

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING (hereinafter referred to as this "Unilateral Agreement" or "Declaration"), is made on _____, 2025, by the STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, through its DIRECTOR OF TRANSPORTATION, whose principal address is 869 Punchbowl Street, Honolulu, Hawaii 96813, and whose authorized contact person is Edwin H. Sniffen, and any of its successors (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of that certain parcel of land situated in Mahinaahina, Maui, Hawaii, consisting of approximately 57.296 acres, and identified for real property tax purposes as Tax Map Key Nos. (2) 4-3-001:068, (2) 4-3-001:073, and (2) 4-3-001:75 (the "Property"), and desires to make the Property subject to this Unilateral Agreement; and

WHEREAS, in and under that certain Unilateral Agreement and Declaration for Conditional Use, dated December 16, 1985, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 19309, Page 785, as amended by that certain Amendment to Unilateral Agreement and Declaration for Conditional Use, dated October 18, 2000, recorded on December 1, 2000, in the Bureau as Document 2000-168906, the Declarant agreed to sixteen zoning conditions applicable to the change in zoning from Agricultural District to Airport District for the Kapalua Airport; and

WHEREAS, the Council of the County of Maui, State of Hawaii ("Council") is considering the establishment of zoning for the Property more particularly described in Exhibit "I", attached hereto and made a part hereof; and

WHEREAS, the Council recommends through its Disaster, Resilience, International Affairs, and Planning Committee, Committee Report No. 24-124, that said establishment of zoning be approved for passage on first reading subject to certain conditions pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant now agrees to amend the fourth zoning condition, to read as follows:

- "4. That the airstrip operations are limited to one-half hour after sunrise to 6:30 p.m., unless extended for emergency airstrip operations. "Emergency airstrip operations" are defined as any occasion or instance that warrants action to save lives and protect property and public health, and shall include emergencies declared pursuant to a Governor's Proclamation."; and

WHEREAS, the Declarant now agrees to a seventeenth zoning condition to

read as follows:

"17. That installation and use of runway lights at the Kapalua Airport are permitted for emergency airstrip operations only. The State Department of Transportation is not responsible for providing funding for the installation of runway lights."; and

WHEREAS, the consolidated amended set of conditions of zoning is attached as Exhibit "3", attached hereto and made a part hereof; and

WHEREAS, the Declarant intends that this Unilateral Agreement replace and supersede the Unilateral Agreement and Declaration for Conditional Use, dated December 16, 1985, recorded in the Bureau in Liber 19309, Page 785, as amended by that certain Amendment to Unilateral Agreement and Declaration for Conditional Use, dated October 18, 2000, and recorded on December 1, 2000, in the Bureau as Document 2000-168906; and

WHEREAS, the Declarant has agreed to execute this Unilateral Agreement in accordance with the conditional zoning provisions of Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. In accordance with Maui County Code. That this Declaration is made in accordance with the provisions of Section 19.510.050, Maui County Code, relating to Conditional Zoning;

2. Binding until Maui County written release. That until written release by the County of Maui ("County"), (a) the Property, and all its parts, are held subject to this Declaration's covenants, conditions, and restrictions, which are effective as to and run with the Property, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawaii, without the execution, delivery, or recordation of any further deed, instrument, document, agreement, declaration, covenant, or the like with respect to the Property by the Declarant, the County, or any successor or assign; (b) the acquisition of any right, title, or interest in or with respect to the Property by any person or entity constitutes acceptance of all of the covenants, conditions, and restrictions of this Declaration by the person or entity; and (c) upon any transfer of any right, title, or interest in or with respect to the Property, the transferee assumes, is bound by, and is obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

3. Running with the Land. That this Declaration and all of its covenants, conditions, and restrictions contained herein are effective as to and run with the land in perpetuity, or until the Declarant notifies the County Department of Planning ("Planning Department") that any of the covenants, conditions,

and restrictions are satisfied by the Declarant, and the Planning Department verifies the satisfaction and provides a written release of the covenant, condition, or restriction;

4. STATE OF HAWAII as Declarant. That the term "Declarant" and any pronoun in reference to it, wherever used in this Declaration, means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, includes any corporation or any other entity, and means and includes the STATE OF HAWAII, as Declarant, and the Declarant's successors and assigns;

5. Emergency Lighting Installation Requirement. That in addition to the restriction imposed in this Declaration in Paragraph 6 below, this Declaration shall not take effect until all required emergency runway lighting for night operations, as determined by the parties, has been installed and certified as operational at Kapalua Airport by Hawaii Department of Transportation.

That the Declarant shall have sole authority to select all vendors and contractors for and to oversee the procurement and installation of the required emergency runway lighting. Notwithstanding the foregoing and anything to the contrary contained herein, the County shall be solely responsible for the design for said emergency lighting and for securing funding and timely payment of all costs associated with the design, procurement and installation of said emergency lighting, in accordance with all applicable laws, regulations, and standards. Without limiting the foregoing, the design for said emergency lighting (including the edge lighting system) shall conform to the requirements noted in Advisory Circular 150/5340-30J: Design and Installation Details for Airport Visual Aids, or any amended or successor requirement. The County shall indemnify, defend, and hold harmless the Declarant from and against any and all claims, liabilities, damages, or losses arising out of or related to the design of the lighting system.

