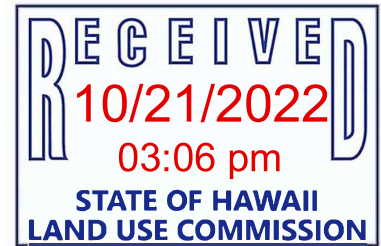




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October 22, 2022

Mr. Daniel E. Orodener
Executive Officer
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, HI 96804-2359

Subject: 2022 Annual Report for the State Land Use Commission
Docket No. A07-772/A&B Properties, Inc.- Kihei Residential

Dear Mr. Orodener:

A & B Properties Hawaii, LLC, Series T (“A&B” or “Petitioner”) as manager of Kamalani Ventures LLC, submits this 2022 annual report for the subject Kihei Residential project (“Project”).

Project Background and Status

By its Decision and Order dated February 20, 2009, the State Land Use Commission (SLUC) granted approval of A&B’s petition to reclassify approximately 94.352 acres from the “Agricultural” to the “Urban” land use district at Waiakoa, Maui. Approval of the petition was subject to 28 conditions. The development of the subject property is for a planned residential community.

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 However, on November 24, 2009, the Planning Department rescinded this policy, citing in part the progress made regarding the Maui General Plan Update.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



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Planning Commission conducted a public hearing on the applications and after due deliberation voted to recommend the Maui County Council's approval of the community plan amendment and change in zoning applications with conditions. The applications and recommendation of the Maui Planning Commission were forwarded to the Maui County Council by the Planning Department in March 2011. In December 2012, after years of review and public comment, the County of Maui adopted the Maui Island Plan. As a result, the subject property is now appropriately situated within the Maui Island Plan's designated urban growth boundary.

Public hearings on the applications were conducted by the Maui County Council's Land Use Committee on December 18, 2013, February 5, 2014, March 19, 2014 and July 2, 2014. The applications subsequently passed first reading before the Maui County Council on July 22, 2014. Second/final reading and approval of Mayor Arakawa was attained on August 1, 2014. Zoning for the Project was granted subject to 16 conditions. Copies of both ordinances were provided in a prior annual report. The receipt of community plan and zoning approval came nearly five and one half years after SLUC approval.

Since the receipt of zoning approval in August 2014, Petitioner has proceeded with the design, engineering and construction of the Project, now known as Kamalani. Subdivision and building plans for the initial increment of Kamalani have been approved by the County. Plans for Kamalani's initial increment include affordable residential units as prescribed by the County's residential workforce housing policy. The overall master plan seeks to provide a range of housing types to meet a range of price points and market segments, all geared toward primary housing for Maui families. Toward that end the plan includes a mix of multi family attached and single family detached units, including stacked flats, townhomes, motor court homes and single family detached homes under condominium ownership. To provide for that mix of housing types within the R-1 zoned area, the Petitioner sought and received a Cluster Housing permit from the County of Maui. This permit allows for a mix of single family detached housing types to meet a wider range of market segments and price points.

Construction of Kamalani commenced in March 2016, with site grading and infrastructure improvements. Vertical construction of the initial increment of Kamalani commenced in February 2017 and the first home deliveries occurred in October 2017. To date, 170 homes (along with related backbone infrastructure) have been constructed and sold at an estimated cost of construction and development of approximately \$64 million. Construction plans for the next



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increment of Kamalani are in process.

The effects of the COVID Pandemic are anticipated to significantly impact the timing of buildout of the remaining homes at Kamalani. Sales for the initial increment of Kamalani points to many of the buyers employed directly or indirectly in tourism related jobs. Tourism, as an employment center, is measured by the Accommodations & Food Service sector. Tourism is the largest employer in Maui County and has experienced the largest number of job losses from the COVID Pandemic. At this point in time it is not possible to accurately determine how long the actual recovery will take.

On November 17, 2020 Petitioner filed a motion for time extension relating to Conditions 22 (Infrastructure Deadline) and 23 (Order To Show Cause) of the Decision and Order. By its Decision and Order dated July 6, 2021 the Commission approved the time extension request and amended Conditions 22 and 23 as follows.

22. Infrastructure Deadline. Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access point, residential internal roadways, and water supply, sewage and electrical infrastructure by April 28, 2031.

23. Order to Show Cause. If Petitioner fails to complete proposed backbone infrastructure by April 28, 2031, 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.

The amended Conditions have been incorporated into this annual report.

A&B is under contract to sell the subject property to Savio Growth Venture LLC, a Hawaii limited liability company. Savio Growth Venture LLC is aware of the conditions imposed by this Decision and Order.

