



RESOLUTION

ASSIGNING TO THE DIRECTOR OF PLANNING AND PERMITTING A PROPOSAL TO AMEND ORDINANCE 86-99 (RE: REZONING FOR TURTLE BAY REPORT EXPANSION PROJECT) BY AMENDING THE UNILATERAL AGREEMENT INCORPORATED THEREIN BY REFERENCE.

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended (RCH), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and

WHEREAS, Section 6-1513, RCH, further provides that "[a]ny such revision or amendment shall be referred to the director and the planning commission by resolution, which resolution shall be accompanied by supporting documentation sufficient to satisfy the director's usual requirements for the commencement of processing"; and

WHEREAS, for the purposes of the RCH, the term "zoning ordinances" refers both to the codification of land use standards in the Land Use Ordinance and to ordinances zoning and rezoning particular parcels of property (Section 6-1514, RCH); and

WHEREAS, pursuant to Section 21-2.80(d), Revised Ordinances of Honolulu 1990, as amended (ROH), "[c]hanges or alterations of conditions [set forth in unilateral agreements] shall be processed in the same manner as the zone change"; and

WHEREAS, Ordinance 86-99 rezoned lands situated in Kahuku to permit the expansion of the existing resort development at Turtle Bay; and

WHEREAS, a Unilateral Agreement and Declaration for Conditional Zoning ("U/A") designated as Document No. 5532.00, was incorporated into Ordinance 86-99; and

WHEREAS, in 1986, by its enactment of Ordinance 86-99 and adoption of Resolution 86-308, the City Council granted zoning and special management area use permit/shoreline setback variance ("SMP/SV") approvals for the Turtle Bay Resort Expansion Project (the "Project"), described as a "master-planned resort community, including hotels, dwellings, commercial areas, golf courses, parks, roadways, utilities and other facilities"; and

WHEREAS, an Exhibit to the U/A depicted a Project development schedule with three phases, commencing in 1986 and ending in 1999; and

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WHEREAS, notwithstanding these approvals, there was little or no activity on the Project for the past 20 years; and

WHEREAS, recently, an application for subdivision approval for the Project was filed with the Department of Planning and Permitting ("DPP") and is now pending; and

WHEREAS, both the U/A and the SMP/SV for the Project approved in Ordinance 86-99 and Resolution 86-308 contained numerous conditions designed to mitigate environmental and other adverse impacts of the Project; and

WHEREAS, however, substantive changes in the laws and practices regarding issuance of land use permits have occurred since 1986, when the Project was granted SMP/SV and zoning approval; and

WHEREAS, for example, Condition 4 of the U/A attached to the zoning approval for the Project requires that 10 percent of the dwelling units not a part of a full service hotel operation shall be set aside for affordable housing; and

WHEREAS, the city rules regarding affordable housing requirements under Unilateral Agreements, adopted October 20, 1994, require 30 percent of the units in a project to be delivered as affordable housing; and

WHEREAS, accordingly, the U/A (Condition 4) for the Project would seem to be only a partial fulfillment of current city policy on the development of affordable housing; and

WHEREAS, in light of the above, it is the desire of the city council that the director of planning and permitting review all areas, including, but not limited to, affordable housing, park dedication requirements, traffic mitigation, historical preservation, and environmental regulations, where laws and practices regarding the issuance of land use permits may have changed since 1986 and that the director of planning and permitting and planning commission process a proposed bill to amend Ordinance 86-99 by amending the Unilateral Agreement conditions to reflect current laws and practices; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the director of planning and permitting is directed, pursuant to Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended, to process the proposed bill attached hereto as Exhibit "A," in the same manner as if the proposal had been proposed by the director; and



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BE IT FURTHER RESOLVED that the director of planning and permitting is requested to prepare a draft bill in essentially the form attached hereto as Exhibit "A" as a vehicle for planning commission and council consideration of the proposed amendment; and

BE IT FURTHER RESOLVED that in such draft bill, the director of planning and permitting shall set forth amendments to the U/A conditions in all areas where required to reflect current laws and practices; and

BE IT FURTHER RESOLVED that the director of planning and permitting is requested to assist the council in the proposed amendment to the Unilateral Agreement by gathering and preparing supporting documentation sufficient to satisfy the requirements to commence processing the amendment as required by Section 6-1513, RCH; and

BE IT FURTHER RESOLVED that the director of planning and permitting is directed to inform the council upon the transmittal of the director's report and the proposed amendment to the planning commission; and



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BE IT FINALLY RESOLVED that copies of this resolution and the Exhibit "A" attached hereto be transmitted to the director of planning and permitting.

INTRODUCED BY:

[Handwritten Signature]

DATE OF INTRODUCTION:

MAY 02 2006
Honolulu, Hawaii

Councilmembers

FILED
MAY 02 2007
PURSUANT TO ROH Sec. 1-2.5

EXHIBIT A



A BILL FOR AN ORDINANCE

TO AMEND ORDINANCE 86-99 BY AMENDING THE UNILATERAL AGREEMENT INCORPORATED THEREIN BY REFERENCE.

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

SECTION 1. The purpose of this ordinance is to amend the Unilateral Agreement incorporated by reference into Ordinance 86-99 to reflect current laws and practices pertaining to conditions for zone change.

SECTION 2. Ordinance 86-99, an ordinance to rezone lands situated in Kahuku, Koolauloa, Oahu, Hawaii (amending portion of Zoning Map No. 19, Kahuku - Laie, Ordinance No. 84-15), is amended by amending the Unilateral Agreement incorporated by reference into Ordinance 86-99 as set forth in Exhibit "A" attached hereto, incorporated herein, and made a part hereof.



A BILL FOR AN ORDINANCE

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

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 2006.

MUFU HANNEMANN, Mayor
City and County of Honolulu



LAND COURT

REGULAR SYSTEM

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

TITLE OF DOCUMENT: Amendment to Unilateral Agreement and
Declaration for Conditional Zoning

PARTY(IES) TO DOCUMENT:

DECLARANT: KUILIMA RESORT COMPANY

TAX MAP KEY FOR PROPERTY:

AMENDMENT TO UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

EXHIBIT A

THIS INDENTURE (hereinafter referred to as this "Amendment to Unilateral Agreement" or this "Declaration"), made this _____ day of _____, 20__, by KUILIMA RESORT COMPANY (hereinafter referred to as the "Declarant"), a Hawaii general partnership, whose address is _____

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of certain parcels of land situated in Kahuku, Koolauloa, Oahu, Hawaii, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"); and

WHEREAS, Ordinance No. 86-99 of the City and County of Honolulu, effective on _____, rezoned the Land from R-6 Residential, AG-1 Restricted Agricultural, P-1 Preservation, A-1 Low-Density Apartment and H-1 Resort Hotel Districts to P-1 Preservation, H-1 Resort Hotel and B-1 Neighborhood Business Districts; and

WHEREAS, as authorized by the Land Use Ordinance, Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, said zone change was approved subject to certain conditions set forth in a Unilateral Agreement and Declaration for Conditional Zoning (the "Unilateral Agreement") executed by the Declarant; and

WHEREAS, the Unilateral Agreement was recorded on _____, 1986, in the _____ of the State of Hawaii as Document No. _____; and

WHEREAS, the Unilateral Agreement is incorporated by reference into Ordinance No. 86-99; and

WHEREAS, the Declarant desires to amend the Unilateral Agreement as set forth herein; and

WHEREAS, a public hearing regarding the amendment, Bill __ (20__), was held by the City Council (the "Council") of the City and County of Honolulu (the "City") on _____; and

WHEREAS, the Council recommended by its Zoning Committee Report No. _____ that the said amendments be approved, pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, to become effective on the effective date of the zoning ordinance approving the amendments to the Unilateral Agreement;

NOW THEREFORE, the Declarant hereby covenants and declares that the Unilateral Agreement shall be amended as follows:

(To be described by DPP)

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 Amendment to 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 Amendment to Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Amendment to 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, this Amendment to Unilateral Agreement and Declaration for Conditional Zoning has been executed as of the day and year first above written.

DECLARANT:
