
CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100

1001 BISHOP STREET

HONOLULU, HAWAII 96813

TELEPHONE 808.523.2500 FAX 808.523.0842

WWW.CARLSMITH.COM

LAND USE COMMISSION
STATE OF HAWAII

2014 NOV 21 A 9:22

DIRECT DIAL NO.
808.523.2557

JLIM@CARLSMITH.COM

November 21, 2014

VIA HAND DELIVERY

Mr. Daniel Orodener
Executive Officer
Land Use Commission
State of Hawaii
Room 406
235 South Beretania Street
Honolulu, HI 96804-2359

Re: **2014 Annual Report - Docket No.: A13-797**
Petitioner: CMBY 2011 Investment, LLC
To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Certain Lands Situate at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawai'i, consisting of approximately 86.030 acres, Tax Map Key No. (2) 3-8-008:019

Dear Mr. Orodener:

On behalf of our client, CMBY 2011 Investment, LLC ("**CMBY**"), we hereby submit the 2014 Annual Report in accordance with Condition 22 of the State Land Use Commission Findings of Fact, Conclusions of Law and Decision and Order, dated, filed and effective on November 22, 2013, in Docket No.: A13-797, to report on the status of the development of heavy industrial subdivision (the "**Project**"). The enclosed matrix outlines CMBY's compliance with each of the 25 conditions of approval under said Decision and Order.

For the past year, CMBY has diligently pursued its land use entitlements with the County of Maui. On April 8, 2014, the Maui Planning Commission voted in favor of the Community Plan Amendment (from Agriculture to Heavy Industrial), and the Change in Zone (from County Agriculture District to M-3 Restricted Industrial District). These approvals are necessary for the development of the Project, and final approval of both must be issued by the County Council via ordinances.

On October 17, 2014, the County Council referred the two Bills to the Council Land Use Committee. The agenda for the Land Use Committee has not yet been established, but CMBY

Daniel Orodener

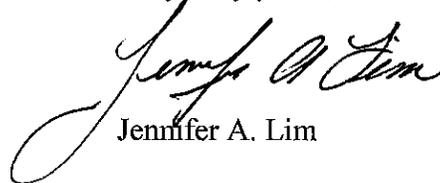
November 21, 2014

Page 2

anticipates that the two Bills could be before the Land Use Committee in December. CMBY must secure the necessary County approvals before it can submit its application for subdivision approval to the County. CMBY intends to pursue satisfaction of several of the conditions of approval imposed under the Decision and Order once the Community Plan Amendment and Change in Zone is approved by the Council, and several other conditions of approval will be addressed in connection with subdivision.

We trust that the foregoing and enclosed satisfies the annual reporting requirement of the subject Docket. Please feel free to contact me at any time should you have any questions or require any additional information from our client. Thank you for your attention.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jennifer A. Lim".

Jennifer A. Lim

JAL:jah
Enclosure

cc: Maui County Planning Department
State of Hawaii Office of Planning
Charles Jencks
Blanca Lafolette

4846-1952-7968.1.064670-00001

**CMBY 2011 INVESTMENT, LLC (the "Petitioner")
State Land Use Commission Docket No.: A13-797, 2014 Annual Report**

State Land Use Commission Docket No.: A13-797 Annual Report

On November 22, 2013, the State Land Use Commission reclassified approximately 86.030 acres of land, more particularly identified as Tax Map Key No.: (2) 3-8-008:019 (the "Petition Area"), from the Agricultural District to the Urban District under LUC Docket No.: A13-797. Petitioner intends to develop the Petition Area as a heavy industrial subdivision (the "Project").

No.	Condition	Status	Comments
1	<p>Highway and Road Improvements. The Petitioner shall abide by, complete and/or submit the following:</p> <p>a. The TIAR shall be revised and resubmitted to the State Department of Transportation ("DOT") for review prior to Petitioner submitting an application for Preliminary Subdivision Approval to the County of Maui. The Petitioner shall obtain acceptance of the revised TIAR ("Revised TIAR") from the DOT prior to Petitioner receiving Preliminary Subdivision Approval from the County of Maui.</p> <p>b. Petitioner shall fund and provide for the planning, design and construction of all recommended transportation improvements required to mitigate local and direct Project-generated and/or related transportation impacts, in accordance with the Revised TIAR and required updates to the TIAR, as accepted by DOT, at no cost to the State, and in accordance with the requirements of the County of Maui Department of Public Works, as applicable. Petitioner shall also dedicate land to accommodate auxiliary lanes on Mokulele Highway, as required.</p> <p>c. Petitioner shall provide its fair share contribution toward the cost of regional transportation improvements to State highways, as determined by Petitioner and DOT. Regional improvements may also include the reservation and contribution of land for such improvements.</p> <p>d. Petitioner shall provide and complete all transportation improvements as recommended in the DOT-accepted Revised TIAR prior to the certificate of occupancy for the first building in the Project being issued by the County of Maui.</p>	On-going	<p>a. Petitioner revised the TIAR that was prepared by Phillip Rowell and Associates dated January 24, 2012, and submitted that revised TIAR, dated September 2013, to the DOT. The DOT has confirmed that the September 2013 TIAR is acceptable.</p> <p>b. Petitioner shall comply with this condition.</p> <p>c. Petitioner shall comply with this condition.</p> <p>d. Petitioner shall comply with this condition.</p>
2	<p>Energy Conservation. Petitioner, where feasible, shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed Project.</p>	On-going	<p>The Petitioner shall comply with this condition as the Project is developed.</p>
3	<p>Water System. Petitioner shall provide the necessary water source, storage and transmission facilities to the satisfaction of the County of Maui's Department of Water Supply and/or DOH and/or Commission on Water Resource Management, as applicable, to service the Petition Area. Petitioner shall also provide notice to surrounding landowners, regarding the required separation distance for individual wastewater systems from the proposed drinking water source.</p>	On-going	<p>CMBY's well completion reports were submitted to the Commission on Water Resource Management in August 2014. Petitioner shall comply with this condition.</p>

