

May 1, 2013

Mr. Daniel E. Orodener
Executive Officer
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, HI 96804-2359

Subject: 2013 Annual Report for the State Land Use Commission
Docket No. A10-789/A&B Properties, Inc.- Wai`ale Community
Project

2013 MAY - 2 A 10: 48
LAND USE COMMISSION
STATE OF HAWAII

Dear Mr. Orodener:

This constitutes A&B Properties, Inc.'s ("A&B" or "Petitioner") first annual report for the subject Wai`ale Community Project ("Project").

Project Background and Status

By its Decision and Order dated June 21, 2012, the State Land Use Commission (SLUC) granted approval of A&B's petition to reclassify approximately 545.229 acres from the "Agricultural" to the "Urban" land use district at Wailuku and Waikapu, Maui. Approval of the petition was subject to 27 conditions.

The subject property is planned to be developed as a master-planned residential community which includes the following uses: village mixed-use, commercial, business/light industrial, multi-family and single-family residential, community center, regional and neighborhood park, greenway and open space, cultural preserves, middle school, and related infrastructure. A total of approximately 2,550 residential units are planned at the Project. The subject property includes approximately 50 acres of land that will be provided to the County of Maui for the development of affordable housing (40 acres), community center (7 acres), and park (3 acres), in satisfaction of zoning requirements for Petitioner's Maui Business Park Phase II development. Approximately 300 affordable residential units have been estimated for the 50 acres associated with the Maui Business Park Phase II zoning requirements, and are included in the Project's 2,550 total residential units.

In December 2012, after years of review and public comment, the County of Maui adopted the Maui Island Plan. The subject property, which was situated within the urban growth boundary of the draft Maui Island Plan, has now been officially designated within

the urban growth boundary of the final Maui Island Plan. As noted in the petition, additional land use approvals, including a community plan amendment, change in zoning and Project District approvals are required from the County of Maui in order for the Project to proceed. The Petitioner is currently undertaking more detailed planning and is in the process of refining its master plan for the Project. These activities are in preparation for the filing of County land use applications and the start of the County land use approval process.

The Petitioner has also been working with the State Department of Land and Natural Resources (DLNR), Division of State Parks, concerning the planning and acquisition of approximately 65 acres within the northeastern portion of subject property for the planned Central Maui Regional Park. This site had been designated for a regional park in the Project's master plan. The State's plans for the regional park include baseball, softball and soccer fields, along with comfort stations and parking.

Status of Compliance/Activities Relating to Imposed Conditions

Listed below (in italics) are each of the conditions imposed under the Decision and Order followed by the status of compliance or activities pertaining to each respective condition (in bold). However, inasmuch as the Project has yet to attain the requisite County land use approvals which are necessary to commence development, most of the imposed conditions will be addressed or complied with as further progress on the Project is achieved.

1. ***Water.** Petitioner shall provide the necessary water source, storage, and transmission facilities and improvements to the satisfaction of the DWS to service the Petition Area.*

Petitioner continues its pursuit of potential water sources to serve the Project. These include potential joint ventures with other parties, as well as new sources developed by the Petitioner.

2. ***Water Conservation.** Petitioner shall implement water conservation and best management practices in the design and construction of the Petition Area.*

Petitioner will comply with this condition as development of the Project progresses. Non potable water sources are being sought for landscape irrigation of the State's proposed Central Maui Regional Park.

3. ***Parks.** Petitioner shall comply with the Parks Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.*

Petitioner will comply with this condition as development of the Project progresses. As noted above, the Petitioner is working with the State in the planning and acquisition of approximately 65 acres for a new regional park.

In addition to the regional park, other neighborhood parks are planned within the Project.

4. **Affordable Housing.** *Petitioner shall provide affordable housing opportunities for residents of the State of Hawai'i in accordance with the affordable housing requirements of the County of Maui.*

Petitioner shall comply with all housing requirements to the satisfaction of the DHHC.

Petitioner will provide affordable housing opportunities in compliance with the County of Maui's affordable housing policy and to the satisfaction of the County DHHC.