STATUS OF ACTIVITIES RELATING TO IMPOSED CONDITIONS

Listed below are each of the conditions imposed under the Decision and Order and the status of activities pertaining to each respective condition.



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

In compliance with the County's Residential Workforce Housing Policy, the Petitioner has executed an affordable housing agreement with the County of Maui. A copy of that agreement was provided with the 2016 annual report. The housing units completed to date have met the requisite affordable housing requirements for the entire Project.

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

Petitioner has incorporated disclosures into applicable sales materials and legal documents.

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

Petitioner has incorporated this notice into all applicable legal documents.

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



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Petitioner is complying with this condition as development of the Project progresses.

5. *Water Resources Allocation. Petitioner shall provide a long-term drinking water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area to the satisfaction of the DWS and other applicable State and County agencies.*

Petitioner is exploring potential water sources to serve the remainder of the Project.

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

Petitioner has incorporated water conservation measures, including the use of drought tolerant plants, into the Project's landscaping plans.

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

Petitioner has coordinated its wastewater plans with the DEM.

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

Petitioner commissioned applicable studies of the property in May and June of 2014. Bureau Veritas North America conducted a Phase I Environmental Site Assessment and a Phase II Site Investigation of



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the property. This analysis included appropriate soil testing of the property in consultation with the State DOH. Analytical testing reported that no detectable concentrations of contaminants were present or that such concentrations were well below the State DOH Tier 1 Environmental Action Levels. These findings and reports were transmitted to the State DOH via letter dated June 20, 2014. The DOH acknowledged the findings of the reports by letter dated April 15, 2015 (a copy was previously transmitted with the 2015 annual report). Subsequently, based on additional submittals and completion of site construction for Increment 1, the DOH issued a No Action Determination for Increment 1 on December 20, 2016. A copy was provided with the 2017 annual report. Petitioner intends to seek a No Action Determination for the balance of the project once site work is complete for each increment.

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

Petitioner met with the County Civil Defense agency and will work with it and other applicable agencies to comply with this condition as development of the Project progresses.

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

Petitioner's construction plans have incorporated best management practices to mitigate fugitive dust. Any requirements for air quality monitoring will be complied with as development of the Project progresses.

- 11. Drainage. Petitioner shall fund the design and construction of drainage system improvements based on applicable standards, to prevent runoff resulting from the development of the Petition Area from adversely affecting State and County highway and roadway facilities to the satisfaction of applicable State and County agencies.*



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Petitioner has coordinated its drainage plans with the County DPW is complying with this condition as development of the Project progresses.

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

In August 2014, an updated traffic analysis was submitted to the State DOT for review. This traffic analysis supplemented the Updated/Revised TIAR dated January 22, 2013, which was accepted by the DOT in May 2013. On May 26, 2015, the DOT accepted the updated traffic analysis including the timing of the improvements at the Piilani Highway/Kaiwahine Street intersection. A copy of that letter was included in the 2015 annual report.

Construction plans for the transportation improvements at the intersection of Piilani Highway/Kaiwahine Street/Uwapo Road were completed and submitted to the State DOT for review in July 2016. Initial comments were received and addressed, with revised plans submitted in May 2017. Further plan revisions are currently being made in response to additional comments received from the State DOT.

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



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

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

Petitioner and the DOE have executed an educational contribution agreement for the Project. A copy of the educational contribution agreement, dated December 22, 2014, was provided with the 2015 annual report. To date, Petitioner has paid approximately \$403,070 to the DOE pursuant to the educational contribution agreement.

15. *Previously Unidentified Burials and Archaeological/Historic Sites.* In the event that historic resources, including human skeletal remains, lava tubes, and lava blisters/bubbles are identified during the construction activities, all work shall cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the DLNR, SHPD, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, Petitioner shall comply with all applicable statutes and rules of the DLNR, SHPD. In addition, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the DLNR, SHPD, that mitigative measures have been implemented to its satisfaction.

Petitioner is complying with this condition as development of the Project progresses.

16. *Established Access Rights Protected.* Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.



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The archaeological inventory survey and cultural impact assessment prepared for the Project disclosed no access or use of the property by Native Hawaiians for subsistence, cultural or religious practices.

17. *Recreational Facilities.* Petitioner shall comply with the Park Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.

The Project's Park Assessment Agreement specifying the park dedication requirements for the Project was executed in April 2016. Active and passive parks are planned at locations within the Project.

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

Petitioner has coordinated its plans with applicable governmental agencies and is complying with this condition as development of the Project progresses.

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

Petitioner is complying with the recommendations of the USFWS as development of the Project progresses.

