

August 11, 2014

LAND USE COMMISSION
STATE OF HAWAII

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

Subject: 2014 Annual Report for the State Land Use Commission
Docket No. A98-723/A&B Properties, Inc.- Haliimaile Residential

Dear Mr. Orodener:

This constitutes A&B Properties, Inc.'s ("A&B") 2014 annual report for the subject Haliimaile Residential project.

Project Background and Status

By its Decision and Order dated October 22, 1998, the State Land Use Commission ("SLUC") granted approval of A&B's petition to reclassify approximately 62.994 acres from the "Agricultural" to the "Urban" land use district at Haliimaile, Maui. Approval of the petition was subject to 17 conditions. The development of the subject property is planned to include residential use (45 acres), park space (10 acres), a drainage basin with buffer/maintenance road (7 acres), and a wastewater treatment facility (1 acre).

Since the SLUC's approval in October 1998, the following work, summarized below, has been undertaken.

- A Community Plan amendment from the "Agriculture" to the "Public/Quasi-Public" district (approximately 7.994 acres) for the planned sewage treatment facility and drainage retention basin, as well as to allow revisions to the configuration of the "Single-Family" district and the "Park" district within the planned project was attained. An Environmental Assessment was also prepared as part of the Community Plan amendment application. The Maui County Planning Department subsequently determined that no significant impacts (FONSI) were associated with this action.
- A County special use permit for the construction and operation of the project's planned sewage treatment facility was applied for and approved by the Maui Planning Commission in November 1999. The current special use permit is valid till September 2, 2021.

- A change in zoning application from “Interim” district to “R-1” residential district (approximately 45 acres) and “PK-1” park district (approximately 10 acres) was filed with the County. The 7.994-acre area designated for the sewage treatment facility and drainage-retention basin will be retained in the County’s “Agriculture” district.
- The Maui Planning Commission conducted public hearings on both the Community Plan and change in zoning applications in July and November 1999. In November 1999, the Planning Commission voted to recommend approval of both applications to the Maui County Council. Approval of the change in zoning application was subject to 13 conditions. The applications were subsequently forwarded to the Maui County Council for hearing and action. The Council’s Land Use Committee conducted a public hearing on the applications in September 2001. However, it was not until June 2005, that the Council’s Land Use Committee again conducted further public hearings on the subject land use applications. The Land Use Committee subsequently recommended approval of the applications to the Maui County Council, and in September 2005 the Council granted final approval of the Community Plan amendment and the change in zoning applications.
- Preliminary subdivision approval for the project was granted in 2006, and an extension was most recently granted in June 2012. Based on that plan, construction drawings were submitted to County agencies for review. More recently, A&B has undertaken more detailed planning of the project and is in the process of reevaluating the subdivision design. In order to meet a wider range of the Upcountry residential housing market needs, current plans utilize the County’s Cluster Housing provisions and allow for a mixture of single family and multi-family housing types. A&B continues discussions with area landowners and the Department of Water Supply to identify a potential water source for the project.

Status of Activities Relating to Imposed Conditions

Listed below are each of the conditions imposed under the Decision and Order and the status of activities pertaining to each respective condition. Many of the imposed conditions will be addressed or complied with as further progress on the project is achieved.

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate income residents in the State of Hawaii to the satisfaction of the County of Maui. The County of Maui shall consult with the State Housing and Community Development Corporation of Hawaii prior to its approval of the Petitioner’s affordable housing plan. The location and distribution of affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Maui.

In June 2005, the County of Maui Department of Housing and Human Concerns (DHHC) recommended to the Maui County Council that the Petitioner provide affordable housing equivalent to 25 units or 15 percent of the total units developed at the project, whichever is greater. This requirement has been imposed as a condition of the change in zoning ordinance for the project and will be complied with.

2. Petitioner shall contribute its fair share to the development, funding, and/or construction of public school facilities as determined by and to the satisfaction of the State Department of Education (DOE). Petitioner and the DOE shall submit a written agreement on this matter prior to the Petitioner obtaining approval for County zoning.

Petitioner entered into an “Educational Contribution Agreement” with the DOE on November 23, 1999. A copy of this agreement was previously transmitted to the SLUC. Pursuant to the agreement, Petitioner is working with the DOE to convey land adjacent to Paia Elementary School for public school use.

3. Petitioner shall fund and construct adequate wastewater transmission and disposal facilities for the proposed development, as determined by the County of Maui Department of Public Works (“DPW”) and the State Department of Health (“DOH”).

Petitioner is planning a wastewater treatment plant to serve the project. A special use permit has been attained for the proposed wastewater treatment plant. In November 2008, the State Department of Health informed Petitioner that the Preliminary Engineering Report for the proposed sewage treatment facility prepared and submitted by Petitioner was found to be in compliance with applicable provisions of Chapter 11-62, Hawaii Administrative Rules and the Guidelines for the Treatment and Use of Recycled Water, May 15, 2002. In 2010, Petitioner solicited proposals for the design, construction, and operation of a private wastewater treatment plant, and continues to evaluate this possibility as well as other alternatives to serve the project as well as surrounding areas.

4. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation systems and regional improvement and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation, and the County of Maui DPW.

Based on a traffic impact analysis prepared by Petitioner, DOT acknowledged and informed the County of Maui DPW that signalized intersection improvements at the intersection of Haliimaile Road and Haleakala Highway will adequately serve expected traffic generated by the project. Petitioner will participate in the pro-rata funding and construction

of other transportation improvements and programs, as may be determined by DOT and DPW.

5. Petitioner, developer and/or landowners of the affected properties shall fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies.

This condition will be addressed as development of the project progresses.

6. Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, the Petitioner, developers and/or landowners of the affected properties shall stop work in the immediate vicinity and State Historic Preservation Division of the Department of Land and Natural Resources (“SHPD”) shall be notified immediately. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

This condition will be addressed as development of the project progresses.

7. Petitioner shall participate in an air quality monitoring program as specified by the DOH. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding Agricultural District land. Petitioner shall notify all prospective buyers of property that the Hawaii Right-to-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

This condition will be addressed as development of the project progresses.

8. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of the DOH, Natural Resources Conservation Service of the U.S. Department of Agriculture, and County agencies.

This condition is being addressed during the design process.

9. Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed Project. Water transmission facilities and improvements shall be coordinated with and approved by appropriate State and County agencies. Petitioner shall coordinate with the Department of Water Supply and provide the necessary information to facilitate the inclusion of the project in the Water Use and Development Plan.

In 2012, the County indicated that it will commence issuing meters to landowners currently on the Upcountry water meter waiting list which includes the Project. Petitioner will monitor this situation and continue discussions with the County of Maui Department of Water Supply and

private landowners in the vicinity of the project regarding the development of water facilities in the region.

10. Petitioner shall retain the buffer strips as depicted in the Petitioner's preliminary site plan to mitigate adverse impacts from the agricultural activities in the surrounding area.

This condition is being addressed during the design process.

11. Petitioner shall conduct seasonal surveys during the late winter/early spring (when water is present in the reservoir) to determine if the reservoir is being used as nesting habitat by stilts or other endangered species/subspecies of waterbirds (e.g., Hawaiian Coot, or Hawaiian Gallinule). Surveys should be conducted for at least two years. The surveyors should look for evidence of increased use of the area, as well as predation by dogs and cats. Should findings detect increased disturbance or predation to endangered waterbirds, the Petitioner shall provide mitigation measures as required by the U.S. Fish and Wildlife Service.

In February 2014, an avian survey of the nearby Haliimaile Reservoir No. 20 was conducted by Robert W. Hobdy. The survey occurred over two days (February 14 and 15, 2014) and included five site visits. A total of ten bird species were identified, including one native species (Ae`o or black necked Hawaiian stilt), one migratory species (Kolea or Pacific golden plover), as well as eight non-native species. Per the survey, birds spend one to two hours at the reservoir but typically depart before sunset to overnight at their primary habitats at wetlands near the coast. Reservoir No. 20 does not provide the quality habitat to attract permanent usage by water birds. Drastic water level changes at the reservoir associated with sugar cane irrigation does not allow for the creation of a stable wetland habitat suitable for waterbirds. The report concludes that the reservoir is not essential habitat for water bird species. A copy of the report is attached.

12. Petitioner shall develop the Property in substantial compliance with the representations made to the Land Use Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

Notwithstanding that the timing of development has been delayed due to the additional time required to attain County community plan and zoning approvals and to secure water for the Project, Petitioner is proceeding with development of the project in substantial compliance with representations made to the SLUC.

13. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

Petitioner will comply with this condition.

14. Petitioner shall timely provide without prior notice, annual reports to the Land Use Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the subject Project 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 Land Use Commission.

This annual report is being filed pursuant to this condition.

15. The Land Use Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

This condition is not currently applicable.

16. Within seven (7) days of the issuance of the Land Use Commission's Decision and Order for the subject reclassification, the Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Land Use Commission.

This condition has been satisfied. On October 28, 1998 a "Notice of Imposition of Conditions by the Land Use Commission" was recorded with the State Bureau of Conveyances (Document No. 98-162166) and copies were filed with the SLUC.

17. Petitioner shall record the conditions imposed herein by the Land Use Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR.

This condition has been satisfied. On November 30, 1998 the conditions imposed by the SLUC were recorded with the State Bureau of Conveyances under the "Declaration of Conditions Applicable to an Amendment of District Boundary From Agricultural to Urban" (Document No. 98-178918).

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 Y. Yasui". The signature is fluid and cursive, with a prominent initial "D" and "Y".

Daniel Y. Yasui, AICP
Vice President, Entitlement

cc: State Office of Planning
County of Maui Planning Department

Hāli'imaile Reservoir #20

Bird Survey

by: Robert W. Hobdy
February 2014

for:
A & B Properties, Inc.

Hāli'imaile Reservoir #20 Bird Survey

INTRODUCTION

The Hāli'imaile Reservoir #20 lies on the west side of Hāli'imaile Town at an elevation of 1,080 feet. The reservoir encompasses approximately 12.5 acres including its rock-faced embankment. This reservoir is the focus of a bird survey to assess its use by species of endangered native water birds, its importance as habitat for these protected species and to document any threats to their well being.

DESCRIPTION OF THE RESERVOIR AND ITS FUNCTION

Reservoir #20 serves as a water storage site to provide irrigation water for sugar cane fields between Hāli'imaile Town and Kailua Gulch. It is supplied from the Hamakua Ditch and it irrigates approximately 500 acres. It is periodically filled up and then the water is distributed as needed leaving it nearly empty for short periods of time before replenishment. Vegetation is rather sparse within the reservoir. When filled, the water is too deep for most plants to survive, and when emptied only fast growing weed species can become established briefly before being drowned at the next filling. Thus little typical wetland or upland vegetation can become established effectively.

SURVEY RESULTS

The survey was conducted over a period of two days on February 14 & 15, 2014. Three 1 ½ hour site visits were made on February 14 at 7:20 a.m. – 8:50 a.m., at 12:25 p.m. – 1:55 p.m. and at 5:20 p.m. to 6:50 p.m. Two more site visits were made on February 15 at 9:30 a.m. – 10:30 a.m. and at 2:30 p.m. – 3:30 p.m. A total of ten bird species were recorded during the five site visits. These included one native species, one migratory species and eight non-native bird species.

Ae'o or black-necked Hawaiian stilt (*Himantopus himantopus knudseni*) endemic to Hawaii, Endangered species.

Seventeen ae'o were seen during the five successive site visits: 2, 3, 2, 0 and 10 respectively. All of these birds were in the shallow water near the shoreline feeding and occasionally resting. All of these birds spend time foraging in the shallows, but all for them eventually departed in small groups to visit other areas. None remained in the evening. Ae'o spend most of their time in the large permanent wetland at Keāli'a, Kanahā, Nu'u and a few other smaller ponds in Mākena where more stable habitats and food resources exist, but they use plantation reservoirs and other temporarily flooded areas opportunistically to supplement their diets. Ae'o are even known to fly between islands. Ae'o breed, nest and raise their young in the larger wetlands, and they appear to spend their nights in these areas as well. Reservoirs such as #20 are primarily used for daily forays and supplementary feeding but cannot be considered as essential habitat for the ae'o.

Kōlea or Pacific golden-plover (*Pluvialis fulva*), migrant winter visitors.

Kōlea spend about 6 months of the fall and winter months each year in Hawaii. They migrate here from their arctic breeding grounds to escape the cold winters. Because they raise their young there they are considered native to the arctic and not to Hawaii, although they do occur in both places naturally. Kōlea are strong, fast and agile fliers that are capable of crossing thousands of miles of open ocean in 2 days of non-stop flight.

Eighteen kōlea were seen during the five successive site visits: 5, 4, 8, 0 and 1 respectively. All of these birds were seen feeding in shallow water or resting along the reservoir shore line. Most of these birds departed from the reservoir by nightfall but a few may have spent the night on the mud flats.

Kōlea are quite common in Hawaii during the fall and winter months and they are not a federally protected Threatened or Endangered species. Kōlea prefer habitat along the margins of wetlands, but can be seen in a great variety of other habitats at low to high elevations. They are not of any particular conservation concern.

Other non-native bird species.

Eight other non-native bird species were observed during the five site visits. These included:
chestnut manikin (*Lonchura malacca*)
spotted dove (*Streptopelia chinensis*)
house finch (*Carpodacus mexicanus*)
northern cardinal (*Cardinalis cardinalis*)
zebra dove (*Geopelia striata*)
common myna (*Acridotheres tristis*)
nutmeg mannikin (*Lonchura punctulata*)
house sparrow (*Passer domesticus*)

These eight species are all widespread upland birds and are not water birds but they all come to water sources to drink water and to bathe. All were seen at waters edge drinking, bathing and sometimes resting for short periods before departing. None of these are of any conservation concern in Hawaii.

Four other native water birds that were looked for but not seen during the survey included the following:

'Alae ke'oke'o or Hawaiian coot (*Fulica alai*), endemic to Hawaii, Endangered species.

The 'alae ke'oke'o are strictly water birds that feed, breed and nest in water. They feed on aquatic plants and mollusks and make their nests in dense aquatic reeds. They require relatively permanent ponds with no more than slight water level changes. They also require a fairly stable growth of aquatic vegetation and reeds for food and nesting. Reservoir #20 does not have an ideal habitat for 'alae ke'oke'o because of the drastic changes in water levels and because of the lack of suitable aquatic vegetation and reeds.

Koloa or Hawaiian duck (*Anas wyvilliana*), endemic to Hawaii, Endangered species

The koloa has many of the same habitat requirements as the 'alae ke'oke'o except it does not nest in the water. The habitat in Reservoir #20 is not ideal for the same reasons of too much fluctuation of water levels and the subsequent lack of aquatic vegetation.

Nēnē or Hawaiian goose (*Branta sandvicensis*), endemic to Hawaii, Endangered species

The nēnē is an upland bird species with a broad range. They are powerful fliers. There is a substantial and growing population on Maui. They feed on succulent grasses and a variety of berries and seeds. They are attracted to large parks, golf courses and irrigated agricultural fields. They are attracted to water sources where they feed, breed and make their nests nearby. Reservoir #20 does not provide the food resources to attract the nēnē.

'Auku'u or black-crowned night-heron (*Nycticorax nycticorax hoactli*), indigenous to Hawaii.

The 'auku'u is common around certain aquatic habitats throughout Hawaii and is not a species protected under the Endangered Species Act. It feeds on aquatic crustaceans, fish, insects, small mammals and baby birds. It is probably an occasional visitor to Reservoir #20, but the periodic draining of the water doesn't allow the 'auku'u's preferred food species populations to build up and it would not be particularly productive habitat for 'auku'u.

THREATS

Reservoir #20 is adjacent to Hāli'imaile Town and is thus affected by some human activities and by their pets. No human or animal activities were observed, but some bicycle tracks indicated that people, probably children, sometimes ride on the mud flats when water levels are down. This could result in disturbances to and possibly the harassment of Endangered water birds. Also dog tracks were seen in the mud. Dogs as well as domestic cats likely harass any birds using this reservoir site and are potentially predators of them as well.

SUMMARY

Reservoir #20 provides a form of temporary, alternative habitat for some Endangered water bird species, primarily the ae'o or Hawaiian black-necked stilt. These birds spend one to two hours at such reservoirs but typically depart before sunset to overnight at their primary habitats in the larger permanent wetlands near the coast.

Reservoir #20 does not provide a quality of habitat that would attract permanent usage by water birds. Drastic water level changes associated with the filling and emptying of the reservoir involved in the irrigation of sugar cane fields does not allow a stable wetland habitat to develop. Neither the vegetation in or around the reservoir, nor the aquatic mollusks, crustaceans and fish species that might live in its waters have not been able to flourish. Water birds are only moderately attracted to this reservoir in an incidental way. Reservoir #20 is not essential habitat for these water bird species.

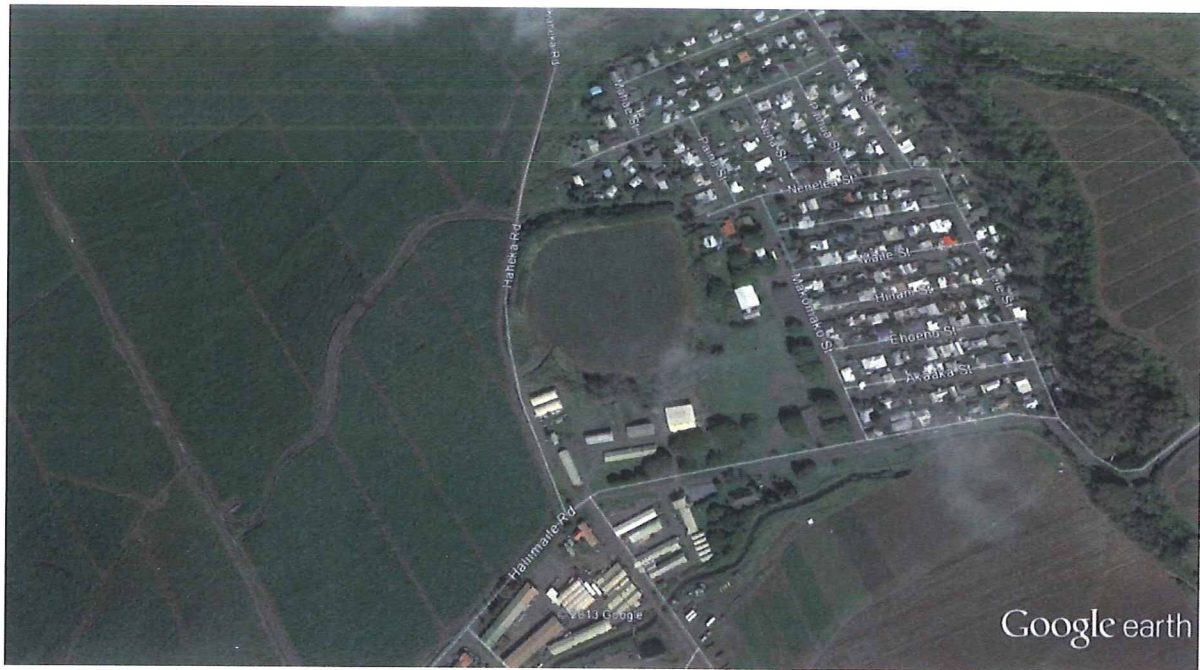


Figure 1. Project Area. Reservoir #20 on the west side of Hāli'imaile Town. Reservoir is full in this aerial photograph.



Figure 2. Project area. Reservoir #20 is very low in this photograph revealing extensive mud flats.



Figure 3. Two ae'o and one kōlea in shallow water along the Reservoir #20 shoreline.



Figure 4. Three ae'o feeding in the shallow waters of Reservoir #20.