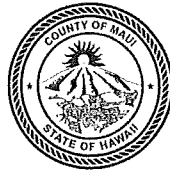


ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

November 29, 2012

2012 DEC -3 A 9:29
LAND USE COMMISSION
STATE OF HAWAII

MEMO TO: DANIEL ORODENKER
Executive Director
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804

FROM: Department of Planning, County of Maui
Clayton Yoshida, Planning Program Administrator *copy*

SUBJECT: **DOCKET No. A12-796 / Waiko Industrial Investment, LLC**

TRANSMITTED ARE THE FOLLOWING:

COPIES	DATE	DESCRIPTION
Original and 16 copies	11/29/12	Testimony Statement of William Spence, Director, Department of Planning, County of Maui; Testimony Statement of Kyle Ginoza, Director, Department of Environmental Management; Amended List of Exhibits, Adding Exhibit No. 3; and Certificate of Service.

- For your information & files
- For approval & signature
- Per your request
- For your review and approval
- See REMARKS below
- For filing

REMARKS: LAND USE COMMISSION - Please return a file-marked copy to us in the enclosed self-addressed envelope. Thank you.

Attachments

K:\WP_DOCS\PLANNING\EA\2011\0005_WaikoIndustrialSubdivision\Pre Approval\LUCLUCtransmittalDirect3.doc

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of)	
WAIKO INDUSTRIAL INVESTMENT, LLC	)	Docket No. A12-796
To Amend the Land Use District Boundary of	)	TESTIMONY OF WILLIAM R.
Certain Lands Situated at Waikapu, Wailuku,	)	SPENCE, DIRECTOR,
Island of Maui, State of Hawaii, Consisting of	)	DEPARTMENT OF PLANNING;
approximately 31.222 Acres, from the	)	TESTIMONY OF KYLE K.
Agricultural District to the Urban District,	)	GINOZA, DIRECTOR,
Tax Map Key No. 3-8-007:102	)	DEPARTMENT OF
	)	ENVIRONMENTAL
	)	MANAGEMENT; CERTIFICATE
	)	OF SERVICE

**TESTIMONY OF WILLIAM R. SPENCE, DIRECTOR, DEPARTMENT
OF PLANNING; TESTIMONY OF KYLE K. GINOZA, DIRECTOR, DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

**DEPARTMENT OF PLANNING
COUNTY OF MAUI
200 South High Street
Wailuku, Hawaii 96793
Telephone: (808) 270-7735
Facsimile: (808) 270-7634**

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

November 28, 2012


Waiko Industrial Investment, LLC Project

Testimony to State Land Use Commission from William Spence

The Department of Planning, County of Maui (hereinafter referred to as "Department") recommends approval of the petition by Waiko Industrial Investment, LLC (hereinafter referred to as "Petitioner"), to reclassify approximately 31.22 acres at Tax Map Key: (2) 3-8-007: 102 (hereinafter referred to as "Property"); Waikapu, Island of Maui, County of Maui, Hawaii, from the State Agricultural District to the State Urban District.

The Department supports Waiko Industrial Investment, LLC's Petition for a District Boundary Amendment to provide their requested Urban District designation. The Maui Planning Commission issued a FONSI (Finding of No Significant Impact) on the Petitioners' Final Environmental Assessment on July 10, 2012. The Project is in harmony with the Proposed Maui Island Plan as it is well within the proposed Urban Growth Boundary for Central Maui. The Project will contribute 31 acres of Light Industrial land to the approximately 235 acres of light industrial land currently in development and/or in the planning stages for Central Maui. In total, there is approximately 549 acres of land planned for industrial subdivisions in Central Maui. The most visible light industrial project currently being built out over the next 10 -15 years is the A&B Maui Business Park Phase II (179 acres) along the Hana Highway corridor in Central Maui/Kahului area.

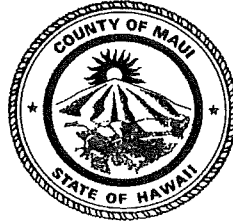
The Department is of the position that Title 19 of the Maui County Code sufficiently addresses any issues and/or concerns regarding permitted allowable uses in the Light Industrial district and the Petitioners request to reclassify lands from the Agricultural designation to the Urban designation.


WILLIAM R. SPENCE, Director
Department of Planning

ALAN M. ARAKAWA
Mayor

KYLE K. GINOZA, P.E.
Director

MICHAEL M. MIYAMOTO
Deputy Director



TRACY TAKAMINE, P.E.
Solid Waste Division
ERIC NAKAGAWA, P.E.
Wastewater Reclamation Division

**COUNTY OF MAUI
DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**
2200 MAIN STREET, SUITE 100
WAILUKU, MAUI, HAWAII 96793

November 28, 2012

Waiko Industrial Investment, LLC Project

Testimony to State Land Use Commission from Kyle Ginoza

Thank you for this opportunity to share our comments on the proposed development relative to how it impacts our access to our closed Waikapu Landfill. Currently our access to the closed landfill is from Waiko Road via an access easement across this property. The access roadway continues on through adjacent properties to our landfill.

