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BEFORE THE LAND USE COMMISSION
 OF THE STATE OF HAWAII

2013 MAR 28 A
 LAND USE COMMISSION
 STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A12-796
)	
WAIKO INDUSTRIAL INVESTMENT, LLC.)	OFFICE OF PLANNING'S COMMENTS AND OBJECTIONS TO PETITIONER'S PROPOSED FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 31.222 Acres of Land at Waikapu, Wailuku, Island of Maui, State of Hawaii, Tax Map Key No: 3-8-007: 102)	DECISION AND ORDER; CERTIFICATE OF SERVICE
)	
)	

**OFFICE OF PLANNING'S COMMENTS AND OBJECTIONS TO
 PETITIONER'S PROPOSED FINDINGS OF FACT,
 CONCLUSIONS OF LAW, AND DECISION AND ORDER**

On March 15, 2013, Petitioner Waiko Industrial Investment, LLC. ("Petitioner") filed *Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order* ("Petitioner's Proposed Decision and Order").

Except as set forth below, the Office of Planning ("OP") has no comments or objections to the Petitioner's Proposed Decision and Order. OP submits the following comments and objections:

I. FINDINGS OF FACT

1. Paragraph 20, Procedural Matters. Correct title of "staff planner" for Rodney Funakoshi to "Planning Program Administrator."

2. Paragraph 26, Procedural Matters. Reference should be, “OP Exhibits 1 – 5 and 8,” as OP Exhibits 6, 7, 9, and 10 were not filed or admitted into evidence.
3. Finding of Fact (“FOF”) 42. Delete reference to “mom and pop type business,” which is not discussed in the cited reference, and instead, reflect Mr. Kunihisa’s description from the transcript.

42. Petitioner intends to subdivide the Petition Area, creating lots ranging in size from 10,000 square feet to 78,000 square feet along an 8.5 acre parcel. The improved lots will be sold to interested users. The Project’s intended market will be sold to interested users. The Project’s intended market will be small light industrial users, ~~[including, mom and pop type businesses.]~~ i.e., local owner-users who now have an affordable opportunity to develop and occupy their own properties. [Pet. Exh. 1, p. i[]; [G. Kunihisa, Tr. 2/21/13, 56:20-21]

4. FOF 45. Amend to clarify Petitioner’s intent to exclude residential units from the Project.

45. Petitioner represented that there ~~[are]~~ will be no apartments or residential units ~~proposed~~ in the Project. [Pet. Exh. 55; C. Jencks, Tr. 2/21/13, 27:21-25.]

5. FOF 69. Amend to include additional clarifying language from the Petitioner’s market study citation as to the type of industrial users targeted by the Project.

69. The Project will focus on ~~[pure]~~ industrial users in the market, a segment that has largely been under-served over the years. Typical industrial tenants may include plumbers, electricians, contractors, building suppliers, wholesalers, fabrication companies, auto repair companies, warehousing companies, trucking companies, and similar type businesses. [Pet. Exh. 1, App. L, pp.28-29]

6. FOF 80. Correct to clarify the build-out period as indicated in the record.

80. Petitioner’s market consultant estimated that employment for business operations would be (1) employer per 1,000 square feet of light industrial floor space. This equates to a total of approximately 66 to 106 jobs per year based on a 5- to 8-year build-out of the subdivision. [Pet. Exh. 1, App. L, p.59]

7. FOF 83, and similarly for FOF 300. Delete the word “parameters” after “population” for purposes of clarity:

83. The Project should not affect population [~~parameters~~] as the Project is not considered a population generator since most potential commercial users are expected to come from existing light industrial complexes. [Pet. Exh. 1, p.37]

8. FOF 84A. Insert a new FOF to include concerns from the Department of Agriculture regarding the importance of Nobriga’s feedlot.