5. **Highway and Road Improvements.** *Petitioner shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to state roadway facilities caused by the Project as set forth in an MOA agreed to and executed between the DOT and Petitioner. Petitioner shall submit to the DOT prior to application for a zone change an updated TIAR. Petitioner shall obtain acceptance of the Project's TIAR from DOT and shall execute the MOA prior to final subdivision approval of the initial phase of onsite development by Petitioner.*

The MOA shall include, but not be limited to, the following terms and conditions: (i) the accepted TIAR shall be incorporated in the MOA by reference; (ii) Petitioner's responsibilities for funding, construction, and implementation of improvements and mitigation; (iii) a schedule of agreed to improvements and a schedule for future TIAR updates or revisions to be accepted by DOT; (iv) development of the Project shall be consistent with the executed MOA and TIAR; and (v) any fees or in-kind contribution that is roughly proportional to any indirect or secondary impacts caused by the Project.

Petitioner shall construct roadway improvements to accommodate the development of the Petition Area in accordance with the requirements of the DPW.

Petitioner will prepare and submit to the State DOT an updated TIAR for the Project prior to application for a change in zoning. Petitioner will comply with other terms of this condition as entitlement and development of the Project progresses.

As part of a large lot subdivision to create the State's planned Central Maui Regional Park parcel, the State DOT required that a 50-foot wide future road widening lot be created along Kuihelani Highway. This future road widening lot has been incorporated into the large lot subdivision.

6. **Disclosure Regarding Highway Traffic Noise.** *Petitioner shall include a provision in each of its sales, lease, and conveyance documents, whereby each person who may from time to time own the Petition Area, any portion thereof, or*

hold any other interest therein or occupy any improvements thereon, makes the same acknowledgement and the following agreements in favor of the State of Hawai'i: (a) such person assumes complete risk of and forever releases the State of Hawai'i from all claims for damages and nuisances occurring on the Petition Area and arising out of or related to highway traffic noise from Kūihelani Highway and (b) such person waives any right to (i) require the State of Hawai'i to take any action to eliminate or abate any highway traffic noise from Kūihelani Highway; and (ii) file any suit or claim against the State of Hawai'i for injunction or abatement of any highway traffic noise from Kūihelani Highway and for any damages or other claims related to or arising therefrom.

Petitioner has informed the State of this condition in conjunction with its planned acquisition of lands for the proposed regional park. Petitioner will further comply with this condition as development of the Project progresses.

7. **Notification of Proximity to Kahului Airport.** *Petitioner and all subsequent owners shall notify and disclose to all prospective developers, purchasers, and/or lessees within the Project, as part of any conveyance document (deed, leases, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from Kahului Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.*

Petitioner has informed the State of this condition in conjunction with its planned acquisition of lands for the proposed regional park. Petitioner will further comply with this condition as development of the Project progresses.

8. **Hazardous Wildlife Attractants on or Near Kahului Airport.** *As deemed necessary by the DOT to minimize the hazards to aircraft operations from Kahului Airport, Petitioner shall fund and implement a program to control any birds nesting or occupation and any insect, pest, or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, and wastewater treatment facilities or associated settling ponds) serving the Project. Petitioner shall enter into an MOA with DOT to document hazardous wildlife attractant mitigation prior to final subdivision approval of the initial phase of onsite development by Petitioner.*

Petitioner has informed the State of this condition in conjunction with its planned acquisition of lands for the proposed regional park. Petitioner will further comply with this condition as development of the Project progresses.

9. **Wastewater.** *Should an onsite wastewater facility be pursued to accommodate wastewater flows from the development, consultation with and approval from the DOH shall be sought pursuant to HAR chapter 11-62, Wastewater Systems. The site's location within the CWDA and the protection of groundwater resources shall be considered as part of the review and approval of such a facility.*

Petitioner shall design, fund, and construct a wastewater treatment facility and transmission lines to accommodate the development of the Petition Area to the satisfaction of the DEM and the DOH.

Petitioner will comply with this condition as development of the Project progresses.

10. **Stormwater Management and Drainage.** *Petitioner shall construct and maintain, or cause to be maintained, stormwater and drainage system improvements as designed in compliance with applicable federal, State, and County laws and rules. To the extent feasible, Petitioner shall implement BMPs and incorporate low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to control water quality and mitigate nonpoint sources of pollution. Petitioner shall construct drainage improvements to accommodate the development of the Petition Area in accordance with the requirements of the DPW.*

Petitioner will comply with this condition as development of the Project progresses.

