

Waiko Industrial Investment, LLC

LAND USE COMMISSION
STATE OF HAWAII

2021 APR 30 A 10:31

April 29, 2020

Daniel E. Orodener, Executive Officer
Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804-2359

Re: 2021 Annual Report - Docket No. A12-796 – Waiko Light Industrial

Dear Mr. Orodener:

Waiko Industrial Investment, LLC ("Waiko") submits this Annual Report in accordance with Condition No. 23 of the State Land Use Commission Findings of Fact, Conclusions of Law and Decision and Order, dated on May 3, 2013, in Docket No. A12-796, to report on the status of the development of the light industrial subdivision (the "Project"). The enclosed matrix outlines Waiko's compliance with each of the 26 conditions of approval.

Waiko has been diligently pursuing the development of the Project. Construction is ongoing for the Project.

Please feel free to contact Leilani Pulmano at (808) 270-5936 or leilanip@pacificrimland.com should you have any questions or require any additional information.

Sincerely,
Waiko Industrial Investment, LLC



Ryan Churchill
Its Authorized Signer

c: Mary Alice Evans, Director, State Office of Planning
Michele Chouteau McLean, Director, County of Maui, Planning Department

WAIKO INDUSTRIAL INVESTMENT, LLC
WAIKO LIGHT INDUSTRIAL
DOCKET A12-796

State Land Use Commission Condition Status

No.	Condition	Status	Comments
1	<p><u>Highway and Road Improvements.</u> The Petitioner shall abide by, complete and/or submit the following:</p> <ul style="list-style-type: none"> a. The TIAR shall be revised and resubmitted to the DOT Highways Division for review and acceptance prior to zone change approval. b. Petitioner shall fund, construct and implement the Project's local/direct access improvements recommended in the TIAR accepted by the DOT for the Waiko Road intersections with Honoapiliiani Highway and Kuibelani Highway. c. Petitioner shall provide its fair share contribution to the cost of regional improvements to State highways. These improvements could be on Honoapiliiani Highway and/or on Kuibelani Highway. d. The revised TIAR shall be updated every three (3) years until build out. If the Project is delayed beyond 2015, trips generated by A&B Properties, Inc.'s development and any other committed developments in the vicinity that are developed before the build out of the Project shall be included as background traffic in the updated TIAR. e. Petitioner shall include a provision in each of its sales, lease, and conveyance documents, whereby each person who may from time to time own the Petition Area, any portion thereof, or hold any other interest therein or occupy any improvements thereon, makes the same acknowledgement and the following agreements in favor of the State of Hawaii: (a) such person assumes complete risk of and forever releases the State of Hawaii from all claims for damages and nuisances occurring on the Petition Area and arising out of or related highway traffic noise from Kuibelani Highway and (b) such person waives any right to (i) require the State of Hawaii to take any action to eliminate or abate any highway traffic noise from Kuibelani Highway; and (ii) file any suit or claim against the State of Hawaii for injunction or abatement of any highway traffic noise from Kuibelani Highway and for any damages or other claims related to or arising therefrom. The provision shall be incorporated into the appropriate title documents and recorded at the Bureau of Conveyances. 	Partially satisfied.	<ul style="list-style-type: none"> a. A final TIAR was approved by DOT on June 13, 2014. b. Construction is completed for the Kuibelani Highway intersection as approved by DOT. No improvements were required by DOT for Honoapiliiani Highway intersection. c. See b, above. d. An updated TIAR was submitted to DOT on April 17, 2018, with no response from DOT. On April 29, 2021 a supplemental letter was submitted to DOT as an update to the TIAR, indicating no significant increase in traffic volumes, See Exhibit A. e. Petitioner will include these provisions in its conveyance documents.
2	<p><u>Notification of Proximity to Kahului Airport.</u> Petitioner and all subsequent owners shall notify and disclose to all prospective developers, purchasers, and/or lessees within the Project, as part of any conveyance document (deed, leases, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from Kahului Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.</p>	Satisfied	This language is included in the conveyance documents of the property.

