

OFFICE OF PLANNING

Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawai'i 96813
Telephone: (808) 587-2846
Facsimile: (808) 587-2824

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LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A12-796
)	
WAIKO INDUSTRIAL INVESTMENT, LLC)	OFFICE OF PLANNING'S TESTIMONY IN SUPPORT OF PETITION WITH CONDITIONS; CERTIFICATE OF SERVICE
)	
To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 31.22 Acres of Land at Waikapu, Wailuku, Island of Maui, State of Hawai'i, Tax Map Key No: (2) 3-8-007:102)	
)	

OFFICE OF PLANNING'S TESTIMONY
IN SUPPORT OF PETITION WITH CONDITIONS

The Office of Planning ("OP") recommends approval, subject to conditions, of Waiko Industrial Investment, LLC's ("Petitioner") Petition to reclassify approximately 31.22 acres of land from the State Agricultural District to the Urban District in Waikapu, Wailuku, Island of Maui, for the development of a light industrial subdivision. OP's recommendation is based on the representations of the Petitioner and documents filed to-date in these proceedings, consultation with affected government agencies, and the statutes and regulations applicable to these proceedings.

PETITION OVERVIEW

General Information

The Petitioner requests that the Land Use Commission (“Commission”) reclassify approximately 31.22 acres of land from the State Agricultural District to the State Urban District at Waikapu, Wailuku, Island of Maui.

The Petitioner, a Washington limited liability company whose principal place of business is at P.O. Box 220 Kihei, Hawai‘i 96753, is the fee owner of the parcel, Tax Map Key (“TMK”) (2) 3-8-007:102, being proposed for reclassification under this Petition.

Proposed Use of the Petition Area

Petitioner proposes to develop a light industrial subdivision known as “Waiko Industrial Subdivision” including light industrial and commercial uses consistent with county zoning. No residential uses are indicated in the Petition. Consisting of approximately forty-one (41) lots, thirty-eight (38) lots will be for sale in fee simple and three (3) lots will be for use by the Petitioner. The lot sizes are proposed to range from approximately 10,000 square feet to 78,000 square feet with one 8.5-acre parcel to be retained by the Petitioner. Related improvements include grading, construction of a drainage system, internal roadways, utilities, a private wastewater system, and off-site roadway improvements.

Petition Area Description and County Land Use Designations

The site is situated in Central Maui south of Wailuku-Kahului, east of the town of Waikapu, north of Waiko Road and west of Kuihelani Highway. The existing land use consists of pasture lands and approximately four (4) acres of light industrial use approved through a County of Maui Conditional Permit and Special Use Permit. The U-shaped Petition Area includes an approximately 20.6-acre western portion and a 9-acre eastern portion joined by a 1.6-acre narrow rectangular portion. The Petition Area surrounds and borders the existing “Consolidated Baseyard” light industrial subdivision.

The Petition Area is within the County of Maui’s *Wailuku-Kahului Community Plan* area, zoned by the County as “agriculture” and designated within the urban growth boundary of the draft *Maui Island Plan*.

The Petition Area is surrounded by the 545-acre A&B Properties, Inc., “Wai‘ale Master Planned Community,” Docket No. A10-789, which was recently reclassified by the Commission from the State Agricultural District into the Urban District on June 21, 2012 for a master-planned community including the following uses: village-mixed use, commercial, business/light industrial, multi-family and single-family residential, community center, regional and neighborhood park, greenway and open space, cultural preserves, middle school, and related infrastructure. (See OP Exhibit No. 5.)

DISCUSSION OF ISSUES OF CONCERN TO THE STATE

The following discusses Project impacts and recommendations to avoid, minimize, or mitigate adverse impacts caused by the proposed Project with respect to the areas of State concern in HRS §§ 205-16 and 205-17.

Impacts on Areas of State Concern

Natural Systems and Habitats

Groundwater resources. The proposed subdivision will be supplied with water from two existing private wells (Well Nos. 5129-02 & 03) drawing potable water from the Kahului Aquifer System. The water system consisting of two groundwater wells, a 350,000 gallon storage tank, pump building and water appurtenances is located in the adjacent “Consolidated Baseyard” industrial subdivision. The Final Environmental Assessment (“FEA”) documents correspondence between Waiko Industrial, LLC and the Consolidated Baseyard Association regarding the shared use of the two wells; however, a formal “joint services agreement” between the two entities confirming the shared use of the wells and responsibilities has not been documented.

