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ALEXANDER & BALDWIN, INC.

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. DR09-38
	)	
ALEXANDER & BALDWIN, INC.	)	PETITION FOR DECLARATORY
	)	ORDER TO DESIGNATE
For Declaratory Order to Designate	)	IMPORTANT AGRICULTURAL
Important Agricultural Lands	)	LANDS; EXHIBITS "A" - "D"
for approximately 27,133 acres at Wailuku	)	
and Makawao, Maui, Hawai`i,	)	
TMK: 2-5-01: portion of 01, 05 and 08; 2-5-02:	)	
portion of 01 and portion of 02; 2-5-03: 06, 07,	)	
08 and 09; 2-5-04: 13 and portion of 39;	)	
2-5-05: portion of 19 and portion of 20;	)	
3-8-01: portion of 01, 05, 06, portion of 07, 11,	)	
12, 14, 15, 33 and 135; 3-8-03: 01, 02, 03,	)	
portion of 04, 05, 06 and 07; 3-8-04: portion of	)	
01, portion of 02 and portion of 22; 3-8-05:	)	
portion of 01, portion of 02 and 18; 3-8-06:	)	
portion of 01, portion of 02, portion of 03, 15	)	
and 29; 3-8-08: 06	)	

2009 APR -6 A 11: 08  
LAND USE COMMISSION  
STATE OF HAWAII

**PETITION FOR DECLARATORY ORDER  
TO DESIGNATE IMPORTANT AGRICULTURAL LANDS**

Comes now, Petitioner ALEXANDER & BALDWIN, INC. ("Petitioner"), by and through its attorney, BENJAMIN M. MATSUBARA, and respectfully petitions the Land Use Commission of the State of Hawaii ("Commission") to issue a declaratory order designating approximately 27,133 acres of land at Wailuku and Makawao, Maui, Hawai'i ("Property"), more particularly described below, as Important Agricultural Lands ("IAL") pursuant to §§ 205-44 and 45 of the Hawaii Revised Statutes ("HRS") and §§ 15-15-98 and 99 of the Hawaii Administrative Rules ("HAR"). In support of this Petition, Petitioner alleges and avers as follows:

I. Petition Content Requirements.

Contents requirement for Petition for Declaration Order pursuant to HAR § 15-15-99:

A. Name, address and telephone number of Petitioner. Petitioner ALEXANDER & BALDWIN, INC. is a Hawaii corporation, whose address is 822 Bishop Street, Honolulu, Hawai'i, 96813, and telephone number is (808) 525-6611. Benjamin M. Matsubara, Curtis T. Tabata and the law firm of Matsubara - Kotake have been appointed to represent the Petitioner pursuant to HAR Section 15-15-35(b). All correspondence and communications in regard to this Petition shall be addressed to, and served upon, Benjamin M. Matsubara, Matsubara & Kotake, 888 Mililani Street, 8<sup>th</sup> Floor, Honolulu, Hawaii 96813.

B. Signature of each petitioner. This petition is signed below by Petitioner's attorney who is authorized to sign and file this petition on Petitioner's behalf.

C. Designation of specific question. Whether the lands identified by Petitioner in this Petition should be designated as IAL pursuant to HRS §§ 205-44 and 45.

D. Statement of Petitioner's interest in the subject matter and reason for the submission. Petitioner is the owner in fee simple of those lands located on the island of Maui, Hawai'i, and more specifically identified and described on Exhibit "B" attached hereto ("Property"). Petitioner requests the Commission designate the Property as IAL pursuant to HRS §§ 205-44 and 45.

E. Statement of Petitioner's position or contention. It is Petitioner's position that the Property meets the qualifications for designation as IAL under HRS § 205-44, and that the Commission should issue a declaratory order designating the Property as IAL pursuant to HRS 205-45.

F. Memorandum of authorities, containing a full discussion of reasons and legal authorities in support of Petitioner's position. HRS § 205-45(c) provides that the petition for declaratory order designating IAL shall be submitted in accordance with subchapter 14 of the Commission's rules and the requirements contained in HRS § 205-45(c). The petition for declaratory order content requirements under subchapter 14 are

found at HAR § 15-15-99 and are discussed in Sections A-F herein. The requirements of HRS § 205-45(c) include the following:

1. Tax Map Key Numbers and verification and authorization from the applicable landowners. Petitioner seeks to designate as IAL approximately 27,133 acres of land on the island of Maui, Hawai`i. Attached hereto and incorporated herein by reference as Exhibit "B" are documents (table and maps) identifying the location, Tax Map Key Numbers and acreage of the Property. Ownership of the lands identified by Tax Map Key Numbers stated in Exhibit "B" is held by Petitioner. Attached hereto and incorporated herein by reference as Exhibit "C" is the letter by Title Guaranty of Hawaii, Incorporated verifying ownership of the Property. Attached hereto and incorporated herein by reference as Exhibit "D" are copies of deeds verifying ownership of the Property.

