

March 13, 2006

Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804-2359

Attention: Mr. Anthony J. H. Ching, Executive Officer

Subject: 2006 Annual Report to the State Land Use Commission
Docket Nos. A03-739 and A88-634
Maui Business Park Phase II

This letter constitutes A&B Properties, Inc.'s ("A&B" or "Petitioner") 2006 annual report to the State Land Use Commission ("SLUC") pursuant to Condition No. 22 under Docket No. A03-739 and Condition No. 23 under Docket No. A88-634. Inasmuch as both land use dockets involve the reclassification of land comprising the proposed 179-acre Maui Business Park Phase II project ("Project"), the annual report requirements under both dockets are being addressed in this report.

Project Background and Status

By its Decision and Order dated March 25, 2004, under Docket No. A03-739, the SLUC granted approval of A&B's petition to reclassify approximately 138.158 acres from the "Agricultural" to the "Urban" land use district at Kahului, Maui, Hawaii. Subsequently, by its Decision and Order dated June 13, 2005, under Docket No. A88-634, the SLUC granted approval of A&B's application for incremental approval of 33.53 acres to the "Urban" land use district at Kahului, Maui, Hawaii. The lands which comprise these two dockets, along with an additional approximately 7.3 acres that were already designated within the Urban District, make up the 179-acre Project site. The Project is a continuation of the existing Maui Business Park situated in Kahului, Maui, Hawaii.

A change in zoning application is being processed with the County of Maui to attain the light industrial zoning necessary for the Project to proceed. On April 26, 2005 and May 24, 2005 the Maui Planning Commission conducted public hearings on the zoning application. At its May 24, 2005 meeting the Maui Planning Commission voted to recommend approval of the zoning application (with conditions) to the Maui County Council. By letter dated January 4, 2006, the Maui Planning Department transmitted the zoning application, the record on file and the Maui Planning Commission's favorable recommendation to the Maui County Council. The zoning application is currently before the Maui County Council.

Status of Activities Relating to Imposed Conditions

Listed below are each of the conditions imposed by the SLUC and the status of activities pertaining to each respective condition. Note that the listed conditions are applicable to both Docket A03-739 and Docket A88-634 unless otherwise indicated. Inasmuch as the Project has yet to receive full land use entitlements, most of the imposed conditions will be addressed or complied with as further progress on the Project is achieved.

Dockets A03-739 & A88-634

1a. Housing Study. *Within one hundred eighty days (180) of this decision and order, the Petitioner shall complete and submit to and for the approval of the Commission, with copies to the Department of Planning, the Department of Housing and Human Concerns and the Office of Planning, a housing study that addresses the following:*

- i. The impact the Project will have on the current labor force;*
- ii. The type of employee/affordable housing demands that will be created by the Project;*
- iii. Any employee/affordable housing policy adopted and in place by the County for commercial and industrial developments;*
- iv. The proposed mitigation measures to alleviate the impact on both the labor market and the employee/affordable housing situation, including, but not limited to, the acreage, siting, timing, type of housing and eligibility for the employee/affordable housing project and the identity of potential developers and recipient of land to be contributed and conveyed by Petitioner for affordable/employee housing (collectively, the "Proposed Mitigation Measures"); and*
- v. Recommendations and timeframe for implementing any applicable county housing policy (in place at the time of this study) or requirements and/or the Petitioner's proposed mitigation measures, including the minimum contribution of land described in Condition 1b immediately herein below (collectively, the "Proposed Timeline").*

The reclassification of the Petition Area, as described in this Decision and Order, shall be subject to the further condition of Petitioner's compliance with the Proposed Mitigation Measures and Proposed Timeline, as modified and/or approved by the Commission (the "Approved Mitigation Measures and Timeline").

1b. Minimum Contribution of Land by the Petitioner. *In compliance and consistent with the Approved Mitigation Measures and Timeline, Petitioner shall contribute, no later than one (1) year after any Maui County zoning approval authorizing the use of the Property for light industrial and/or commercial use, to the County of Maui or a non-profit housing entity or other appropriate entity, a minimum of ten (10) acres of land useable for residential development within the Central Maui region reasonably acceptable to the County of Maui towards development of employee/affordable housing or satisfy such more stringent employee/affordable housing requirements for the Project as may be imposed by the Maui County Council. The Approved Mitigation Measures and Timeline shall be an obligation of the recipient of the land conveyed for affordable*

housing purposes, as memorialized in the conveyance document from the Petitioner to such recipient.

Status: Petitioner prepared and submitted a housing study to the SLUC in September 2004. The study focused on the increased housing unit demand due to the in-migration of job seekers at the Project. Based on the study, approximately 13 acres of land for affordable housing would be needed. The timing of the demand for these units would be over an approximately 13-year period from 2008 through 2020. The analysis confirmed that the preferable location for the land contribution would be in the Central Maui region. By letter dated November 10, 2004 the Maui Department of Housing and Human Concerns concurred with the findings of the housing study and recommended its approval to the Maui Planning Department.

Petitioner is working with the County of Maui to meet the land contribution requirement for affordable housing pursuant to this condition. It is anticipated that the specifics of the land contribution program will be determined during the zoning approval process with the Maui County Council.

Dockets A03-739 & A88-634

2. **Water Facilities.** *Petitioner shall participate in the funding and construction of adequate water source, storage and transmission facilities and improvements or remit applicable fees for water source, storage and transmission facilities and improvements to accommodate projected water usage generated by the Project. Water facilities and improvements, including adequate storage facilities, should surface water sources be developed, or the payment of applicable fees, shall be coordinated and approved by the County of Maui, Department of Water Supply and, if applicable, the Commission on Water Resources Management of the Department of Land and Natural Resources. Adequate water source shall be made available prior to the issuance of any occupancy permits for buildings developed on the Property.*

Status: The Petitioner, in coordination with the County of Maui, undertook an evaluation of the engineering and feasibility of developing a surface water treatment plant utilizing water from the West Maui ditch system. Plans for the surface water treatment plant have been prepared and are currently under review by applicable County and State agencies.

Dockets A03-739 & A88-634

3. **Aircraft Operations.** *Petitioner shall implement procedures to address notification and liability issues which arise from the potential adverse impacts from noise, right of flight, emissions, vibrations and other incidences of aircraft operations upon the present and future Owners and future lessees or occupants of the Property resulting from the adjacent Kahului Airport operations. The following covenant shall encumber the Property and be included in any transfer of any interest in the Property.*

“The Property is located in the vicinity of Kahului Airport, a commercial airport, and each Owner is aware that there is a likelihood of noise

from aircraft passing overhead or nearby and other potential adverse impacts from other incidence of aircraft operation. Each Owner hereby assumes the risk of any potential adverse impacts from such noise, right of flight, emissions, vibrations or other incidents of aircraft operations upon the Owner's lot or uses thereon. Each Owner shall be responsible for appropriate mitigation measures to address the abovementioned potential adverse impacts. Each Owner shall indemnify and hold harmless Declarant and the State of Hawaii from and against all claims, liability and losses that arise out of noise, right of flight, emissions, vibrations and other incidences of aircraft operations, unless such claim, liability or loss arises out of the State of Hawaii's willful misconduct in the operation of Kahului Airport or violating any applicable federal, state or county requirement governing aircraft safety and noise abatement measures, in which case, the indemnification of the State of Hawaii will be inapplicable."

Status: **Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.**

Dockets A03-739 & A88-634

4. **FAA Form 7460-1, Notice of Proposed Construction or Alteration.** *Petitioner shall impose a covenant encumbering the Property and be included in any transfer of any interest in the Property requiring the submittal of Federal Aviation Administration (FAA) Form 7460-1, Notice of Proposed Construction or Alteration, to the FAA's Hawaii District Office when or if required under applicable FAA Regulations with a copy to DOT's Airports Division.*

Status: **Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.**

Dockets A03-739 & A88-634

5. **Runway Protection Zone.** *Petitioner acknowledges that a portion of Petition Area A overlaps the runway protection zone (hereinafter "RPZ") for a proposed extension of the Kahului Airport runway of up to 9,600 feet in length, as further described in the State Office of Planning's Exhibits Nos. 9 and 10 and the testimony of DOT Airports Division witness Benjamin Schlapak. Petitioner agrees to restrict uses in the RPZ to light industrial, parking, roadway and other infrastructure uses that do not entail the congregation of people, provided all such uses are approved by the Federal Aviation Administration. This restriction on uses within the RPZ shall automatically terminate if the State Department of Transportation (DOT) does not attain all governmental approvals for the extension of the Kahului Airport runway within a period of five (5) years from the date of the Commission's decision and order. Notwithstanding the foregoing, and for good cause shown, the Commission may grant an extension of time for the DOT if DOT during such five-year period has been using its best efforts, in good faith, to attain all governmental approvals for the extension of the Kahului Airport runway. The size of the RPZ shall be adjusted if the runway length sought by the DOT is less than 9,600 feet. Should the DOT desire to acquire an easement or the fee simple interest in the RPZ, the fair market value of the land shall be based on its current*

Agricultural District classification and present zoning designation by the County of Maui provided that: a) the acquisition occurs within a period of five (5) years from the date of the Commission's decision and order; and b) the DOT during such five-year period has been using its best efforts, in good faith, to attain all governmental approvals for the extension of the Kahului Airport runway.

Status: Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.