The proposed development of this property proposes to relocate our access through this property. Our concern is that this relocated access easement is continuous with our access through the adjacent properties.

As we often times temporarily store equipment and material on the closed landfill, we have trucks of significant size that need access. We want to ensure that any relocated access through this property provides adequate turning radii for our large vehicles. We also want to make sure that the roadway surface is adequate to handle the weight of our large vehicles.

We would propose a condition that the developer work the County of Maui's Solid Waste Division to construct the relocated landfill access road that is continuous with the adjacent access easements, provides adequate turning radii for large vehicles and is of a roadway surface sufficient to carry the weight of the large vehicles to the satisfaction of the Solid Waste Division.

A handwritten signature in black ink, appearing to read "K. Ginoza", is written over a horizontal line.

Kyle K. Ginoza, Director
Department of Environmental Management

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the following as indicated below:

B. MARTIN LUNA
CARLSMITH BALL LLP
Attorney for the Petitioner
One Main Plaza, Suite 400
2200 Main Street
Wailuku, Hawaii 96793
Mail

GREGORY K. SCHLAIS
CARLSMITH BALL LLP
Attorney for the Petitioner
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Mail

MARLIN NEW MANAGEMENT, INC., Manager
WAIKO INDUSTRIAL INVESTMENT, LLC
P.O. Box 220
Kihei, Hawaii 96753
Mail

JESSE SOUKI
Director
Office of Planning
State of Hawaii
235 South Beretania Street, Room 406
Honolulu, Hawaii 96813
Mail

BRYAN YEE, Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813
Mail

MAUI PLANNING COMMISSION
County of Maui
250 South High Street
Wailuku, Hawaii 96793
Mail

JAMES A. GIROUX
Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793
Hand Delivery

DOCKET NO. /PETITIONER: A12-796/ WAIKO INDUSTRIAL INVESTMENT, LLC.

PARTY: COUNTY OF MAUI

AMENDED LIST OF EXHIBITS: ADDING EXHIBIT 3

EXHIBIT NUMBER	DESCRIPTION	PARTY: OBJECTIONS	ADMIT
3	Bureau of Conveyances Document Number: 92-134141 granting perpetual nonexclusive easement from Waikapu Road, also known as Waiko Road, to property owned by the County of Maui known as the Waikapu Landfill side, over, and across "Easement Area" (being Easements "C" and "D").		

EASEMENT

This Indenture, made this 20th day of April, 1991, by and between ALEXANDER & BALDWIN, INC., a Hawaii corporation, whose mailing address is 822 Bishop Street, Honolulu, Hawaii 96813, hereinafter called "Grantor", and COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business and post office address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called "Grantee",

W I T N E S S E T H :

That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) to it paid by the Grantee and for other valuable consideration, receipt whereof is hereby acknowledged, and the covenants hereinafter contained to be observed and performed by the parties hereto, does hereby grant and convey unto the Grantee, its successors and assigns:

A perpetual nonexclusive easement from Waikapu Road, also known as Waiko Road to property owned by the County of Maui known as the Waikapu Landfill site and identified as Tax Map Key No. (2)3-8-07-92, over and across property owned by Grantor and identified as Tax Map Key No. (2)3-8-07-103, hereinafter referred to as the "Easement Area", more particularly shown on Exhibit "A" attached hereto and incorporated herein by reference, situate at Wailuku and Waikapu, Island and County of Maui, State of Hawaii, for ingress and egress purposes only.

TO HAVE AND TO HOLD, unto the Grantee and its successors and assigns for the purposes hereinabove provided and for so long as so used and not otherwise.

EXCEPTING AND RESERVING, HOWEVER, from this grant the right of the Grantor, full use of the land within the Easement Area and the right to grant to others easements for any purposes within

the Easement Area or such part so taken or condemned shall thereupon cease.

5. The Grantee hereby agrees and acknowledges that the Grantor has not made and will not make, any representation or warranty with respect to the condition of the Easement Area, including but not limited to, any express or implied warranty of merchantability or fitness for a particular purpose. The Grantee acknowledges that the Grantor and its subsidiaries conduct active agricultural and processing operations on lands surrounding the Easement Area, which activities in the normal course may from time to time bring about on the Easement Area smoke, heat, agricultural chemicals, particulates and similar substances. The Grantee further acknowledges and agrees that this agreement is subject to any effect that the presence of such substances may from time to time have upon the Easement Area or the operations and activities conducted thereon. The Grantee will accept this agreement with full assumption of the risks, and consequences thereof, of said operations (which operations may include, but are not limited to, the growing of sugarcane), including but not limited to, dust caused as a result thereof, quality of water and the property damages as a result thereof, burning of sugarcane, use of equipment and use of chemicals normally used in said operations. The Grantee agrees to indemnify and hold harmless the Grantor for any and all losses, costs and/or damages, including but not limited to, reasonable attorneys' fees and court costs arising out of or in connection with any such claims brought by the Grantee, its employees, agents, licensees, tenants, or third persons.

6. The Grantee shall at all times keep the Easement Area free of any and all flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous sub-

relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials or violation of or compliance with any Hazardous Materials Laws, and (c) the Grantee's discovery of any occurrence or condition on the Easement Area or any real property adjoining or in the vicinity of the Easement Area which could subject the Grantor, the Grantee or the Easement Area to any restrictions on ownership, occupancy, transferability or use of the Easement Area under any Hazardous Materials Laws. The Grantee shall indemnify and hold harmless the Grantor, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Easement Area, including, without limitation: (i) all fines which may be imposed and all costs of any required or necessary repair, clean up or detoxification of the Easement Area, and the preparation and implementation of any closure, remedial or other required plans; and (ii) all reasonable costs and expenses incurred by the Grantor in connection with clause (i) and any other actions arising as a result of Grantee's actions, including, without limitation, reasonable attorneys' fees. At any time during the term of this easement, Grantor may require Grantee to (A) remove all Hazardous Materials from the Easement Area, (B) restore the Easement Area to a good and orderly condition even-grade and to substantially the same condition the Easement Area was in as of the date of this Easement, (C) remediate and clean-up any contamination, spills or leakages upon the Easement Area so as to render the Easement Area in compliance with all applicable Hazardous Materials Laws, and (D) provide the Grantor with a written certification (dated no earlier than the date the Grantee fully vacates the premises) from an independent licensed engineer or

addition to any other remedy it may have, it may recover from the Grantee all costs and damages it may incur by reason of such breach, including reasonable attorneys' fees.

9. The Grantee shall not assign, sublet or mortgage the rights and privileges herein granted, or any part thereof or interest therein, without the prior written consent of the Grantor, which consent may be withheld in Grantor's sole discretion.

10. In the event that the Grantor decides to develop the Easement Area or any portion thereof, or decides in its sole discretion that the Easement Area should be relocated, and Grantor can provide an alternate route, the Grantor may, at any time upon at least thirty (30) days' notice to the Grantee require a relocation of the Easement Area at Grantee's sole cost and expense, which cost of relocating shall be payable to the Grantor promptly upon demand therefor by the Grantor. Thereafter, this agreement shall continue in full force and effect with respect to the area or premises to which the Easement Area is relocated. The Grantor shall not be required to pay or reimburse the Grantee for any losses due to special or consequential damages, business interruption, loss of good will or similar losses or damages resulting from any such relocation.

11. The Grantee's use of the Easement Area for access to the Waikapu Landfill (Tax Map Key No. (2)3-8-07-92) will be for private purposes only. Grantee will not take any action or allow any use of the Easement Area which may result in the Easement Area being constructed as or deemed to be a public right of way.

12. This Easement will terminate in the event that either public access to the Waikapu Landfill (Tax Map Key No. (2)3-8-07-92) becomes available in the future or Grantee obtains or may reasonably obtain alternative access to the Waikapu Landfill over public lands or by means of easement.

13. The foregoing covenants and agreements shall run with the Easement Area and shall be binding upon and shall inure to

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

On this 20th day of April, 1991, before me appeared R K SASAKI and SUMAE TSUHA, to me personally known, who, being by me duly sworn, did say that they are the VICE PRESIDENT and ASST. SECRETARY, respectively, of ALEXANDER & BALDWIN, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said Officers acknowledged said instrument to be the free act and deed of said corporation.

C.S.

[Signature]
Notary Public, State of Hawaii

My Commission Expires: 6-7-93

STATE OF HAWAII)
COUNTY OF MAUI) SS.

On this 17th day of December, 1991, before me personally appeared LINDA CROCKETT LINGLE, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said LINDA CROCKETT LINGLE acknowledged the said instrument to be the free act and deed of said County of Maui.

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

LS

[Signature]
Notary Public, State of Hawaii
My commission expires: 10/19/94

Easement D

Beginning at the southeasterly corner of this easement, on the southerly boundary of Lot 4 of Kopaa Subdivision No. 2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 9,750.80 feet South and 941.85 feet East, and running thence by azimuths measured clockwise from True South:

1. 101° 45' 61.76 feet along Lot 1 of Kopaa Subdivision No. 2;
2. 142° 07' 253.49 feet along the remainder of Lot 4;
3. Thence along same, along a curve to the right with a radius of 1,784.00 feet, the chord azimuth and distance being: 162° 38' 1,250.51 feet;
4. 183° 09' 450.00 feet along same;
5. Thence along same, along a curve to the left with a radius of 1,210.00 feet, the chord azimuth and distance being: 161° 22' 898.06 feet;
6. 139° 35' 42.86 feet along same;
7. 185° 45' 55.45 feet along the remainder of Grant 3152 to Henry Cornwell;
8. 319° 35' 81.27 feet along the remainder of Lot 4;
9. Thence along same, along a curve to the right with a radius of 1,250.00 feet, the chord azimuth and distance being: 341° 22' 927.74 feet;
10. 3° 09' 450.00 feet along same;
11. Thence along same, along a curve to the left with a radius of 1,744.00 feet, the chord azimuth and distance being: 342° 38' 1,222.47 feet;
12. 322° 07' 300.55 feet along same to the point of beginning and containing an area of 2.744 acres.