84A. The Department of Agriculture expressed concern that the feedlot is the only one on Maui and has helped ranchers feed their cattle. Petitioner represented that Mr. Nobriga is in discussions with A&B Properties regarding relocation to another property. [OP Exh. 1, Attachment D, pg. 2; V. Bagoyo, Tr. 2/21/2013, 54:9-12]

9. FOF 88. Amend to incorporate the specific Land Study Bureau rating, rather than a general description of the agricultural quality of the land.

88. [~~The reclassification and d]~~ Development of the Petition Area will result in the loss of ~~affects~~ a relatively small amount of farm land that is poorly suited for agriculture – about 31.22 acres that are classified by the Land Study Bureau as “E”, the lowest class of productivity. [~~of low/poor quality agricultural land.~~ [Pet. Pp.5;9-11] [Petition, p. 10]

10. FOF 141. Amend to include additional information regarding best management practices. OP also recommends insertion of the authority or standard for best management practices to be implemented, e.g., industry practice, State Department of Health (“DOH”) or county rules or guidelines, etc.

141. During construction of the Project, Petitioner will institute Best Management Practices, including equipment maintenance and vehicle maintenance, limiting hours of construction, and limiting the access route for heavy equipment. [Pet. Exh. 1, p.33]

11. FOF 142. Delete FOF 142 as it is implied in FOF 141 and not stated on page 33 as cited.

~~[142. Best Management Practices are anticipated to reduce noise levels significantly. [Pet. Exh. 1, p. 33]]~~

12. FOF 153 and 154. The record citation for these FOF, Pet. Exh. 1, page 31, does not support these FOF. Either clarify the FOF or provide appropriate citations to the record for the FOF.
13. FOF 160 – 214, Transportation Systems. Amend this section to eliminate unnecessary detail from the Petitioner’s Traffic Impact Analysis Report (“TIAR”), which the State Department of Transportation (“DOT”) has determined to be unacceptable and needs to be revised. Insert new FOF to reflect DOT concerns regarding Project-related impacts and required mitigation.

160. Phillip Rowell and Associates prepared a traffic impact analysis report (“TIAR”) for the Project dated May 17, 2011. [Pet. Exh. 1, App. P]

161. The purposes and objectives of the TIAR were to identify the individual and cumulative traffic impacts of the Project, and provide recommendations concerning mitigation measures. [Pet. Exh. 1, App. P, p. 1]

161A. The State of Hawaii, Department of Transportation (“DOT”) reviewed the TIAR and found that the TIAR is not acceptable and needs to be revised to address DOT concerns as stated in OP Exh. 1, Attachment E. [OP Exh. 1, OP Exh. 2, pg. 6]

~~[162. The methodology for the TIAR consisted of the following tasks:~~

- ~~a. Site reconnaissance to identify existing roadway cross-sections, intersection lane configurations, traffic control devices, and surrounding land uses;~~
- ~~b. Existing peak-hour traffic volumes for the evaluated intersections were obtained;~~
- ~~c. A list of related development projects within and adjacent to the Project that will impact traffic conditions was compiled;~~
- ~~d. Estimation of future background traffic volumes at the study intersections without traffic generated by the Project;~~
- ~~e. Estimation of peak-hour traffic using trip-generation analysis procedures recommended by the Institute for Transportation Engineers;~~
- ~~f. Level-of-service analysis for future traffic conditions with traffic generated by the Project;~~
- ~~g. Quantification and estimation of the impacts of traffic generated by the Project at the study intersections;~~
- ~~h. Identification of locations that traffic generated by the Project may significantly impact; and~~
- ~~i. Formulation of recommendations, improvements or modifications necessary to mitigate the traffic impacts of the Project and to provide adequate access to and egress from the site. [Pet. Exh. 1, App. P, p. 1 and Pet. Exh. 34, p.2]~~

163. Access to the Petition Area will be from Waiko Road, which is a two-lane County collector roadway that connects Honoapiilani Highway and Kuihelani Highway. [Pet. Exh. 34, p. 4]

164. Honoapiilani Highway is a State highway and the main artery connecting Waikapu to Central, South and West Maui. Honoapiilani Highway is located approximately 4,000 feet west of the Project. [Pet. Exh. 34, p. 4]

