

**LETTER OF TRANSMITTAL**

2015 SEP 28 A 7:40  
 LAND USE COMMISSION  
 STATE OF HAWAII

DATE: September 21, 2015

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

RE: 2015 Annual Report for the State Land Use Commission  
 Docket No. A10-789 /A&B Properties, Inc. – Wai’ale Community Project

Please find the following enclosed:

QTY	DATE	DESCRIPTION
1	9/21/15	A&B Properties, Inc.’s 2015 Annual Report for Wai’ale Community Project

**FOR:**

- |                                     |   |                          |                            |
|-------------------------------------|---|--------------------------|----------------------------|
| <input type="checkbox"/>            | As Requested                                | <input type="checkbox"/> | For Your Information & Use |
| <input checked="" type="checkbox"/> | For Your Files/Records                      | <input type="checkbox"/> | See Remarks Below:         |
| <input type="checkbox"/>            | Signature and Return one copy to our office |                          |                            |



Dana Sato on behalf of  
 Dan Yasui, Vice President of Permitting

CC: State Office of Planning  
 County of Maui Planning Department

September 21, 2015

Mr. Daniel E. Orodener  
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Land Use Commission  
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LAND USE COMMISSION  
STATE OF HAWAII

Subject: 2015 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") 2015 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, has now been 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. 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 the last annual report, 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 regional park is underway, with the first phase anticipated to be completed in late 2015.

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 Wa`iale, 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 is attached.

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. This 123-acre area is planned for residential use. Accordingly, in February 2015, the Petitioner filed for County community plan amendment, change in zoning and project district approvals. These applications are currently under review and processing by the County of Maui.

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. Non potable water sources are planned 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 previously noted, the State has acquired approximately 65 acres for the proposed Central Maui 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.*

**As part of its County land use applications, an updated TIAR was prepared and submitted. Petitioner will comply with other terms of this condition as entitlement and development of the Project progresses.**

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

**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. Petitioner has indicated its interest in partnering with the County on such a regional facility. 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 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.*

**The Petitioner continues to work with the State Department of Education (DOE) concerning their acquisition of a future middle school site within Wai'ale. In August 2015, an Educational Contribution Agreement was executed with the DOE. A copy of that agreement is attached.**

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 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.*

**As noted previously, Petitioner's decision to move ahead with the County entitlement process for a portion of the Project 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 planned Central Maui Regional Park, the 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 Yasui". The signature is fluid and cursive, with the first name being more prominent.

Daniel Yasui, AICP  
Vice President

Encl.

cc: State Office of Planning  
County of Maui Planning Department

Educational Contribution Agreement for  
WAIALE COMMUNITY PROJECT

THIS INDENTURE, made this 31<sup>st</sup> day of August, 2015 by and between A&B PROPERTIES, INC. (hereinafter referred to as "A&B"), whose principal place of business and mailing address is 822 Bishop Street, Honolulu, Hawai'i 96813, and the State of Hawai'i DEPARTMENT OF EDUCATION (hereinafter referred to as "DOE") whose mailing address is Department of Education, Facilities Development Branch, 4680 Kalaniana'ole Highway, Honolulu, Hawai'i 96821.

WHEREAS A&B is the developer and subsidiary of Alexander & Baldwin, LLC, the recorded fee simple owner of that certain parcel of land comprised of approximately 545 acres and identified as Tax Map Key Nos (2) 3-8-05:023 (portion) and (2) 3-8-05:0037; and (2) 3-8-07:071, (2) 3-8-07: 101 (portion) and (2) 3-8-07:104, also known as the "Waiale Community Project" (hereinafter referred to as "WAIALE"). The location of WAIALE is shown on the map attached hereto and referenced herein as Exhibit "A".

WHEREAS WAIALE is anticipated to contain a total of approximately 2,550 residential units in the entire project;

WHEREAS, pursuant to Hawai'i Revised Statutes ("HRS") Chapter 302A-1601 to 1612, the DOE is authorized to collect impact fees from all new residential development in designated areas or enter into education contribution agreements to satisfy its requirements;

WHEREAS, pursuant to HRS Chapter 302A-1601, said impact fee obligation is comprised of two components, land and construction cost;

WHEREAS, for the land component, pursuant to HRS Chapter 302A-1606 (c), the DOE has exclusive authority to determine whether the obligation shall be satisfied by actual acreage or fees in lieu thereof;

WHEREAS, the amount for the construction cost component shall be determined pursuant to HRS Chapter 302A-1607;

WHEREAS A&B and DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy all DOE requirements for WAIALE, based on a maximum of 2,550 net residential units, less any units that prohibit school age children;

NOW THEREFORE, A&B and DOE agree as follows:

1. A&B Cash Contribution.

a. The Cash Contribution shall be paid out of Escrow and made payable to the "State of Hawai'i, Department of Education" in accordance with the following schedule:

- (1) Two Thousand One Hundred Fifty Three Dollars (\$2,153.00) payable upon the closing and recordation of each single family unit within the project.
- (2) Nine Hundred Thirteen Dollars (\$913.00) payable upon the closing and recordation of each multi-family unit within the project.

- b. The amount of the fee shall be adjusted from the effective date of this Agreement to the date it is paid, so that it is always equal to the Central Maui School Impact Fee District Impact Fee amount that is in effect at the time of payment.
- c. The total estimated cash contribution for Waiale based on a total of 2,550 residential units, including an estimated 1,240 single-family units and estimated 1,310 multi-family units, is approximately \$3,865,750. However, the actual total cash contribution for Waiale will be based on the actual number of single-family and multi-family units developed.
- d. While the obligation to pay impact fees is being addressed by this Agreement with A&B, the obligation passes to whoever purchases or possesses the identified project land and develops residential units within WAIALE. That includes government agencies and private developers.

2. A&B's Land Contribution. A&B shall dedicate 16.879 net useable acres to the State of Hawai'i (hereinafter referred to as "school site"). Usable is generally defined as land free of conditions determined to be restrictive by the DOE. Characteristics of a usable site include, but are not limited to, slope of five percent or less; no ravines or stream beds; a distance from potential hazards such as chemical emissions; and setbacks of 100 to 350 feet from high voltage power lines (distance depending on voltage). The DOE will make the final determination as to whether land is usable based on an evaluation of the specific property taken in the context of the development as a whole.

The presence of school sites within WAIALE will be acknowledged and included in all plans and studies for the development, including environmental impact studies and zoning applications.

The location of the school site shall be as generally shown on the map attached hereto and incorporated herein as Exhibit "B". Additional school site characteristics shall include:

- a. Use of the school site shall be limited to public school and ancillary school uses.
- b. The school site shall have a minimum of two vehicular access points, along two different boundaries of the parcel, in locations approved in writing by DOE.
- c. A&B shall conduct an initial title search of the school site at no cost to the State of Hawai'i at the time of the execution of this Agreement. Updates to the title report (with hyperlinks) may be required by the DOE during the DOE's due diligence process and following substantial changes to the property title.
- d. A&B may be required to clear title, encumbrances or liens as required by DOE or the Department of Land and Natural Resources (hereinafter referred to as "DLNR"), prior to conveyance and at no cost to the State of Hawai'i. In the event A&B cannot clear title, encumbrances or liens, or it is not economically feasible to do so; A&B shall propose a mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).
- e. A&B shall provide a topographic map of the school site at two-foot elevation.



- f. If necessary, A&B shall be responsible for rezoning the school site to a land use designation that permits residential development, prior to conveyance to the State of Hawai'i.
- g. A&B shall conduct property appraisals at no cost to the State of Hawai'i and at times specified by the DOE.
- h. A&B shall grant a right-of-entry to the State of Hawai'i and its consultants for preliminary data gathering (archaeological, soil testing, topographic surveys, etc.) and construction on the school site prior to the transfer of title and within 60 days of a written request by the DOE.
- i. A&B shall provide a soils report within 12 months of the signing of this Agreement and within ninety (90) days following the addition of any subsequent fill.

In the event the soils report and documentation indicate conditions unacceptable to the DOE; A&B shall propose mutually agreeable alternative site(s) or remove the objectionable material and replace it with soil acceptable for construction, as determined by the DOE. The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

In addition, a copy of any grading report that includes the school site shall be provided to the DOE.

- j. A&B shall conduct a Phase I Environmental Site Assessment (Phase I ESA) for the school site, at no cost to the State of Hawai'i. The State of Hawai'i shall be listed as an intended user of the Phase I ESA. The study shall satisfy the requirements of the State Department of Health (hereinafter referred to as "DOH") and DLNR. Two copies of the study shall be provided to DOE within 60 days of a DOE request.

If necessary, the Phase I ESA or sections of the Phase I ESA may require updating prior to closing, as determined by DLNR, if some sections of the report are more than six (6) months old.

If the Phase I ESA identifies the potential for hazardous material release, the presence of naturally occurring hazardous materials, or if required by DOH or DLNR; A&B shall also conduct a Phase II Environmental Site Assessment and any and all abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or DOH, all at no cost to the State of Hawai'i.

In the event A&B cannot conduct any and all abatement and disposal to the standards described above, or it is not economically feasible to do so, A&B shall propose a mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- k. The school site shall not contain any known historical or archaeological sites. A&B shall be responsible for verifying such state with the DLNR-State Historic

Preservation Division (hereinafter referred to as "SHPD") and/or provide appropriate mitigation measures that are acceptable to SHPD and DOE. If requested by DOE, A&B shall update the archaeological survey for the school site if there are unintentional/inadvertent discoveries of human remains within the school site.

In the event A&B cannot provide sufficient mitigation, or it is not economically feasible to do so, A&B shall propose a mutually agreeable alternative site. The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- l. A&B shall be responsible for the subdivision of the school site(s) at no cost to the State of Hawai'i, including Land Court recordation, if applicable.
- m. Upon formal subdivision of the school site, A&B shall provide a survey of the site stamped by a duly licensed surveyor. Said survey shall include a metes and bounds description and map of the school site in accordance with the subdivision process. All survey maps and descriptions for the subject property must be in accordance with the State's Department of Accounting and General Services' standards and at A&B's own cost.

If available, A&B shall also provide the latest ALTA survey prior to subdivision of the school site.
- n. A&B shall commit to the completion of the following subdivision infrastructure systems, at no cost to the DOE and up to the property line of the school site, on a mutually agreeable schedule to be determined by the DOE and A&B:
  - (1) Potable water distribution systems for irrigation, domestic, and fire flow needs;
  - (2) Non-potable water distribution system, if required, for irrigation;
  - (3) Sewage collector, treatment and disposal systems;
  - (4) Drainage collector and disposal systems;
  - (5) Access roadway systems sufficient for bus and vehicular traffic (minimum 60-foot right-of-way); and
  - (6) Electrical, telephone, CATV and any other telecommunication distribution systems.
- o. A&B shall provide at no cost to the State of Hawai'i, adequate allocations for the above services, on a mutually agreeable schedule to be determined by the DOE and A&B, such as:
  - (1) Subdivision water system allocations based on up to 60 gallons per person per day (1,300 people) for domestic use plus 4,000 gallons per day per acre for irrigation purposes at no cost to the school.
  - (2) Subdivision water system capacity of 2,000 gallons per minute for a two-

hour duration (with residual critical pressure of 20 psi at the fire hydrants), as required for fire flow requirements, with related reservoir storage capacity.