The Petitioner’s civil engineer estimates water consumption for the proposed subdivision would be 142,920 gallons per day based on County water standards. According to the Petitioner’s water resources engineer, the Kahului Aquifer has been pumped for many decades at 45 million gallons per day (“mgd”) and is presently being pumped at between 25 and 30 mgd without adverse effects such as increased salinity or water level decline. The Commission on Water Resource Management (“CWRM”) has set the sustainable yield at 1.0 mgd, but this is based on rainfall recharge and does not include other important sources of recharge including

underflow from Haleakala and the West Maui Mountains (Mauna Kahalawai), irrigation return flow from sugarcane fields along with other agricultural activities, and leakage from the Wai‘ale Reservoir.

CWRM commented that the potability of the wells is dependent upon the continued irrigation of sugarcane on adjacent lands and leakage from the Wai‘ale Reservoir artificially freshening the aquifer which is otherwise pumped in excess of the sustainable yield of one mgd. Reliance upon the potability of these wells and others cannot be assured in the absence of these sources of augmentation. (See OP Exhibit No. 1, Attachment A.)

Petitioner’s water resources engineer estimates that the plantation’s closing would reduce aquifer pumpage by more than 25 mgd leaving current and projected pumpage at less than 5 mgd, but the two wells supplying the Petition Area can continue to provide the needed quantity and quality of groundwater.

OP notes that, unlike the adjacent Iao Aquifer, the Kahului Aquifer is not a designated ground water management area subject to more intensive management and allocation of water resources by the CWRM. However, given some uncertainty regarding the future availability of water should plantation operations cease to provide the present irrigation recharge, OP is in consultation with CWRM staff regarding systemic potable water resource availability for the region as it pertains to this Petition.

Flora and Fauna. A flora and fauna inventory field survey was conducted in December 2010 and found there are no significant habitats or rare, endangered, or threatened species of flora or fauna located in the Petition Area.

Archaeological, Historic, and Cultural Resources

A *Cultural Impact Assessment* was conducted which concluded that no cultural practices are continuing or are currently occurring within the Petition Area.

An *Archaeological Assessment Report* was prepared for the Petition Area documenting archaeological surveys and subsurface testing activities including 20 trench excavations. The trench excavations found no significant surface or subsurface remains. No historic properties were identified within the perimeters of the subject area during the archaeological field work. The Department of Land and Natural Resources State Historic Preservation Division (“SHPD”) approved the archaeological report on May 31, 2012. (See OP Exhibit No. 1, Attachment B.)

The Petitioner also submitted an *Archaeological Monitoring Plan* for the Petition Area outlining the procedures that will be implemented to prevent damage to unknown sites including the identification and documentation of any newly discovered archaeological and cultural features. The *Plan* indicates all future construction or ground altering activities will be monitored by a qualified archaeologist and that a report of monitoring activities be submitted within 180 days after completion of field work. SHPD also approved the monitoring plan on May 31, 2012. (See OP Exhibit No. 1, Attachment C.)

In consideration of the project location, geology, and presence of known burials on adjacent properties, OP recommends that a condition be imposed requiring compliance with SHPD recommendations, including archaeological monitoring during any ground-disturbing activities.

Natural Resources Relevant to Hawai'i's Economy

Agricultural lands. The Petition Area has not been used for any agricultural cultivation in recent years. Under the Agricultural Lands of Importance to the State of Hawai'i ("ALISH") system, the Petition Area is classified as "Other" important agricultural lands. "Other" lands are not classified as "Prime" or "Unique" agricultural lands that are also of statewide or local importance for agricultural use. The soil within the Petition Area is classified as Pu'uone ("PZUE"), which is loose sandy soil over subsurface lithified (cemented) sand layers. It is characterized as having a rapid permeability above the cemented layer with slow runoff and a moderate to severe wind erosion hazard. The productivity of the soil is rated as poor by the Land Study Bureau's ("LSB") Detailed Land Classification which lists the soil within the Petition Area as "E," the lowest class of productivity.