11. **Civil Defense.** *Petitioner shall fund and install two civil defense warning sirens as specified by and in locations and timeframes determined by the DOD, OCD.*

Petitioner will comply with this condition as development of the Project progresses.

12. **Archaeological and Historic Preservation.** *Petitioner shall comply with the mitigation and preservation measures recommended and approved by the DLNR, SHPD. This includes, but is not limited to, the implementation of the Preservation and Data Recovery Plan, the establishment of the Cultural Preserve, and continuous archaeological monitoring during site excavation activities.*

Petitioner is complying with this condition as development of the Project progresses.

13. **Previously Unidentified Burials and Archaeological/Historic Sites.** *In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the DLNR, SHPD, Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of*

an archaeological clearance from the DLNR, SHPD, that mitigative measures have been implemented to its satisfaction.

Petitioner is complying with this condition as development of the Project progresses. The State is also aware of this requirement.

14. **Established Access Rights Protected.** *Pursuant to Article XII, section 7, of the Hawai'i State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.*

Petitioner will comply with this condition.

15. **Sustainability.** *Petitioner shall comply with the implementation of its Sustainability Plan for the Project and Petition Area.*

Petitioner will comply with this condition as development of the Project progresses.

16. **Endangered Species.** *To address the potential impacts on the endangered Blackburn's sphinx moth and other endangered species in the Petition Area, Petitioner shall consult with the DLNR, DOFAW, and the USFWS to develop mitigation measures to avoid adverse impacts to endangered species. Mitigation measures may include obtaining approval of a Habitat Conservation Plan and Incidental Take License and Permit.*

Petitioner will comply with this condition as development of the Project progresses. The State has also been informed of this requirement.

17. **Waikapū Landfill Buffer.** *A buffer area at least 300 feet wide extending from the boundary of the Waikapū Landfill shall be established, within which allowable uses shall be limited to parking, roadway, other infrastructural uses, and open space. Any deviation from these uses shall be approved by the DOH, SHWB.*

Petitioner will comply with this condition. The Petitioner is also examining land use alternatives in this buffer area which are consistent with this condition.

18. **Public School Facilities.** *In conjunction with educational plans for a middle school facility within the Petition Area, an Education Contribution Agreement specifying the fair share contribution for the development, funding, and/or construction of school facilities shall be executed with the DOE prior to zone change approval.*

Petitioner is in consultation with the State DOE concerning its fair share

contribution toward school facilities. Based on discussions with the State DOE, land for a new middle school is currently being planned within the Project.

19. **Compliance with HRS Section 205-3.5, Related to Agricultural Uses on Adjacent Agricultural Land.** For all land in the Petition Area or any portion thereof that is adjacent to land in the State Land Use Agricultural District, Petitioner shall comply with the following:

A. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS section 165-2; and

B. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS chapter 165, the Hawai'i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

Petitioner has informed the State of this condition in conjunction with its planned acquisition of lands for the proposed regional park. Petitioner will further comply with this condition as development of the Project progresses.

20. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten years from the date of the Decision and Order approving the Petition.

Petitioner's efforts are currently focused on the attainment of County land use approvals from the County of Maui which are required to commence development of the Project.

21. **Compliance with Representations.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

Petitioner is proceeding with development of the Project in substantial compliance with representations made to the SLUC.

22. **Order to Show Cause.** *If Petitioner fails to complete the proposed backbone infrastructure within ten years from the date of the Decision and Order, the Commission may issue and serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use Agricultural District classification, or be changed to a more appropriate classification.*

Petitioner acknowledges this condition.

23. **Notice of Change of Ownership.** *Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, at any time prior to completion of development of the Petition Area.*

Other than the acquisition of approximately 65 acres by the State for its planned Central Maui Regional Park, no other changes of ownership to the subject property are currently contemplated.

As of June 7, 2012, Alexander & Baldwin, Inc., owner of the subject property, was converted from a Hawaii corporation to a Hawaii limited liability company, and is now known as Alexander & Baldwin, LLC. Petitioner is a subsidiary of Alexander & Baldwin, LLC.

24. **Annual Reports.** *Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DP, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.*

This annual report is being submitted in compliance with this condition.

25. **Release of Conditions.** *The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.*

No release of conditions is currently contemplated.