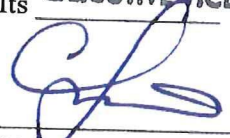
- (3) Average sewage flow allocations based on 25 gallons per person, per day (1,300 people) plus 1,250 gallons per acre per day for wet weather infiltration/inflow or plus 2,750 gallons per acre per day for wet weather if the sewer line is laid below the normal ground water table.
  - (4) Actual allocations and size of utility lines at street for potable and non-potable water, sewer, drainage, power, telephone, CATV and any other telecommunication systems shall be reported with the conveyance documents.
- p. A&B shall grant all utility easements over lands owned by A&B which are required to provide utility service to the school site without charge to the State of Hawaii.
  - q. The school site shall be exempt from WAIALE community Declaration of Covenants, Conditions and Restrictions, WAIALE association rules, WAIALE design committee rules, and subdivision design guidelines.
  - r. The school site shall be conveyed to the State of Hawaii based on a mutually agreeable schedule to be determined by the DOE and A&B. Both parties acknowledge that the conveyance schedule will generally be dependent on the timing and completion of A&B's development of abutting properties and the roadways and major infrastructure systems servicing the school site. A&B will proceed with the development of Waiale as it deems appropriate in its sole and absolute discretion.
  - s. A&B shall be responsible for payment of all property taxes up to the effective date of the Warranty Deed.
  - t. A&B shall provide title insurance for the school site when the DOE's due diligence process is completed and conveyance is eminent.
  - u. Conveyance of the school site shall be via Warranty Deed in a form approved by the Department of the Attorney General, Land/Transportation Division and the DLNR. The standard boilerplate Warranty Deed form, as may be amended from time to time, will be provided to A&B.
  - v. A&B recognizes that the State's acquisition and disposition of private property is subject to approval by the Board of Land and Natural Resources.
3. This Agreement shall be binding upon A&B, or its successor in interest.
  4. This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this instrument and the several counterparts shall constitute one instrument to the same effect as though the signature of all the parties were upon the same instrument. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one instrument.



IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

A & B PROPERTIES, INC.

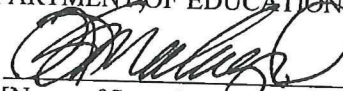
By  Date: 07/20/2015  
[Name of Individual] PAUL HALLIN  
Its EXECUTIVE VICE PRESIDENT

By  Date: 07/20/2015  
[Name of Individual] CHARLES W. LOOMIS  
Its ASST. SECRETARY

Approved as to form:

By  Date: 7-29-15  
Attorney General  
State of Hawai'i  
*Dep.*

DEPARTMENT OF EDUCATION

By  Date: AUG 31 2015  
[Name of Superintendent]

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

On this 20<sup>th</sup> day of July, 2015, before me appeared PAUL HALLIN and CHARLES W. LOOMIS, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, has been duly authorized to execute such instrument in such capacities.

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



Signature: *Cheryl A. Onishi*  
Print Name: CHERYL A. ONISHI  
Notary Public, State of Hawaii ...  
My commission expires: APR 17 2017

**NOTARY CERTIFICATE** (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Educational Contribution Agreement for Waialeale Community Project Doc. Date: Undated at Time of Notarization  
No. of Pages: 10 Jurisdiction: First Circuit

Signature of Notary: *Cheryl A. Onishi* Date of Certificate: 7/20/15

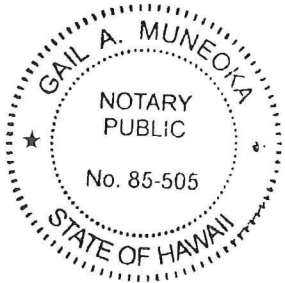
Printed Name of Notary: CHERYL A. ONISHI



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

On this 31st day of August, 2015, before me appeared Kathryn S. Matuyoshi, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, has been duly authorized to execute such instrument in such capacity.

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



Signature: Gail A. Muneoka  
Print Name: Gail A. Muneoka  
Notary Public, State of Hawaii  
My commission expires: May 10, 2019

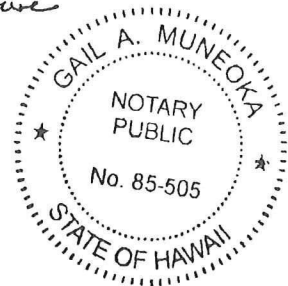
NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Educational Contribution Agreement  
for Waialeale Community Project Doc. Date: undated at time of signature