Dockets A03-739 & A88-634

6. **Traffic Impact Analysis Report.** *Prior to obtaining County zoning, Petitioner shall revise or supplement its traffic impact analysis report (hereafter TIAR) dated May 2003 to the satisfaction of the DOT. The TIAR shall identify the impact of Petitioner's project on the transportation system and recommend any required mitigation measures. Conditions and assumptions reflected in the TIAR shall be developed in consultation with DOT, including but not limited to, various proportions of retail and light industrial uses to be developed at the Property, plans for the proposed airport access road, permitted accesses, trip generation rates, and traffic projections. Petitioner shall obtain the DOT's prior written approval of the final TIAR and Petitioner may not proceed with the development of Petitioner's project unless and until the DOT approves the TIAR. As development occurs within the Property, the TIAR shall be revised or supplemented as may be requested and required by the DOT. Petitioner shall be responsible for constructing, implementing and/or contributing its fair share of the cost of those improvements or mitigation measures as recommended or required by the TIAR and as dictated by the actual proportion of light industrial and retail uses developed at the Property. The TIAR shall also address the impact to County of Maui roadways and shall be submitted to the County of Maui, Department of Planning for the County's review and consideration in the zoning approval process.*

Status: Petitioner prepared a revised TIAR for the Project dated July 2004 in compliance with this condition. The revised TIAR updates the previous study dated May 2003. The study was revised in response to comments received from the DOT concerning completion of the proposed Airport Access Road and development scenarios with a higher percentage of retail versus industrial uses. Prior to preparing the revised TIAR, input concerning applicable assumptions was solicited and obtained from the DOT. A copy of the revised TIAR was included in the environmental impact statement that was prepared for the Project and accepted by the SLUC. As noted in this condition, as development occurs over time within the property, the TIAR will be revised or supplemented as may be required by the DOT.

Dockets A03-739 & A88-634

7. **Regional Transportation Improvements.** *Petitioner shall contribute Petitioner's fair share of the cost of regional transportation improvements in the area, as such fair share shall be determined by the DOT based on appropriate transportation planning methodologies to establish a rational nexus.*

Status: Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.

Dockets A03-739 & A88-634

8. **Best Management Practices.** *The Petitioner shall coordinate with the County of Maui, the State Department of Land and Natural Resources and the State Department of Health to establish Best Management Practices to contain spills, and prevent materials associated with light industrial uses such as petroleum products, chemicals, and other pollutants from leaching or draining into the ground or the storm drain system.*

Status: Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.

Dockets A03-739 & A88-634

9. **Hazardous Materials.** *Storage and/or disposal of hazardous materials shall be approved by the State Department of Health prior to their establishment on the subject Property.*

Status: Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.

Dockets A03-739 & A88-634

10. **Wastewater Facilities.** *Petitioner shall provide a sewer impact study to the County Department of Public Works and Environmental Management evaluating the wastewater system requirements for the Project. Petitioner shall fund and develop, as required by the County of Maui and the State Department of Health, wastewater transmission and treatment facilities to accommodate the additional wastewater generated by the Project.*

Status: Petitioner has commenced preparation of a sewer system study for the Project.

Dockets A03-739 & A88-634

11. **Drainage.** *Petitioner shall fund, design and construct any drainage system improvements required to mitigate the additional runoff resulting from the project without creating adverse effects on adjacent and downstream properties. The master drainage plan for Maui Business Park shall be constructed to mitigate the additional runoff resulting from this development.*

Status: Petitioner has commenced preparation of a drainage study to address the additional runoff resulting from the Project.

Dockets A03-739 & A88-634

12. **Aircraft Operation Hazards.** *Petitioner shall fund and implement a program to control any bird nesting or occupation and any insect, pest or wildlife infestation, in any drainage retention basins serving the Property to minimize the hazards to aircraft operations, as deemed necessary by the DOT.*

Status: **The Petitioner has an ongoing maintenance and monitoring program of existing drainage retention areas.**

Dockets A03-739 & A88-634

13. **Provisions of the Hawai'i Right to Farm Act.** *Petitioner shall inform all prospective occupants of possible odor, noise, and dust pollution resulting from adjacent Agricultural Districts lands, and that the Hawaii Right-to-Farm Act, Chapter 165, HRS, limits the circumstances under which preexisting farming activities may be deemed a nuisance.*

Status: **Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.**

Dockets A03-739 & A88-634

14. **Solid Waste.** *Petitioner shall develop a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act, Chapter 342G, HRS. The Plan shall be approved by the County of Maui and shall address the need to divert the maximum amount of waste material caused by the development away from the County's landfills.*

Status: **A solid waste management plan was prepared for the project and included in the environmental impact statement prepared for the Project.**

Dockets A03-739 & A88-634

15. **Visual Analysis.** *That as part of its zoning application submittal, the Petitioner shall submit a visual analysis study for the location of the Hookele Street Extension emphasizing the maintenance of a "view corridor" toward Haleakala.*

