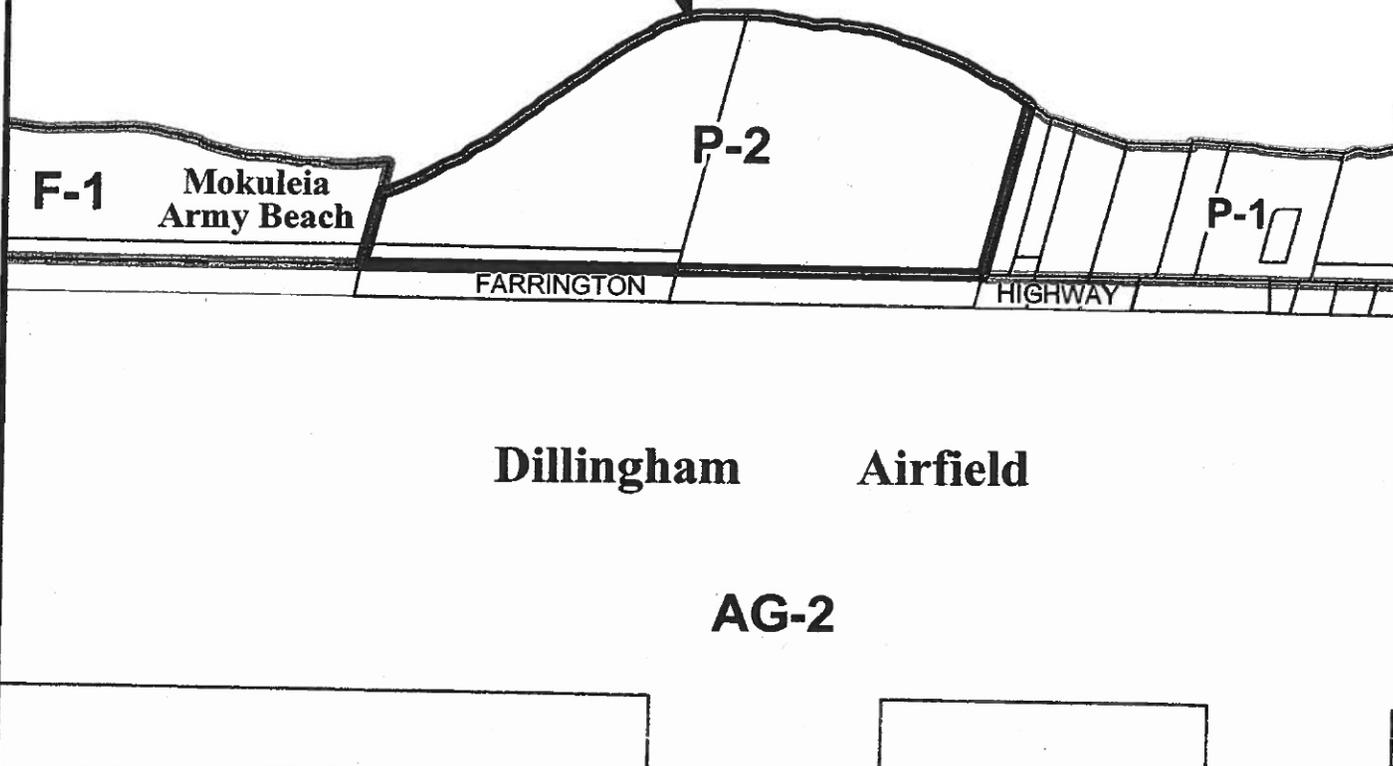
\_\_\_\_\_  
Deputy Corporation Counsel

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

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu

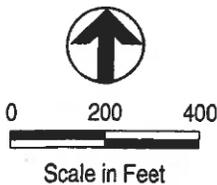
**From: P-2  
To: AG-2**

**Pacific  
Ocean**



**PORTIONS OF  
ZONING MAP No. 17  
(MOKULEIA-WAIALUA-HALEIWA)**

Land situated along Farrington Highway adjacent to Mokuleia Army Beach and across Dillingham Airfield.



**APPLICANT:** KEALIA FARMS, LLC  
**TAX MAP KEY(S):** 6-8-02: 10 & 14  
**FOLDER NO. :** 2013/Z-4  
**LAND AREA:** Approx. 13 Acres  
**PREPARED BY:** DEPARTMENT OF PLANNING & PERMITTING  
 CITY AND COUNTY OF HONOLULU  
**PUBLIC HEARING:** PLANNING COMMISSION CITY COUNCIL

**ORD. NO.**

**JUL 01 2013**

**2013/Z-2**

**EFF. DATE:**

**EXHIBIT A**

**EXHIBIT B  
(DRAFT UNILATERAL AGREEMENT)**

DRAFT  
8/15/13  
BILL 49 (2013)  
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

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

Philip Kai Binney  
Kealia Farms, LLC  
1338 Mokulua Drive  
Kailua, Hawaii 96734

Page 1 of

**TITLE OF DOCUMENT:** Unilateral Agreement and Declaration for  
Conditional Zoning

**PARTY TO DOCUMENT:** Kealia Farms, LLC  
1338 Mokulua Drive  
Kailua, Hawaii 96734

**TAX MAP KEY NO. (1) 6-8-002: 010 and 014**

**UNILATERAL AGREEMENT AND  
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Kealia Farms, a Hawaii Limited Liability