LAND USE COMMISSION
 STATE OF HAWAII
 2014 NOV 21 9:22

4	<p>Water Conservation. Petitioner shall implement water conservation measures and best management practices, including water efficient plumbing fixtures, high efficiency or drip irrigation systems, and drought tolerant landscaping.</p>	On-going	Petitioner shall comply with this condition as the Project is developed.
5	<p>Environmental Management. Petitioner shall comply with the requirements of the County Department of Environmental Management and/or DOH as applicable.</p>	On-going	Petitioner shall comply with this condition.
6	<p>Pollution Prevention Best Management Practices. Petitioner shall prepare a pollution prevention plan that incorporates Best Management Practices ("BMPs") for use during construction and development and during the operational phase of the Project.</p> <p>The pollution prevention plan shall be implemented by Petitioner, its successors and assigns, and shall be incorporated into the CC&Rs for the Project. BMPs shall be implemented during construction to control fugitive dust, minimize infiltration and runoff from construction and vehicle operations, and reduce or eliminate soil erosion and groundwater and surface water pollution in accordance with DOH rules and guidelines and County of Maui rules and ordinances. BMPs for the operational phase of the Project shall be directed at preventing all pollutants that may be associated with a specified industrial use from being released into the environment, including structural BMPs such as oil/water separators, detention ponds, lined containment pits, and stormwater filtration units designed to contain and remove industrial contamination.</p> <p>The pollution prevention plan shall include but not be limited to:</p> <p>a. Cleaning, repair, and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drip or spills and to provide for the recovery of any spilled liquids. Water drainage from these concrete floors shall, if necessary, pass through a separator sump before being discharged. The separated fluids shall be handled and disposed of in compliance with applicable DOH requirements for disposal of such materials. This material must be tested to determine whether it qualifies as hazardous waste and if determined to be hazardous waste, must be disposed of in compliance with hazardous waste rules.</p> <p>b. Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain.</p> <p>c. Petitioner and all lot owners and occupants shall inform their employees to immediately collect and contain any industrial liquid spills on the concrete floor. Employees shall be informed against discharging or spilling any industrial liquids, and shall be aware to</p>	On-going	<p>Petitioner shall comply with this condition.</p> <p>Petitioner will be drafting Conditions, Covenants and Restrictions for the Project.</p>

	<p>prevent any industrial spill onto the bare ground.</p> <p>d. For parking areas, BMPs emphasizing pollution prevention shall be established. Large vehicles such as trucks and construction equipment shall utilize drip pans to avoid release of petroleum onto paved surfaces. Areas used primarily for automobile parking shall be periodically checked and cleaned to avoid buildup or oil or other automotive fluids: Maintenance work other than emergency work on vehicles should be prohibited in parking areas.</p>				
7	<p>Potable Water and Injection Wells. Any injection well that would dispose of desalination wastewater or other types of wastewater such as industrial process wastewater, sewage, or rainfall runoff, shall comply with Chapter 11-23, HAR, entitled Underground Injection Control, and shall demonstrate that the injections shall not adversely affect downgradient streams, Kealia Pond National Wildlife Refuge, and coastal waters.</p>	On-going	Petitioner shall comply with this condition.		
8	<p>Debris Catch Basin. All drainage injection wells or subsurface drainage structures shall be designed with a debris catch basin to allow the detention, before flowing into the drainage well, of rubbish and sediments that are often carried and deposited by runoff. The debris catch basin shall be periodically inspected and cleaned. An environmental precautionary sign shall be installed at, or painted on the ground next to, each drainage injection well, which shall read: "DUMP NO WASTE, GOES TO GROUNDWATER AND OCEAN HELP PROTECT HAWAII'S ENVIRONMENT."</p>	On-going	Petitioner shall comply with this condition.		
9	<p>Stormwater Management and Drainage. Petitioner shall fund the design and construction of stormwater and drainage system improvements for the Petition Area in accordance with the requirements of the County of Maui's Department of Public Works, and incorporate in the design and construction of backbone infrastructure low impact development features for stormwater capture and reuse, to the extent practicable and allowed by the County of Maui, to prevent runoff from adversely affecting downstream properties and facilities and receiving streams, Kealia Pond National Wildlife Refuge, and coastal waters, consistent with Federal, State, and County laws, rules, and ordinances.</p> <p>The Petitioner, its successors and assigns, shall cause to be maintained the stormwater and drainage system improvements for the Petition Area. Petitioner shall include in the CC&Rs for the Project the requirement that low impact development features be incorporated in individual site design and development, to the extent practicable and allowed by the County of Maui.</p>	On-going	<p>Petitioner shall comply with this condition.</p> <p>Petitioner will be drafting Conditions, Covenants and Restrictions for the Project.</p>		
10	<p>Water Quality Monitoring. Petitioner shall develop and implement a near shore water quality monitoring program to detect the presence of contaminants resulting from the development of the Project. The monitoring program will be developed by the Petitioner in consultation with the State Department of Health, to include the sampling constituents,</p>	On-going	Petitioner shall comply with this condition.		

