

A BILL FOR AN ORDINANCE

TO REZONE LAND SITUATED AT KAHALUU, OAHU, HAWAII.

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

SECTION 1. Zoning Map No. 21 (Kualoa-Waiahole-Kahaluu), Ordinance 86-122, is hereby amended as follows: Land situated at 47-357 Ahuimanu Road, Kahaluu, Oahu, Hawaii hereinafter described, is hereby rezoned from the AG-2 General Agricultural District to the R-10 Residential 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: 4-7-025: 016, 017, and portion of 024.

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

DPP13Z-10.B14



A BILL FOR AN ORDINANCE

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

INTRODUCED BY:

[Handwritten signature]
_____ (br)

DATE OF INTRODUCTION:

APR 1 2014

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

[Handwritten signature]

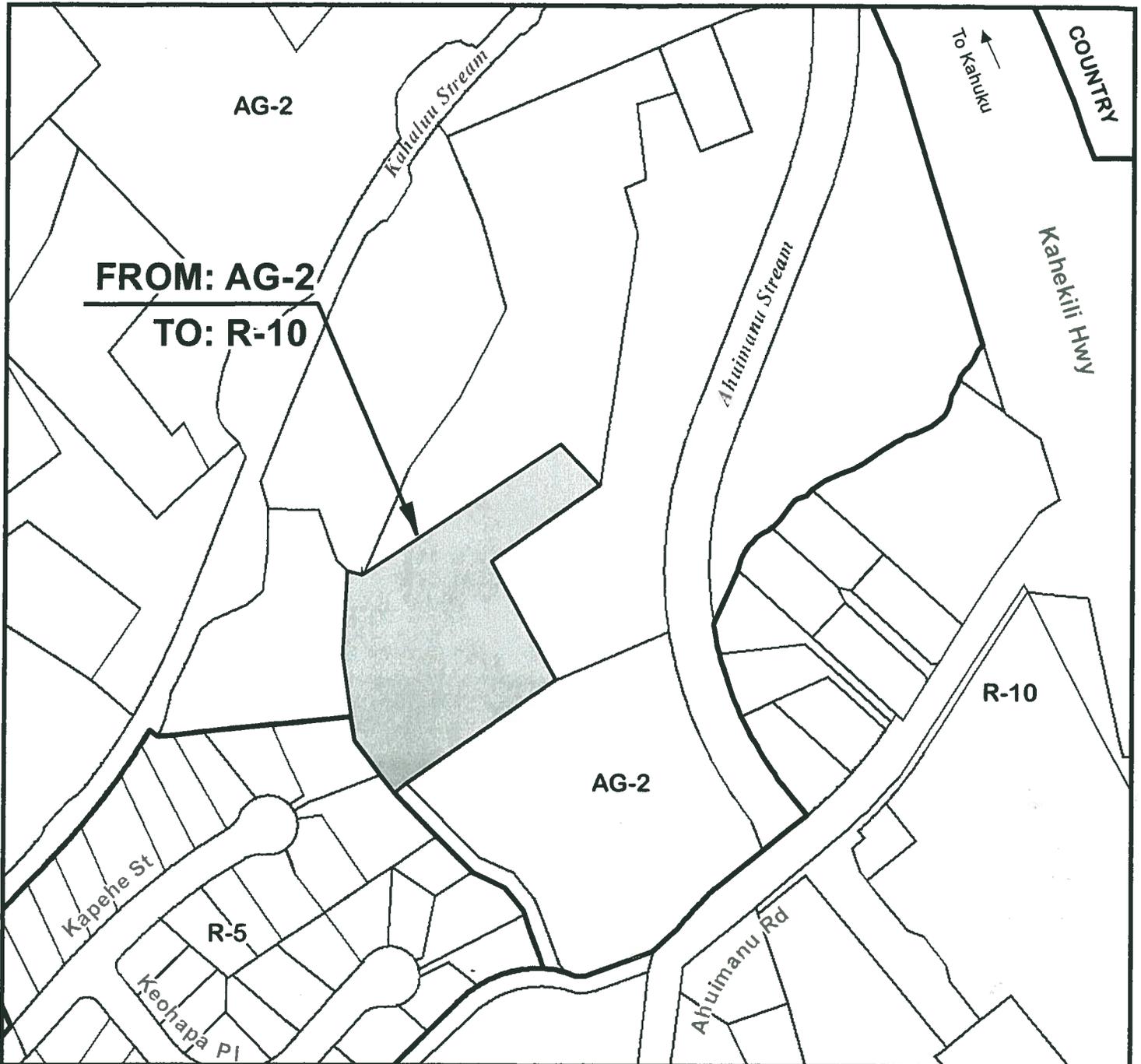
Deputy Corporation Counsel DON S. KITAOKA

APPROVED this 20 day of June, 20 14.

[Handwritten signature]

KIRK CALDWELL, Mayor
City and County of Honolulu

15:00 MA 1 - 99A JDS
C & C OF HONOLULU
CITY CLERK
RECEIVED



PORTION OF
ZONING MAP NO. 21
(KUALOA - WAIHOLE - KAHALUU)

Lands situated approximately 400' Northwestly of Ahuimanu Road between Ahuimanu Stream and Kahaluu Stream.

APPLICANT: BERTHA S.M. AWA TRUST
(AKA BERTHA P. AWA TRUST)

TAX MAP KEY(S): 4-7-025:016, 017 & por. of 024

FOLDER NO.: 2013/Z-10

LAND AREA: APPROXIMATELY 1.785 ACRES

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

PUBLIC HEARING PLANNING COMMISSION CITY COUNCIL



ORD. NO. 14-14

MAR 5 2014

MAY 07 2014 2013/Z-8

EFF. DATE: JUN 20 2014

EXHIBIT A

BILL 29 (2014)

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

The original of this document was
recorded as follows:

DOCUMENT NO. Doc T - 8914343
CT 242504, 263624
DATE May 29, 2014 8:02 AM

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES
DATE _____ Doc A - 52620597
DOCUMENT NO. May 29, 2014 8:02 AM

LAND COURT

REGULAR SYSTEM

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

THE GRAD LAW FIRM
DAVIES PACIFIC CENTER, SUITE 1800
841 BISHOP ST, HONOLULU, HI 96813

Total pages: 12

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]

EXHIBIT B

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 20th day of May, 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,

[Form: 2/13]

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. 166 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 (47-357-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:

[Form: 2/13]

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.

[Form: 2/13]

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:

[Form: 2/13]

Maxie V. Awa

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,

Bertha S. M. Awa

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

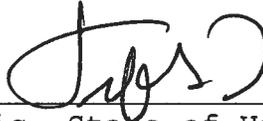
Sheila Ann Iseri

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

[Form: 2/13]

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

On this 20th day of MAY, 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.

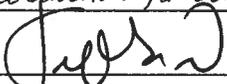


Notary Public, State of Hawaii

Jeffrey S. Grad

(Printed name)

My commission expires: 11/20/14

Doc. Date: <u>5/20/14</u>	# Pages: <u>12</u>
Name: <u>Jeffrey S. Grad</u>	First Circuit
Doc. Description: <u>Unilateral Agreement; Declaration for Conditional Zoning</u>	
	(Seal)
Notary Signature	Date
NOTARY CERTIFICATION	

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

On this 20th day of May, 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.

Jeffrey S. Grad

Notary Public, State of Hawaii

Jeffrey S. Grad

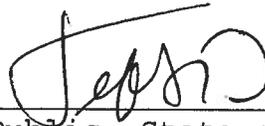
(Printed name)

My commission expires: 11/20/14

Doc. Date: <u>5/20/14</u>	# Pages: <u>12</u>
Name: <u>Jeffrey S. Grad</u>	First Circuit
Doc. Description: <u>Unilateral Agreement / Declaration for Conditional Zoning</u>	
<i>Jeffrey S. Grad</i>	(Seal)
Notary Signature	Date <u>5/20/14</u>
NOTARY CERTIFICATION	

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

On this 20th day of MAY, 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

Jeffrey S. Grad

(Printed name)

My commission expires: 11/20/14

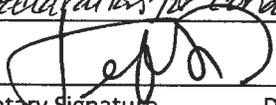
Doc. Date: <u>5/20/14</u>	# Pages: <u>12</u>
Name: <u>Jeffrey S. Grad</u>	First Circuit
Doc. Description: <u>Unilateral Agreement; Declaratory by Conditional Zoning</u>	
	(Seal)
Notary Signature	Date <u>5/20/14</u>
NOTARY CERTIFICATION	

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.

[Form: 2/13]

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 MAKI AWA, aka JOSEPH MAKI 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:

[Form: 2/13]

(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]

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 14-14

BILL 29 (2014)

Introduced: 04/01/14 By: ERNEST MARTIN (BR)

Committee: ZONING AND PLANNING

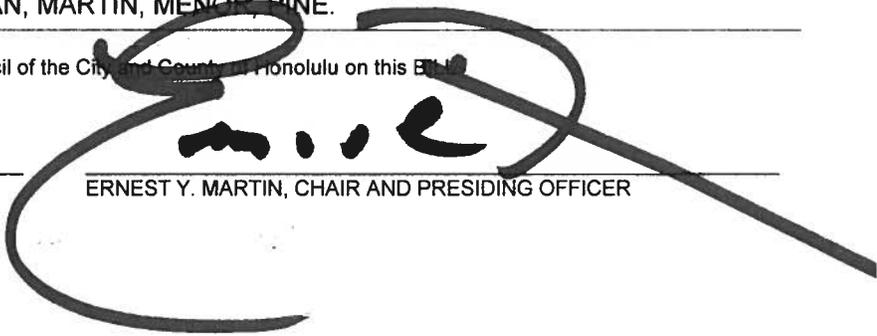
Title: A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT KAHALUU, OAHU, HAWAII.

Voting Legend: * = Aye w/Reservations

04/16/14	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.
04/24/14	ZONING AND PLANNING	CR-121 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
04/26/14	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
05/07/14	COUNCIL/PUBLIC HEARING	CR-121 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.
05/13/14	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
05/22/14	ZONING AND PLANNING	CR-166 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
06/04/14	COUNCIL	CR-166 ADOPTED AND BILL 29 (2014) PASSED THIRD READING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, 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. M. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER