

**OFFICE OF PLANNING**  
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BEFORE THE LAND USE COMMISSION  
 OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A07-772
	)	
A&B PROPERTIES, INC.	)	OFFICE OF PLANNING’S RESPONSE
	)	TO PETITIONER’S MOTION FOR
	)	ORDER GRANTING TIME
To Amend the Agricultural Land Use	)	EXTENSION; CERTIFICATE OF
District Boundary into the Urban Land Use	)	SERVICE
District for approximately 94.352 acres at	)	
Waiakoa, Island and County of Maui, State	)	
of Hawaii, TMK: 3-8-04: portion of 2,	)	
portion of 22 and portion of 30	)	
_____	)	

OFFICE OF PLANNING’S RESPONSE TO  
PETITIONER’S MOTION FOR ORDER GRANTING TIME EXTENSION

I. INTRODUCTION

The Office of Planning (“OP”) has no objection to Petitioner’s Motion for Order Granting Time Extension (“Motion for Extension”), agrees with the proposed wording for Condition 22, and recommends a different wording for Condition 23, without prejudice to any rights, remedies, or privileges of Petitioner.

II. ARGUMENT

On February 20, 2009, the Land Use Commission (“LUC”) granted Petitioner A & B Properties Hawaii, LLC, Series T’s (“Petitioner”) district boundary amendment. One of the

requirements of the decision and order was that the backbone infrastructure be completed within ten years.

Petitioner has proceeded in good faith with the development of the project. Partially due to factors beyond its control, Petitioner was only able to secure zoning approval in August 2014. Petitioner began site work in March 2016, vertical construction in February 2017, and the first home deliveries in October 2017. Of the 600 proposed units described in the February 20, 2009 Decision and Order, Petitioner has constructed and sold 170 homes so far.

Petitioner asks for an additional ten years to complete the backbone infrastructure. Given the current state of the economy due to the pandemic and good faith development of a substantial portion of the project, the Office of Planning supports the Motion for Extension.

Petitioner asks that Condition 22 be amended to change the deadline from ten years after the date of the decision and order to February 20, 2029, effectively extending the deadline an additional ten years. OP has no objection to this requested amendment.

Petitioner also asks that Condition 23 be amended to state that “If Petitioner fails to substantially commence use of the land in accordance with representations made to the commission....” to reflect current case law and section 205-4(g), Hawaii Revised Statutes. OP has strong views on the importance of finality in decisions. Accordingly, OP recommends that Condition 23 be more simply amended as follows:

Order to Show Cause. If Petitioner fails to complete proposed backbone infrastructure within [~~ten~~] twenty years from the date of the decision and order, the Commission may issue and serve upon Petitioner an Order to Show Cause and the Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land use Agricultural District classification or be changed to a more appropriate classification.

Finality is an important value in LUC cases. The purpose of LUC cases is to resolve disputes. Once resolved, OP generally disfavors relitigating or revising decisions. On motions to amend, OP recognizes that circumstances change and new facts may occasionally require changes to conditions. OP does not support, however, changes to conditions simply because someone believes the condition wording could be improved.

In this case, Condition 23 is essentially a notice condition. It informs the Petitioner and any subsequent landowner that the failure to comply with Condition 22 may subject them to an order to show cause. As discussed above, OP supports the extension of time to complete the backbone infrastructure. Petitioner, however, does more than extend the time in its amended Condition 23. Petitioner also amends the language to reflect more recent case law.

OP respectfully suggests that it is neither necessary nor advisable to change the wording of condition 23. The condition does not change the law. So, it is not necessary to change the wording of the condition. Since Condition 23 is a notice condition, it does not create obligations or place requirements upon Petitioner. So, the need by Petitioner to change the wording is minimal. Finally, whether the wording accurately reflects recent changes in the law will be easier to resolve in some motions than others. OP recommends a bright line rule in simply refusing to engage in that discussion, and to minimize the changes to Condition 23 just to those changes necessary to meet the changing circumstances of Petitioner's ability to meet the 10-year infrastructure deadline.

In making this recommendation, OP believes the LUC should specifically note that this does not affect any rights, remedies, or privileges of the Petitioner under existing law. Given Petitioner's diligence so far, OP is hoping the necessity of addressing this scenario is remote.

III. CONCLUSION

For all these reasons, OP respectfully recommends that the LUC grant the motion, amend Condition 22 as proposed by Petitioner, and amend Condition 23 as proposed by OP.

DATED: Honolulu, Hawaii, April 15, 2021.

OFFICE OF PLANNING  
STATE OF HAWAII

*Mary Alice Evans*

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MARY ALICE EVANS  
DIRECTOR

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_____	)	

**CERTIFICATE OF SERVICE**

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

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DATED: Honolulu, Hawaii, April 15, 2021.

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STATE OF HAWAII

*Mary Alice Evans*

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DIRECTOR