



A BILL FOR AN ORDINANCE

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)

DATE OF INTRODUCTION:

July 26, 2013
Honolulu, Hawaii

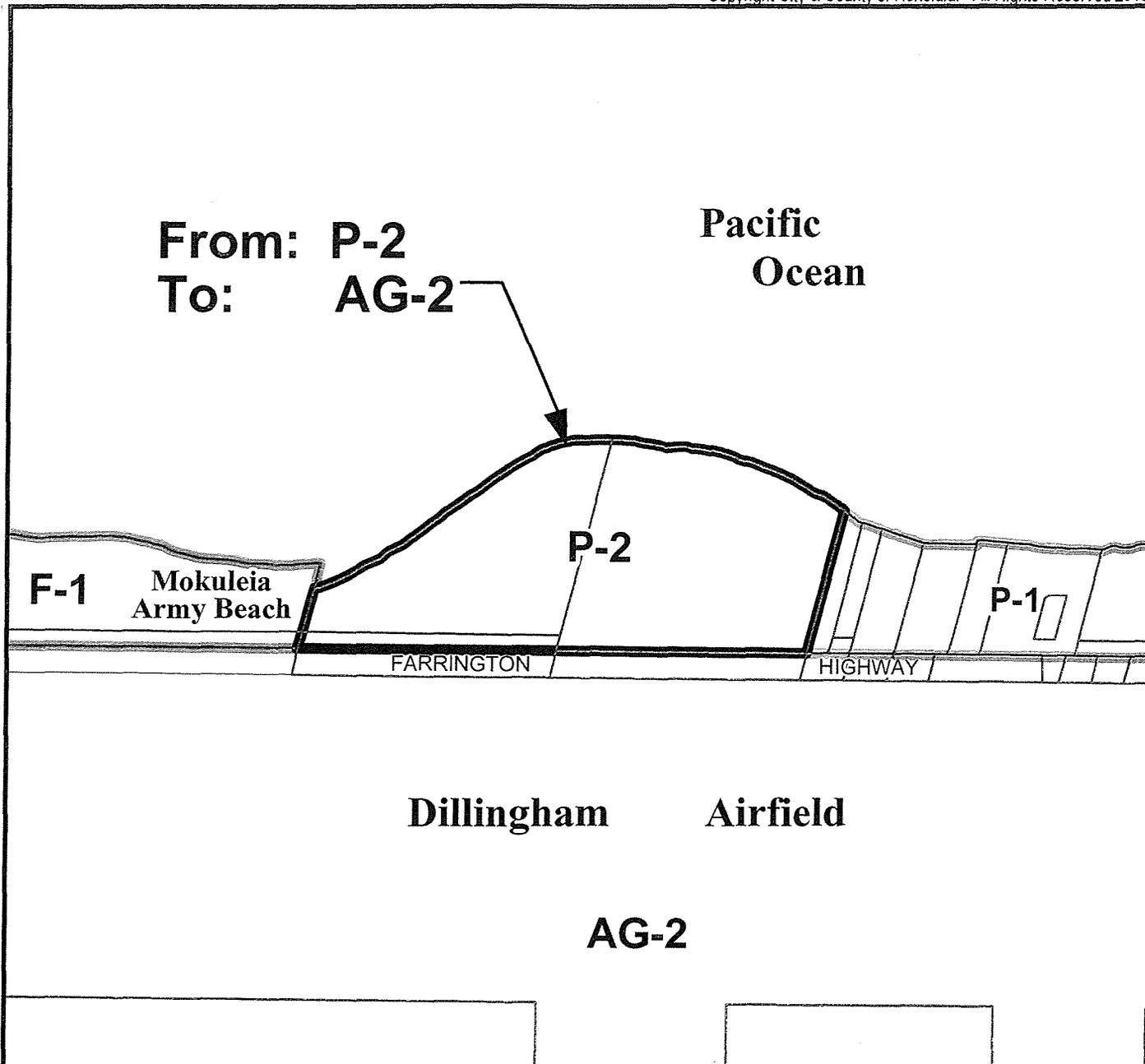
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Don S. Kirtorf
Deputy Corporation Counsel

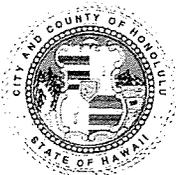
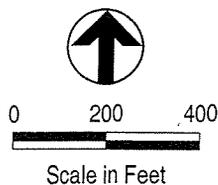
APPROVED this 24th day of October, 2013.

