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February 22, 2012

Mr. Orlando Davidson  
Executive Officer  
Land Use Commission  
State of Hawaii  
P. O. Box 2359  
Honolulu, HI 96804-2359

LAND USE COMMISSION  
STATE OF HAWAII  
2012 FEB 23 P 7:05

Subject: 2012 Annual Report for the State Land Use Commission  
Docket No. A07-772/A&B Properties, Inc.- Kihei Residential

Dear Mr. Davidson:

This constitutes A&B Properties, Inc.'s ("A&B" or "Petitioner") 2012 annual report for the subject Kihei Residential project.

### **Project Background and Status**

By its Decision and Order dated February 20, 2009, the State Land Use Commission (SLUC) granted approval of A&B's petition to reclassify approximately 94.352 acres from the "Agricultural" to the "Urban" land use district at Waiakoa, Maui. Approval of the petition was subject to 28 conditions. The development of the subject property is planned to include a residential community of approximately 600 units, a 1.4 acre neighborhood commercial site and park and open space areas.

As noted in the petition, additional land use approvals, including a community plan amendment and change in zoning from the County of Maui are required for the project. In deference to the County of Maui Planning Department's January 10, 2008 policy of not supporting applications for community plan amendment while the Maui General Plan Update process is ongoing, A&B withheld the filing of County land use applications after the SLUC's approval in February 2009. However, on November 24, 2009, the Planning Department rescinded this policy, citing in part the progress made regarding the Maui General Plan Update. As a result of this change in policy, project applications for community plan amendment and change in zoning were filed with the County of Maui in April 2010. The applications were subsequently processed for agency and public review. The applications received the support of the Maui Planning Department who recommended approval with conditions. On December 14, 2010, the Maui Planning Commission conducted a public hearing on the applications and after due deliberation voted to recommend the Maui County Council's approval of the community plan amendment and change in zoning applications with conditions. The applications and recommendation of the Maui Planning Commission were forwarded to the Maui County Council by the Planning Department

in March 2011. Public hearings on the applications by the Maui County Council are anticipated in 2012.

### **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. However, in light of the project status described above, most of the imposed conditions will be addressed or complied with as further progress on the project is achieved.

1. *Affordable Housing. Petitioner shall provide affordable housing opportunities for residents of the State of Hawai'i in accordance with the applicable affordable housing requirements of the County of Maui. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County of Maui.*

**Petitioner will provide affordable housing opportunities in compliance with the County of Maui's affordable housing policy.**

2. *Notification of Potential Nuisances. Petitioner shall disclose to all prospective buyers of the Petition Area that potential odor, noise, and dust pollution may result from agricultural uses on adjacent lands or noise from general aviation overflights in the vicinity.*

**Petitioner will comply with this condition as development of the project progresses.**

3. *Provisions of the Hawai'i Right to Farm Act. Petitioner shall notify all prospective buyers of the Petition Area that the Hawai'i Right to Farm Act, HRS chapter 165, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any lands in the Agricultural District adjacent to the Petition Area.*

**Petitioner will comply with this condition as development of the project progresses.**

4. *Integrated Solid Waste Management Plan. Petitioner shall cooperate with the DOH and the County of Maui to conform to the program goals and objectives of HRS chapter 342G, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities, including recycling bins in public places, such as schools and parks, if any, within the proposed development.*

**Petitioner will comply with this condition as development of the project progresses.**

5. *Water Resources Allocation. Petitioner shall provide a long-term drinking water source, storage, and transmission facilities and improvements to accommodate development of*

*the Petition Area to the satisfaction of the DWS and other applicable State and County agencies.*

**Efforts to attain a long-term potable water source for the project are ongoing, including the development of a surface water treatment plant and new potable wells.**

- 6. Water Conservation Measures. Petitioner shall implement water conservation measures and BMPs, such as use of endemic, indigenous and drought-tolerant plants and turf, and incorporate such measures into the landscape planting. Petitioner shall also coordinate with Maui County in the utilization of R-1 recycled water and other non-drinking water sources, where feasible.*

**Petitioner will comply with this condition as development of the project progresses.**

- 7. Wastewater. Petitioner shall develop a wastewater collection and transmission system and other sewer improvements in the Petition Area, as required by the DOH and the DEM. Petitioner shall also pay a fair-share contribution to fund improvements to wastewater treatment facilities to serve the Petition Area as determined by the County of Maui.*

**Petitioner will comply with this condition as development of the project progresses.**

- 8. Soil Analysis. Petitioner, in consultation with the DOH, HEER, shall undertake a soil analysis study of the Petition Area to determine the impact to the Project from fertilizer and pesticide residue that may be present on the Petition Area and undertake reasonable measures to abate and/or remove hazardous materials identified.*

**Petitioner will comply with this condition as development of the project progresses.**

- 9. Civil Defense. Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area if required by and as determined by the State of Hawai'i, Department of Defense, Office of Civil Defense, and the County Of Maui, Civil Defense Agency.*