Company, whose address is 1338 Mokulua Drive, Kailua, Hawaii 96734 (hereinafter referred to as the "Declarant"),

**WITNESSETH:**

WHEREAS, the Declarant is the owner in fee simple of those certain parcels of land situated in Mokuleia, consisting of approximately 13.089 acres, described as Tax Map Keys No. 6-8-002: 010 and 014, and more particularly described in Exhibit A & B attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to use the Land for Agricultural purposes, including farm dwellings. (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 the P-2 General Preservation District to the AG-2 General Agricultural District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 49 (2013), was held by the Council on \* ; and

WHEREAS, the Council recommended by its Zoning and Planning 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 Declarant hereby covenants and declares as follows:

1. **Archeological Inventory Survey**. Prior to issuance of a grading, grubbing, or building permit, whichever is first, the Declarant shall consult with the Department of Land and Natural Resources, State of Hawaii Preservation Division (SHPD), regarding the need for an Archeological Inventory Survey and/or mitigation plan. In the event the SHPD determines that a mitigation plan is required, the

Declarant shall comply with the SHPD recommendations and requirements.

2. **Required 60 foot Shoreline Setback.** The Declarant shall abide by a shoreline setback of 60 feet from the certified shoreline established by a certified shoreline survey prior to the issuance of building permits.
3. **Flora and Fauna.** Prior to issuance of a grading, grubbing, or building permit, whichever is first, the Declarant shall have a flora and fauna survey prepared for the site, in its entirety, by a qualified professional. In the event a mitigation plan is required, the Declarant shall comply with its recommendation and requirements.
4. **Limitation on Farm Dwelling.** No more than four farm dwellings shall be developed on the Land.
5. **Compliance with other Government Requirements.** The Declarant acknowledges 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 Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.
6. **Annual reports.** On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction and/or describing its progress toward complying with each condition of approval for this zone change. This 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. **Noncompliance with Conditions.** 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 the 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 Declarant hereby makes 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 Declarant 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 Declarant or its 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.

DECLARANT:

KEALIA FARMS, LLC  
a Hawaii Limited Liability Company

By \_\_\_\_\_  
Philip Kai Binney, Member

KEALIA FARMS, LLC  
a Hawaii Limited Liability Company

By \_\_\_\_\_

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared \_\_\_\_\_ in his capacity as an \_\_\_\_\_ for Kealia Farms, 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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Print Name:

EXHIBIT "A"

All of that certain parcel of land situate at Mokuleia, District of Waialua, City and County of Honolulu, State of Hawaii, described as follows:

LOT 39, area 7.498 acres, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1810 of Mokuleia Ranch and Land Company, Limited.

Being the land(s) described in Transfer Certificate of Title No. 859,139 issued to the Grantor herein.

Being the premises acquired by the Grantor herein by Warranty Deed of Safe Investment Properties, LLC, a Washington limited liability company, dated May 11, 2007, filed in the said Land Court as Land Court Document No. 3603953.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance.
3. Triangulation Survey Station "KEALIA" located within the land described herein, as shown on the Tax Map. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or removal of survey monuments.
4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
5. The land has no recorded access to a public roadway.
6. Any other liens or encumbrances of record.

7. Any unrecorded agreements or rights affecting the property described herein.

END OF EXHIBIT "A"

Tax Key: (1) 6-8-002-014

EXHIBIT "B"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 338 to Hikiiau and Kua) situate, lying and being at Kealia, District of Waialua, City and County of Honolulu, State of Hawaii, being LOT "B", also a portion of Former Oahu Railway and Land Company's Railroad Right-of-Way and Lot 1 of Land Court Application No. 665 (cancelled), and thus bounded and described:

Beginning at an iron pin, found, at the Southeast corner of this parcel of land, being also the Southwest corner of Lot 39 (Map 2) of Land Court Application 1810, and on the North side of Kaena Point road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "DILLINGHAM" being 71.05 feet North and 9,707.15 feet West, and running by azimuths measured clockwise from true South:

1. 90° 33' 45" 681.26 feet along the North side of Kaena Point Road to a 1/2" pipe (found);
2. 195° 00' 45" 160.00 feet along Lot 1-B (Map 4) of Land Court Application 588 to highwater mark (vegetation line) at seashore, and passing over an "L" cut in concrete (found) at 41.31 feet, and over a 1/2" pipe at 139.60 feet;
3. Thence along highwater mark (vegetation line) at seashore, the direct azimuth and distance between points being:  
244° 16' 865.45 feet;
4. 14° 35' 45" 554.90 feet along Lot 39 (Map 2) of Land Court Application 1810 to an iron pin (found), passing over 1/2" pipe at 48.90 feet and a 1/2" pipe (found) at 513.60 feet, to the point of beginning and containing an area of 5.591 acres, more or less.

Being one of the premises acquired by the Grantor herein by Warranty Deed of Ocean Shores Properties, LLC, a Hawaii limited liability company, dated August 24, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-172207.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.
3. Any other liens or encumbrances of record.
4. Any unrecorded agreements or rights affecting the property described herein.

END OF EXHIBIT "B"

Tax Key: (1) 6-8-002-010