3	<p><u>Hazardous Wildlife Attractants on or Near Kahului Airport.</u> As deemed necessary by the DOT to minimize the hazards to aircraft operations from Kahului Airport, Petitioner shall fund and implement a program to control any birds nesting or occupation and any insect, pest, or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, wastewater treatment facilities, or associated settling ponds) serving the Project. Petitioner shall enter into a Memorandum of Agreement with the DOT to document hazardous wildlife attractant mitigation prior to the granting of tentative subdivision approval.</p>	Satisfied.	DOT Airports executed a Memorandum of Agreement that includes a Wildlife Hazardous Prevention Program.
4	<p><u>Water Conservation.</u> Petitioner shall implement water conservation measures, including the use of endemic, indigenous, and drought-tolerant plants and turf, and incorporate such measures into the Petition Area's site design and landscaping.</p>	Will be satisfied with construction.	Water conservation measures have been integrated into the landscape design (minimal landscaping and use of drip irrigation) which has been approved by the County of Maui.
5	<p><u>Wastewater System and Facilities.</u> Petitioner shall comply with chapter 11-62, HAR, entitled "Wastewater Systems," and any IWS shall be approved by the DOH. Petitioner shall construct internal sewer lines in accordance with County of Maui standards and provide stub outs for future sewer connection as may be required by the County.</p>	Will be satisfied with construction.	Construction plans for the wastewater system were approved by the DOH on December 7, 2017.
6	<p><u>Stormwater Management and Drainage.</u> Petitioner shall construct and maintain stormwater and drainage system improvements as designed in compliance with applicable federal, State, and County laws and rules. To the extent feasible, Petitioner shall implement BMPs and incorporate Low Impact Development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to control water quality and mitigate nonpoint sources of pollution.</p>	Will be satisfied with construction.	A stormwater and drainage system have been design for the Project, and the plans were approved by the County of Maui on December 22, 2017.
7	<p><u>Civil Defense.</u> Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location approved by the SCD and County of Maui Civil Defense Agency.</p>	Will be satisfied with construction.	HIEMA and SDOT have approved the location and construction plan for a siren along Kuhelani Highway. Petitioner will purchase the siren and hire a contractor to install the siren.
8	<p><u>Archaeological and Historic Preservation.</u> Petitioner shall comply with mitigation measures recommended by the DLNR, SHPD. Archaeological monitoring shall be conducted during all ground disturbing activities on the Petition Area and a report of monitoring activities shall be submitted to the SHPD upon the completion of the fieldwork.</p>	Will be satisfied with construction.	An archaeological monitoring plan was approved by SHPD on May 31, 2012, and Petitioner is complying with the plan during construction.
9	<p><u>Previously Unidentified Burials and Archaeological/Historic Sites.</u> In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the DLNR, SHPD, Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving,</p>	Ongoing	Petitioner is complying with inadvertent finds..

	and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the DLNR, SHPD, that mitigation measures have been implemented to its satisfaction.		
10	Infrastructure Deadline. Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of the Decision and Order granting the requested reclassification.	Will be satisfied during construction.	Construction is underway.
11	County Access to Waikapu Landfill Site. Petitioner will provide continued access to the County of Maui Waikapu Landfill site as shown on the conceptual plan, page 2, of Petitioner's Exhibit "53" ("Access Easement"). Acceptable alternatives for County access are: (a) over existing Easement "C"; (b) over the Project's internal roadways in combination with the proposed temporary access over Lot 12-A; or (c) over permanent roads within A&B Properties, Inc.'s future Waiale master-planned community. With the consent of the County, Easement "C" may be released before the development of an alternate, permanent route provided the proposed temporary access easement is in place or Petitioner has provided alternate access to the County over Lot 1-C to the satisfaction of the DEM.	Satisfied	County of Maui has executed an access easement to their property.
12	County Conditions Related to Access Easement. Within the Access Easement area, Petitioner shall ensure that: (1) all turning radii in the Access Easement accommodate large vehicles accessing the landfill; (b) the replacement roadway surface in the Access Easement area is sufficient to handle the weight of the large vehicles that access the landfill; (c) the continuity of flow from Waiko Road to the remainder of the landfill Access Easement is preserved; and (d) there is a formal, written easement recorded against the Petition Area to document the Access Easement, the terms of which shall be reviewed and approved by the DEM, Solid Waste Division.	Satisfied	County of Maui has executed an access easement to their property.
13	Condition Relating to Light Industrial and Commercial Uses. The uses in the area shown on the conceptual plan referenced in the Commission's proceedings as Petitioner's Exhibit "55" will be limited to the uses described in Exhibit "55". No residential or apartment uses are planned or will be built within the Petition Area. Uses within the 8.5-acre portion of the Petition Area fronting Kuhelani Highway as also shown on Petitioner's Exhibit "55" are limited to B-1, B-2, and B-3 zoning district uses except that no apartment uses are allowed.	Ongoing	Encumbrance on the property restricting the uses have been recorded as part of the D&O.
14	Water Service. A private water system shall be developed for the Petition Area which shall be approved by the DOH, Safe Water Drinking Division, and the DLNR for well drilling and pump installation requirements. Petitioner shall	Will be satisfied during construction.	DOH and DLNR has approved the private water system and pump installation permits, respectively. County of Maui has approved the internal water lines.