Appendix K of the Final Environmental Assessment ("FEA") indicates the location of an operational feedlot referred to as "Nobriga's Ranch," which is partially located within the south west portion of the Petition Area. The Department of Agriculture ("DOA") commented that this 27-acre feedlot is the only one on Maui and has been in operation since 1968, providing feed to various ranches throughout Maui. Due to persistent drought over the last seven years and a lack of available pasture grasses, the feedlot has been especially important to ranchers on the leeward side of Maui. (See OP Exhibit No. 1, Attachment D.)

Petitioner's consultant has indicated that only a few acres of the feedlot are located within the Petition Area such that the primary ranch operations would not be affected by the proposed development.

Sustainability, energy and resource. Act 181, Session Laws of Hawai'i, 2011 established priority guidelines for sustainability in the Hawai'i State Plan. Furthermore, the State of Hawai'i's Clean Energy Initiative has adopted a goal of using efficient and renewable energy resources to meet 70 percent of Hawai'i's energy demand by 2030, with 30 percent from efficiency measures and 40 percent from locally-generated renewable sources.

OP recommends that the Petitioner prepare a sustainability plan which identifies and incorporates sustainability elements into the project design. OP also recommends that a condition be imposed to incorporate water conservation measures in site design and landscaping.

Commitment of State Funds and Resources

Transportation. The Petition Area will primarily be accessed via Waiko Road which connects with Kuihelani Highway to the east and Honoapiilani Highway to the west. The State Department of Transportation ("DOT") has reviewed the Traffic Impact Analysis Report ("TIAR") and found that the TIAR is not acceptable and needs to be revised and resubmitted to DOT for review and acceptance. DOT noted the following additional concerns: elimination of any existing direct access to Kuihelani Highway, provision of fair share contribution to the cost of regional highway improvements, potentially unacceptable traffic impacts to Honoapiilani Highway and Kuihelani Highway, need for transportation mitigation improvements, and impacts from heavy vehicle truck traffic. (See OP Exhibit No. 1, Attachment E.)

Based on consultation with the DOT, OP recommends that conditions be imposed to address concerns regarding the TIAR and mitigation of traffic impacts to the State highway system.

Civil defense. This location currently does not have an outdoor warning system. State Civil Defense recommends a 121 dB Omni-Direct Siren located on the plant property with repair access. (See OP Exhibit No. 1, Attachment F.) OP recommends that a condition be imposed requiring the installation of a civil defense warning siren.

Airports. The Petition Area lies west of the aircraft flight path to Kahului Airport. DOT is concerned with the proximity of the Petition Area to Kahului Airport, that flight operations in

and out of the Airport may affect the Petition Area. In order to address this concern the DOT recommends that the Petitioner and any subsequent owners notify and formally disclose to all prospective buyers and lessees of real property in the petition area, as part of any prospectus, purchase or conveyance document, that there is the potential for aircraft noise, emissions, vibrations, and other effects from the over-flight of aircraft and other incidences of aircraft operations.

The development of the Petition Area will require the construction of wastewater and storm water improvements. The DOT is concerned that these improvements will have the potential to attract wildlife and threaten aviation safety. The Federal Aviation Administration (“FAA”) Advisory Circular 150/200-33B Hazardous Wildlife Attracts On or Near Airports, recommends a distance of five (5) miles between the farthest edge of the air operations area (“AOA”) and the wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach or departure airspace. This FAA Advisory Circular is a requirement for certified airports such as the Kahului Airport. Since the Petition Area is within five miles from the AOA, the Petitioner needs to consult with DOT and execute a Memorandum of Agreement (“MOA”) to ensure that the FAA Advisory Circular conditions are met, and that the Project does not create a safety hazard to aircraft operations. The Petitioner will need to document hazardous wildlife attractant mitigation. For example, the MOA may require that the design and construction of sanitary sewer and storm water improvements be done in a manner that ensures that no standing water is created. The MOA should be executed prior to the Petitioner being granted tentative subdivision approval.

OP recommends that conditions regarding notification and disclosure of airport operations and hazardous wildlife attractants be imposed to address the DOT airport concerns.

Other Issues of Concern

Wastewater. Average wastewater demand is estimated by the Petitioner’s engineer at 16,436 gallons per day. Wastewater collection will be provided by a private wastewater system installed within the subdivision roadways with a sewer lateral provided to each lot. The master sewer system will outlet into a community leach field. Individual wastewater systems for each lot are proposed to be aerobic units intended to allow installations in close proximity to existing potable wells. The master sewer system will require approval from the State Department of

Health for compliance with the provisions of Hawaii Administrative Rules (“HAR”) Chapter 11-62 regarding wastewater systems. According to HAR Chapter 11-62 Appendix F, Table 2, any cesspool, seepage pit, or soil absorption system must be a minimum distance of 1,000 feet from a potable water source. Given the proximity of the proposed septic system and leach fields to the potable water wells, OP recommends a condition be imposed seeking compliance with the DOH wastewater system rules.

The Petitioner will need to ensure that during construction and operations, any construction or industrial wastewater, discharges and releases, the reuse of treated wastewater, and stormwater runoff are properly managed to mitigate any potential impacts on surface or groundwater resources. OP recommends a condition be imposed that the Petitioner incorporate Low Impact Development (“LID”) techniques and technologies in the design and construction of the Project’s drainage and stormwater management system.

Provision for Employment Opportunities and Economic Development.

The proposed project will provide the opportunity to encourage the creation of new local small industrial businesses and create employment opportunities for island residents.

SUMMARY DISCUSSION OF CONFORMITY WITH DECISION-MAKING CRITERIA FOR BOUNDARY AMENDMENTS

The following summarizes OP’s assessment of the Petition’s conformity with applicable district standards, planning statutes, plans and other criteria the Commission must consider in decision-making for a district boundary amendment petition.

Conformance with State Urban District Standards

The Petition meets the standards for determining State Urban District boundaries as set forth in HAR § 15-15-18. The Petition Area is surrounded by existing and proposed urban uses, in particular the Waiale master planned community which will have “city-like” concentrations of people, structures, streets, urban levels of service. The Project is in proximity to areas of trading and employment, and with proposed mitigation will have access to basic public services. The Petition Area is surrounded by lands within the Urban District and is located within the proposed urban growth boundary of the draft Maui Island Plan. Minimal impacts are anticipated from natural hazards due to existing topography and the inland location of the Petition Area.

Conformance with the Hawaii State Plan, Priority Guidelines, and State Functional Plans

With appropriate mitigation, the proposed reclassification is generally consistent with one or more objectives, policies, and priority guidelines of HRS Chapter 226, the Hawai'i State Plan. In particular, the proposal supports a steadily growing and diversified economic base, and complements the Administration's priorities in its *New Day Comprehensive Plan* by supporting the economy, jobs, and small businesses.

Conformance with the Coastal Zone Management Objectives and Policies

The Petition Area lies within the State Coastal Zone Management ("CZM") Area which includes all lands of the State and the area extending seaward from the shoreline to the territorial limit. The Petition generally conforms to the CZM objectives and policies set forth in HRS § 205-2. The Petition Area is not located within the County's Special Management Area.

Areas of State Concern

With respect to areas of State concern, the Project contributes favorably to the creation of jobs and business opportunities. With appropriate mitigation measures, Petitioner can minimize impacts on the commitment of State funds and resources with respect to State transportation infrastructure, and potential degradation of surface and groundwater resources from storm water runoff and land use activities. The Petition Area does not meet the criteria for important agricultural lands as specified in HRS § 205-2.

County Plans

On July 10, 2012, the County of Maui Planning Commission accepted Waiko Industrial Investment, LLC's FEA and issued a Finding of No Significant Impact. The Petition Area is consistent with infill development policies in the County *General Plan: Countywide Policy Plan* adopted by Ordinance No. 3732 on March 24, 2010 and lies within the urban growth boundary of the draft *Maui Island Plan* which is pending County Council approval. The *Wailuku-Kahului Community Plan* was adopted by County Ordinance No. 3061, Bill No. 29, and became effective on June 5, 2002. The Petition Area is not consistent with the *Wailuku-Kahului Community Plan's* land use designation of "Agriculture." A Community Plan Amendment and Change of Zoning are required to change the land use designations to allow the proposed uses.

Petitioner Representations and Commitments; Petitioner's Financial Capability

In general the Petitioner has represented that Project impacts will be mitigated as requested by impacted State and County agencies. The FEA identifies and discusses a number of mitigation measures to be taken to minimize potential adverse impacts of the Project. Additionally, Petitioner will be held accountable for compliance with the representation made in all submittals provided on behalf of this Docket. Petitioner has submitted its financial capability and intends to finance the Project through a variety of sources, including, but not limited to, private investment sources and banking institutions.

RECOMMENDATION

Based on the foregoing information and analysis, OP recommends the approval of the Petition subject to Petitioner's commitments to avoid, minimize, or mitigate Project impacts as represented herein and in this proceeding, and the imposition of the following conditions of approval in addition to the standard conditions of the Commission.

1. **Highway and Road Improvements.** The Petitioner shall abide by, complete and/or submit the following :
 - A) The TIAR shall be revised and resubmitted to the DOT Highways Division for review and acceptance prior to zone change approval.
 - B) The Petitioner shall fund, construct and implement the project's local/direct access improvements recommended in the TIAR accepted by DOT for the Waiko Road intersections with Honoapiilani Highway and Kuihelani Highway.
 - C) The Petitioner shall provide fair share contribution to the cost of regional improvements to State highways. These improvements could be on Honoapiilani Highway and/or on Kuihelani Highway.
 - D) The revised TIAR shall be updated every three (3) years until buildout. If the project is delayed beyond 2015, trips generated by A&B Properties, Inc. project and any other committed projects in the vicinity that are

developed before the buildout of the subject project shall be included as background traffic in the updated TIAR.

E) 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 Hawaii: (a) such person assumes complete risk of and forever releases the State of Hawaii from all claims for damages and nuisances occurring on the Petition Area and arising out of or related highway traffic noise from Kuihelani Highway and (b) such person waives any right to (i) require the State of Hawaii to take any action to eliminate or abate any highway traffic noise from Kuihelani Highway; and (ii) file any suit or claim against the State of Hawaii for injunction or abatement of any highway traffic noise from Kuihelani Highway and for any damages or other claims related to or arising there-from. The provision shall be incorporated into the appropriate title documents and recorded at the Bureau of Conveyances.

2. **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.
3. **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, wastewater treatment facilities or associated settling ponds) serving the Project. Petitioner shall execute a Memorandum of Agreement with DOT to document hazardous wildlife attractant mitigation prior to the granting of tentative subdivision approval.

4. **Water Conservation.** Petitioner shall implement water conservation measures including the use of endemic, indigenous, and drought-tolerant plants and turf, and incorporate such measures into the Petition Area's site design and landscaping.
5. **Wastewater.** Petitioner shall comply with Chapter 62 of Title 11, HAR entitled, "Wastewater Systems". If the Petitioner utilizes any Individual Wastewater Systems (IWS) for the collection and treatment of wastewater, any cesspool, seepage pit or soil absorption system shall be located at a minimum of 1000 feet from any potable water system.
6. **Stormwater Management and Drainage.** Petitioner shall construct and maintain 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 Best Management Practices and incorporate Low Impact Development ("LID") 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.
7. **Civil Defense.** Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location approved by the State Civil Defense agency.
8. **Archaeological and Historic Preservation.** The Petitioner shall comply with mitigation measures recommended by the DLNR SHPD. Archaeological monitoring shall be conducted during all ground disturbing activities on the Petition Area and a report of monitoring activities shall be submitted to the SHPD upon the completion of fieldwork.

9. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, 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 SHPD that mitigation measures have been implemented to its satisfaction.
10. **Infrastructure Deadline.** The 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 (10) years from the date of the Decision and Order approving the Petition.
11. **Compliance with Representations.** The 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.

DATED: Honolulu, Hawai'i, this 30th day of November, 2012.

OFFICE OF PLANNING
STATE OF HAWAI'I

for 

JESSE K. SOUKI
Director

Docket No. A12-796

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.

B. MARTIN LUNA, ESQ.
Carlsmith Ball LLP
One Main Plaza, Suite 400
2200 Main Street
Wailuku, Hawai'i 96793-1691

GREGORY K. SCHLAIS, ESQ.
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawai'i 96813

WILLIAM SPENCE, DIRECTOR
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawai'i 96813

PATRICK WONG, ESQ.
JAMES GIROUX, ESQ.
Department of the Corporation Counsel
County of Maui
200 High Street
Wailuku, Hawai'i 96793

DATED: Honolulu, Hawai'i, this 30th day of November, 2012.

for 

JESSE K. SOUKI
Director
Office of Planning