Kirk Caldwell
KIRK CALDWELL, Mayor
City and County of Honolulu



**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
SEP 11 2013**

ORD. NO. 13-36

JUL 01 2013

2013/Z-2

EFF. DATE: OCT 24 2013

EXHIBIT A

BILL 49 (2013), CD1

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)

The original of this document was
recorded as follows:

DOCUMENT NO. _____
DATE _____ Doc T-8680223
CT 1043116
October 7, 2013 8:02 AM

9/24/2013

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DOCUMENT NO. _____ Doc A-50280550

DATE - TIME _____ October 7, 2013 8:02 AM

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 8

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 7th day of
October, 2013, by Kealia Farms, LLC, a Hawaii limited

1

EXHIBIT B

D-728

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 Exhibits A and 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 September 11, 2013; 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. **Limitation on Farm Dwellings.** No more than four farm dwellings shall be developed on the Land.
4. **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.
5. **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.
6. **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.

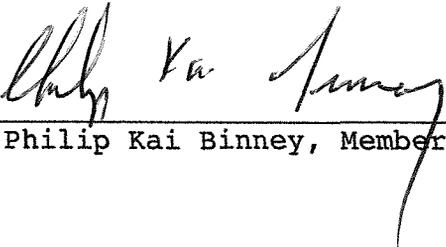
That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

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

By _____

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

On this 7th day of October, 2013, before me personally appeared Philip Kai Binney in his capacity as an Member 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.

Wendy-Lee P Bruhn-Peterka

Print Name: Wendy-Lee P Bruhn-Peterka

My Comm. Exp. Oct. 20, 2014

LS

NOTARY PUBLIC CERTIFICATION

Wendy-Lee P. Bruhn-Peterka First Judicial Circuit

Doc. Description: Unilateral Agreement + Declaration For Card. Zoning

No. of Pages: 8 Date of Doc. OCT 07 2013

Wendy-Lee P Bruhn-Peterka OCT 07 2013
Notary Signature Date

LS

Exhibit "A"

TMK: 6-8-002: 014

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 the Mokuleia Ranch and Land Company, Limited.

Being the land described in Transfer Certificate of Title No. 1043116 and filed by the Declarant on June 1, 2012 in the said Land Court as Land Court Document No. T-8187165.

7
Suzanne M

Exhibit "B"

TMK: 6-8-002: 010

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 Hikiau 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 the land recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A45350773 June 1, 2012.

F 8
Sep/10/11

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

ORDINANCE 13-36

BILL 49 (2013), CD1

Introduced: 07/26/13 By: IKAIKA ANDERSON (BR)

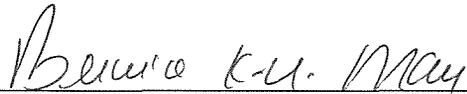
Committee: ZONING AND PLANNING

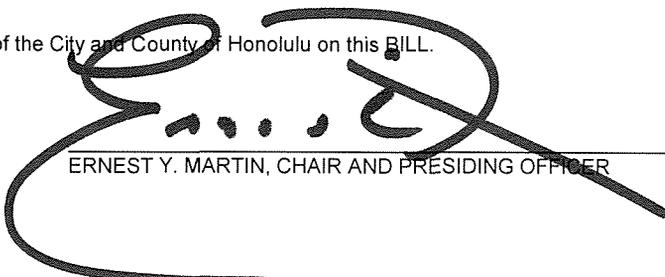
Title: A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT MOKULEIA, OAHU, HAWAII.

Voting Legend: * = Aye w/Reservations

08/07/13	COUNCIL	BILL PASSED FIRST READING AND WAS REFERRED TO COMMITTEE ON ZONING AND PLANNING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, CHANG, MARTIN, MENOR, PINE.
08/22/13	ZONING AND PLANNING	CR-261 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AS AMENDED IN CD1 FORM AND SCHEDULING OF A PUBLIC HEARING.
08/31/13	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
09/11/13	COUNCIL/ PUBLIC HEARING	CR-261 ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.
09/18/13	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
09/26/13	ZONING AND PLANNING	CR-294 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
10/09/13	COUNCIL	CR-294 ADOPTED AND BILL 49 (2013), CD1 PASSED THIRD READING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, CHANG, MARTIN, MENOR, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER