



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 04 - 08

BILL 4 (2004), CD1

A BILL FOR AN ORDINANCE

TO REZONE LANDS SITUATED AT EWA, OAHU, HAWAII (AMENDING PORTION OF ZONING MAP NO. 12, EWA BEACH-IROQUOIS POINT, ORDINANCE NO. 86-114).

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

SECTION 1. Land situated at Ewa, Oahu, Hawaii, hereinafter described, is hereby rezoned from AG-1 Restricted Agricultural District, AG-2 General Agricultural District and R-5 Residential District to R-5 Residential District, A-1 Low Density Apartment District, IMX-1 Industrial-Commercial Mixed Use District with a 40-foot height limit, and P-2 General Preservation District. The boundaries of said Districts shall be described as shown on the map attached hereto, marked "Exhibit A-1" and made a part hereof, and further identified as Tax Map Key: 9-1-010:007, 9-1-069:005 and 9-1-069:006 (portion).

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:

Donovan Dela Cruz (BR)

DATE OF INTRODUCTIONS:

Councilmembers

January 22, 2004

Honolulu, Hawaii

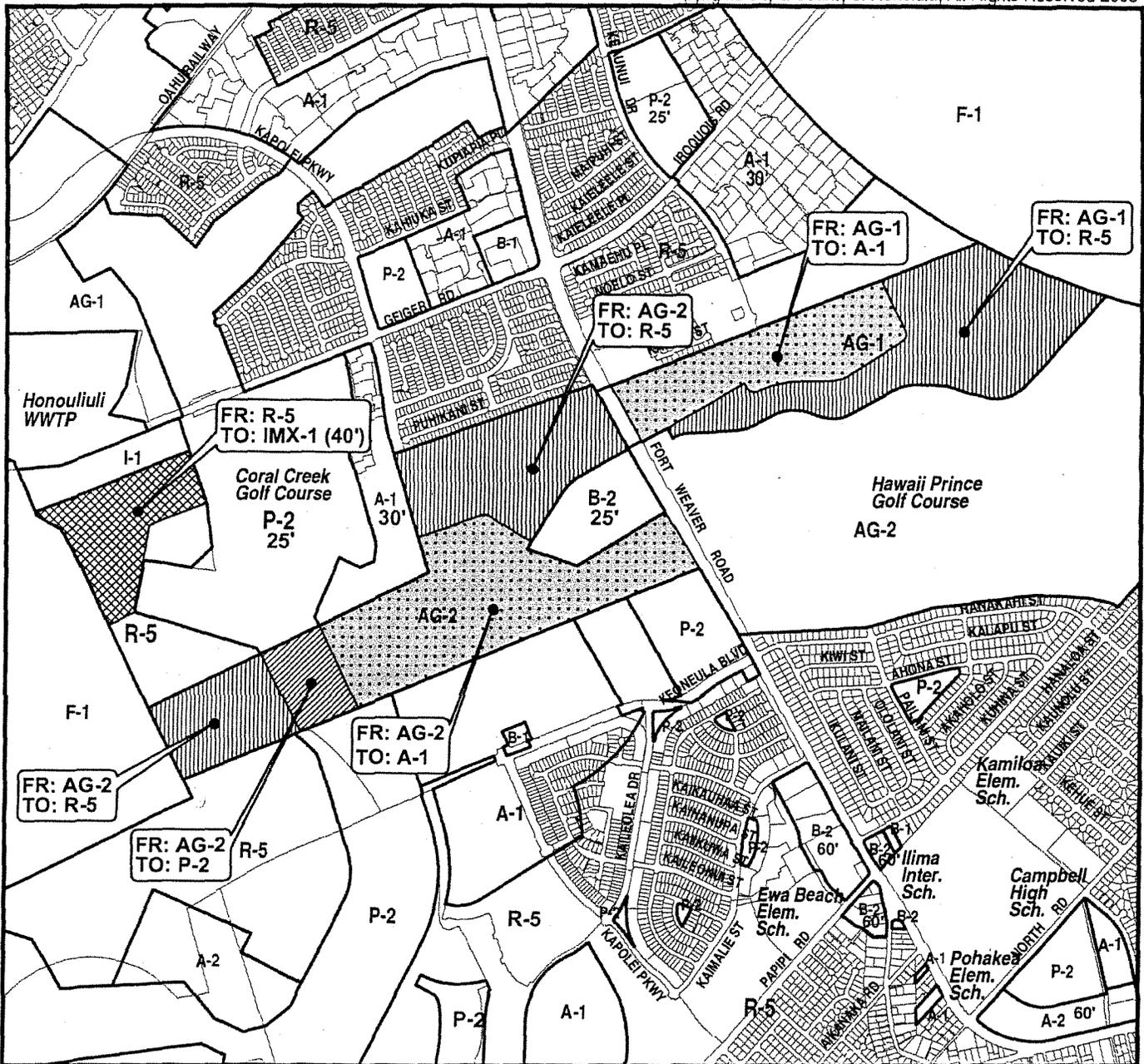
APPROVED AS TO FORM AND LEGALITY:

Don S. Kitoaka
Deputy Corporation Counsel

APPROVED this 7th day of April, 2004.

Benjamin B. Lee
BENJAMIN B. LEE, ACTING MAYOR
City and County of Honolulu

(OCS/030504/mg)



PORTION OF
ZONING MAP NO. 12
 (EWA BEACH - IROQUOIS POINT)



0 500 1,000 2,000
 Scale in Feet



APPLICANT: GENTRY INVESTMENT PROPERTIES

TAX MAP KEY(S): 9-1-010: 007; 9-1-069: 005 and Por. 6

FOLDER NO.: 2003/Z-9

LAND AREA: Approx. 315 Acres

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

PUBLIC HEARING: PLANNING COMMISSION

CITY COUNCIL
 2/18/04

ORD. NO. 04-08

JAN 07 2004

2003/Z-9

EFF. DATE: APR 07 2004

EXHIBIT A-1

BILL 4 (2004), CD1

I hereby certify that this is a true copy from the records of the Bureau of Conveyances, as 3084363.

M. Kekua-Halvick
for Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii MAR 17 2004

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

Gentry Investment Properties-Legal Dept.
P. O. Box 295
Honolulu, HI 96809

ITC 226567

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for Conditional Zoning

DECLARANT: Gentry Investment Properties, a Hawaii limited partnership

TMK Nos. 9-1-69:005 and 006 (portion); 9-1-010:007

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE, hereinafter referred to as this "Unilateral Agreement" or this "Declaration", made this 16th day of March, 2004, by GENTRY INVESTMENT PROPERTIES, a Hawaii limited partnership, whose post office address is P. O. Box 295, Honolulu, Hawaii 96809 ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of those certain parcels of land situated in Ewa, Oahu, Hawaii, consisting of approximately 283 acres, described as Tax Map Key Nos. 9-1-010:007 and 9-1-069:005 and that certain parcel of land situated in Ewa, Oahu, Hawaii, consisting of approximately 32 acres, described as Tax Map Key No. 9-1-069:006 (por.), which parcels of land are more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Land"), and

WHEREAS, the Declarant desires to make the Land subject to this Unilateral Agreement; and



WHEREAS, the Declarant, or its affiliate, Gentry Homes, Ltd., plans to develop single family and multi-family dwelling units, an industrial-commercial mixed use complex, a school site, public park sites, and other community facilities (the "Project") on the Land; and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu, State of Hawaii (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 Project Land from AG-1 Restricted Agricultural District and AG-2 General Agricultural District to R-5 Residential District, A-1 Low Density Apartment District, and P-2 General Preservation District, and from R-5 Residential District to IMX-1 Industrial Commercial Mixed Use District with a 40-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning [Bill No. 4 (2004)] was held by the Council on February 18, 2004; and

WHEREAS, the Council recommended in its Zoning Committee Report No. 80 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, Declarant hereby covenants and declares as follows:

1. **MASTER PLANS** – The Declarant shall develop conceptual plans which shall further describe and govern the development of the IMX-1 area to be located in a portion of TMK: 9-1-069:005. These conceptual plans shall conform to the policies, principles and guidelines in the Ewa Development Plan. These conceptual plans shall be submitted to the Department of Planning and Permitting (DPP) for review and approval prior to approval of any subdivision or grading permit for the IMX-1 area. The conceptual plans required pursuant to this condition shall include the following:

- a. Master Site Plan. This plan shall identify the following elements:
 - 1) All proposed public roadways, bikeways and transit stops, major pathways, and all proposed private internal roadways; and
 - 2) All proposed IMX-1 district lots.

- b. Master Landscape Plan. This plan shall at a minimum include the following elements:
 - 1) Except for the boundaries abutting the I-1 district, Coral Creek Golf Course and Kalaeloa (formerly Naval Air Station Barbers Point), which shall not require a buffer, there shall be a minimum 20-foot landscaped buffer within the IMX-1 district adjacent to the R-5 district to mitigate potential noise, visual and air quality impacts. The buffer areas shall be established as landscaped easements and shall be subject to the following requirements and restrictions:

- a) Except for off street parking, which shall be allowed within the ten-foot interior perimeter of the buffer area, no structures or uses, including loading, maneuvering and parking of equipment and delivery vehicles, and trash and storage areas, shall be permitted in this buffer area;
 - b) The buffer areas shall be landscaped with ground cover, hedges, and medium and large canopy form trees to screen the IMX-1 district from adjacent R-5 lots;
 - c) Walls or fences higher than four feet shall not be permitted in the buffer areas adjacent to the Primary Access Roadway (referred to in Condition 1.b.(1)(c) of the Unilateral Agreement incorporated in Ordinance 98-44 as the “eastern perimeter roadway”); and
 - d) Except for emergency exit doors required by the City’s building code and fixed windows, no doors or openings shall be permitted in building walls facing the R-5 district to mitigate potential noise and air quality impacts to future homeowners.
- 2) In addition, solid walls at least 8 feet in height shall be erected along any property line between the IMX-1 district and R-5 districts. Maintenance obligations of the 20-foot setback, 8-foot walls, and landscaping shall be the responsibility of the fee owner of the IMX-1 properties and shall be incorporated as covenants running with the land for all affected IMX-1 lots. A draft of the covenants shall be submitted to the DPP for review and approval prior to recordation. All existing unilateral conditions affecting TMK: 9-1-069:006 shall remain in force.

2. **AFFORDABLE HOUSING PROGRAM** - Prior to subdivision, cluster or building permit approval, whichever comes first, the Declarant shall execute a binding agreement to participate in an affordable housing plan acceptable to the Department of Planning and Permitting in accordance with adopted rules. The agreement shall provide for no less than the equivalent of 30 percent of the units to be delivered to households with incomes up to and including 120 percent of the median income levels or less; including no less than the equivalent of 10 percent of the units to be delivered to households with incomes up to and including 80 percent of the median income level or less. “Median income level” means the median income for Honolulu, adjusted for family size, as determined by the United States Secretary of Housing and Urban Development. A portion of the requirement may be met by affordable housing units in the Ewa by Gentry project not needed to meet the requirements for Ewa by Gentry.

3. **DRAINAGE** - The Declarant shall prepare revised drainage master plans for Ewa Makai-East and Ewa Makai-West. These revised drainage master plans shall be submitted to the DPP for review and approval prior to approval of any subdivision or grading permit for an area served by the drainage plan. The developer and/or association owners shall be required to maintain all on-site grass-lined drainage channels, swales, and detention basins. Evidence that such a requirement has been incorporated as a covenant shall be submitted before subdivision

approval for an affected area.

4. **WASTEWATER** - The Declarant shall prepare and submit a Site Development Master Application for Sewer Connection to the Department of Planning and Permitting prior to approval of any subdivision or grading permit.

5. **EDUCATION** - By July 1, 2005, or later as determined in writing by the Department of Education (DOE), the Declarant shall convey approximately 18 acres of land within the Project area to the State of Hawaii for a school site to meet the DOE's fair share school contribution requirement for the Project. The Department of Planning and Permitting shall not approve subdivision applications unless timely compliance with the terms of the executed "Education Contribution Agreement for Gentry Ewa Makai" dated July 23, 2003 is being made as determined in writing by the DOE.

6. **TRANSPORTATION** - The Declarant shall carry out the following requirements related to traffic and transportation improvements:

- a. Fund and construct the recommended traffic and roadway improvements described in the Traffic Impact Assessment Report (dated August 2003). The scheduling of the traffic and roadway improvements shall be coordinated among the Declarant and the DPP's Transportation Review Branch after consulting with the City's Department of Transportation Services (DTS), and the State's Department of Transportation (DOT). The Declarant shall also complete its portion of Kapolei Parkway between Declarant's Sun Terra residential subdivision (in Ewa by Gentry) and the northern boundary of Ocean Pointe on or before the 500th residential housing unit of this project is completed.
- b. Prepare periodic updates to the TIAR (dated August 2003) as may be required by the DPP's Traffic Review Branch after consultation with the DTS and DOT.
- c. Provide a 12-foot wide landscaped setback along the Declarant's property fronting Fort Weaver Road to minimize potential impacts to adjacent uses.
- d. Provide pedestrian, bicycle, and if necessary, vehicular access from Gentry Ewa Makai to Ocean Pointe in the vicinity of the district park and elementary school planned in Ocean Pointe. The access shall be identified on the Declarant's revised Roadway Master Plan that shall be submitted to the Department of Planning and Permitting prior to approval for any subdivision or grading permit for the Ewa Makai West area. This requirement is to be resolved to the satisfaction of DPP and DOE.

7. **CIVIL DEFENSE** - The Declarant shall install and activate a new civil defense warning siren in the vicinity of the project's 3.5-acre park before the first residential housing unit is occupied. The Declarant shall submit construction plans for the proposed siren to the City's Oahu Civil Defense Agency and the State's Civil Defense Agency to ensure that the new warning siren is installed and activated to their satisfaction.

8. **DUST MITIGATION** - The Declarant shall be required to prepare and submit a dust control plan to the Department of Health for its review and approval prior to approval for any

subdivision or grading permit.

9. **NOISE MITIGATION** - All housing that will be located within the 60 DNL noise contour shall be attenuated to 45 DNL or lower.

10. **DISCLOSURES** - The Declarant shall inform all prospective purchasers or lessees of residential properties in the Project of the potential impacts, including but not limited to traffic and aircraft noise; and noise and odor impacts from the Honouliuli Wastewater Treatment Plant, the future light-industrial park and industrial-commercial mixed-use complex.

11. **PRIOR AGREEMENTS** - The conditions established in that certain Unilateral Agreement filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on June 29, 1998 as Document No. 2467238, and incorporated in Ordinance 98-44, shall remain in effect. In the event of any conflict between said conditions and the conditions of this Unilateral Agreement, the conditions of this Unilateral Agreement shall prevail.

12. **AVIGATION EASEMENT** - Prior to building permit approval for the affected land with 60 DNL noise contours or higher, the Declarant shall grant an avigation easement to the DOT, Airports Division, for an area of the Project that falls within the 60 DNL noise contour or higher as identified on noise exposure maps described in Section 508D-15(2), HRS. The exact area of said avigation easement shall be established to the satisfaction of the DOT, Airports Division.

13. **COMPLIANCE WITH OTHER GOVERNMENTAL REQUIREMENTS** - The Declarant acknowledges that approval of this zone change does not constitute compliance with other Land Use Ordinance or governmental agencies' 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 Land Use Ordinance and other governmental agencies' provisions and requirements.

14. **ANNUAL REPORTS** - On 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.

15. **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 institute action to rezone the Land, seek civil enforcement, or take appropriate action to terminate or stop the Project until applicable conditions are met.

16. **FAILURE TO FULFILL ANY CONDITIONS** - Failure to fulfill any conditions to the zone change may be grounds for revocation of the permits issued under this zoning and 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, Declarant hereby makes the following additional declarations:

As used herein, any 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 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.

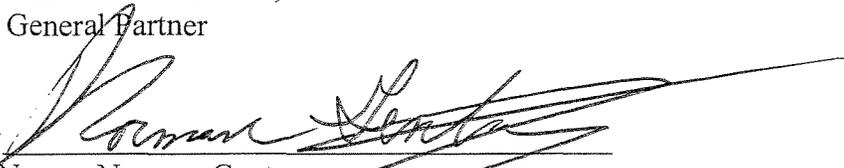
Development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the DPP may fully or partially release, as applicable, any of the foregoing conditions that have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

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 shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that Declarant or its successors and assigns may file a petition with the DPP 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 Declarant has executed this Unilateral Agreement as of the day and year first above written.

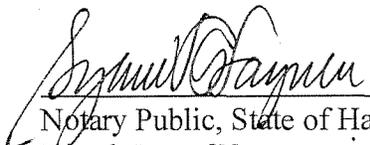
GENTRY INVESTMENT PROPERTIES,
a Hawaii limited partnership

By GENTRY-PACIFIC, LTD.
Its General Partner

By: 
Name: Norman Gentry
Title: President

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

On March 16, 2004, before me appeared NORMAN H. GENTRY, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing instrument as the free act and deed of such person, and in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Notary Public, State of Hawaii
Printed Name of Notary: SYLVIA T. HAYASHI
My commission expires: 10-26-07

EXHIBIT A

FIRST: (Parcel identified as Parcel 1 on attached Exhibit A-1, R-5 to IMX-1)
Tax Map No. 9-1-69:005 (por.), being also a portion of Lot 15254, as shown on Map 1175 of Land Court Application 1069, and noted on Land Court Certificate of Title No. 664,039 issued to Gentry Investment Properties.

SECOND: (Parcel identified as Parcel 2 on attached Exhibit A-1, AG-2 to R-5)
Tax Map No. 9-1-69:005 (por.), being also a portion of Lot 11252-A as shown on Map 861 of Land Court Application 1069, and noted on Land Court Certificate of Title No. 667,069 issued to Gentry Investment Properties.

THIRD: (Parcel identified as Parcel 3 on attached Exhibit A-1, AG-2 to P-2)
Tax Map No. 9-1-69:005 (por.), being also a portion of Lot 11252-A as shown on Map 861 of Land Court Application 1069, and noted on Land Court Certificate of Title No. 667,069 issued to Gentry Investment Properties.

FOURTH: (Parcel identified as Parcel 4 on attached Exhibit A-1, AG-2 to A-1)
Tax Map No. 9-1-69:005 (por.), being also a portion of Lot 11252-A as shown on Map 861 of Land Court Application 1069, and noted on Land Court Certificate of Title No. 667,069 issued to Gentry Investment Properties.

FIFTH: (Parcel identified as Parcel 5 on attached Exhibit A-1, AG-2 to R-5)
Tax Map No. 9-1-69:005 (por.), being also a portion of Lot 11252-A as shown on Map 861 of Land Court Application 1069, and noted on Land Court Certificate of Title No. 667,069 issued to Gentry Investment Properties.

SIXTH: (Parcel identified as Parcel A on attached Exhibit A-2, AG-1 to A-1)
Tax Map No. 9-1-010:007 (por.), being all of Lot 15603, as shown on Map 1192 of Land Court Application 1069, and noted on Land Court Certificate of Title No. 687,385 issued to Gentry Investment Properties; and also a portion of Lot 15604, as shown on Map 1192 of Land Court Application 1069, and noted on Land Court Certificate of Title No. 687,386 issued to Gentry Investment Properties.

SEVENTH: (Parcel identified as Parcel B on attached Exhibit A-2, AG-1 to R-5)
Tax Map No. 9-1-010:007 (por.), being also a portion of Lot 15604, as shown on Map 1192 of Land Court Application 1069, and noted on Land Court Certificate of Title No. 687,386 issued to Gentry Investment Properties.

End of Exhibit "A"

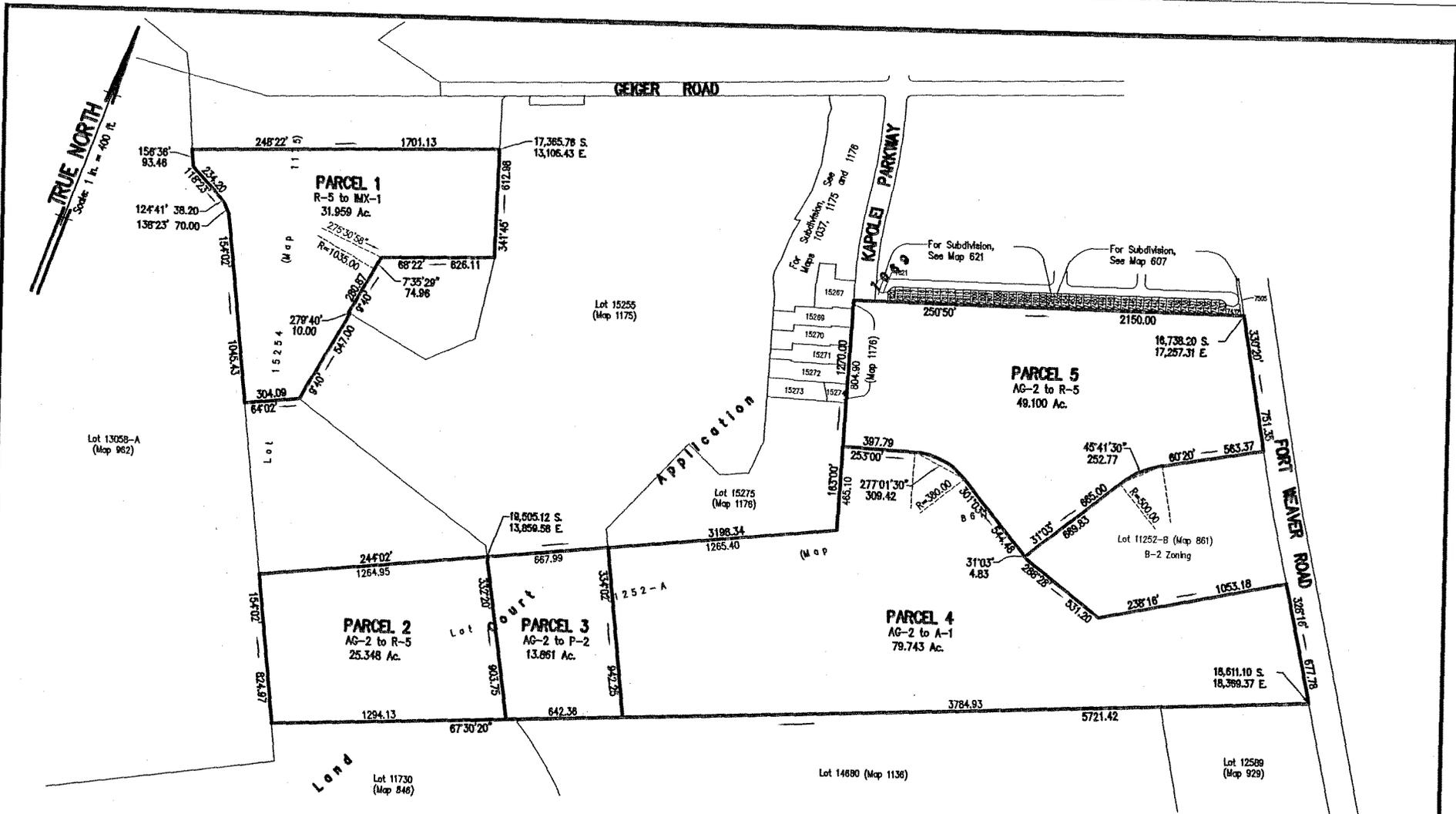


EXHIBIT A-1
EWA MAKAI-WEST PARCELS

Being Portions of Land Court Application 1069

AT HONOLULU, EWA, OAHU, HAWAII

Tax Map Key 9-1-69: 5 and 6

NOTE:
Azimuths and Coordinates
referred to "KAPUAI HEW"

BELT COLLINS HAWAII LTD.
2153 North King Street
Suite 200
Honolulu, Hawaii 96819

TRUE NORTH
Scale: 1 in. = 300 ft.

FORT
WEAVER
ROAD

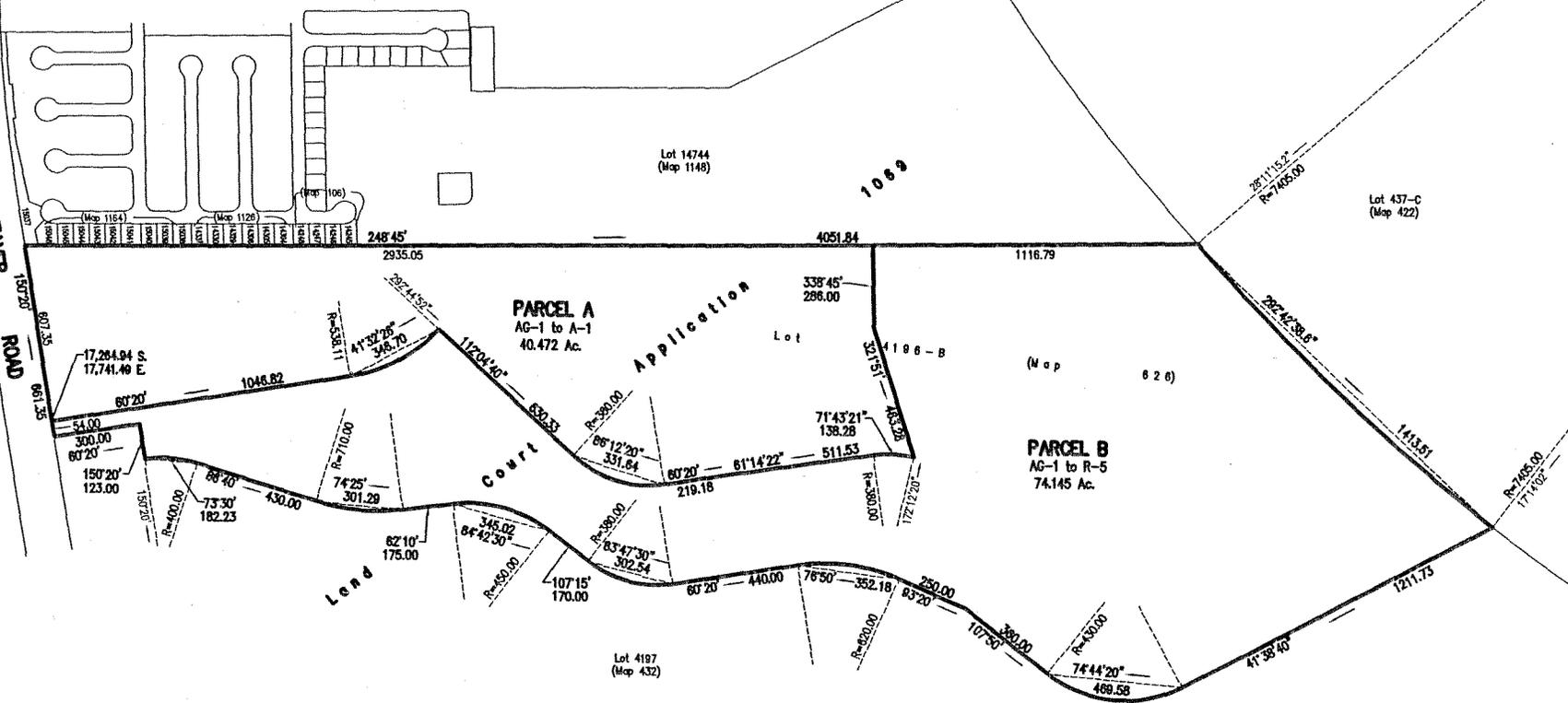


EXHIBIT A-2
EWA MAKAI-EAST PARCELS

Being Portions of Land Court Application 1099

AT HONOLULU, EWA, OAHU, HAWAII

Tax Map Key 9-1-10: 7

NOTE:
Azimuths and Coordinates
referred to "KAPUAI NEW" Δ

BELT COLLINS HAWAII LTD.
2153 North King Street
Suite 200
Honolulu, Hawaii 96819

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 04 - 08

BILL 4 (2004)

Introduced: 1/22/04 By: CHAIR DONOVAN DELA CRUZ (BY REQUEST) Committee: ZONNG

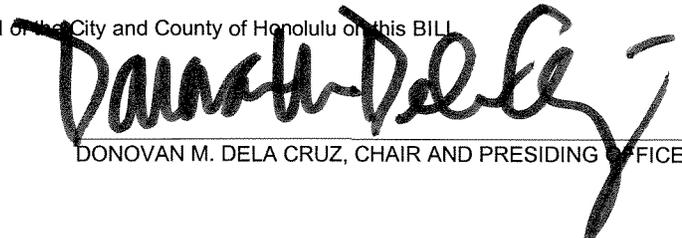
Title: A BILL FOR AN ORDINANCE TO REZONE LANDS SITUATED AT EWA, OAHU, HAWAII (AMENDING PORTION OF ZONING MAP NO. 12, EWA BEACH-IROQUOIS POINT, ORDINANCE NO. 86-114).

Links: [4 \(2004\)](#)
[BILL 4 \(2004\), CD1](#)
[CR40](#)
[Related Communications](#)

Council	1/28/04	Passed first reading and referred to Committee on Zoning. Cachola Y Dela Cruz Y Djou Y Gabbard Y Garcia ... Y Kobayashi Y Marshall Y Okino Y Tam Y
Zoning	2/3/04	CR-40 – Reported out of committee for passage on second reading and scheduling of a public hearing.
Publish	2/7/04	Public Hearing Notice published in Honolulu Star-Bulletin.
Council/ Public Hearing	2/18/04	Passed second reading, CR-40 adopted, public hearing closed and referred to Zoning Committee. Cachola Y Dela Cruz Y Djou Y Gabbard Y Garcia ... Y Kobayashi Y Marshall Y Okino Y Tam Y
Publish	3/2/04	Second Reading Notice published in the Honolulu Star-Bulletin.
Zoning	3/9/04	CR-80 – Reported out of committee for passage on third reading as amended in CD1 form.
Council	3/24/04	Passed third reading, as amended (CD1), and CR-80 adopted. Cachola Y Dela Cruz Y Djou Y Gabbard Y Garcia ... Y Kobayashi Y Marshall Y Okino Y Tam Y

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.


DENISE C. DE COSTA, CITY CLERK


DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER

04 - 08