**Petitioner will comply with this condition as development of the project progresses.**

- 10. Air Quality. Petitioner will comply with and implement all required and applicable statutes, ordinances, rules, and regulations to mitigate the effects of fugitive dust and exhaust emissions. In addition, Petitioner shall participate in an air quality monitoring program if required by the DOH.*

**Petitioner will comply with this condition as development of the project progresses.**

- 11. Drainage. Petitioner shall fund the design and construction of drainage system improvements based on applicable standards, to prevent runoff resulting from the*

*development of the Petition Area from adversely affecting State and County highway and roadway facilities to the satisfaction of applicable State and County agencies.*

**Petitioner will comply with this condition as development of the project progresses.**

12. Highways. *Petitioner shall implement traffic improvements and mitigation measures as recommended or required by the TIAR and as approved by the DOT. Petitioner shall not proceed with the development of the Project until the DOT reviews and agrees with the proposed traffic improvements and mitigation measures, including any modifications to the existing bikeway along Pi'ilani Highway. Petitioner shall contribute its fair share of the cost of State highway planned improvements and/or traffic mitigation measures that will alleviate the impacts generated by the proposed development and uses, as agreed to by Petitioner and the DOT, in accordance with the findings of the TIAR and any required updates. Within the Petition Area, bike paths and accommodations to support public bus transportation services (bus stop) shall be provided as determined by the applicable governmental agencies.*

**Petitioner will comply with this condition as development of the project progresses. An update to the TIAR was completed and filed with the project applications for County community plan amendment and change in zoning in April 2010. Petitioner has had ongoing discussions with the DOT concerning potential impacts to Pi'ilani Highway.**

13. TDM Plan. *Petitioner shall submit a TDM plan to the County of Maui together with any future land use applications, including but not limited to any application for a Community Plan Amendment and/or Change in Zoning.*

**In fulfillment of this condition, the TDM plan was prepared and submitted with the project applications for County community plan amendment and change in zoning in April 2010.**

14. Public School Facilities. *Petitioner shall contribute to the development, funding and/or construction of school facilities, on a fair-share basis on the market units only, as determined by, and to the satisfaction of, the DOE. Terms of any contribution shall be agreed upon in writing by Petitioner and the education agency.*

**Petitioner will comply with this condition as development of the project progresses.**

15. Previously Unidentified Burials and Archaeological/Historic Sites. *In the event that historic resources, including human skeletal remains, lava tubes, and lava blisters/bubbles are identified during the construction activities, all work shall cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the DLNR, SHPD, 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, pavings, and walls not previously identified in studies referred to herein, are*

*discovered during the course of construction of the Project, Petitioner shall comply with all applicable statutes and rules of the DLNR, SHPD. In addition, 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 will comply with this condition as development of the project progresses.**

16. Established Access Rights Protected. *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 as development of the project progresses.**

17. Recreational Facilities. *Petitioner shall comply with the Park 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.**

18. BMPs. *Petitioner shall implement BMPs applicable to each proposed land use in order to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and groundwater pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the DOH guidelines.*

**Petitioner will comply with this condition as development of the project progresses.**

19. Seabirds. *Petitioner shall implement BMPs as recommended by the USFWS during construction of the Project to mitigate potential impacts to threatened and endangered seabirds whose flight corridor includes the Petition Area.*

**Petitioner will comply with this condition as development of the project progresses.**

20. Energy Conservation Measures. *Petitioner shall implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai'i, the USGBC, the Hawai'i Commercial Building Guidelines for Energy Star, and Green Communities into the design and construction of the Project and the structures within the Petition Area. Petitioner shall also provide information to home purchasers regarding energy conservation measures that may be undertaken by the individual homeowner.*

**Petitioner will comply with this condition as development of the project progresses.**

21. Compliance with Representations to the Commission. *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. Infrastructure Deadline. *Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access point, residential internal roadways, and water supply, sewage and electrical infrastructure within ten years from the date of the decision and order.*

**Petitioner will comply with this condition as development of the project progresses.**

23. Order to Show Cause. *If Petitioner fails to complete 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 the 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.**

24. 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.*

**Petitioner will comply with this condition.**

25. Annual Reports. *Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, 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.**

26. 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.*

**This condition is not currently applicable.**

27. 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 February 26, 2009 a "Notice of Imposition of Conditions by the Land Use Commission" was recorded with the State Bureau of Conveyances (Document No. 2009-028710) and copies were filed with the SLUC.**

28. 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 April 6, 2009 the conditions imposed by the SLUC were recorded with the State Bureau of Conveyances under the "Declaration of Conditions" applicable to that petition for district boundary amendment in Docket No. A07-772 of the SLUC (Document No. 2009-051059).**

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,



Daniel Y. Yasui, AICP  
Director, Planning and Entitlement

cc: State Office of Planning  
County of Maui Planning Department