

LAND USE COMMISSION  
STATE OF HAWAII

September 21, 2016 <sup>2016</sup> SEP 26 A 8:31

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

Subject: 2016 Annual Report for the State Land Use Commission  
Docket No. A10-789/A&B Properties, Inc.- Wai'ale Community  
Project

Dear Mr. Orodener:

This constitutes A&B Properties, Inc.'s ("A&B" or "Petitioner") 2016 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.

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, was officially designated within the urban growth boundary of the final Maui Island Plan.

As noted in the Petition, 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. Pursuant to Petitioner's discussions with the County, an application to subdivide parcels for affordable housing, community center and park sites, was prepared and filed in April, 2015. The subdivision is proceeding with the County. Approximately 300 affordable residential units have been estimated for the 50 acres associated with the Maui Business Park Phase II zoning requirements.

As noted in prior annual reports, the State Department of Land and Natural Resources (DLNR), Division of State Parks, under threat of condemnation, acquired approximately 65 acres within the northeastern portion of subject property for the planned Central Maui Regional Park. Construction of the first phase of the regional park has been completed and opened for public use, while the next phase of the park is under construction.

The Petitioner continues to work with the State Department of Education (DOE) concerning their acquisition of a future middle school site within Wai'ale. The planned middle school site is also located in the northern portion of Wai'ale, near the State's planned Central Maui Regional Park and lands to be dedicated to the County of Maui for affordable housing, parks and community center. In August 2015, an Educational Contribution Agreement was executed with the DOE. A copy of that agreement was transmitted with the 2015 annual report.

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. As previously reported, because the final land plan for the northern portion of the Project (north of Waiko Road) involves other parties and has yet to be finalized, the Petitioner has focused its attention to the portion of the Project situated south of Waiko Road (Wai'ale South). Wai'ale South comprises approximately 123-acres and is planned primarily for residential use. Accordingly, in February 2015, the Petitioner filed applications for County community plan amendment, change in zoning and project district approvals for Wai'ale South. In November 2015, the Maui Planning Commission conducted a public hearing on the applications and subsequently recommended approval of the applications to the Maui County Council. The applications were transmitted to the Maui County Council in August 2016, and hearings before the Council are anticipated to commence in late 2016/early 2017.

The decision to move ahead with the County entitlement process was spurred by the development time limits that have been imposed on Project. Petitioner's experience has shown that the County entitlement process can prove lengthy. Given that prospect, the decision was made to move ahead with entitlements for the area which Petitioner was confident that sufficient planning had been undertaken and over which it has control. The alternative of waiting would potentially jeopardize Petitioner's ability to comply with the development time limits imposed on the Project.

#### **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, in partnership with other parties, including the County DWS, is undertaking the development of new potable groundwater wells to serve the project.**

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. The State's Central Maui Regional Park utilizes a non potable water source for landscape irrigation.**

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 previously noted, the State has acquired approximately 65 acres for the Central Maui Regional Park. In addition to the regional park, other neighborhood parks and open space areas 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.'*

**As required by this condition, and as part of its County land use applications, an updated TIAR was prepared. Based on comments and meetings with the DOT, a revised TIAR Addendum was prepared. The DOT subsequently provided additional comments and indicated that it had no objections to the Petitioner's County zoning applications for Wai'ale South. Petitioner will comply with other terms of this condition as entitlement and development of the Project progresses, including the execution of an MOA prior to final subdivision approval of the initial phase of onsite development.**

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 informed the State of this condition in conjunction with its acquisition of lands for the 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 informed the State of this condition in conjunction with its acquisition of lands for the 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 informed the State of this condition in conjunction with its acquisition of lands for the 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.*

**In 2015, the County DEM commissioned a study for a regional wastewater treatment facility which would include the subject area and lands to the south that are owned by the County and other landowners. Petitioner is in discussion with other landowners concerning the development of a private regional wastewater treatment facility to serve planned future projects in the region. Alternative locations for the facility, taking into account the areas to be served, the location of existing potable water wells, as well as applicable engineering considerations, are being examined. Potential sites include lands across Kuihelani Highway from the Project. Petitioner will comply with the terms of 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.*

Preliminary engineering studies are being undertaken to develop an appropriate drainage system to manage stormwater runoff. The system anticipates offsite drainage basins (across Kuihelani Highway) to meet system requirements. Petitioner will comply with the terms of 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. An archaeological monitoring plan was prepared for the Wai'ale South area and submitted to the SHPD for their review in March 2016. Protective fencing and signage is being enhanced at preserves within Wai'ale North per the approved preservation plan.

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 was also 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.*

**In August 2015, an Educational Contribution Agreement was executed with the DOE, including provisions for a future middle school site within Wai'ale North. A copy of that agreement was provided with the 2015 annual report.**

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 informed the State of this condition in conjunction with its acquisition of lands for the 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.*

**As noted previously, Petitioner’s decision to move ahead with the County entitlement process for a portion of the Project (Wai‘ale South) was spurred by the development time limits that have been imposed on Project. Petitioner’s experience has shown that the County entitlement process can prove lengthy. Given that prospect, the decision was made to move ahead with entitlements for the area which Petitioner was confident that sufficient planning had been undertaken. The alternative of waiting would potentially jeopardize Petitioner’s ability to comply with the development time limits impose on 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. 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 on a timely basis, consistent with 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.*

**As previously noted, other than the acquisition of approximately 65 acres by the State for its Central Maui Regional Park, the planned future contribution of land to the DOE for a middle school site and the contribution of land to the County for affordable housing, park and community center, 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 previously provided) 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 previously provided) 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,

A handwritten signature in black ink, appearing to read 'Daniel Yasur', with a stylized flourish at the end.

Daniel Yasur, AICP  
Vice President

cc: State Office of Planning  
County of Maui Planning Department