

# 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  
May 22, 2014

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 29 (2014) entitled:

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

transmitted by Departmental Communication No. 258 dated March 25, 2014, and which passed Second Reading at the May 7, 2014 Council meeting, reports as follows:

The purpose of Bill 29 is to rezone approximately 71,634 square feet of land in Kahaluu from the AG-2 General Agricultural District to the R-10 Residential District to lift the nonconforming status of five existing dwellings. According to the Department of Planning and Permitting Director's report, the five dwellings were constructed between 1958 and 1964 before the underlying land use designation was changed from Residential to Agriculture. In conjunction with the Applicant's proposal, the Department of Planning and Permitting (DPP) also is proposing to rezone approximately 6,131 square feet of the abutting roadway from AG-2 to R-10 to avoid creating a remnant AG-2 area. The combined total area of the proposed zone change is approximately 77,764 square feet (1.785 acres).

The Applicant's proposal would remove the nonconforming status of the five existing dwellings. If the proposed zoning is approved, the Applicant intends to create Condominium Property Regime on the land.

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## CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON

JUN 4 2014

COMMITTEE REPORT NO. 166

# 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  
May 22, 2014  
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Your Committee finds that the Planning Commission, after a public hearing held on March 5, 2014, at which no written or oral testimony was received, voted to recommend approval of the of the rezoning in concurrence with the recommendations of the DPP in the Attachment to Departmental Communication No. 258 (2014).

Your Committee finds that at a public hearing held on May 7, 2014 by the City Council no testimony was received on the proposed rezoning.

Your Committee has reviewed the conditions recommended by the DPP to be included in the Unilateral Agreement for this rezoning, as set forth in the Attachment to Departmental Communication No. 258 (2014) 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.

Attached hereto is the proposed Unilateral Agreement (draft dated 05/19/14) submitted by the Applicant. The proposed Unilateral Agreement reflects the foregoing.

There was no public or written testimony offered on the Bill at your Committee's meeting of May 22, 2014.

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 Koolaupoko Development Plan established by Chapter 24, Article 6, Revised Ordinances of Honolulu 1990, as amended.

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

ADOPTED ON     JUN 4 2014    

COMMITTEE REPORT NO.     166

# REPORT OF THE COMMITTEE ON ZONING AND PLANNING

## Voting Members:

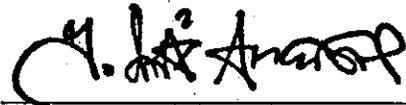
Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;  
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

Committee Meeting Held  
May 22, 2014  
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Your Committee further finds that, pursuant to Chapter 24, Article 6, 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.

Your Committee on Zoning and Planning is in accord with the intent and purpose of Bill 29 (2014) 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. 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, Harimoto, Pine - 3; Noes: None; Excused: Kobayashi, Menor - 2.)

Respectfully submitted,



Committee Chair

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

ADOPTED ON JUN 4 2014

COMMITTEE REPORT NO. 166

DRAFT  
5/19/14  
BILL 29 (2014)  
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

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

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for  
Conditional Zoning

PARTIES TO DOCUMENT:

MAXIE V. AWA, also known as MAXIE VIRGINIA KAMEKONA AWA, as  
Successor Trustee under that certain testamentary trust created  
under the Last Will and Testament of Joseph M. Awa, Sr. dated  
February 14, 1977, as amended; and BERTHA S. M. AWA and SHEILA  
ANN ISERI, (1) as Successor Co-Trustees under that certain  
unrecorded Bertha S. M. Awa Revocable Trust Agreement dated May  
23, 1984, as amended; and (2) as Successor Co-Trustees under that  
certain unrecorded Bertha Pang Awa Revocable Trust dated May 23,  
1984, as amended

TAX MAP KEY NO. (1) 4-7-025:016 & 017

[Form: 2/13]

Attachment to CR-166

**UNILATERAL AGREEMENT AND  
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by MAXIE V. AWA, also known as MAXIE VIRGINIA KAMEKONA AWA, as Successor Trustee under that certain testamentary trust created under the Last Will and Testament of Joseph M. Awa, Sr. dated February 14, 1977, as amended; and BERTHA S. M. AWA and SHEILA ANN ISERI, (1) as Successor Co-Trustees under that certain unrecorded Bertha S. M. Awa Revocable Trust Agreement dated May 23, 1984, as amended; and (2) as Successor Co-Trustees under that certain unrecorded Bertha Pang Awa Revocable Trust dated May 23, 1984, as amended, each having all powers under said trust agreements, including full powers to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate and interests therein, whose address is 47-357 Ahuimanu Road, Kaneohe, Hawaii 96744 (hereinafter referred to as the "Declarant"),

