

June 8, 2012

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

Attention: Mr. Daniel Orodener, Executive Officer

Subject: 2012 Annual Report to the State Land Use Commission
Docket Nos. A03-739 and A88-634
Maui Business Park Phase II

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LAND USE COMMISSION
STATE OF HAWAII

Dear Mr. Orodener:

This letter constitutes A&B Properties, Inc.'s ("A&B" or "Petitioner") 2012 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 was filed in April 2004 with the County of Maui to attain the light industrial zoning necessary for the Project to proceed. In May 2005, the Maui Planning Commission voted to recommend approval of the zoning application to the Maui County Council. Subsequently, in April 2008 the County Council approved the zoning bill and it was enacted as Ordinance No. 3559 in May 2008.

Construction of an offsite private water system that will serve the Project commenced in February 2011 and was substantially completed in December 2011. Construction of other infrastructure improvements including drainage, sewer, and water systems, and roadways commenced in September 2011. In May 2011, the State Department of Commerce and Consumer Affairs issued a Preliminary Order of Subdivision Registration (attached), allowing for the commencement of sales and marketing of the Project.

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.

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: In compliance with this condition, Petitioner prepared and submitted the subject 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. It should also be noted that although the Maui County's Residential Workforce Housing Policy was enacted in 2006, it did not address nor specify affordable housing requirements for commercial and industrial projects.

Affordable housing requirements related to the Project were deliberated by the Maui County Council as part of the zoning application. The Council, as a condition of zoning for the Project, has required the Petitioner to contribute a total of 50 acres of land for affordable housing, community center and park purposes. The specific provisions of the zoning condition are described below.

“7. That Alexander & Baldwin, Inc. shall provide land for affordable housing, a community multi-purpose center, and park purposes at the approximate location of the terminus of Kamehameha Avenue, near the new Maui Lani Park and Pomaikai Elementary School, as follows:

- a. Approximately 40 acres for affordable housing purposes;*
- b. Approximately 7 acres for a Kahului community multi-purpose center; and*
- c. Approximately 3 acres for park purposes.*

The precise location of these lands shall be acceptable to the Department of Housing and Human Concerns and the Department of Parks and Recreation, and Alexander & Baldwin, Inc. shall perform archaeological and topographic surveys of the land for the County's evaluation of the property's acceptability.”

As a result of land planning work and discussions with various representatives of the County, a suitable location on Petitioner's lands just south of the Maui Lani development has been identified. The required affordable housing, community center and park sites have been integrated within the Petitioner's Waiale master planned residential community. Waiale will include single-family and multi-family dwellings connected to village mixed-use areas supported with commercial, retail, office, park, open space, school, civic and other uses through a system of new roadways, pedestrian/bicycle paths and greenways. As part of the Waiale land planning process, a burial treatment plan was prepared to address the long term preservation of burial features. The plan was reviewed by the Maui/Lanai Islands Burial Council in July 2010 and the State Historic Preservation Division subsequently accepted the plan in September 2010.

The lands to be provided to the County as outlined in this condition were collaboratively integrated into the Waiale master plan. In August 2010, as part of the initial entitlement effort, Petitioner filed a land use petition with the State Land Use Commission to reclassify the Waiale lands from the Agricultural to the Urban District. As part of that process, an environmental impact statement was prepared and accepted by the SLUC in November 2011. The SLUC subsequently conducted hearings on the Waiale petition and in June 2012 approved the reclassification of the land. Petitioner will consult with the County regarding the process and timing of conveyance of the subject affordable housing, community center and park sites.

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: Construction of an offsite water system comprised of two wells, pumps, equipment, and storage and transmission facilities was completed in December 2011.

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: In accordance with this condition, the above language has been incorporated into the Declaration of Covenants and Restrictions for the Project.

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: As development of the Project progresses, Petitioner will comply with this condition.

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 March 25, 2004, the date of the Commission’s Decision and Order in Docket No. A03-739. 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 March 25, 2004, the date of the Commission's Decision and Order in Docket No. A03-739; 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: In April 2011, DOT expressed interest in acquiring land within the project for an RPZ for and extension of the existing runway to 9,600 feet. Discussions between Petitioner and DOT regarding the terms for the transfer of land for the RPZ are ongoing.

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.

In an effort to further update the traffic data for key intersections analyzed in the TIAR, new traffic counts were undertaken in 2006. The results of the 2006 traffic counts were consistent with the projections of the TIAR, confirming the validity of the conclusions and recommendations of the TIAR. The DOT reviewed the 2006 supplemental traffic counts and found them reasonably consistent with the 2004 traffic report assumptions concerning growth in regional traffic.

In further compliance with this condition, Petitioner updated the TIAR with new traffic counts in June 2010. The updated TIAR served as the basis for development of construction drawings and discussions with DOT regarding Petitioner's fair share contribution toward regional transportation improvements.

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: In 2006, Petitioner worked in cooperation with the State Department of Transportation-Maui District Office, to fund and implement the coordination of traffic signals during the AM and PM peak periods along the Dairy Road corridor from Haleakala Highway to Puunene Avenue. This work consisted of an evaluation of existing traffic signal equipment, the procurement and installation of new traffic signal equipment and communication systems, and the preparation and implementation of timing plans to coordinate the traffic signals at all intersections. The system was activated in December 2006.

Petitioner has reached an agreement with the DOT concerning fair share costs and contributions, in compliance with this condition. The agreement has been executed by Petitioner and forwarded to DOT for execution. (Copy attached)

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, and as development of the Project progresses, will comply with this condition.

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: As development of the Project progresses, Petitioner will comply with this condition.

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 completed a preliminary sewer system study for the Project and construction of approved offsite and onsite wastewater facilities is ongoing.

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 completed a Drainage Report dated October 2010, and submitted the report to appropriate government agencies. Construction of drainage system improvements consistent with the Report is ongoing.

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 consulted with the County of Maui regarding utilizing the existing drainage basins adjacent to the South Project Area for open area recreational use by a private entity (related correspondences concerning this matter were included in the 2010 annual report). Alternatively, the basins will be maintained by the project's owners association. The future use of these existing drainage basins will incorporate the provisions of this condition.

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: The Declaration of Covenants and Restrictions for the Project includes provisions which satisfy this condition.

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. The visual analysis study was reviewed and approved by the Maui Urban Design Review Board on December 7, 2004.

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 received approval of construction plans for a non potable water system for landscape irrigation purposes. The system is being constructed with other project improvements.

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: **As development of the Project progresses, Petitioner will comply with this condition.**

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: **The Property will be subject to a Declaration of Use Restriction which will implement this condition. (Copy attached)**

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 will comply with this condition.**

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

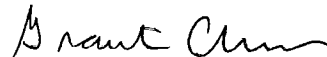
*25./26. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawai'i Administrative Rules.*

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,



Grant Chun
Vice President, Maui

cc: Properties (Hnl)
 Maui Planning Department
 State Office of Planning

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



KEALI'I S. LOPEZ
DIRECTOR

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SUBDIVISION PROGRAM

STATE OF HAWAII
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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May 4, 2012

Ms. Taya R. Naruse
Cades Schutte
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

**Re: Preliminary Order of Subdivision Registration
Alexander & Baldwin, Inc.
Maui Business Park, Phase II, S-1183**

Dear Ms. Naruse:

Please be advised that a preliminary order of registration under Section 484-8.5, Hawaii Revised Statutes ("HRS"), has been issued for the 65 lots identified in the attached Schedule 1 effective May 2, 2012, subject to the following conditions:

1. Submit two copies of the Public Offering Statement. The effective date of the preliminary order of registration shall be entered as the "Date of Preliminary Registration" in the upper-right corner of the face page along with the registration number. The date of registration shall also be entered in the appropriate space near the bottom of the last page of the preliminary Public Offering Statement.
2. The Subdivider may solicit and accept binding sales contracts (subject to any rights of rescission in favor of the purchaser) or non-binding reservation agreements to purchase the subdivided lands; provided that all earnest money deposits, if any, received by the Subdivider or the Subdivider's agents shall take the form of a check or other instrument within the meaning of article 3 of Chapter 490 and shall be payable to the escrow agent, and no cash shall be accepted by the Subdivider or the Subdivider's agents.

3. Pre-sales and reservations in Hawaii must be made by the licensed real estate broker and salespersons that you have designated in your filing. All solicitations or invitations to attend real estate presentations, either by telephone or in person, are considered real estate activities, and such activity by persons other than real estate licensees is prohibited.
4. The Subdivider shall provide each prospective purchaser a true copy of the preliminary Public Offering Statement, as well as a copy of a receipt, prior to signing any contracts of sale or reservation agreements and prior to accepting any funds from the prospective purchaser. Each purchaser shall be afforded a reasonable opportunity to examine the preliminary Public Offering Statement and shall be notified in writing of the purchaser's right of refund and cancellation of the contract and the waiver of such right upon the purchase's failure to act within a seven-day period.
5. All sums paid by purchasers and prospective purchasers prior to the time the Department of Commerce and Consumer Affairs issues a final order registering the subdivided lands shall be placed in an escrow account under an escrow agreement which provides that no disbursements shall be made from such escrow account to or on behalf of the Subdivider until the director issues a final order registering the subdivided lands and the requirements of Sections 484-8.7 and 484-8.6(b) or (c), HRS, have been met. Your attention is directed to Section 484-8.6, HRS, regarding the Subdivider's responsibilities and obligations if final subdivision approval is not applied for and obtained within one year from May 2, 2012.
6. The Subdivider shall comply with all applicable County, State or Federal laws, codes, rules, statutes or case law that are related to the Subdivision.
7. All promotional material, including newspaper advertisements, radio and television commercials, must be filed with this office prior to their use.
8. Annual reports must be submitted using the attached form within thirty (30) days after the anniversary date of this order pursuant to Section 484-9, HRS, and Section 16-104-40, Hawaii Administrative Rules.
9. Acceptance of the Application is not and is not intended and should not be deemed or construed to be a determination by the Department that the Subdivider has complied with all provisions of Chapter 484, HRS.
10. The Subdivider's continued compliance with the Act, including the requirement to immediately report all material changes in the information contained in the application as required by Section 484-5(d), HRS.

Ms. Taya R. Naruse
May 4, 2012
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Please be further advised that the Department is not confirming the Subdivider's conclusion stated in your April 25, 2012 letter that the sale of a condominium unit encompassing property this is currently part of, and upon final subdivision approval will be adjacent to, the North Project area of the Subdivision, is not part of the same common promotional plan as the lots in the Subdivision and therefore is not required to be included in this Application. The Subdivider is responsible for determining whether the sale of the condominium unit and/or the lots to be created thereunder must be registered under Chapter 484, HRS.

Should you have any questions, you may call me at 586-2709.

Very truly yours,



Lori Beth Van Cantfort
Executive Officer

LBVC:tat

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup To:

Total Pages: _____

Tax Map Key No(s). (2) 3-8-01:2 (portion), 3-8-06:4 (portion), and 3-8-79:13 (portion).

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this "Agreement") is made this _____ day of _____, 2012, by and between A & B PROPERTIES, INC., a Hawaii corporation ("ABP"), the business address of which is 822 Bishop Street, Honolulu, Hawaii 96813, and the DEPARTMENT OF TRANSPORTATION, a department of the State of Hawaii ("DOT"), the business address of which is 869 Punchbowl Street, Honolulu, Hawaii 96813-5097.

