STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 9, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Oahu

Approval of Unilateral Agreement and Declaration for Conditional Zoning for lands situate at Waikiki, Honolulu, Oahu, Hawaii; Tax Map Key: (1) 2-7-36:04 and 16

REQUEST:

Approval of Unilateral Agreement and Declaration for Conditional Zoning ("UA")

LEGAL REFERENCE:

Section 171-3

SUBJECT PROPERTY:

Portion of Government lands situated at Waikiki, Honolulu, Oahu, Hawaii, identified by Tax Map Key (1) 2-7-036:04 and 16, as shown on the attached map labeled **Exhibit A**.

The property is located at 548 Kapahulu Avenue, near Date Street. The property is surrounded by the Prudential Locations building (formerly the Hawaiian Dredging building) to the north, the Ala Wai Golf Course to the west, and a Board of Water Supply booster station to the south.

AREA:

Total area is 24,407 square feet, more or less.

ZONING:

State Land Use District:	Urban
City and County of Honolulu:	R-5 (residential)

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

A portion of the subject property (TMK Parcel 04 consisting of 6,751 sq ft) is currently encumbered by a month-to-month Revocable Permit No. 7108 to New Kapahulu Business Association for parking purposes. The remainder of the site is vacant.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

An environmental assessment (EA) was prepared and submitted as part of DLNR's Change of Zone application to the City and County of Honolulu Department of Planning and Permitting for the subject property. The EA considered and reviewed the impacts of DLNR's proposed zone change for the property from residential to commercial use.

The Final EA for the subject project was published in the OEQC's Environmental Notice on February 8, 2006 with a finding of no significant impact (FONSI).

REMARKS:

On January 9, 2004, the Board granted approval in principal of the sale of a commercial ground lease for the subject property at public auction (Agenda Item D-3). The Board's approval was subject to DLNR obtaining approval from the City and County of Honolulu ("City") rezoning the property from the R-5 residential district to a zoning district that allowed commercial uses, e.g. B-2 community business district.

DLNR subsequently initiated the rezoning process with the City, which included the processing of an environmental assessment and a rezoning application through the City Department of Planning and Permitting ("DPP").

DPP has recommended approval of DLNR's rezoning application. The City Planning Commission subsequently also recommended approval. The proposed rezoning is currently before the Honolulu City Council as Bill 1 (2007). Bill 1 passed the first reading of the City Council's Zoning Committee on February 6, 2007. The City Council held a public hearing on the bill on February 21, 2007, and referred the matter back to the Zoning Committee for second reading. As of the date this submittal was drafted, Bill 1 was scheduled for second reading before the Zoning Committee on February 27, 2007.

As part of the City Council's approval process, the Zoning Committee requires the applicant to submit a draft UA setting for the conditions to the rezoning approval. The final UA must be executed by the applicant (in this case, the Board of Land and Natural Resources) and the document will be recorded as an encumbrance to the subject property and will run with the land.

Staff has prepared a draft of the UA, which is provided as **Exhibit B**, which incorporates the conditions recommended by the Director of DPP in his report to the Planning Commission.

RECOMMENDATION: That the Board:

1. Approve the Unilateral Agreement and Declaration for Conditional Zoning ("UA") attached as **Exhibit B**.

2. Authorize the Chairperson to approve amendments to the UA as may be necessary or desirable to best serve the interests of the State.

3. Authorize the Chairperson to execute the UA, subject to the following:

   a. Approval by the Honolulu City Council of DLNR's rezoning application to allow commercial/business uses on the property; and

   b. Review and approval of the UA by the Department of the Attorney General.

Respectfully Submitted,

Keith Chun
Planning and Development Manager

APPROVED FOR SUBMITTAL:

PETER T. YOUNG, Chairperson

PORTION OF TAX MAP
ZONE 2, SECTION 7, PLAT 36

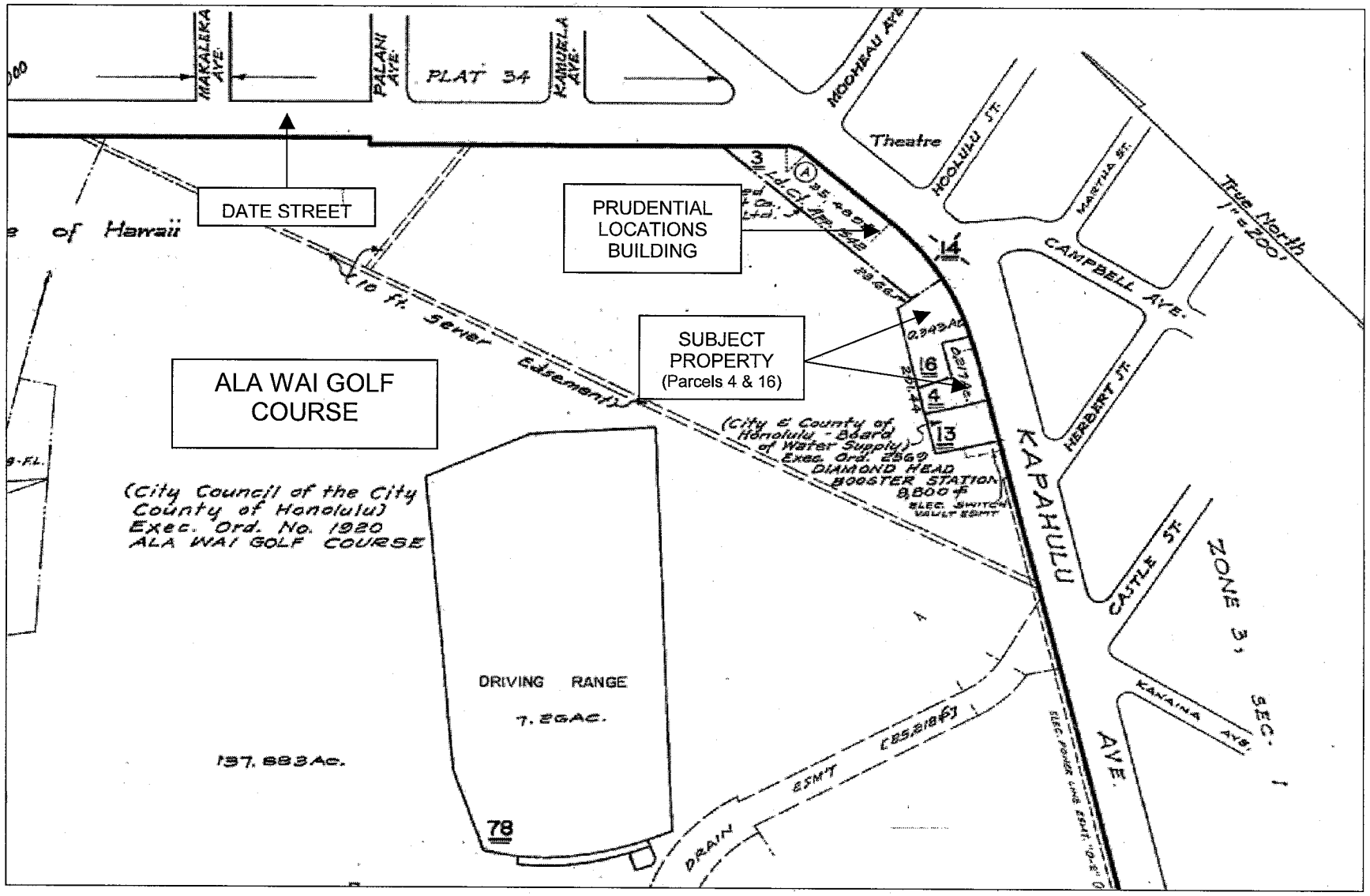

EXHIBIT A

DRAFT

LAND COURT SYSTEM	)	REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Total Number of Pages:

Tax Map Key No. (1) 2-7-036:04 & 16

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for Conditional Zoning

PARTY TO DOCUMENT: State of Hawaii, Department of Land and Natural Resources

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter "Unilateral Agreement"), made this _____ day of _____, 200___, by the STATE OF HAWAII (hereinafter "Declarant"), by its Board of Land and Natural Resources, whose address is _____,

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situate in Waikiki, City and County of Honolulu, State of Hawaii, consisting of approximately 24,407 square feet, described as Tax Map Key Nos. (1) 2-7-36:04 and 16,

and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desire to make the Land subject to this Unilateral Agreement; and

WHEREAS, the City Council ("Council") of the City and County of Honolulu ("City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, related to conditional zoning, is considering a change in zoning under the LUO of the Land from R-5 Residential District to B-2 Community Business District (the "zone change"); and

WHEREAS, a public hearing regarding the zone change, Bill 1 (2007), was held by the Council on January 21, 2007; and

WHEREAS, the Council recommended by its Zoning Committee Report No. ____ that said zone change be approved, subject to the following conditions contained in this Unilateral Agreement 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 zone change (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. **Revised Traffic Impact Analysis Report (TIAR).** Prior to building permit approval a revised Traffic Impact Analysis Report (TIAR) shall be submitted to and approved by the City Department of Transportation Services and the City Department of Planning and Permitting. Both departments should be consulted regarding the scope of the TIAR. The TIAR shall discuss the result of discussions with the owner of the adjacent Prudential Locations property to secure an access easement.

2. **Disclosure.** The Declarant shall inform all prospective purchasers or lessees of the Land of all of the following:

a. The Land is subject to possible errant golf balls from the Ala Wai Golf Course. Design of the development of the Land should account for the possibility of such errant golf balls.

b. Mowing and maintenance of the Ala Wai Golf Course may result in noise and other impacts.

3. **Mature Trees.** At the time of the submittal of the Diamond Head Special District permit application or prior to tree removal, clearing, and/or grubbing, whichever occurs first, the Declarant shall submit to the Department of Planning and

Permitting for approval a map showing all mature trees, their species, trunk diameter, canopy spread, and tree height.

4. **Compliance with Other Governmental Requirements.** The Declarant shall be responsible for ensuring that the final plans for the proposed development of the Land shall comply with all applicable Land Use Ordinance and other governmental agencies' provisions and requirements.

5. **Annual Reports.** On an annual basis, the Declarant shall submit a written status report to the Department of Planning and Permitting documenting its satisfaction of and/or describing its progress toward complying with each condition of this Unilateral Agreement. The status report will be submitted by December 31 of each year until such time as the Department of Planning and Permitting has determined that all conditions of this Unilateral Agreement have been satisfied. If a status report is not submitted within the time specified, the Department may defer the processing of permits until a status report is submitted.

6. **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 development of the Land until applicable conditions are met. Failure to fulfill any conditions of this Unilateral Agreement 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, 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 zone change 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.

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.

That if there are any conflicts between this Unilateral Agreement and any applicable public land laws or statutes, the provisions of the public land laws or statutes shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Unilateral Agreement 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 Unilateral Agreement 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 Unilateral Agreement, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and executed this Unilateral Agreement and Declaration for Conditional Zoning on the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on _____.

By DRAFT
Chairperson
Board of Land and Natural Resources

Declarant

APPROVED AS TO FORM:

DRAFT
Deputy Attorney General

Dated: _____