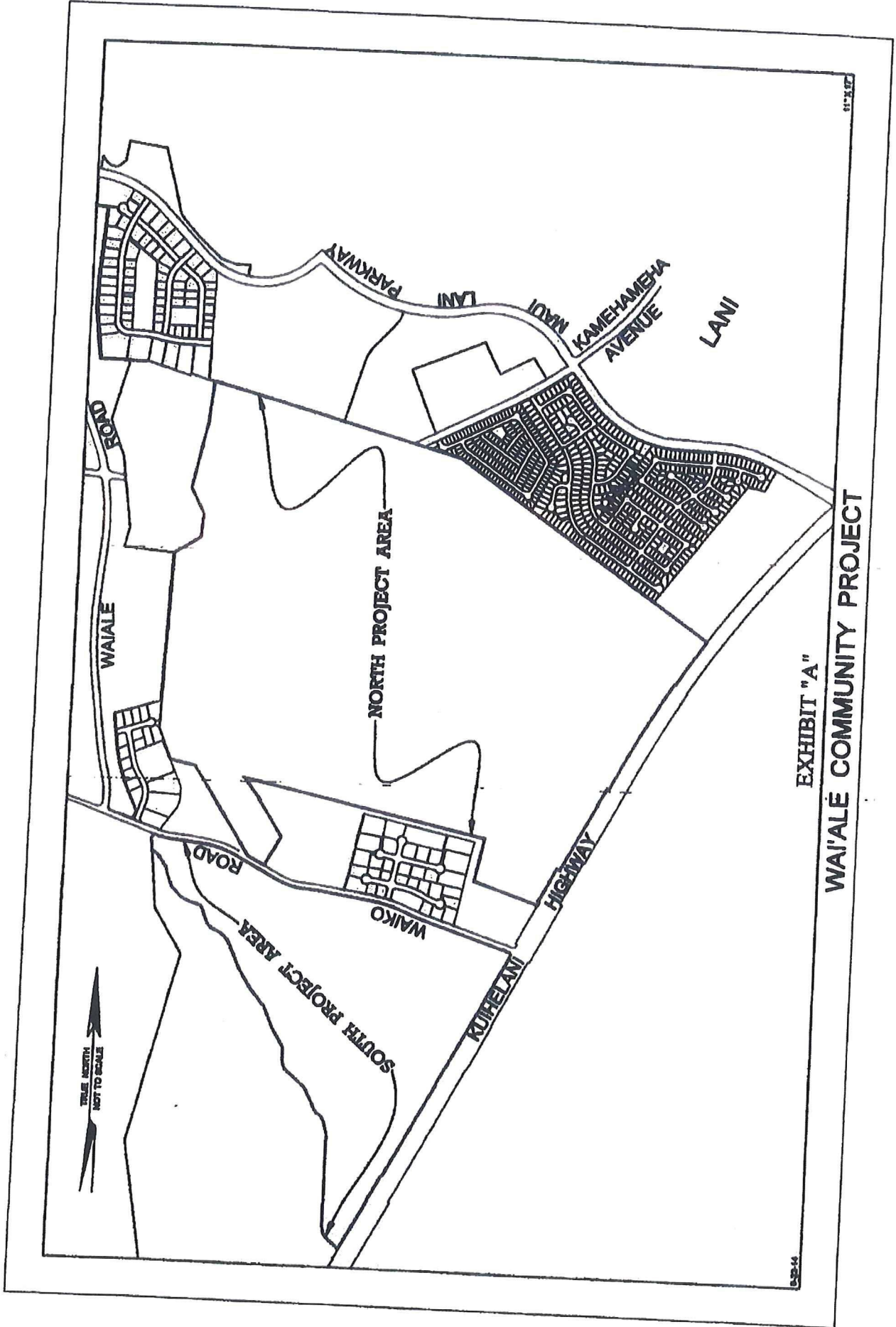
No. of Pages: 10 Jurisdiction: First Circuit

Gail A. Muneoka (in which notarial act is performed)  
Signature of Notary 8/31/2015  
Date of Certificate