26. **Notice of Imposition of Conditions.** *Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed herein by the*

Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.

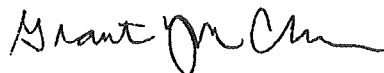
This condition has been satisfied. On June 27, 2012, a “Notice of Imposition of Conditions by the Land Use Commission” was recorded (copy attached) with the State Bureau of Conveyances (Document No. A-45610752).

27. **Recordation of Conditions.** *Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.*

This condition has been satisfied. On June 27, 2012, the conditions imposed by the SLUC were recorded (copy attached) with the State Bureau of Conveyances under the “Declaration of Conditions” applicable to that petition for district boundary amendment in Docket No. A10-789 of the SLUC (Document No. A-45610753).

Please contact me should you require any further information regarding this report. An email .pdf version of this report will also be transmitted to your office for your use.

Sincerely,



Grant Y. M. Chun
Vice President

cc: State Office of Planning
County of Maui Planning Department

LAND USE COMMISSION
STATE OF HAWAII

2012 JUN 27 P 2:56

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES

DOCUMENT NO. _____

DATE - TIME Doc A-45810753
June 27, 2012 1:00 PM

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK UP (X)

BENJAMIN M. MATSUBARA, ESQ.

Matsubara - Kotake

888 Mililani Street, Eighth Floor

Honolulu, Hawai'i 96813

Telephone: (808) 526-9566

TITLE OF DOCUMENT: DECLARATION OF CONDITIONS

Total Pages: 15

DECLARATION OF CONDITIONS

A&B PROPERTIES, INC., a Hawai'i corporation, the business address of which is 822 Bishop Street, Honolulu, Hawai'i, 96813, as Petitioner of that certain Petition For District Boundary Amendment in Docket No. A10-789 of the Land Use Commission of the State of Hawai'i, affecting those certain lands, approximately 545.229 acres, situate at Wailuku and Waikapu, Island and County of Maui, State of Hawai'i, Maui Tax Map Key Nos. 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion of 101 and 104, as shown

on map marked Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Property"), does hereby certify pursuant to Section 15-15-92, Hawai'i Administrative Rules, as follows:

THAT by Findings Of Fact, Conclusions Of Law, And Decision And Order, entered June 21, 2012, in Docket No. A10-789, the Land Use Commission reclassified approximately 545.229 acres of land in the State Land Use Agricultural District at Wailuku and Waikapu, Island and County of Maui, Hawai'i, identified as Maui Tax Map Key Nos. 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion of 101 and 104, as shown on Exhibit "A" to the State Land Use Urban District.

AND THAT by Findings Of Fact, Conclusions Of Law, And Decision And Order, entered June 21, 2012, it was further ordered that the reclassification from Agricultural District to the Urban District shall be subject to the following conditions:

1. **Water.** Petitioner shall provide the necessary water source, storage, and transmission facilities and improvements to the satisfaction of the DWS to service the Petition Area.

2. **Water Conservation.** Petitioner shall implement water conservation and best management practices in the design and construction of the Petition Area.

3. **Parks.** Petitioner shall comply with the Parks Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.

4. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for residents of the State of Hawai'i in accordance with the affordable housing requirements of the County of Maui.

Petitioner shall comply with all housing requirements to the satisfaction of the DHHC.

5. **Highway and Road Improvements.** Petitioner shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to state roadway facilities caused by the Project as set forth in an MOA agreed to and executed between the DOT and Petitioner. Petitioner shall submit to the DOT prior to application for a zone change an updated TIAR. Petitioner shall obtain acceptance of the Project's TIAR from DOT and shall execute the MOA prior to final subdivision approval of the initial phase of onsite development by Petitioner.

The MOA shall include, but not be limited to, the following terms and conditions: (i) the accepted TIAR shall be incorporated in the MOA by reference; (ii) Petitioner's responsibilities for funding, construction, and implementation of improvements and mitigation; (iii) a schedule of agreed to improvements and a schedule for future TIAR updates or revisions to be accepted by DOT; (iv) development

of the Project shall be consistent with the executed MOA and TIAR; and (v) any fees or in-kind contribution that is roughly proportional to any indirect or secondary impacts caused by the Project.

Petitioner shall construct roadway improvements to accommodate the development of the Petition Area in accordance with the requirements of the DPW.