Status: **The visual analysis study was submitted to the County of Maui as part of the change in zoning application for the Project. The study was also included in the environmental impact statement prepared for the Project.**

Dockets A03-739 & A88-634

16. **Visual Impacts.** *That as part of its zoning application, the Petitioner shall submit design guidelines with renderings on how a landscaped aesthetic visual corridor along all adjacent highways and how a landscaped berm utilizing trees and shrubbery shall be constructed along the entire proposed collector road (Hookele Street Extension) to soften the visual impact of the buildings along the road. (Wailuku-Kahului Community Plan Update).*

Status: The design guidelines were submitted to the County of Maui as part of the change in zoning application for the Project. The design guidelines were reviewed and approved by the Maui Urban Design Review Board on December 7, 2004.

Dockets A03-739 & A88-634

17. **Dual Water System.** *Petitioner shall evaluate the feasibility of developing a dual water system for the Project, utilizing non-potable water for landscape irrigation purposes.*

Status: Petitioner has commenced an evaluation of the feasibility of a dual water system for the Project.

Dockets A03-739 & A88-634

18. **Energy Conservation.** *Petitioner shall implement energy conservation measures such as the use of solar energy and solar heating and incorporate such measures into the Project.*

Status: Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.

Dockets A03-739 & A88-634

19. **Project Composition.** *For a period of eight (8) years from the date of the County's approval of zoning for the Project a total of at least fifty percent (50%) of the Project acreage shall be (a) used and developed by Petitioner for non-retail, light industrial use and/or (b) sold or leased to and developed and used by third-party buyers for non-retail, light industrial use. For this same eight-year period, simultaneous with Petitioner's development or offer for sale or lease of the Property for retail use, Petitioner shall develop or offer for sale or lease an equal amount of acreage within the Property for non-retail, light industrial use. The phrase "light industrial", as used in this paragraph, includes warehousing and distribution types of activity as well as compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials. It is the intent of this paragraph that at the end of the above-described eight-year period, to the extent that the Project is developed or in the process of being developed by Petitioner or any third party, no less than fifty percent (50%) of such development or development in process shall be for non-retail, light industrial purposes.*

Status: Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.

Docket A88-634

20. **Archaeological.** *Should any burial, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, Petitioner or landowners of the affected properties shall stop work in the immediate vicinity and the SHPD shall be notified immediately. Subsequent work shall*

proceed after the SHPD authorization has been received and applicable mitigation measures have been implemented.

Status: Petitioner acknowledges this condition, however, due to the current status of the Project, no action has been undertaken at this time.

Dockets A03-739 & A88-634

20./21. Compliance with Representations to the Commission. Petitioner shall develop the Property in substantial compliance with the representations made to the 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.

Status: Petitioner intends to develop the Property in substantial compliance with the representations made to the Commission.

Dockets A03-739 & A88-634

21./22. Notice of Change to Ownership Interests. 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 Property, prior to development of the Property.

Status: Petitioner will comply with this condition.

Dockets A03-739 & A88-634

22./23. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the 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 Commission.

Status: This annual report is being submitted in compliance with this condition for both Dockets A03-739 and A88-634.

Dockets A03-739 & A88-634

23./24. Release of Conditions. The 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 Petitioner.

Status: Not applicable at this time.

Dockets A03-739 & A88-634

24./25. Notice of Imposition of Conditions. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, 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 Commission.

Status: Docket A03-739: On April 1, 2004 the Notice of the Imposition of Conditions by the SLUC was filed with the Bureau of Conveyances as Document No. 2004-066861 and a copy was filed with the SLUC.

Docket A88-634: On June 17, 2005 the Notice of Imposition of Conditions by the SLUC was filed with the Bureau of Conveyances as Document No. 2005-120343 and a copy was filed with the SLUC.

Dockets A03-739 & A88-634

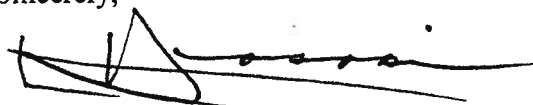
25./26. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawai'i Administrative Rules.

Status: Docket A03-739: On April 20, 2004 the Declaration of Conditions imposed by the SLUC was filed with the Bureau of Conveyances as Document Nos. 2004-078771 thru 2004-078772 and a copy was filed with the SLUC.

Docket A88-634: On June 29, 2005 the Declaration of Conditions imposed by the SLUC was filed with the Bureau of Conveyances as Document No. 2005-128814 and a copy was filed with the SLUC.

Please do not hesitate to contact the undersigned should you require any further information regarding this matter. An email .pdf version of this report is also being transmitted to you for your use.

Sincerely,



Robert K. Sasaki
President

cc: Maui Planning Department
State Office of Planning