R E C I T A L S :

A. ABP is the owner and developer of those certain parcels of land situated at Kahului, Wailuku, County of Maui, Island of Maui, State of Hawaii, being the identified as Tax Map Key Nos. (2) 3-8-079: 013 comprising approximately 38 acres (the "North Parcel") and (2) 3-8-006: 004 and (2) 3-8-001: 002 comprising approximately 140 acres (the "South Parcel") and together with the North Parcel is collectively known as the "Property", intended to be developed into a commercial/light industrial subdivision known as "Maui Business Park Phase II" (the "Project"), as more particularly shown on Exhibit A attached hereto and made a part hereof.

B. The Property was redesignated from the State Land Use Agricultural District to State Land Use Urban District by the State Land Use Commission ("SLUC"), subject to conditions, by the Order Adopting Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order dated March 18th, 2004, in Docket No. A03-739 ("Decision and Order"). In accordance with and in satisfaction of **Condition No. 6** of the Decision and Order, ABP has submitted a revised and/or supplemented Traffic Impact Analysis Report dated June 16,

2010 (“**Traffic Impact Study**”) for the proposed Project and has entered into this Memorandum of Agreement which sets forth ABP’s level of fair share funding and participation in the construction of local and regional transportation improvements and dedication of rights-of-way as determined by the DOT.

C. ABP representatives have met with DOT staff and based on these meetings and pursuant to **Condition No. 7** of the Decision and Order, has committed to funding its fair share of the costs of the regional transportation improvements that will be provided by DOT to mitigate traffic impacts of the proposed development of the Project on the Property, in accordance with recommendations of the Traffic Impact Study and further recommendations of DOT staff (“**Fair Share Analysis**”). A copy of the Fair Share Analysis setting forth the amounts that ABP is required to pay and the summary of each of the regional transportation improvements to be funded, in part, by ABP’s fair share contribution, is attached hereto as Exhibit B.

D. The Property has been rezoned to M-1 Light Industrial for development of the Project into industrial lots and/or industrial condominium units (collectively, the “**Lots**”) to be sold to end users for uses permitted within these zoning districts.

NOW, THEREFORE, in consideration of the recitals and the promises and agreements herein, ABP and DOT agree as follows:

1. **IMPROVEMENTS BY DOT.** DOT shall construct the following improvements recommended by the Traffic Impact Study:

- a. Puunene Avenue Widening – Wakea to Kuihelani (MP 0.46 to 1.09)
- b. Puunene Avenue Widening –Kuihelani to Hookele Street (MP 0.0 to 0.2)
- c. Hana Highway Widening – Kaahumanu Avenue to Airport Access Road (MP 0.0 to 1.27)
- d. Airport Access Road – Hana Highway to Puunene Avenue (4700 lf)

2. **IMPROVEMENTS BY ABP.** DOT acknowledges that ABP at its sole cost and expense will construct the following.

- a. Addition of a left turn lane westbound on Haleakala Highway at the intersection of Dairy Road, Keolani Place, and Haleakala Highway as recommended in the Traffic Impact Study. Subject to DOT approval of construction drawings, this improvement will be completed no later than the completion of subdivision improvements for the North Parcel.
- b. Hana Highway & Hookele Intersection improvements including widening of Hana Highway (MP 1.27 to 1.75). Subject to DOT approval of construction drawings, these improvements will be constructed concurrently with the Hookele Street

extension within the first increment of development of the South Parcel. DOT further acknowledges that ABP will receive a credit towards its fair share cost allocation for the same as described in Exhibit B attached hereto.

3. **PAYMENT OF FAIR SHARE AMOUNT.** ABP shall pay the total fair share amount of \$4,182,751.00 set forth in Exhibit B, subject to the credit described in paragraph 2b above, upon the letting and award of the public procurement construction contract for the first improvement project described in paragraph 1 above and ABP's receipt of written notice from the DOT of such procurement award. Upon payment in full, no further payments or amounts shall be due and/or owing by ABP to DOT, regardless of the actual costs of such improvements.

4. **COMPLETION OF IMPROVEMENTS.** DOT shall cause the construction of the improvements identified in paragraph 1 above in a diligent and workmanlike manner.

5. **MATERIAL CHANGES TO PLANNED IMPROVEMENTS.** In the event the DOT makes material changes to the scope of the improvements outlined in the Traffic Impact Study, DOT agrees to notify ABP of such material changes. ABP shall have an opportunity to review and comment on said changes, and to submit suggestions and objections and the reasons therefor to DOT within ten (10) business days of ABP's receipt of notification from the DOT of proposed material changes to the improvements; provided that the DOT shall make the final decision regarding said proposed material changes, which decision shall be final.

6. **DISCLOSURES REGARDING THE PROPERTY.** ABP shall include a provision in each of ABP's sales, lease and conveyance documents, whereby each person who may from time to time own the Property, any portion thereof, or hold any other interest therein or occupy any improvements thereon, makes the same acknowledgment and the following agreements in favor of Airports Division DOT, ABP and its affiliates: (a) such person assumes complete risk of and forever releases Airports Division DOT, ABP and its affiliates from all claims for damages and nuisances occurring on the Property and arising out of or related to noise, right of flight, emissions, vibrations and other incidences of aircraft operations at Kahului Airport; and (b) such person waives any right to (i) require Airports Division DOT, ABP or its affiliates to take any action to correct, modify, alter, eliminate or abate any noise, right of flight, emissions, vibrations and other incidences of aircraft operations; (ii) file any suit or claim against Airports Division DOT, ABP or its affiliates for injunction or abatement of any noise, right of flight, emissions, vibrations and other incidences of aircraft operations at Kahului Airport and for any damages or other claims related to or arising therefrom.

7. **ACKNOWLEDGEMENT OF DOT.** DOT acknowledges that it has agreed to ABP's level of fair share funding and participation in the construction of local and regional transportation improvements and programs set forth in this Agreement, as required by **Condition No. 7** of the Decision and Order. DOT further acknowledges that should the actual cost of such improvements paid for, in part, by ABP exceed the amounts set forth in Exhibit B, that ABP shall have no further obligation to contribute additional amounts and that DOT shall be obligated to complete the construction of such improvements in a diligent and timely manner.

8. **BINDING EFFECT.** Upon execution of this Agreement by the parties, this Agreement shall become binding and enforceable according to its terms. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of each party and their respective successors and assigns.

9. **AUTHORIZATION.** Each party warrants to each other party that the individuals executing this Agreement on behalf of the respective parties are authorized to do so.

10. **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement of the parties and supersedes any other agreements and understandings with respect to the subject matter hereof that may have existed between the parties.

11. **COUNTERPARTS.** The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

12. **AMENDMENT.** Notwithstanding anything provided herein, this Agreement may be amended only by each party signing a subsequent written instrument which sets forth the amendment.

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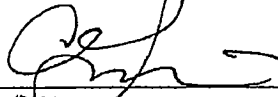
IN WITNESS WHEREOF, ABP and DOT have caused these presents to be executed as of the day and year first above written.

A & B PROPERTIES, INC., a Hawaii corporation

By: 
ALAN K. ARAKAWA
Its SENIOR VICE PRESIDENT

"ABP"

A & B PROPERTIES, INC., a Hawaii corporation

By: 
CHARLES W. LOOMIS
Its ASST. SECRETARY

"ABP"

STATE OF HAWAII DEPARTMENT OF TRANSPORTATION

By: _____
Its

"DOT"

Approved as to Form and Content:

OFFICE OF THE ATTORNEY GENERAL
STATE OF HAWAII

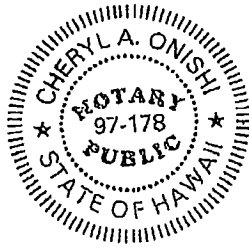
Name:
Deputy Attorney General

STATE OF HAWAII)
)
CITY & COUNTY OF HONOLULU)

copy pp
On this 16th day of May 2012, before me appeared ALAN K. ARAKAWA
and CHARLES W. LOOMIS to me personally known, who, being by me duly sworn, did say
that he is an officer of the A & B PROPERTIES, INC., a Hawaii corporation; that the
foregoing instrument was signed on behalf of said corporation; and that said officer
acknowledged said instrument to be the free act and deed of said corporation.

Further, I certify, as of this date, as follows:

Date of Document: Undated at time of notarization
Number of Pages: 9 (if counterpart signature pages are subsequently
attached, the document may have a different number of pages)
Document Description: Memorandum of Agreement
Jurisdiction/Judicial Circuit Where Signed: First



Cheryl A. Onishi
Print Name: CHERYLA. ONISHI
Date: 5/16/12
Notary Public, in and for said County and State
My commission expires: APR 17 2013

STATE OF HAWAII)
)
CITY & COUNTY OF HONOLULU)

On this _____ day of _____ 20____, before me appeared _____ to me personally known, who, being by me duly sworn, did say that he is the Director of the Department of Transportation, State of Hawaii; that the foregoing instrument was signed in his capacity as the Director of the Department of Transportation, an agency of the State of Hawaii; and the Director acknowledged said instrument to be the free act and deed of said limited liability company.

Further, I certify, as of this date, as follows:

Date of Document: _____
Number of Pages: _____ (if counterpart signature pages are subsequently attached, the document may have a different number of pages)
Document Description: Memorandum of Agreement
Jurisdiction/Judicial Circuit Where Signed: _____

Print Name: _____
Date: _____
Notary Public, in and for said County and State
My commission expires: _____

EXHIBIT A

DESCRIPTION

LIGHT INDUSTRIAL
ZONING APPLICATION

SOUTH PROJECT AREA

T.M.K: (2) 3-8-06:PARCEL 4 (Portion)

T.M.K: (2) 3-8-01:PARCEL 2 (Portion)

All of that certain parcel of land, being a portion of Grant 3343 to Claus Spreckels situated at Puunene, Kahului, Wailuku, Island and County of Maui, State of Hawaii

Beginning at a point at the southwesterly corner of this parcel of land, on the easterly side of Puunene Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,888.88 feet South and 13,107.78 feet East and running by azimuths measured clockwise from True South:

1. 149° 00' 484.87 feet along the easterly side of Puunene Avenue to a pipe;
2. Thence along the southeasterly side of Ho'okele Street on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:
190° 30' 39.76 feet to a pipe;
3. 232° 00' 158.73 feet along the southeasterly side of Ho'okele Street to a pipe;
4. 228° 34' 10" 100.28 feet along same to a pipe;
5. 232° 00' 1,369.86 feet along same to a pipe;
6. 142° 00' 80.00 feet along the northeasterly side of Ho'okele Street to a pipe;
7. 232° 00' 316.37 feet along Lot 12 of the Kahului Industrial Park-Phase 1B to a point;

8. Thence along same on a curve to the right with a radius of 3,056.00 feet, the chord azimuth and distance being:
233° 44' 46.5" 186.25 feet to a point;
9. Thence along Lot 12 of the Kahului Industrial Park-Phase 1B on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
195° 36' 16.5" 38.48 feet to a point;
10. 335° 43' 263.55 feet along the remainder of Grant 3343 to Claus Spreckels to a point;
11. Thence along same on a curve to the right with a radius of 580.00 feet, the chord azimuth and distance being:
290° 29' 14.5" 91.27 feet to a point;
12. 273° 18' 135.31 feet along the remainder of Grant 3343 to Claus Spreckels to a point;
13. 276° 27' 404.15 feet along same to a point;
14. 245° 00' 561.68 feet along same to a point;
15. 155° 00' 539.27 feet along same to a point;
16. 155° 15' 30" 862.12 feet along same to a point;
17. 239° 13' 385.03 feet along same (being along the southeasterly side of the Proposed Kahului Airport Access Road) to a point;
18. Thence along same on a curve to the left with a radius of 240.00 feet, the chord azimuth and distance being:
265° 20' 30" 211.36 feet to a point;
19. 291° 28' 352.18 feet along the remainder of Grant 3343 (being along the southeasterly side of the Proposed Kahului Airport Access Road) to a point;

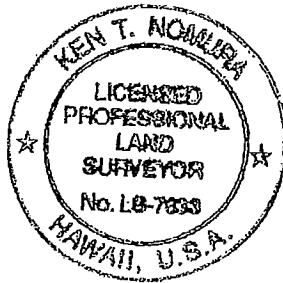
20. 16° 08' 76.34 feet along same to a point;
21. Thence along same on a curve to the left with a radius of 480.00 feet, the chord azimuth and distance being:
263° 03' 376.39 feet to a point;
22. 239° 58' 50.00 feet along the remainder of Grant 3343 to Claus Spreckels (being along the southeasterly side of the Proposed Kahului Airport Access Road) to a point;
23. 234° 28' 271.50 feet along same to a point;
24. Thence along the southwesterly side of Pulehu Road on a curve to the left with a radius of 3,472.00 feet, the chord azimuth and distance being:
141° 32' 24" 12.38 feet to a point;
25. 231° 43' 56.00 feet along the remainder of Grant 3343 to Claus Spreckels to a point;
26. Thence along the northeasterly side of Pulehu Road on a curve to the left with a radius of 3,528 feet, the chord azimuth and distance being:
141° 25' 08.5" 2.86 feet to a point;
27. 231° 43' 143.37 feet along the remainder of Grant 3343 to Claus Spreckels to a point;
28. 288° 51' 11" 708.85 feet along same to a point;
29. Thence along the southerly side of Hana Highway on a curve to the left with a radius of 11,509.16 feet, the chord azimuth and distance being:
291° 04' 49.5" 748.18 feet to a point;
30. 34° 56' 48" 1,017.74 feet along the remainder of Grant 3343 to Clause Spreckels to a point;
31. 34° 57' 78.41 feet along same to a point;
32. 23° 08' 312.58 feet along same to a point;

33. 85° 20' 348.01 feet along same to a point;
34. Thence along same on a curve to the left with a radius of 1000.00 feet, the chord azimuth and distance being:
75° 15' 350.16 feet to a point;
35. 65° 10' 3,628.00 feet along the remainder of Grant 3343 to Claus Spreckels to a point;
36. 72° 30' 337.41 feet along same to the point of beginning and containing an Area of 140.783 Acres.

Prepared by: A&B Properties, Inc.
Kahului, Maui, Hawaii

March 16, 2004

This work was prepared by me or under my supervision.



Ken T. Nomura 4/30/04
 Ken T. Nomura
 Licensed Professional Land Surveyor
 Certificate No. LS-7633
 Expiration Date: 4/30/04

ME
27/30-y

DESCRIPTION

LOT 17-A

AIRPORT INDUSTRIAL SUBDIVISION

TAX MAP KEY: (2) 3-8-079:013

KAHULUI, WAILUKU, MAUI, HAWAII

All of that certain parcel of land, being a portion of Grant 3343 to Claus Spreckels situated at Kahului, Wailuku, Island and County of Maui, State of Hawaii

Beginning at a point at the northwesterly corner of this lot, on the southerly side of Haleakala Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,745.93 feet North and 16,205.40 feet East and running by azimuths measured clockwise from True South:

1. 267° 32' 52" 442.36 feet along the southerly side of Haleakala Highway to a point;
2. Thence along same on a curve to the left with a radius of 2,892.93 feet, the chord azimuth and distance being:
264° 26' 22" 313.73 feet to a point;
3. 261° 19' 52" 594.40 feet along the southerly side of Haleakala Highway to a point;
4. Thence along same on a curve to the right with a radius of 1,882.08 feet, the chord azimuth and distance being:
266° 51' 22" 362.41 feet to a point;
5. 272° 22' 52" 270.09 feet along the southerly side of Haleakala Highway to a point;

6. Thence along the northwesterly side of the Kahului Airport Access Road on a curve to the right with a radius of 40.00 feet, the chord azimuth and distance being:
342° 02' 52" 75.02 feet to a point;
7. 51° 42' 52" 621.03 feet along the northwesterly side of the Kahului Airport Access Road to a point;
8. 53° 46' 08" 800.51 feet along same to a point;
9. 51° 42' 52" 320.91 feet along same to a point;
10. Thence along same on a curve to the right with a radius of 250.00 feet, the chord azimuth and distance being:
81° 42' 52" 250.00 feet to a point;
11. 114° 17' 52" 330.00 feet along same to a point;
12. 201° 42' 52" 15.00 feet along same to a point;
13. Thence along same on a curve to the left with a radius of 390.00 feet, the chord azimuth and distance being:
72° 31' 52" 492.81 feet to a point;
14. 33° 20' 52" 49.90 feet along same to a point;
15. 21° 27' 52" 97.13 feet along same to a point;
16. 33° 20' 52" 49.65 feet along same to a point;
17. Thence along same on a curve to the right with a radius of 90.00 feet, the chord azimuth and distance being:
75° 48' 12" 121.50 feet to a point;
18. 118° 15' 32" 289.85 feet along the northeasterly side of Hana Highway to a point;
19. 223° 00' 00" 402.57 feet along Lot 20-A of the Airport Industrial Subdivision to a point;
20. 300° 00' 86.00 feet along Lot 21-A of the Airport Industrial Subdivision to a point;

21.	237° 30'	588.99 feet	along same to a point;
22.	145° 48'	179.85 feet	along same to a point;
23.	182° 55'	54.86 feet	along same to a point;
24.	193° 28'	219.17 feet	along same to a point;
25.	214° 24'	116.73 feet	along same and along the southerly side of Haleakala Highway to the point of beginning and containing an Area of 38.191 Acres.

Prepared by: A&B Properties, Inc.
Kahului, Maui, Hawaii

November 22, 2011

This work was prepared by me or under my supervision.



Ken T. Nomura 4/30/2012

 Ken T. Nomura
 Licensed Professional Land Surveyor
 Certificate No. LS-7633
 Expiration Date: 4/30/2012

ME
11/47-j

Exhibit B
Fair Share Analysis

Roadway Improvement	Estimated Construction Cost	MBP/II AM % of Traffic	MBP/II PM % of Traffic	MBP/II Average % of Traffic	AM Peak % Pro Rata Share	PM Peak % Pro Rata Share	Average Pro Rata Share
Puunene Avenue Widening - Wakea to Kuihelani (MP 0.46 to 1.09)	\$ 7,983,360	7.31%	11.34%	9.33%	\$ 583,584	\$ 905,313	\$ 744,448
Puunene Avenue Widening - Kuihelani to Hookele Street (MP 0.0 to 0.2)	\$ 2,534,400	11.07%	18.84%	14.96%	\$ 280,608	\$ 477,481	\$ 379,044
Hana Highway Widening - Kaahumanu Avenue to Airport Access Road (MP 0.0 to 1.27)	\$ 16,093,440	7.52%	15.54%	11.53%	\$ 1,210,227	\$ 2,500,921	\$ 1,855,574
Hana Highway and Hookele Street Intersection Improvements & Widening (MP 1.27 to 1.75)	\$ 6,082,560	11.77%	24.85%	18.31%	\$ 715,917	\$ 1,511,516	\$ 1,113,717
Airport Access Road - Hana Highway to Puunene Avenue (4700 lf)	\$ 30,400,000	9.58%	16.02%	12.80%	\$ 2,912,320	\$ 4,870,080	\$ 3,891,200
Subtotal					\$ 5,702,655	\$ 10,265,311	\$ 7,983,983
Credit for Construction of Hana Highway/Hookele Street Intersection Improvements					\$ (6,082,560)	\$ (6,082,560)	\$ (6,082,560)
Total (less Hana Highway/Hookele Intersection)					\$ (379,905)	\$ 4,182,751	\$ 1,901,423
Total Fair Share Amount						\$ 4,182,751	

Percent of Traffic from TIAR, Austin Tsutsumi & Associates, June 16, 2010
ATA's estimate of probable construction costs - \$1,200/ft./lane

End of Exhibit B

DRAFT

Return by Mail () Pickup () To:

This document contains _____ pages

Tax Map Key No.:

DECLARATION OF USE RESTRICTION IMPLEMENTING STATE LAND USE CONDITION

THIS DECLARATION OF USE RESTRICTION IMPLEMENTING STATE LAND USE CONDITION (this "Declaration") is made as of _____, by A & B PROPERTIES, INC., a Hawaii corporation (the "Declarant") whose principal place of business and post office address is 822 Bishop Street, Honolulu, Hawaii 96813.

1. RECITALS

1.1 **The Property.** Declarant is the owner in fee simple of all of the land described in Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as the "Property". Declarant, for the term stated in Section 3.1 below, desires that certain covenants encumber and run with the land, which covenants are intended to be binding upon all persons from time to time acquiring any right, title or interest in the Property or occupying any improvements on the Property. These restrictions burden only the Property and shall not be deemed or construed to burden any other lands of Declarant. As used herein, "Lot" shall mean each of the lots which were or will be created in the subdivision of the Property.

1.2 **State Land Use Commission Decision and Order.** This Declaration implements Condition 19 ("SLUC Condition 19") of the State Land Use Commission's ("SLUC") Decision and Order dated March 25, 2004, under Docket No. A03-739, and SLUC Decision and Order dated June 13, 2005 under Docket A88-634 (hereinafter collectively referred to as the "Decision and Orders").

2. USE RESTRICTION

2.1 **Establishment of Restriction.** Declarant hereby declares that the Property is now held and hereafter at all times for the term stated in Section 3.1 below shall be held, improved, conveyed and used upon and subject to the restrictions herein set forth, which are for and shall inure to the benefit of Declarant and its successors and assigns.

2.2 **Use Restriction; Property Composition Restriction.** SLUC Condition 19 provides:

[Property] Composition. For a period of eight (8) years from the date of the County's approval of zoning for the [Property] a total of at least fifty percent (50%) of the [Property] acreage shall be (a) used and developed by [Declarant] 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 [Declarant's] development or offer for sale or lease of the [Property] for retail use, [Declarant] 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 [Property] is developed or in the process of being developed by [Declarant] 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.

2.3 **Implementation of Use Restriction/Property Composition Restriction.** In accordance with SLUC Condition 19, the Lots within the Property hereby are currently designated either "non-retail/light industrial", "retail" or "undesignated" as shown in Exhibit "B-1" attached hereto. At the time any Lot is sold or used and developed by Declarant (such as a lease of a Lot by Declarant), Declarant shall designate, in its sole discretion, whether such Lot shall be used for non-retail/light industrial use or retail use. Upon each such designation of Lot(s), Declarant shall amend Exhibit "B" and "B-1" to this Declaration to indicate the current designated use of each Lot within the Property and the percentage of the land acreage designated for "retail" use and shall record such amended Exhibit "B" and "B-1" in the Bureau of Conveyances of the State of Hawaii. At no time prior to the end of the term stated in Section 3.1 below shall more than fifty percent (50%) of the land acreage of the Property (that has been offered for sale) be designated for "retail" use.

2.4 **Compliance with Use Restriction.** All Lots designated for "non-retail/light industrial" use as shown on Exhibit "B-1" shall be used solely for the purposes set forth in SLUC Condition 19.

2.5 **Remedies.** Declarant shall have the sole right to enforce this Declaration in accordance with all remedies available at law or in equity, including but not limited to specific

performance. Without limiting the foregoing, each owner of any Lot in violation of this Declaration shall be liable for any damages, including, but not limited to, consequential damages incurred by Declarant or third parties resulting from such violation.

3. **TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS OF THE DECLARANT'S RIGHTS AND DUTIES**

3.1 **Term and Termination.** This Declaration and every provision hereof and every restriction contained herein shall continue in full force and effect until May 1, 2016, unless sooner terminated earlier by Declarant to the extent permitted by the Decision and Orders or any amendment thereto. On May 2, 2016, this Declaration shall automatically and immediately terminate and shall be of no further force or effect, without any action on the part of the Declarant or the recordation of any instrument. If necessary to remove the Declaration from title to any or all of the Property or portion thereof, Declarant or its successor or assigns may unilaterally record a cancellation of this Declaration in the Bureau, which cancellation shall not require the consent of any party.

3.2 **Modification; Amended and Restated Declaration of Use Restriction.** This Declaration may be modified, amended or waived in whole or in parts only by Declarant by recording at instrument to that effect in the Bureau.

3.3 **Assignments of the Declarant's Rights and Duties.** Any and all of the rights, powers, privileges of the obligations of the Declarant herein contained may be assigned to any person or entity which will assume such rights, powers, privileges and obligations, and upon the written consent and agreement of such person or entity, it shall, to the extent of such assignment, have the same rights, powers, privileges and obligations as are held by the Declarant in any capacity hereunder.

4. **DECLARATION RUNS WITH THE LAND**

4.1 **Constructive Notice and Acceptance.** Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property and/or Lot is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein and in any amendment hereto, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

4.2 **Benefit; Runs with Land.** All restrictions, conditions, covenants and agreements contained herein are made for the benefit of the Declarant and its successors and assigns, and shall, as to every owner and occupant of a Lot, operate as covenants running with the land, and shall apply to and bind them and their respective agents, heirs, devisees, personal representatives, assignees and successors in interest, and their all tenants subtenants and vendees of all or any portion of the Property, and shall be enforceable by Declarant.

4.3 **Rights of Third Parties.** Neither this Declaration nor the recording of this Declaration shall give any adjoining property owner or other third party any right, title or interest whatsoever in this Declaration, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and this Declaration may be terminated, modified or

amended as provided herein without the consent, permission, or approval of any other third party other than Declarant.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of _____, 2011.

A & B PROPERTIES, INC.,
a Hawaii corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 2011, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

Printed Name: _____

My commission expires: _____

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description:	
Declaration of Use Restriction Implementing State Land Use Condition	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____ Jurisdiction: _____ Circuit (in which notarial act is performed)	
_____ Signature of Notary	_____ Date of Notarization and Certification Statement
_____ Printed Name of Notary	(Official Stamp or Seal)

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 2011, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