6. **Disclosure Regarding Highway Traffic Noise.** Petitioner shall include a provision in each of its sales, lease, and conveyance documents, whereby each person who may from time to time own the Petition Area, any portion thereof, or hold any other interest therein or occupy any improvements thereon, makes the same acknowledgement and the following agreements in favor of the State of Hawai'i: (a) such person assumes complete risk of and forever releases the State of Hawai'i from all claims for damages and nuisances occurring on the Petition Area and arising out of or related to highway traffic noise from Kūihelani Highway and (b) such person waives any right to (i) require the State of Hawai'i to take any action to eliminate or abate any highway traffic noise from Kūihelani Highway; and (ii) file any suit or claim against the State of Hawai'i for injunction or abatement of any highway traffic noise from Kūihelani Highway and for any damages or other claims related to or arising therefrom.

7. **Notification of Proximity to Kahului Airport.** Petitioner and all subsequent owners shall notify and disclose to all prospective developers, purchasers,

and/or lessees within the Project, as part of any conveyance document (deed, leases, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from Kahului Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

8. **Hazardous Wildlife Attractants on or Near Kahului Airport.** As deemed necessary by the DOT to minimize the hazards to aircraft operations from Kahului Airport, Petitioner shall fund and implement a program to control any birds nesting or occupation and any insect, pest, or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, and wastewater treatment facilities or associated settling ponds) serving the Project. Petitioner shall enter into an MOA with DOT to document hazardous wildlife attractant mitigation prior to final subdivision approval of the initial phase of onsite development by Petitioner.

9. **Wastewater.** Should an onsite wastewater facility be pursued to accommodate wastewater flows from the development, consultation with and approval from the DOH shall be sought pursuant to HAR chapter 11-62, Wastewater Systems. The site's location within the CWDA and the protection of groundwater resources shall be considered as part of the review and approval of such a facility.

Petitioner shall design, fund, and construct a wastewater treatment facility and transmission lines to accommodate the development of the Petition Area to the

satisfaction of the DEM and the DOH.

10. **Stormwater Management and Drainage.** Petitioner shall construct and maintain, or cause to be maintained, stormwater and drainage system improvements as designed in compliance with applicable federal, State, and County laws and rules. To the extent feasible, Petitioner shall implement BMPs and incorporate low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to control water quality and mitigate nonpoint sources of pollution.

Petitioner shall construct drainage improvements to accommodate the development of the Petition Area in accordance with the requirements of the DPW.

11. **Civil Defense.** Petitioner shall fund and install two civil defense warning sirens as specified by and in locations and timeframes determined by the DOD, OCD.

12. **Archaeological and Historic Preservation.** Petitioner shall comply with the mitigation and preservation measures recommended and approved by the DLNR, SHPD. This includes, but is not limited to, the implementation of the Preservation and Data Recovery Plan, the establishment of the Cultural Preserve, and continuous archaeological monitoring during site excavation activities.

13. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are

identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the DLNR, SHPD, Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the DLNR, SHPD, that mitigative measures have been implemented to its satisfaction.

14. **Established Access Rights Protected.** Pursuant to Article XII, section 7, of the Hawai'i State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

15. **Sustainability.** Petitioner shall comply with the implementation of its Sustainability Plan for the Project and Petition Area.

16. **Endangered Species.** To address the potential impacts on the endangered Blackburn's sphinx moth and other endangered species in the Petition Area, Petitioner shall consult with the DLNR, DOFAW, and the USFWS to develop mitigation measures to avoid adverse impacts to endangered species. Mitigation

measures may include obtaining approval of a Habitat Conservation Plan and Incidental Take License and Permit.

17. **Waikapū Landfill Buffer.** A buffer area at least 300 feet wide extending from the boundary of the Waikapū Landfill shall be established, within which allowable uses shall be limited to parking, roadway, other infrastructural uses, and open space. Any deviation from these uses shall be approved by the DOH, SHWB.

18. **Public School Facilities.** In conjunction with educational plans for a middle school facility within the Petition Area, an Education Contribution Agreement specifying the fair share contribution for the development, funding, and/or construction of school facilities shall be executed with the DOE prior to zone change approval.