	the location, frequency and duration of monitoring, and reporting requirements. If contaminants are present, and such presence is irrefutably linked to the development of, or operations at, the Project, Petitioner, its successors and assigns, shall, in coordination with the DOH, implement appropriate revisions to the pollution prevention plan and BMPs, and CC&Rs if applicable, to address such contaminants.			
11	Civil Defense. Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location identified by the State Civil Defense agency.	On-going	The warning siren will be included in the Project construction plans/final subdivision plans to be approved by the County. Petitioner shall comply with this condition.	
12	Restricted Industrial Uses. The uses within the Petition Area shall be limited to those allowed in the M-3 Restricted Industrial District as established by the County of Maui under Ordinance 3977, as the same may be amended from time to time.	On-going	Petitioner shall comply with this condition.	
13	Provisions of the Hawai'i Right to Farm Act. For all land in the Petition Area or any portion thereof that is adjacent to land 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 principles on adjacent or contiguous lands in the State Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in Section 165-2, HRS; 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 Agricultural District are protected under Chapter 165, HRS, 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.	On-going	The Petitioner shall comply with this condition.	
14	Flora and Fauna. Petitioner shall ensure that all exterior lighting fixtures are down-shielded to minimize the harmful effects of lighting on endangered avifauna.	On-going	Petitioner shall comply with this condition.	
15	Hawaiian Hoary Bats. Petitioner shall include a provision in the CC&R prohibiting the construction of barbed wire fences within the Petition Area.	On-going	Petitioner shall comply with this condition.	

16	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.	On-going	Petitioner shall comply with this condition.
17	Archaeological and Historic Preservation. Petitioner shall comply with mitigation measures recommended by the SHPD. Archaeological monitoring shall be conducted should an alternative access road alignment be pursued.	On-going	Petitioner shall comply with this condition. At this time it is unlikely that the alternative access road will be pursued.
18	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 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 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 SHPD that mitigation measures have been implemented to its satisfaction.	On-going	Petitioner shall comply with this condition.
19	Infrastructure Deadline. The Petitioner shall complete construction of the proposed backbone infrastructure for the Project, which consists of the primary roadways and access points, internal roadways, water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of this Decision and Order approving the Petition.	On-going	Petitioner shall comply with this condition.
20	Compliance with Representations. The Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the findings of fact, conclusions of law, and decision and order. 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.	On-going	Petitioner shall comply with this condition.
21	Notice of Change of Ownership. Petitioner shall notify 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.	On-going	Petitioner shall comply with this condition.
22	Annual Reports. Petitioner shall timely provide and without any prior notice, annual reports to the Commission, the Office of Planning and the Maui County Planning Department, and their respective successors, in connection with the status of the	On-going	Petitioner acknowledges this condition, and submits this 2014 LUC Annual Report in compliance with Condition 22.

	development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be in a form prescribed by the Executive Officer of the Commission. The annual report shall be due on or before the anniversary date of the Decision and Order for the reclassification of the Petition Area.			
23	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 provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors or assigns.	On-going	The Petitioner acknowledges this condition.	
24	Notice of Imposition of Conditions. Within seven (7) days of the 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 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.	Satisfied	The Notice of Imposition of Conditions by the Land Use Commission was recorded at the Bureau of Conveyances on November 27, 2013 as Document No. A-50790870. A certified copy of the recorded Notice was filed with the Commission on November 27, 2013, by Jennifer A. Benck.	
25	Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR. All such conditions shall run with the land.	Satisfied	A Declaration of Conditions was recorded at the Bureau against the Petition Area as Document No. A-50880606 on December 6, 2013. A certified copy of said Declaration filed with the Commission on December 9, 2013, by Jennifer A. Benck.	