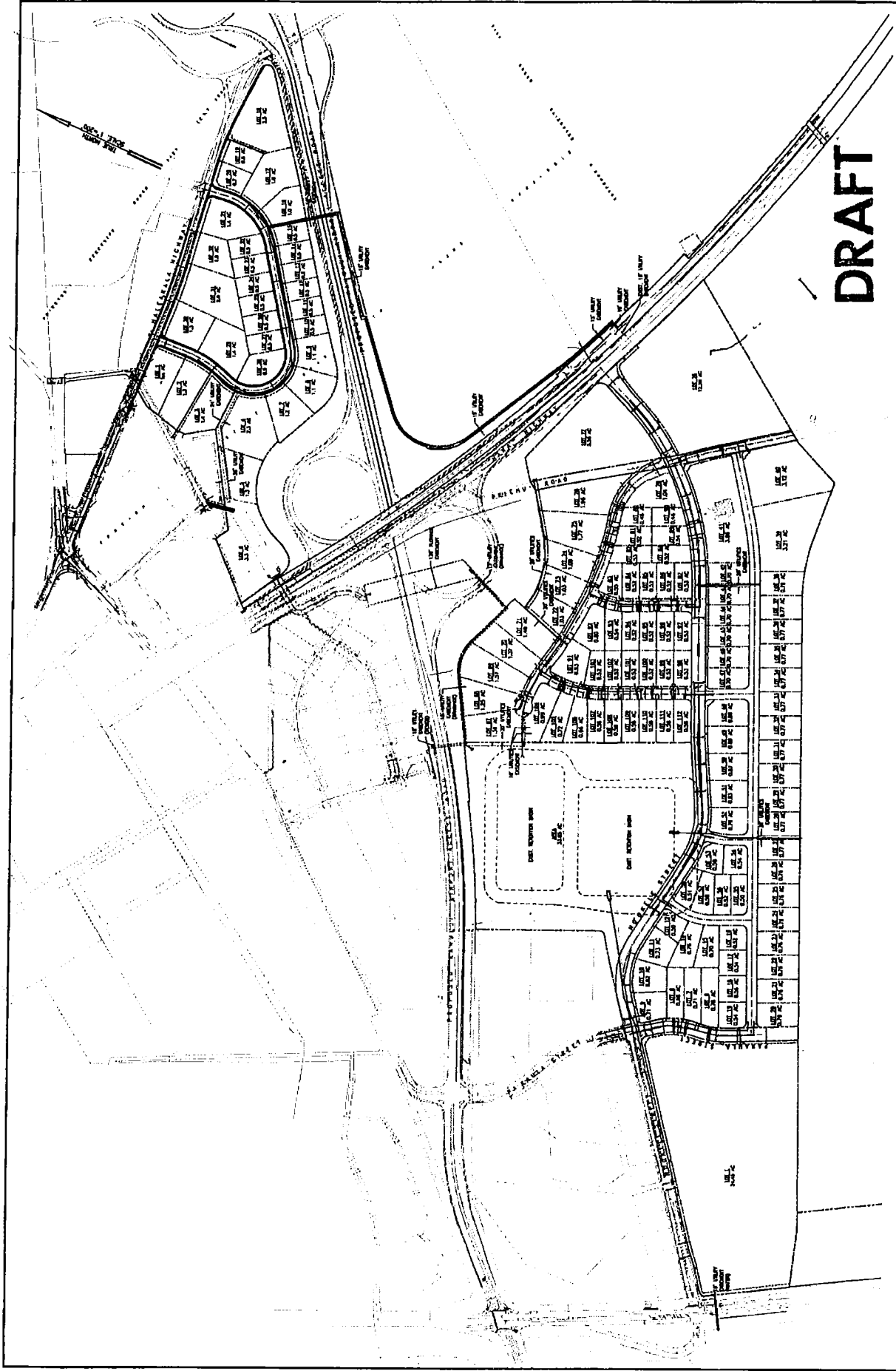
Notary Public, State of Hawaii

Printed Name: _____

My commission expires: _____

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description:	
Declaration of Use Restriction Implementing State Land Use Condition	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____ Jurisdiction: _____ Circuit (in which notarial act is performed)	
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Official Stamp or Seal)



AAB PROPERTIES, INC.
 MAUI BUSINESS PARK - PHASE II
 HAWAII, MAUI, HAWAII

ATA AUSTIN, TSUTSUMI & ASSOCIATES, INC.
 ARCHITECTS, ENGINEERS, & INTERIOR DESIGNERS
 SITE PLAN

EXHIBIT
 A

SITE PLAN
 SCALE 1"=50'

1. THIS PLAN IS THE PROPERTY OF AAB PROPERTIES, INC.

DRAFT

EXHIBIT "B"

Reference Date: _____, 2011

Total Acreage of Property Offered for Sale as of Reference Date: _____ acres

Total Acreage of Property Designated "Retail" Use _____ acres

Percentage of Development Designated for "Retail" Use
(MUST NOT BE GREATER THAN 50%) _____ %

See Exhibit "B-1" attached hereto for specific designation of Lots and Acreages of Lots.

DRAFT

EXHIBIT B-1 MAUI BUSINESS PARK PHASE II LOT AREAS & USE RESTRICTIONS (Genex)

Lot #	Incremental 1				Incremental 2				Total MHP/TL					
	SP Inc. 1A	NP Inc. 1B	Inc. 1C	NP Inc. 1D	SP Inc. 2A	NP Inc. 2B	Inc. 2C	NP Inc. 2D	Total Retail	Total Retail	Total Retail	Total Retail	Total Retail	Total Retail
1-5	24,851	21,144	18,000	33,797	32,440	4,628	271,158	8,600	8,600	0.000	77,272	0.000	77,272	8,000
6	24,152				0.270									
7					0.310									
8					0.300									
9					0.300									
10					0.300									
11					0.440									
12					0.410									
13					0.380									
14					0.330									
15					0.300									
16					0.470									
17					0.480									
18					0.490									
19					0.490									
20					0.760									
21					0.760									
22					0.760									
23					0.760									
24					0.760									
25					0.760									
26					0.760									
27					0.770									
28					0.770									
29					0.770									
30					0.770									
31					0.770									
32					0.770									
33					0.790									
34					0.790									
35					0.790									
36					0.790									
37					0.790									
38					0.790									
39					0.790									
40					3,120									
41					3,120									
42					2,660									
43					0.790									
44					0.790									
45					0.790									
46					0.790									
47					0.790									
48					0.880									
49					0.880									
50					0.890									
51					0.890									
52					0.910									
53					0.910									
54					0.970									
55					0.970									
56					0.970									
57					0.790									
58														
59														
60														
61														
62														
63														
64														
65					1,355									
66														
67														
68					1,290									
69					1,270									
70														

South Project

Numbers Omitted

Lot #	Increment 1				Increment 2				Total MDPH					
	SP		NP		SP		NP		SP		NP		Total	
	Inc. 1A	Inc. 1B	Inc. 1C	Total	Inc. 2A	Inc. 2B	Inc. 2C	Total	Inc. 3A	Inc. 3B	Inc. 3C	Total	Retail	Unassigned
71	21,652	21,141	18,008	33,800	33,797	33,797	33,797	33,797	12,460	44,690	57,150	154,543	77,272	77,272
72									1,400					
73									1,030					
74									1,030					
75									1,060					
76									1,770					
77			3,600						1,960					
78			12,400											
79		1,023												
80		0,428												
81		0,315												
82		0,331												
83		0,338												
84		0,312												
85		0,312												
86		0,312												
87		0,325												
88		0,320												
89		0,341												
90		0,463												
91		0,919												
92		0,791												
93		0,533												
94		0,512												
95		0,512												
96		0,512												
97		0,512												
98		0,512												
99		0,512												
100		0,512												
101		0,512												
102		0,512												
103		0,514												
104		0,514												
105		0,716												
106		0,637												
107		0,577												
108		0,573												
109		0,574												
110		0,574												
111		0,574												
112		0,579												
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South Prodes

North