19. **Compliance with HRS Section 205-3.5, Related to Agricultural Uses on Adjacent Agricultural Land.** For all land in the Petition Area or any portion thereof that is adjacent to land in the State Land Use Agricultural District, Petitioner shall comply with the following:

A. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS section 165-2; and

B. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS chapter 165, the Hawai'i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

20. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten years from the date of the Decision and Order approving the Petition.

21. **Compliance with Representations.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

22. **Order to Show Cause.** If Petitioner fails to complete the proposed backbone infrastructure within ten years from the date of the Decision and Order, the

Commission may issue and serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use Agricultural District classification, or be changed to a more appropriate classification.

23. **Notice of Change of Ownership.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, at any time prior to completion of development of the Petition Area.

24. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DP, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

25. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.

26. **Notice of Imposition of Conditions.** Within seven days of issuance of the Commission's Decision and Order for the subject reclassification,

Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.

27. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.

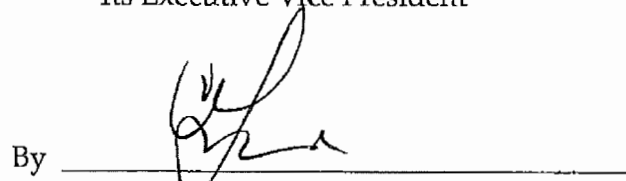
This Declaration of Conditions shall supersede the Notice of Imposition of Conditions by the Commission dated June 26, 2012 upon the recordation at the Bureau of Conveyances of this Declaration of Conditions.

Dated: Honolulu, Hawai'i, June 26, 2012.

A&B Properties, Inc.

By 

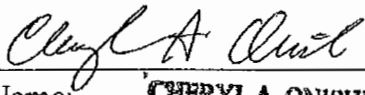
Paul W. Hallin
Its Executive Vice President

By 

Charles W. Loomis
Its Vice President and Assistant
Secretary

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

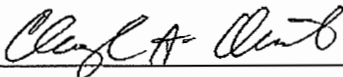
On this 26th day of June, 2012, before me personally appeared Paul W. Hallin, to me known, who, being by me duly sworn, did say that: he is the Executive Vice President of A&B PROPERTIES, INC., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.


Name: CHERYL A. ONISHI
Notary Public, State of Hawai'i
My Commission Expires: APR 17 2013



STATE OF HAWAII NOTARY CERTIFICATION

Doc. Description: Declaration of Conditions
Date of Document: Undated at time of notarization # Pages: 15
Date of Notarization: 6/26/12

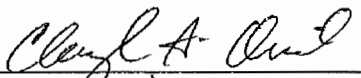

Notary Public Signature
Print Name: CHERYL A. ONISHI
Notary Public, State of Hawai'i, Fifth Circuit
Notary Commission No. 97-178



(Stamp or Seal)

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

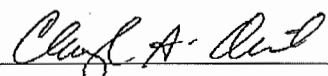
On this 26th day of June, 2012, before me personally appeared Charles W. Loomis, to me known, who, being by me duly sworn, did say that: he is the Vice President and Assistant Secretary of A&B PROPERTIES, INC., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.


Name: CHERYL A. ONISHI
Notary Public, State of Hawai'i
My Commission Expires: APR 17 2013