	construct internal water lines in accordance with County of Maui standards and will include a stub out for future connection should County of Maui water service becomes available to the Petition Area. At such time, Petitioner and/or its successors shall apply to the DWS for connection and service.		
15	Solid Waste. Petitioner shall comply with solid waste disposal as required by the DEM.	Ongoing	Petitioner will comply
16	Dust Control Measures. In addition to the Stormwater Management and Drainage Condition recommended by OP, Petitioner shall use BMPs to implement dust control measures during and after the development process in accordance with the DOH guidelines.	Will be satisfied during construction.	BMPs have been approved by the County of Maui. Petitioner also has an approved NPDES Permit.
17	Hazardous Materials. Storage and/or disposal of hazardous materials shall be approved by the DOH prior to their establishment within the Petition Area.	Satisfied to date & Ongoing	Petitioner has and will comply. Future owners will be notified of this condition.
18	Energy Conservation Measures. Petitioner, where feasible, shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed development.	Ongoing – post construction	Energy conservation measures will be incorporated into the project by the individual building owners.
19	Established Access Right Protected. Pursuant to Article XII, section 7, of the Hawaii State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.	Ongoing	Petitioner acknowledges this condition.
20	Compliance with Section 205-3.5 HRS, Related to Agricultural Uses on Adjacent Agricultural Land. For all land in the Petition Area or any portion thereof that is adjacent to land in the State Land Use Agricultural District, Petitioner shall comply with the following: a. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, “farming operations” shall have the same meaning as provided in section 165-2, HRS; and b. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under chapter 165, HRS, the Hawaii Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.	Ongoing	Petitioner will notify potential purchasers of Hawaii Right to Farm Act within the conveyance documents.

21	<p>Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with representations made to the Commission as reflected in this Decision and Order. Failure to so develop the Petition Area may result in reversion of the Petition to its former classification, or change to a more appropriate classification.</p>	Ongoing	The subdivision and construction plans are consistent with what was represented to the Commission.
22	<p>Notice of Change of Ownership. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interests in the Petition Area at any time, prior to completion of development of the Petition Area.</p>	Ongoing	The Petition area was subdivided into 21 saleable lots.
23	<p>Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DP, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be in a form prescribed by the Executive Officer of the Commission. The annual report shall be due on or before the anniversary date of the Decision and Order for the reclassification of the Petition Area.</p>	Ongoing	Petitioner has submitted annual reports to comply.
24	<p>Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors or assigns.</p>	Ongoing	Petitioner acknowledges this condition.
25	<p>Notice of Imposition of Conditions. Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances of the State of Hawaii a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.</p>	Satisfied	The D&O was recorded on July 18, 2013 and filed with the commission.
26	<p>Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR.</p> <p>The limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to the Reclassified Area included in this Declaration until such time that the Commission removes or releases the conditions relating to the Reclassified Area established through its Decision and Order filed May 3, 2013, as amended, in Docket No. A 12-796.</p>	Satisfied	The D&O was recorded on July 18, 2013 and filed with the commission.

Exhibit A



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS

CONTINUING THE ENGINEERING PRACTICE FOUNDED BY H. A. R. AUSTIN IN 1934

TERRANCE S. ARASHIRO, P.E.
ADRIENNE W.L.H. WONG, P.E., LEED AP
DEANNA M.R. HAYASHI, P.E.
PAUL K. ARITA, P.E.
ERIK S. KANESHIRO, L.P.L.S., LEED AP
MATT K. NAKAMOTO, P.E.
GARRETT K. TOKUOKA, P.E.

April 26, 2021

Mr. Robin Shishido, Maui District Engineer
State of Hawaii
Department of Transportation
Highways Division – Maui District Office
650 Palapala Drive
Kahului, Hawaii 96732

Dear Mr. Shishido:

**Subject: Status of TIAR Update
For Waiko Light Industrial
Waikapu, Maui, Hawaii**

This letter was written to discuss the status of the TIAR update for the Waiko Light Industrial development (hereinafter referred to as "Project"), in accordance with Condition 1.d of the State Land Use Commission Findings of Fact, Conclusions of Law and Decision and Order, dated May 3, 2013, in Docket No. A12-796, which states "*The revised TIAR shall be updated every three (3) years until build-out.*"

A final TIAR for the Project was completed by Phillip Rowell and Associates, dated January 31, 2014 (hereinafter referred to as "DOT Approved 2014 Project TIAR") and was approved by the State of Hawaii Department of Transportation (HDOT) on June 13, 2014. Austin, Tsutsumi & Associates, Inc. (ATA) subsequently prepared the first revised TIAR dated April 4, 2018, consistent with Condition 1.d. It's our understanding that a second revised TIAR is required for Year 2021 to fulfill Condition 1.d. However, ATA believes that for the following reasons, an updated TIAR prepared in Year 2021 will not yield any changes from the first revised 2018 TIAR and is therefore not needed at this time:

- Based on HDOT's COVID-19 Average Daily Traffic (ADT) Traffic Volume Comparison from pre-COVID-19 2019 levels to current April 2021 levels, traffic along Honoapiilani Highway near Wailuku Town is currently 9% less and traffic along Kuihelani Highway is the same as 2019 levels.
- Nearby schools in the Wailuku and Kahului areas are still only partial reopened due to COVID-19. Therefore, weekday AM peak volumes are likely still much lower than pre-COVID-19 levels.
- The Project currently remains unoccupied, so there is no existing traffic generated at the Project site.



Mr. Robin Shishido, Maui District Engineer
State of Hawaii
Department of Transportation

April 26, 2021

We appreciate the opportunity to prepare this Status Update Letter. If you have any questions or require additional information, please contact me at (808) 244-8044.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

TYLER K. FUJIWARA, P.E.
Chief Transportation Manager - Maui

TF