Gail A. Muneoka  
Printed Name of Notary





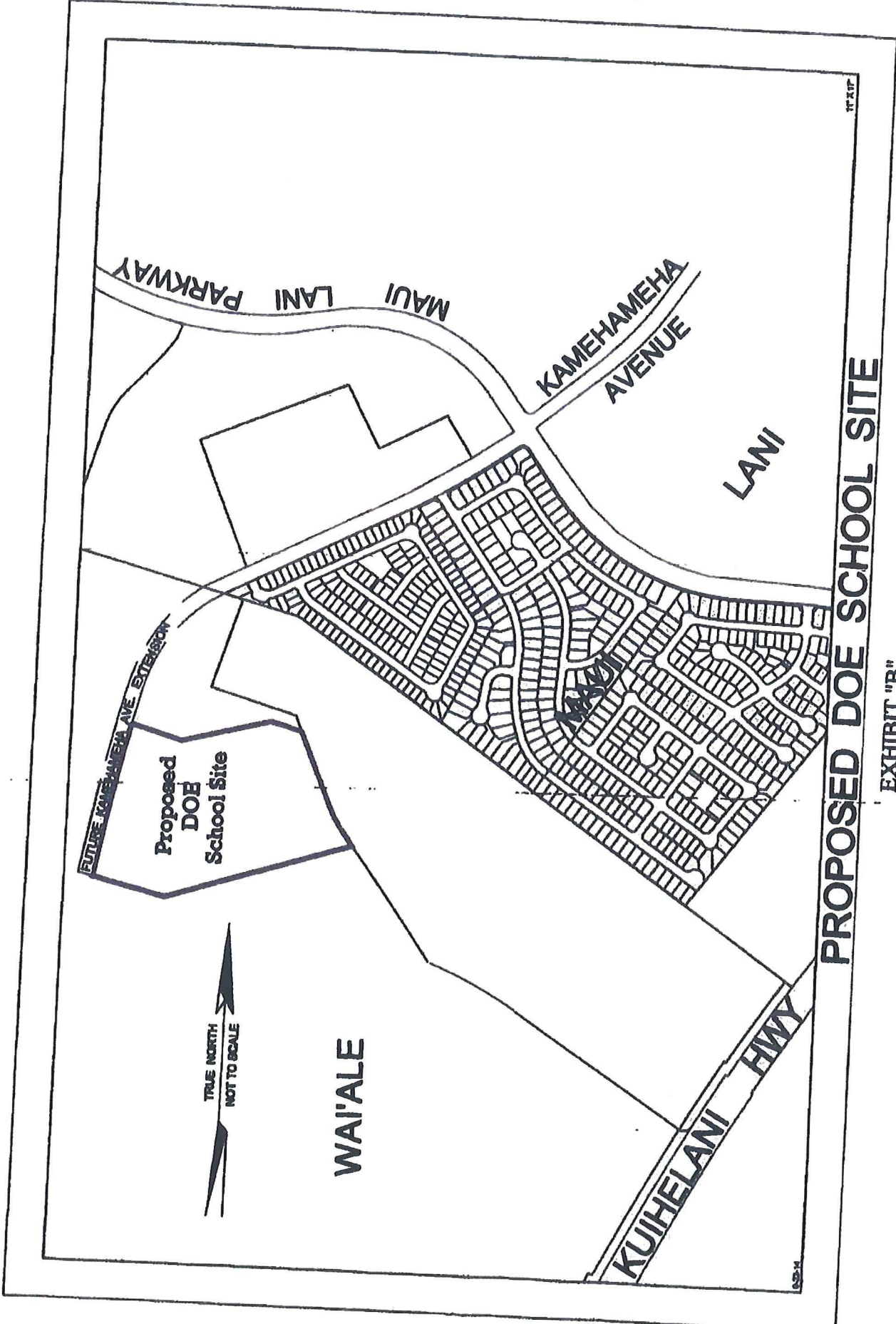


11-21-07

EXHIBIT "A"

WAI'ALE COMMUNITY PROJECT

0-2-11



**PROPOSED DOE SCHOOL SITE**

EXHIBIT "B"