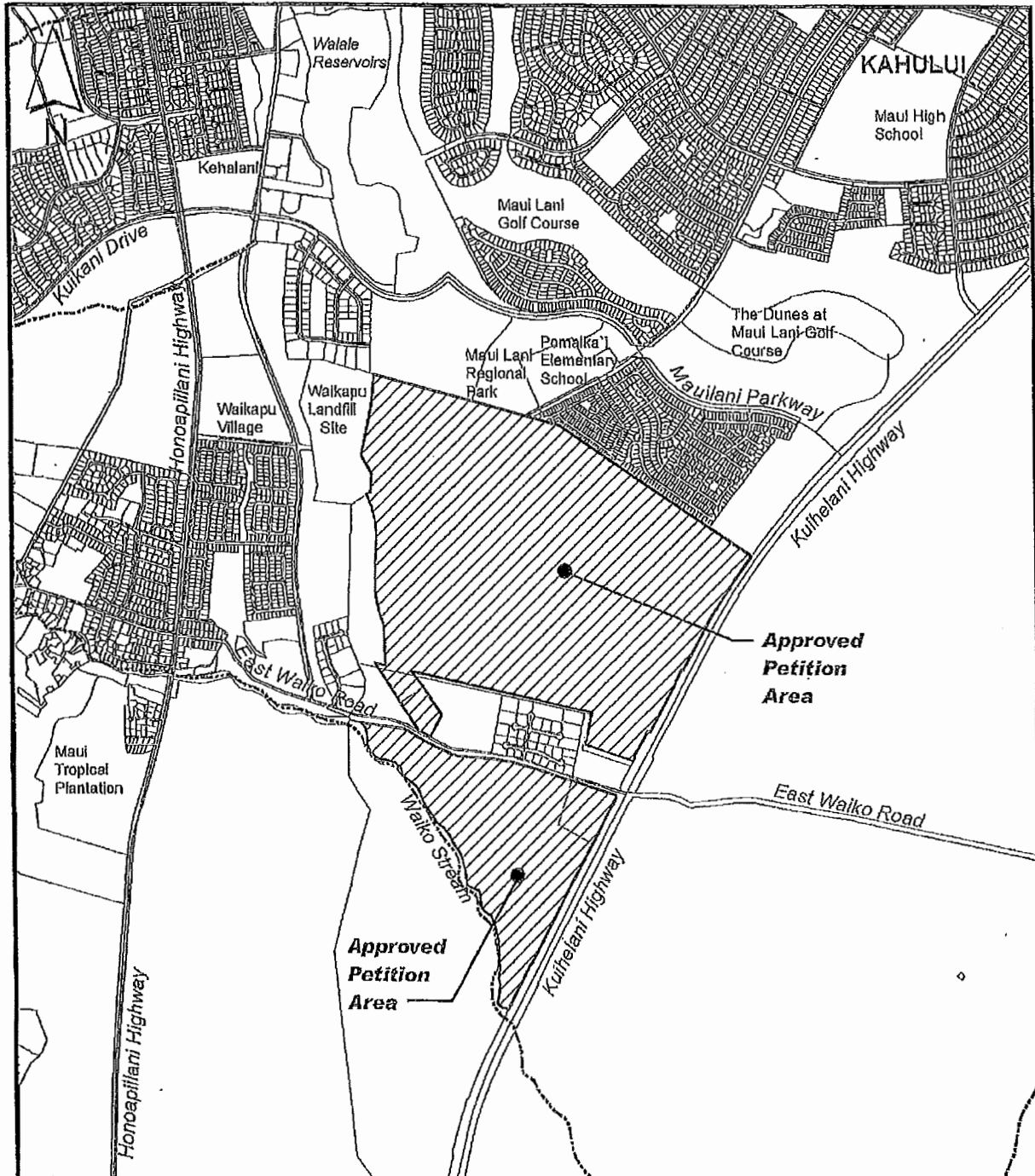
STATE OF HAWAII NOTARY CERTIFICATION

Doc. Description: Declaration of Conditions
Date of Document: Initial at time of notarization Pages: 15
Date of Notarization: 6/26/12


Notary Public Signature
Print Name: CHERYL A. ONISHI
Notary Public, State of Hawai'i, FIRST Circuit
Notary Commission No. 97-178



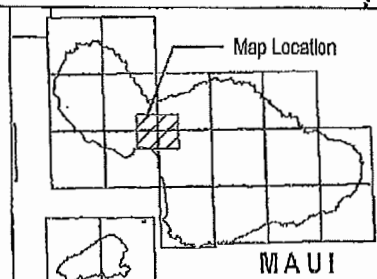
(Stamp or Seal)



A10-789 A & B PROPERTIES, INC.
LOCATION MAP

Tax Map Keys: 3-8-05: Portion Of 23 And 37 And
3-8-07: 71, Portion Of 101, And 104
Wailuku And Waikapū, Island Of Maui,
State Of Hawai'i,
Scale 1: 24, 000

Exhibit "A"



LAND USE COMMISSION
STATE OF HAWAII

2012 JUN 27 P 2: 56

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES
DOCUMENT NO. _____
DATE - TIME Doc A-45610752
June 27, 2012 1:00 PM

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK UP (X)

BENJAMIN M. MATSUBARA, ESQ.