165. In the vicinity of the Project, Honoapiilani Highway is a two-lane, two-way facility with separate left turn lanes into East and West Waiko Road. Kuihelani Highway is a four-lane divided State highway connecting Kahului and Maalaea. [Pet. Exh. 34, p. 4]

166. The intersection with Waiko Road is a signalized T-intersection with a separate left turn lanes for northbound to westbound left turns onto Waiko Road. [Pet. Exh. 34, p. 4]

167. Also located in the vicinity of the Project is Waiale Road, a two-lane road with its southern terminus at Waiko Road. [Pet. Exh. 34, p. 4]

~~168. — Included with the TIAR was a Level of Service ("LOS") analysis. [Pet. Exh. 34, p. 4]~~

~~169. — LOS is a qualitative measure used to describe the conditions of traffic flow ranging from free flow conditions, LOS A, to congested conditions, LOS F. [Pet. Exh. 34, p. 4]~~

170. The Petitioner's TIAR states the intersection of Honoapiilani Highway and Waiko Road currently operates at an acceptable Level of Service ("LOS") B during morning peak hour and LOS A during the afternoon peak hour. [Pet. Exh. 34, p. 4]

~~171. — All lane groups operate at LOS C, or better, during both peak periods. [Pet. Exh. 34, p. 4]~~

172. The Petitioner's TIAR states the intersection of Kuihelani Highway at Waiko Road operates at LOS B during morning peak hour and LOS A during afternoon peak hour. [Pet. Exh. 34, p. 4]

~~173. — The northbound left turn operates at LOS D during the afternoon peak hour and all other lane groups operate at LOS C, or better. [Pet. Exh. 34, p. 4]~~

~~174. — All intersections in the vicinity of the Project currently operate at an acceptable Level of Service. [Pet. Exh. 34, p. 4]~~

~~175. — The impact of the Project was assessed by analyzing the changes in LOS at the study intersections. [Pet. Exh. 34, p. 5]~~

~~176. — The LOS analysis of the study intersections was performed for background and background plus Project conditions. [Pet. Exh. 34, p. 5]~~

~~177. — The incremental difference of the volume to capacity ratios between the two conditions is the impact of the Project. [Pet. Exh. 34, p. 5]~~

~~178. — The traffic study assumed that the existing intersection configurations will be maintained. [Pet. Exh. 34, p. 5]~~

179. According to the Petitioner's TIAR, at the signalized intersections [(intersections)] with Honoapiilani and Kuihelani Highways), [indicate that] the overall intersections and major

northbound and southbound through movements operate at [Level-of-Service] LOS D, or better, and all the volume-to-capacity ratios are less than 1.00. [Pet. Exh. 34, p. 5]

~~180. Based on the LOS analysis, no mitigation will be required. [Pet. Exh. 34, p. 5]]~~

181. The intersection of Waiko Road and Waiale Road is the only unsignalized study intersection. [Pet. Exh. 34, p. 5]

182. ~~[The results of the LOS analysis] The Petitioner's TIAR indicates that~~ for this intersection ~~[indicate that]~~ all the controlled movements will operate at LOS C during the morning peak hour and LOS F during the afternoon peak hour with Project-generated traffic. [Pet. Exh. 34, p. 5]

183. The LOS of the southbound left and right turns will decrease from LOS C to LOS F, with the addition of Project-related traffic, during the afternoon peak hour. [Pet. Exh. 34, p. 5]

184. The average vehicle delay increases from 18.5 seconds per vehicle to 151.0 seconds per vehicle; due to Project-related traffic. [Pet. Exh. 34, p. 5]

~~[185. Since the delay increases to over 3.5 minutes, this implies that Project-generated traffic will have a significant impact on the level of service of the overall intersection. [Pet. Exh. 34, p. 5]]~~

~~186. As noted in the TIAR, the Institute for Transportation Engineers standard is that LOS D is the minimum acceptable LOS. [Pet. Exh. 34, p. 5]]~~

~~187. For signalized intersections, this criteria is applicable to the overall intersection rather than each controlled lane group. [Pet. Exh. 34, p. 5]]~~

~~188. Minor movements, such as left turns, and minor side street approaches may operate at LOS E for short periods of time during the peak hours so that the overall intersection and major movements along the major highway will operate at LOS D, or better. [Pet. Exh. 34, p. 5]]~~

~~189. All volume to capacity ratios should also be less than 1.00 and a volume to capacity ratio equal to or greater than 1.00 implies that the intersection or lane group operates at or over capacity. [Pet. Exh. 34, p. 5]]~~

~~190. A comparable standard, has not been established for unsignalized intersections. [Pet. Exh. 34, p. 6]]~~

~~191. Because of this, the study used a standard that LOS D as an acceptable LOS for any major controlled lane groups, such as left turns from a major street to a minor street. [Pet. Exh. 34, p. 6]]~~

~~192. Side street approaches may operate at LOS E or F for short periods of time which is determined from the delays of the individual lane groups. [Pet. Exh. 34, p. 6]]~~

~~193. If the delay of any of the side street approaches appears to be so long that it will affect the overall LOS of the intersection, then mitigation measures should be assessed. [Pet. Exh. 34, p. 6]]~~

~~194. The results of the LOS analysis indicate that Project generated traffic will have a significant impact at the unsignalized~~

intersection of Waiko Road and Waiale Road during the afternoon peak hour. [Pet. Exh. 34, p. 6]

195. — The average vehicle delay increases from 18.5 seconds per vehicle without Project related traffic to 151.0 seconds per vehicle with Project related traffic. [Pet. Exh. 34, p. 6]

196. — Since the delay increases to over 3.5 minutes, this indicates that Project generated traffic will have a significant impact on this intersection and mitigation measures should be assessed. [Pet. Exh. 34, p. 6]

197. — In the majority of instances, a left turn refuge lane is an effective mitigation measure in comparable cases. [Pet. Exh. 34, p. 6]

198. — Developing a left turn refuge lane for the intersection of Waiko Road and Waiale Road will improve the level of service of the southbound to eastbound left turn at this intersection from LOS F to LOS D during the afternoon peak hour; an effective mitigation measure. [Pet. Exh. 34, p. 6]

199. — A separate LOS analysis of anticipated traffic conditions at the Project's driveways along Waiko Road was performed to determine the required lane configuration. [Pet. Exh. 34, p. 6]

200. There will be two driveways in the Project – Drive A and Drive B. [Pet. Exh. 34, p. 6]

201. Drive A will serve the retail portion of the Project, which is located along the north side of Waiko Road between Kuihelani Highway and the Consolidated Baseyard. [Pet. Exh. 34, p. 6]

202. The driveway will be along the west boundary of the parcel adjacent to the Baseyard, which is approximately 580 feet from the right-of-way along Kuihelani Highway. [Pet. Exh. 34, p. 6]

[203. — The traffic study was assumed that the driveway will not be signalized and the exit from the Project will have one left and one right turn lane. [Pet. Exh. 34, p. 6]

204. — The traffic study also assumed that a separate left turn lane would be provided for eastbound to northbound left turns into the Project. [Pet. Exh. 34, p. 6]

205. The second driveway, Drive B, will serve the industrial portion of the Project, which is located west of the Consolidated Baseyard. [Pet. Exh. 34, p. 6]

[206. — The traffic study assumed that the driveway is unsignalized and that all intersection approaches are one lane each. [Pet. Exh. 34, p. 6]

207. — During the morning peak hour, all movements will operate at acceptable LOS. [Pet. Exh. 34, p. 7]

208. — During the afternoon peak hour, the southbound left turn from Drive A, which serves the retail portion of the Project, will have an estimated delay of 301.4 seconds per vehicle, which equates to LOS F and implies that there will be a long queue for left turns from the retail area. [Pet. Exh. 34, p. 7]

209. — Accordingly, additional capacity is required for the driveway to operate acceptably. [Pet. Exh. 34, p. 7]

210. — After an assessment of various improvements, the traffic study concluded that the following improvements will be required for Drive A to operate acceptably:

a. — Provide a separate right turn lane along the westbound approach of Waiko Road to Drive A.

b. — Provide a left turn refuge lane for left turns from Drive A to eastbound Waiko Road. The refuge lane should provide capacity for three vehicles. [Pet. Exh. 34, p. 7]

211. — With the implementation of the recommended measures in the TIAR, left turns from Drive A will operate at LOS D, and the average vehicle delay is reduced from 301.4 seconds per vehicle to 33.2 seconds per vehicle. [Pet. Exh. 34, p. 7]

211A. Traffic generated by the Project will have LOS capacity, operational, and safety impacts on two State principal arterials, Honoapiilani Highway and Kuihelani Highway, especially at the signalized intersection with Waiko Road. [OP Exh. 2, Attachment E]

211B. DOT is concerned with the potential for vehicles queuing onto Kuihelani Highway, as the 580-foot distance along Waiko Road from Kuihelani Highway to Drive A is shorter than desirable. [OP Exh. 2, Attachment E]

212. Drive A should be monitored as the retail portion of the Project is developed in order to determine if additional improvements should be implemented. [Pet. Exh. 34, p. 7]

~~213. — The traffic study concluded that no improvements are required at Drive B. [Pet. Exh. 34, p. 7]~~

214. The Petitioner is working with ~~[the State of Hawaii, Department of Transportation ("DOT"),]~~ to make further revisions to the TIAR so that the TIAR is acceptable to DOT. [2/21/13, Tr. 68:1 through 69:22]

214A. Revisions to the TIAR will need to address DOT concerns, including the following: elimination of any existing direct access to Kuihelani Highway; potentially unacceptable traffic impacts to Honoapiilani Highway and Kuihelani Highway and the need for Petitioner to provide local/direct transportation mitigation improvements; and impacts from heavy vehicle truck traffic. [OP Testimony, Exh. 2, pg. 6]

214B. DOT will require that the Petitioner provide its fair share contribution to the cost of regional highway improvements. [OP Exh. 2, pg. 6]

14. FOF 247. Amend to include DOH review and approval.

247. As the Project develops and individual building permits are applied for, the building permit applicant will be required to submit the design of each IWS for DOH review and approval. [Exh. 41, p. 3]

15. FOF 248 and 249. Recommend deleting these FOF as they are redundant with FOF 247 as amended above.

~~[248. It is the responsibility of DOH to review and approve each IWS. [Exh. 41, p. 3]~~

~~249. IWS are subject to the review and approval of DOH. [Exh. 41, p. 3]~~

16. FOF 256. Amend statement by removing the development runoff formula and describing the total runoff impacts.

256. It is estimated that the post development runoff will be ~~[75.23 cfs]~~ 123.49 cubic feet per second. ~~[(West Section) + 6.30 cfs (Middle Section) + 41.96 cfs (East Section) = 123.49 cfs.]~~ [Pet. Exh. 41, p. 3]

17. FOF 257. Amend statement by removing the development runoff formula and describing the total runoff impacts.

257. Accordingly, the developed runoff volume ~~[is]~~ will total ~~[67,705]~~ 101,068 cubic feet, ~~[(West Section) + 5,671 cubic feet (Middle Section) + 27,692 cubic feet (East Section) = 101,068 cubic feet,]~~ a net increase of 59,134 cubic feet. [Pet. Exh. 41, p. 3]

18. FOF 253 and 258. Recommend deleting one of the following FOF, as they are redundant statements.

253. As each lot is developed, it will be required to install an onsite drainage system to collect runoff from the site and provide a drain line connection to the drain stub out to the master drainage system. [Pet. Exh. 41, p. 2]

...

258. As each individual subdivided lot is developed, the building permit applicant will be required to construct an onsite storm runoff collection system and connect to the drain line stub out that was provided to the lot. [Pet. Exh. 41, p. 3]

19. FOF 266. Either amend or delete as the statement is unclear.

266. The MPD recommended the installation of street lighting the use of Best Management Practices to control dust during the subdivision phase of the Project. [Pet. Exh. 1, pp. 102-103]

20. FOF 278. Delete FOF as irrelevant, given that elderly and long-term care residential facilities are neither impacted nor required by the proposed commercial and light industrial subdivision.

278. Elderly and long-term residential facilities within the Wailuku-Kahului region include Hale Mahaolu and Roselani. [Pet. 19]

21. Conditions 11, 12, 17, and 18 in the Decision and Order are not factually supported in the FOF section. OP has no objections to the Conditions, but recommends the Conditions be supported with findings of fact.

II. CONCLUSIONS OF LAW

22. Conclusions of Law (“COL”) 3, 4, 6, 7, 8, and 10. Recommend eliminating these COL, as they are not COLs and are already included within the findings of fact.

~~3. — Based on the archaeological inventory survey of the Petition Area and earlier surveys of neighboring areas, there is a potential for isolated, undocumented human burials in portions of the Petition Area. Should any resources be found during construction, Petitioner will comply with all State and County laws and rules regarding the preservation of archaeological and historic sites.~~

~~4. — Based on the cultural impact assessment prepared for the Project, the Project will not have any adverse effects to native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawaii State Constitution~~

~~6. — There are no threatened and endangered species or flora and fauna of concern in the Petition Area.~~

~~7. — The ambient air quality of the Petition Area will be impacted in the short term by fugitive dust and emissions from engine exhaust during construction of the Project. Petitioner will implement all required mitigation measures for fugitive dust and exhaust emissions.~~

~~8. — The Project's long term impacts to air quality will be minimal, and mitigation measures are probably unnecessary and unwarranted~~

~~10. — The Project will not have a significant impact on agriculture in Maui or in the State as the reduction of these agricultural lands in comparison to the total acreage of agricultural lands in Maui and in the State are minimal.~~

III. DECISION AND ORDER

23. Standard Condition 21, Compliance with Representations to the Commission.
Recommend adding the following language to be consistent with language adopted in recent Commission Decision and Orders.

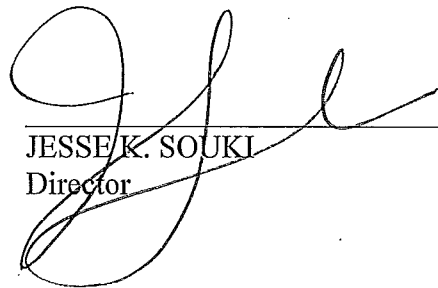
21. Compliance with Representations to the Commission.
Petitioner shall develop the Petition Area in substantial compliance with representations made to the Commission as reflected in this Decision and Order. Failure to so develop the Petition Area may result in reversion of the Petition to its former classification, or change to a more appropriate classification.

IV. GENERAL COMMENTS

24. FOF 51. Correct spacing in: "\$2,_058,097.40."
25. FOF 119. Correct "Office of Hawaiian [ef] Affairs."
26. FOF 157. Correct date, "2013[0]."
27. FOF 166. Correct spelling for "left turn lane[s]."

DATED: Honolulu, Hawaii, this 28th day of March, 2013.

OFFICE OF PLANNING
STATE OF HAWAII



JESSE K. SOUKI
Director

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

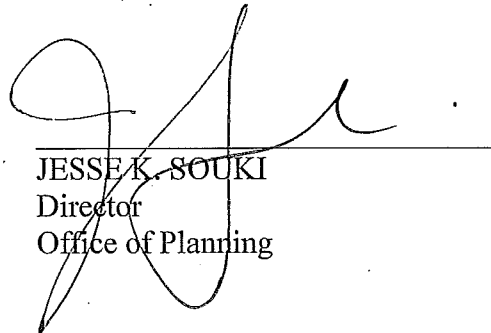
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DATED: Honolulu, Hawaii, this 28th day of March, 2013.



JESSE K. SOUKI
Director
Office of Planning