2. Proof of qualification for designation as IAL under HRS § 205-44. HRS § 205-44(c) provides the standards and criteria to identify IAL. HRS § 205-44(a) provides that lands identified as IAL need not meet every standard and criteria listed in HRS § 205-44(c); rather, lands meeting any of the criteria in HRS § 205-44(c) shall be given initial consideration, provided that the designation of IAL shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawaii Constitution and the objectives and policies for IAL in section 205-42 and 205-43.

Attached hereto and incorporated by reference herein as Exhibit "A" is the Agricultural Lands Assessment for Alexander & Baldwin, Inc.'s Maui lands which describes and illustrates the characteristics of the Property.

The standards and criteria for identifying IAL pursuant to HRS § 205-44(c) are as follows:

a. Land currently used for agricultural production. The Property is currently utilized for active agricultural purposes. Approximately 87% of the Property is used for the cultivation of sugar cane, by Hawaiian Commercial & Sugar Co. ("HC&S"), a division of the Petitioner. Another 6% of the Property is used for the cultivation of seed corn, pineapple and pasture in Waikapu and Hamakuapoko. See Figure 1 of Exhibit "A", Existing Cultivated/Farmed Land. The remaining approximately 7% of the Property includes essential elements of the agricultural operations such as gulches which serve a drainage function or other key agricultural infrastructure, such as reservoirs and irrigation distribution infrastructure.

b. Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops. The University of Hawaii, Land Study Bureau ("LSB") developed the Overall Productivity Rating, which classified soils according to five (5) levels, with "A" representing the class of highest productivity soils and "E" representing the lowest. These letters are followed by numbers which further classify the soil types by conveying such information as

texture, drainage and stoniness. Based on this, approximately 59% of the Property is rated "A" and approximately 14% of the Property is rated "B". Approximately 27% of the Property is rated "C", "D", "E" and less than approximately 1% is not classified, comprising lands that are farmed or include essential elements of the active agricultural operation, such as drainage gulches and reservoirs. See Figure 2 of Exhibit "A", LSB's Agricultural Soils Productivity Ratings for the Property. Solar radiation received by the Property is described in the Solar Radiation Map, as shown in Figure 3 of Exhibit "A".

c. Lands identified under agricultural productivity ratings systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977. In 1977, the State Department of Agriculture developed a classification system to identify Agricultural Lands of Importance to the State of Hawaii ("ALISH"). The classification system is based primarily, though not exclusively, upon the soil characteristics of the lands. The three (3) classes of ALISH lands are: "Prime", "Unique", and "Other", with all remaining lands termed "Unclassified". When utilized with modern farming methods, "Prime" agricultural lands have a soil quality, growing season, and moisture supply necessary to produce sustained crop yields economically. "Unique" agricultural lands possess a combination of soil quality, growing season, and moisture supply to produce sustained high yields of a specific crop. "Other" agricultural lands include those that have not

been rated as "Prime" or "Unique". The ALISH system classifies approximately 76% of the Property as "Prime" and 13% of the Property as "Other". The balance of the Property, while not classified by ALISH, includes areas that are farmed or contain essential elements of the active agricultural operations, such as drainage gulches and reservoirs. See Figure 4 of Exhibit "A", ALISH Map.

d. Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production. The majority of the Property has been in active sugar cane cultivation for at least 100 years. In addition to sugar production, HC&S produces electricity through the burning of bagasse. See Figure 1 of Exhibit "A", Existing Cultivated/Farmed Land.

e. Lands with sufficient quantities of water to support viable agricultural production. Access to reliable sources of water and efficient irrigation systems are crucial to the cultivation of sugar cane, as well as other agricultural crops. To conserve water, the sugar cane fields are served by drip irrigation systems. Currently, irrigation water is derived from a combination of sources, including non potable wells and surface water ditch systems. The irrigation system includes ditches, pipelines and reservoirs for the transport and storage of water. The availability of adequate water is crucial to maintaining current agricultural operations. See Figure 5 of Exhibit "A", Agricultural Infrastructure/Water Resources. The East Maui Irrigation