Matsubara - Kotake

888 Mililani Street, Eighth Floor

Honolulu, Hawai'i 96813

Telephone: (808) 526-9566

TITLE OF DOCUMENT:

NOTICE OF IMPOSITION OF CONDITIONS BY
THE LAND USE COMMISSION

Total Pages: 4

NOTICE OF IMPOSITION OF CONDITIONS BY THE LAND USE COMMISSION

KNOW ALL PERSONS BY THESE PRESENTS:

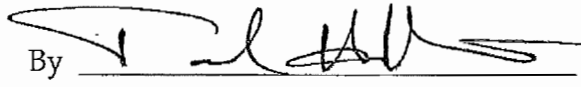
Please take notice that A&B Properties, Inc. (hereinafter "Petitioner"), was the Petitioner in the State Land Use Commission (hereinafter "Commission") Docket No. A10-789, for the reclassification of approximately 545.229 acres of land situated in Wailuku and Waikapu, Island and County of Maui, State of Hawai'i, more particularly identified as Maui Tax Map Key Nos. 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion

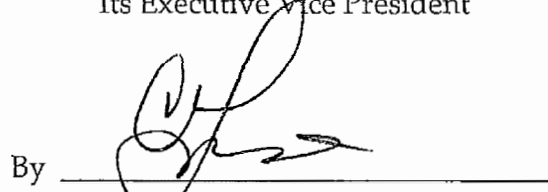
of 101 and 104 (hereinafter "Petition Area"), and does hereby state and declare that the Commission, by its Decision and Order dated June 21, 2012, reclassified approximately 545.229 acres of the Petition Area under Docket No. A10-789, from the State Land Use Agricultural District to the State Land Use Urban District (hereinafter "Property"), subject to a number of conditions imposed on the reclassified Property. Said conditions shall run with the land and shall be set forth in the Declaration of Conditions to be subsequently recorded at the Bureau of Conveyances of the State of Hawai'i pursuant to Commission Rule Section 15-15-92.

This Notice of Imposition of Conditions by the Commission shall be superseded upon the recordation at the Bureau of Conveyances of the said Declaration of Conditions setting forth the conditions imposed by the Commission in Docket No. A10-789.

Dated: Honolulu, Hawai'i, June 26, 2012.

A&B Properties, Inc.

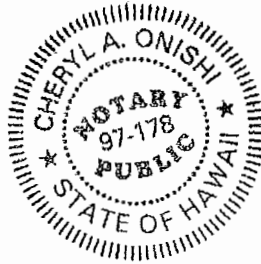
By 
Paul W. Hallin
Its Executive Vice President

By 
Charles W. Loomis
Its Vice President and Assistant
Secretary

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 26th day of June, 2012, before me personally appeared Paul W. Hallin, to me known, who, being by me duly sworn, did say that: he is the Executive Vice President of A&B PROPERTIES, INC., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

Cheryl A. Onishi
Name: CHERYL A. ONISHI
Notary Public, State of Hawai'i
My Commission Expires: APR 17 2013



STATE OF HAWAII NOTARY CERTIFICATION

Doc. Description: Notice of Imposition of Conditions by the Land Use Commission

Date of Document: Undated at time of notarization # Pages: 4

Date of Notarization: 6/26/12

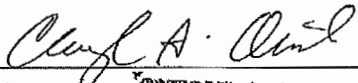
Cheryl A. Onishi
Notary Public Signature
Print Name: CHERYL A. ONISHI
Notary Public, State of Hawai'i, First Circuit
Notary Commission No. 97-178



(Stamp or Seal)

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 20th day of June, 2012, before me personally appeared Charles W. Loomis, to me known, who, being by me duly sworn, did say that: he is the Vice President and Assistant Secretary of A&B PROPERTIES, INC., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.


Name: CHERYL A. ONISHI
Notary Public, State of Hawai'i
My Commission Expires: APR 17 2013

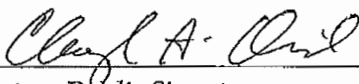


STATE OF HAWAII NOTARY CERTIFICATION

Doc. Description: Notice of Imposition of Conditions by the Land Use Commission

Date of Document: Undated at time of notarization # Pages: 4

Date of Notarization: 6/26/12


Notary Public Signature
Print Name: CHERYL A. ONISHI
Notary Public, State of Hawai'i, First Circuit
Notary Commission No. 97-178