That upon certification of the lighting system as operational, the Declarant shall be responsible for routine, day-to-day maintenance of the lighting system, to the extent and scope determined by the Declarant in accordance with all applicable laws, regulations, and standards as well as best management procedures and practices of the Declarant; provided, however, that the County shall be solely responsible for all costs related to such routine, day-to-day maintenance as well as major maintenance, capital repairs, or replacements of the lighting system, spare parts, testing, inspection, utility costs, and shall promptly reimburse the Declarant for any and all such costs incurred by the Declarant. The parties may, by separate written agreement, establish a cost-sharing arrangement amending and/or further detailing any maintenance, repairs, or replacements, specifying the term and scope of such arrangement; provided that no such agreement shall be effective unless executed in writing by both parties.

That the parties acknowledge that during use, the lighting system must be visually inspected during the day by authorized Declarant staff, under the guidance of the Code of Federal Regulations (CFR) Part 139. When the lighting system is not in regular use, periodic night-time testing is recommended, to ensure that the system remains operable when needed.

That the parties further acknowledge that, before use of the lighting system, the Federal Aviation Administration (FAA), Air Traffic Organization (ATO), Regional Airports

and District Office (ADO), Flight Standards District Office (FSDO), and Kahului Airport (OGG) Tower must be notified in writing, and procedurally, these conditions need to be noted and updated in the Airport Certification Manual, Airport Master Record, Airport Layout Plan, and Airport Facility Directory. A Notice to Airmen (NOTAM) must also be issued to provide instructions of the nighttime operations when needed.

That the lighting system shall be maintained in perpetuity, or until the County provides written notice to the Declarant that it no longer requires the lighting system to be maintained, subject to compliance with all applicable laws and regulations; provided, however, that the Declarant may, in its sole discretion, amend the duration of its obligations herein upon _____ () days' prior written notice to the County.

That the Declarant shall bear no liability or responsibility for the design or funding of the lighting system, except as specifically set forth herein. The Declarant's authority to select all vendors and contractors and to oversee the procurement and installation of the required emergency runway lighting shall not be construed as an assumption of responsibility or liability by the Declarant for any aspect of the design or funding of the lighting system. Unless and until such runway lighting installation is completed and certified as operational, this Declaration shall have no force or effect, and no obligations shall arise on the part of the Declarant.

6. Effective as of date Section 19-13-8.1, Hawaii Administrative Rules, is amended. That this Declaration is valid only if Section 19-13-8.1, Hawaii Administrative Rules, is amended to allow the hours of operation at Kapalua Airport to be extended for emergency airstrip operations, and the amendments in this Declaration are effective as of the date the amendment to the administrative rule is effective.

7. Develop consistently with Conditional Zoning conditions. That the Declarant agrees to develop the Property in conformance with the conditions stated in Exhibit "3" and in the Conditional Zoning ordinance;

8. Conditions reasonable and rationally related to public health, safety, and welfare. That the conditions imposed are reasonable and rationally related to the objective of preserving the public health, safety, and general welfare and fulfilling the need for the public service demands created by the Property's proposed use;

9. Conditions enforceable by County of Maui. AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration run with the land and bind and constitute notice to all the parties hereto and subsequent owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property. The Declarant further understands and agrees that the County has the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, with the understanding that the Declarant or its successors and assigns may at any time file a petition with the Planning Department for amendment or removal of any conditions or

termination of this Declaration, which will be processed in the same manner as petitions for zone changes.

This Declaration may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, constitute one and the same Declaration.

Any persons signing this Unilateral Agreement represent that they are duly authorized and have legal capacity to execute and deliver this Unilateral Agreement. Each party represents to the other that the execution and delivery of this Unilateral Agreement and the performance of the party's obligations have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year first above written.

DECLARANT:

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION

By _____

Its _____

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

APPROVED AS TO FORM AND
LEGALITY:

Department of the Corporation Counsel
County of Maui

drip:misc:003abil102_conditions01:jpp

STATE OF HAWAII

SS.

On this ____ day of _____, before me personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____, and that said instrument was signed on behalf of _____, and _____, as _____, acknowledged said instrument to be the free act and deed of _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

[Stamp or Seal]

Notary Signature: _____

Date: _____

EXHIBIT “1”

(Property)

EXHIBIT "3"

Conditions

1. That the Council's approval is based on revised plans, as amended December 1985, and identified as Amended Exhibits 1 through 5, and upon all other documentation submitted with the subject application (including, but not limited to, the "Petition for District Boundary Amendment for Hawaiian Airlines, Inc."). No material or substantive changes shall be made without the approval of the Maui County Council.
2. That the runway, runway apron, and other facilities shall not be expanded, nor shall any portion of the runway safety area be paved or utilized for displaced landing or takeoff thresholds.
3. That the concession area shall be limited to the 5040 square feet designated in the revised plans and shall not contain more than one cocktail lounge, one snack bar, one restaurant, and one newsstand.
4. That the airstrip operations are limited to one-half hour after sunrise to 6:30 p.m., unless extended for emergency airstrip operations. "Emergency airstrip operations" are defined as any occasion or instance that warrants action to save lives and protect property and public health, and shall include emergencies declared pursuant to a Governor's Proclamation.
5. That there shall not be more than three car rental booths.
6. That onsite parking or storage of rental cars shall not be allowed.
7. That the Mayor of the County of Maui or his designated representative shall be designated a member of any Users' Committee which may be established to oversee flight scheduling, operations, and management of the facility.
8. That the applicant shall submit and enforce a comprehensive sign program subject to review and approval by the Planning Department. In addition, the applicant shall provide street and highway directional signs as may be required by the State or County.
9. That a final landscape planting plan shall be submitted to the Planning Department for review and approval.
10. That the applicant shall comply with all requirements of the State Department of Transportation, Highways Division.

11. That construction of the project shall be initiated within one year of the final approval of said Change in Zoning.
12. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the projects relative to soil erosion from wind and rain, and increased ambient noise levels.
13. That the applicant, its successors and assigns, shall protect, defend, indemnify and hold harmless the County of Maui from and against any loss, liability, claim, or demand arising out of this ordinance.
14. That full compliance with all federal, state, and county requirements shall be rendered.
15. That all aircraft operated at the airstrip, including without limitation applicant's aircraft, and aircraft of licensees of applicant, shall have a current "Aircraft Type" or "Airworthiness" certificate or its equivalent issued by the Federal Aviation Administration ("FAA") certifying that such aircraft generates noise levels no greater than the following:

(1) For propeller-driven aircraft of 12,500 pounds or less maximum FAA-certificated takeoff weight only: The maximum allowable noise levels for "propeller-driven small airplanes" under Appendix F to Part 36, "Noise Standards: Aircraft Type Airworthiness Certifications," Title 14, Code of Federal Regulations (January 1, 1978), as the same may be amended from time to time, with noise levels measured and corrected as provided in such appendix, but in no event in excess of a noise level of 80dB(A) measured pursuant to said Appendix F; and

(2) For all other aircraft: The "Effective Perceived Noise Levels," as that term is defined in said Part 36, under conditions of "Takeoff," "sideline," and "approach," as those terms are defined in said Part 36, in units of "EPNdB," as that term is defined in said Part 36, measured as provided in said Part 36, as follows:

- (a) for takeoff: 80.5 EPNdB;
- (b) for sideline: 84 EPNdB; and
- (c) for approach: 91.6 EPNdB.

16. That if, and only to the extent such changes to the intersection of Lower Honoapiilani Road and Akahele Street are required to be made as a result of applicant's airstrip operations, applicant will participate with the County of Maui in (a) the signalization of the intersection and (b) the design and planning of any required street widening of Akahele Street within 100 feet of the intersection.

17. That installation and use of runway lights at Kapalua Airport are permitted for emergency airstrip operations only. The State Department of Transportation is not responsible for providing funding for the installation of runway lights.

DRIP Committee

From: DRIP Committee
Sent: Thursday, May 1, 2025 12:49 PM
To: DRIP Committee
Subject: FW: DRIP-5: Bill 21, CD1 (2023) Kapalua Airport Emergency Airstrip Operations
Attachments: DOTA - Unilateral Agreement and Declaration for Conditional Zoning (FINAL DRAFT 042225)v2 drip-5.docx

From: Otaguro, Curt T <curt.otaguro@hawaii.gov>
Sent: Tuesday, April 22, 2025 2:05 PM
To: jarrett.pascual@mauicounty.us; DRIP Committee <DRIP.Committee@mauicounty.us>
Cc: Honda, Karen H <karen.h.honda@hawaii.gov>; Fuchigami, Ford <ford.fuchigami@hawaii.gov>; Yamaguchi, Angela H <angela.h.yamaguchi@hawaii.gov>; Wakumoto, Diane <diane.wakumoto@hawaii.gov>; Moniz, Marvin A <marvin.a.moniz@hawaii.gov>; Ah Sam, Leslie <Leslie.AhSam@hawaii.gov>
Subject: DRIP-5: Bill 21, CD1 (2023) Kapalua Airport Emergency Airstrip Operations

Jarrett – Attached is our response regarding revisions to the Unilateral Agreement needed for Kapalua Airport’s Conditional Zoning bill. Chair Paltin’s letter of April 7, 2025 requested for our response by April 23th. Thank you for the opportunity to provide our requested revisions. Let me know if you have further questions. Aloha, Curt

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