**WITNESSETH:**

WHEREAS, the Declarant is the owner in fee simple of those certain parcels of land situate at Kahuluu, District of Koolaupoko, City and County of Honolulu, State of Hawaii, consisting of approximately 0.139 and 1.52 acres, described as Tax Map Key No. (1) 4-7-025:016 and 017, respectively, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, there currently exist five (5) single-family dwellings on the Land (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 AG-2 General Agricultural District to the R-10 Residential District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 29 (2014), was held by the Council on May 7, 2014; 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. After-the-Fact Building Permit. The Declarant shall obtain an after-the-fact building permit for the addition of the covered lanai on Unit B1 (45-357-B1 Ahuimanu Road) and any other buildings and structures built on the Land without a permit. The Declarant shall submit an application to the Department of Planning and Permitting (DPP) for the permit within 30 days of the effective date of the Rezoning Ordinance, provided that this deadline may be extended by the DPP if the DPP finds that the delay is due to reasons beyond the control of the Declarant.

2. Drain Connection License. The Declarant shall obtain a Drain Connection License for the existing drainage system across Parcel TMK 4-7-025: 041 that provides drainage from the Land to the Kahaluu Flood Control Channel. The Declarant shall apply for the License prior to the approval of the after-the-fact building permit required by Condition 1.

3. Easement. The Declarant shall designate a flowage easement on Parcel TMK 4-7-025: 041 in favor of Parcel TMK 4-7-025: 017 for the existing drainage system that drains into the Kahaluu Flood Control Channel. The Declarant shall submit a subdivision application to the DPP to designate the easement prior to the approval of the after-the-fact building permit required by Condition 1.

4. Any Other Building Permit. Prior to approval for any other building permit involving an increase in floor area and submitted by the Declarant after the effective date of the Rezoning Ordinance, the following shall apply:

a. Transportation System. The Declarant shall widen the pavement of the access roadway from Ahuimanu Road to the northern tip of Parcel TMK 4-7-025: 016 from 10 feet to a minimum of 20 feet in accordance with City standards.

b. Water System. The Declarant shall upgrade the water system from Ahuimanu Road to the Land according to the Board of Water Supply Water System Standards.

5. Compliance with Other Governmental 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 of and/or describing its 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.

7. Noncompliance with Conditions. In the event of noncompliance with any of the conditions set forth herein, the Director of the DPP 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:

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MAXIE V. AWA, also known as  
MAXIE VIRGINIA KAMEKONA AWA,  
as Successor Trustee under  
that certain testamentary  
trust created under the Last  
Will and Testament of Joseph  
M. Awa, Sr. dated February 14,  
1977, as amended,

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BERTHA S. M. AWA, (1) as  
Successor Co-Trustee under  
that certain unrecorded Bertha  
S. M. Awa Revocable Trust  
Agreement dated May 23, 1984,  
as amended; and (2) as  
Successor Co-Trustee under  
that certain unrecorded Bertha  
Pang Awa Revocable Trust dated  
May 23, 1984, as amended

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SHEILA ANN ISERI, (1) as  
Successor Co-Trustee under  
that certain unrecorded Bertha  
S. M. Awa Revocable Trust  
Agreement dated May 23, 1984,  
as amended; and (2) as  
Successor Co-Trustee under

that certain unrecorded Bertha  
Pang Awa Revocable Trust dated  
May 23, 1984, as amended

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared MAXIE V. AWA, also known as MAXIE VIRGINIA KAMEKONA AWA, to me personally known or adequately proven to be the person(s) described in and who executed the foregoing instrument, who, being by me duly sworn or affirmed, did say that such person(s) executed the same as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
(Printed name)

My commission expires: \_\_\_\_\_

Doc. Date: _____	# Pages: _____
Name: _____	First Circuit
Doc. Description: _____	
_____	(Seal)
Notary Signature	Date
<b>NOTARY CERTIFICATION</b>	

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared BERTHA S. M. AWA, to me personally known or adequately proven to be the person(s) described in and who executed the foregoing instrument, who, being by me duly sworn or affirmed, did say that such person(s) executed the same as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
(Printed name)

My commission expires: \_\_\_\_\_

Doc. Date: _____	# Pages: _____
Name: _____	First Circuit
Doc. Description: _____	
_____	(Seal)
Notary Signature	Date
<b>NOTARY CERTIFICATION</b>	

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared SHEILA ANN ISERI, to me personally known or adequately proven to be the person(s) described in and who executed the foregoing instrument, who, being by me duly sworn or affirmed, did say that such person(s) executed the same as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
(Printed name)

My commission expires: \_\_\_\_\_

Doc. Date: _____	# Pages: _____
Name: _____	First Circuit
Doc. Description: _____	
_____	(Seal)
Notary Signature _____	Date _____
<b>NOTARY CERTIFICATION</b>	

**EXHIBIT "A"**

PARCEL FIRST:

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

LOT A-71, area .139 acre, more or less, as shown on Map 18, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 979 of Bishop Trust Company, Limited.