(EMI) ditch system is owned, operated and maintained by East Maui Irrigation Company, a wholly owned subsidiary of Alexander & Baldwin, Inc. The West Maui Ditch System is co-owned, operated and maintained by HC&S and the Wailuku Water Company, formerly Wailuku Sugar Company. The delivery capacity of the two ditch systems total approximately 570 million gallons per day (EMI system: 450 mgd; West Maui ditch system: 120 mgd). The long-term average water delivery from the two systems is approximately 195 mgd (this includes only the water delivered from the West Maui system used by HC&S, not the total delivery of the system). In addition, HC&S owns and operates 15 brackish water wells with a total pumping capacity of approximately 228 mgd which are used to supplement ditch flows as needed. In addition to the existing wells, reservoirs and surface water ditch systems, the Property also receives an average of 15 to 59 inches of rain annually. The Property has sufficient quantities of water to support viable agricultural production.

f. Land whose designation as Important Agricultural Lands is consistent with general, development, and community plans of the County. The Property's agricultural classification is consistent with the County's General Plan and Community Plans. As shown on the Wailuku-Kahului Community Plan Land Use Map (Figure 7A of Exhibit "A"), the Kihei-Makena Community Plan Land Use Map (Figure 7B of Exhibit "A") and the Paia-Haiku Community Plan Land Use Map (Figure 7C of Exhibit "A"), the Property is designated Agriculture or Open Space. The Draft Maui

Island Plan-Land Use Policy Map (Figure 6 of Exhibit "A") shows the Property outside of the proposed urban growth and developed areas. Additionally, the Property is situated within the State Agricultural District as reflected on Figure 8 of Exhibit "A", Proposed IAL on State Land Use District Boundary Map.

g. Land that contributes to maintaining a critical land mass important to agricultural operating productivity. Petitioner seeks to designate approximately 27,133 acres of land as IAL, approximately 93% of which are used for the cultivation of sugar cane, seed corn, pineapple and pasture. See Figure 1 of Exhibit "A", Existing Cultivated/Farmed Land. Additional lands proposed for inclusion, which consist of essential elements of the agricultural operations, are necessary to provide the overall critical "contiguous" land mass necessary for agricultural operating productivity. Lands containing high to steep slopes which include gulches, valleys, ravines and drainage ways provide critical infrastructure support of the adjacent highly productive lands by providing and preserving the necessary natural drainage ways for adjacent lands which have been identified as highly productive. Similarly, lands containing natural and/or man-made water ways and features such as streams, reservoirs, wetlands, and drainage basins provide critical infrastructure support for adjacent highly productive lands by providing and preserving the necessary water source for existing as well as potential future irrigation systems necessary to assure agriculture productivity. The entire Property, including those areas that are not being

actively cultivated comprised of gulches, streams and reservoirs, constitute contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management and is consistent with the policies of HRS § 205-43(1).

h. Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power. The Property has been in active agriculture for at least 100 years. Existing infrastructure include water irrigation systems, hydroelectric generation systems, roadways and transport systems, warehousing and processing structures and facilities. See Figure 5 of Exhibit "A", Agricultural Infrastructure/Water Resources.

3. The current or planned agricultural use of the area sought to be designated as IAL. As describe above, the majority of the Property is used for the cultivation of sugar cane. See Figure 1 of Exhibit "A", Existing Cultivated/Farmed Lands.

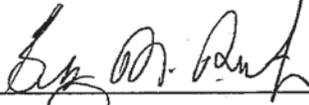
## II. Waiver of 85/15 Reclassification Incentive

Petitioner is not seeking a reclassification of land pursuant to HRS 205-45(b) in conjunction with this Petition to designate IAL. Furthermore, Petitioner hereby voluntarily waives any and all rights to assert, claim or exercise any credits pursuant to HRS § 205-45(h), as effective as of the date of this petition, that may be earned by Petitioner in the event of and as a result of this Petition being granted. This waiver is limited to the use of credits for the sole purpose of reclassifying other

lands that are not the subject of this Petition to the Urban, Rural or Conservation Districts pursuant to HRS § 205-45(h), as effective as of the date of this petition, and shall not apply to any other credits, incentives, rights or privileges that Petitioner may possess now or in the future, whether known or unknown, which are hereby expressly reserved.

Based on the foregoing, Petitioner respectfully requests that the Commission find that the Petition meets the standards for designating Important Agricultural Lands pursuant to HRS §§ 205-44 and 45, and designates the Property as Important Agricultural Lands.

DATED: Honolulu, Hawai'i, 06 APR 2009.

  
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BENJAMIM M. MATSUBARA  
CURTIS T. TABATA  
Attorneys for Petitioner  
ALEXANDER & BALDWIN, INC.