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



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Petitioner has incorporated energy conservation, such as the use of gas in lieu of electricity for the appropriate appliances and LED lighting, and will continue to comply with this condition as development of the Project progresses.

21. Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

Petitioner is proceeding with development of the Project in substantial compliance with representations made to the SLUC. As noted earlier, the Petitioner received a Cluster Housing permit for the R-1 portion of the Project to allow for a mix of single family detached housing types to meet a wider range of market segments and price points.

In 2016, at the request of the Maui Planning Department, Petitioner contacted the Executive Director of the SLUC to discuss certain matters relating to this condition. That discussion resulted in the preparation of a Supplemental Report by the Petitioner dated November 7, 2016 to Mr. Daniel E. Orodener, Executive Officer, SLUC. Subsequently, in February 2017, Petitioner also met with representatives of the State Office of Planning (OP) regarding the matter. That meeting was documented via a letter from the Petitioner dated February 10, 2017 to Mr. Rodney Funakoshi, Planning Program Administrator, OP. In response, the OP provided a letter dated February 14, 2017 to the Petitioner. Based on the information provided, the OP found that the Project was being developed in substantial compliance with the Project's 2009 SLUC decision and order. The OP further noted that the use of a Condominium Property Regime (CPR) in lieu of a subdivision did not cause greater impacts for the Project, given that the planned residential land use and overall residential density remained unchanged. Copies of these referenced correspondences were previously provided to the SLUC, OP and Maui Planning Department. As noted previously, the Petitioner firmly believes it is proceeding



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with the development of the Project in substantial compliance with representations made to the SLUC and Condition 21.

22. Infrastructure Deadline. Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access point, residential internal roadways, and water supply, sewage and electrical infrastructure by April 28, 2031.

On November 17, 2020, Petitioner, in consultation with the Maui Planning Department, the State Office of Planning and the SLUC staff filed a motion to amend the original condition to allow more time to complete the backbone infrastructure for the remainder of the Project. The Commission subsequently approved a time extension to April 28, 2031 as reflected in this condition. The additional time should allow for the timely completion of the Project's remaining backbone infrastructure.

23. Order to Show Cause. If Petitioner fails to complete proposed backbone infrastructure by April 28, 2031, 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.

The original condition was amended to be consistent with the new deadline established in Condition 22. Petitioner acknowledges this condition.

24. Notice of Change of Ownership. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, at any time prior to completion of development of the Petition Area.

In 2012 landowner Alexander & Baldwin, Inc. converted from a corporation to a limited liability company, known as Alexander & Baldwin, LLC. Subsequently in 2015, Alexander & Baldwin, LLC transferred ownership of the property to its affiliate Kamalani Ventures LLC, a Hawaii limited liability company. Notices of these transactions were previously provided to the SLUC. In 2016 A & B



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Properties, Inc. converted from a corporation to a limited liability company known as A & B Properties Hawaii, LLC, and its assets were allocated between two series, Series R and Series T. A & B Properties Hawaii, LLC, Series T is the manager of Kamalani Ventures LLC.

As noted, 170 homes have been constructed and sold, including the affordable homes prescribed by the County's residential workforce housing policy. To facilitate timely development of the remainder of the Project, Petitioner anticipates the future participation of other parties, as well as the possible sale of its equity interest in the Project.

As previously noted, Petitioner is under contract with a buyer to acquire the undeveloped portion of the subject property. The Commission will be notified of any sale of the subject property.

25. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

This annual report is being submitted in compliance with this condition.

26. Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.

This condition is not currently applicable.

27. Notice of Imposition of Conditions. Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.



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This condition has been satisfied. On February 26, 2009 a “Notice of Imposition of Conditions by the Land Use Commission” was recorded with the State Bureau of Conveyances (Document No. 2009-028710) and copies were filed with the SLUC.

28. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.

This condition has been satisfied. On April 6, 2009 the original conditions imposed by the SLUC were recorded with the State Bureau of Conveyances under the “Declaration of Conditions” applicable to that petition for district boundary amendment in Docket No. A07-772 of the SLUC (Document No. 2009-051059).

On August 27, 2021 conditions 22 and 23 which were amended by the SLUC were recorded with the State Bureau of Conveyances under the “First Amendment to Declaration of Conditions” applicable to that petition for district boundary amendment in Docket No. A07-772 of the SLUC (Document No. A-79090780). A copy was provided to the SLUC.

Please contact me should you require any further information regarding this report. An email pdf version of this report will also be transmitted to your office for your use.

Sincerely,

DocuSigned by:

Francisco Gutierrez

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Francisco Gutierrez

Senior Vice President

A & B Properties Hawaii, LLC, Series T

cc: State Office of Planning
County of Maui Planning Department