Being the land described in Transfer Certificates of Title Nos. 242,504 and 263,624.

PARCEL SECOND:

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Number 1552, Land Commission Award Number 2246-D, Apana 1 to Ioba) situate, lying and being at Kahaluu, District of Koolaupoko, City and County of Honolulu, State of Hawaii, containing an area of 1.52 acres, Tax Map key No. 4-7-25-017 and thus bounded and described:

Beginning at the north corner of Lot A-71 of Land Court Application 979, as shown on Map 10 of said Land Court Application, and thence running:

1.	236° 20'	317.10	feet along Lots A-70 and A-72 of Ld. Ct. App. 979;
2.	316° 4'	76.00	feet along Lot A-72 of Ld. Ct. App. 979;
3.	54° 24'	178.90	feet along same;
4.	330° 43'	181.00	feet along same;
5.	54° 43'	243.45	feet along same;
6.	167° 47'	288.05	feet along Lot A-71 to the point of beginning.

Being the land having been acquired as follows:

1. By BISHOP TRUST COMPANY, LIMITED, as Trustee of that certain residuary trust created under the Last Will and Testament of Joseph M. Awa, Sr. dated February 14, 1977, as to an undivided 1/2 interest, by ORDER APPROVING FINAL ACCOUNTS AND DISTRIBUTING AND SETTLING ESTATE had in the matter of the estate of JOSEPH M.

AWA, SR., aka JOSEPH M. AWA, aka JOSEPH MAKA AWA, aka JOSEPH MAKA AWA, SR., deceased, dated January 16, 1980, filed in the Circuit Court of the First Circuit, State of Hawaii, Probate No. 39881, on January 17, 1980, recorded in Liber 23117 at Page 725.

2. By BISHOP TRUST COMPANY, LIMITED, a Hawaii corporation, Trustee under unrecorded Trust Agreement of the Bertha Pang Awa Revocable Trust dated May 23, 1984, with full powers to sell, mortgage, lease or otherwise deal with the land, as to an undivided 1/2 interest, by QUITCLAIM DEED of BERTHA SAM MOI AWA, unmarried, dated August 3, 1989, recorded in Liber 23521 at Page 195.

Note:

1. AFFIDAVIT TO NOTE RESIGNATION OF TRUSTEE AND ACCEPTANCE OF TRUSTEESHIP BY DESIGNATED SUCCESSOR TRUSTEE dated August 7, 1997, recorded as Document No. 97-136842 sets forth the following:

(a) The resignation of HAWAIIAN TRUST COMPANY, LIMITED, as Trustee of the Joseph M. Awa, Sr. Trust dated February 14, 1977.

(b) The appointment of MAXIE V. AWA, also known as Maxie Virginia Kamekona Awa, wife of Bertram Lee Awa, as Successor Trustee of the Joseph M. Awa, Sr. Trust dated February 14, 1977; and ELLEN E. AWA, also known as Ellen Emiko Ikehara Awa, wife of Joseph Maka Awa, Jr., as alternate Successor Trustee of said Trust.

2. AFFIDAVIT TO NOTE RESIGNATION OF TRUSTEE AND ACCEPTANCE OF TRUSTEESHIP BY DESIGNATED SUCCESSOR TRUSTEE dated August 7, 1997, recorded as Document No. 97-136843 sets forth the following:

(a) The Resignation of HAWAIIAN TRUST COMPANY, LIMITED, as Trustee under unrecorded Trust Agreement of the Bertha Pang Awa Revocable Trust dated May 23, 1984.

(b) The appointment of BERTHA S. M. AWA, also known as Bertha Sam Moi Awa, Bertha P. Awa and Bertha Pang Awa; and SHEILA ANN ISERI, also known as Sheila Ann Ululani Awa Iseri, as Successor Co-Trustees of the Bertha S. M. Awa Revocable Trust dated May 23, 1984, as amended (formerly known as the Bertha Pang Awa Revocable Trust).

**END OF EXHIBIT ``A``**

[Form: 2/13]