



LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION

2015 MAY -1 P 3:07

OF THE STATE OF HAWAII

WAIKAPŪ PROPERTIES, LLC; MTP	)	DOCKET NO. A15-798
LAND PARTNERS, LLC; WILLIAM S.)	
FILIOS, Trustee of the William S. Filios	)	ORDER DETERMINING (1) THAT THE
Separate Property Trust dated APRIL 3,	)	LAND USE COMMISSION AGREES TO
2000; and WAIALE 905 PARTNERS, LLC	)	BE THE ACCEPTING AUTHORITY
	)	PURSUANT TO CHAPTER 343, HAWAII
To Amend The Agricultural Land Use	)	REVISED STATUTES; AND (2) THAT
District Boundaries Into The Rural Land	)	THE PROPOSED ACTION MAY HAVE A
Use District For Approximately 149.848	)	SIGNIFICANT IMPACT UPON THE
acres of land, consisting of Tax Map Key	)	ENVIRONMENT TO WARRANT
No. (2) 3-6-004: 003 (por.) and Into the	)	PROCEEDING DIRECTLY TO THE
State Urban Land Use District for	)	PREPARATION OF AN
Approximately 335.155 acres of land,	)	ENVIRONMENTAL IMPACT
consisting of Tax Key Nos. (2) 3-6-002: 003	)	STATEMENT
(por.), (2) 3-6-004: 006 and (2) 3-6-005: 007)	
(por.) At Waikapū, District of Wailuku,)	
Island and County of Maui, State of Hawai'i)	
)	

ORDER DETERMINING (1) THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAII REVISED STATUTES; AND (2) THAT THE PROPOSED ACTION MAY HAVE A SIGNIFICANT IMPACT UPON THE ENVIRONMENT TO WARRANT PROCEEDING DIRECTLY TO THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT

On April 16, 2015, Waikapū Properties, LLC; MTP Land Partners, LLC; William S. Filios, Trustee of the William S. Filios Separate Property Trust dated April 3, 2000; and Waiale 905 Partners, LLC (collectively “Petitioner”), filed a Petition For Land Use District Boundary Amendment (“Petition”) to reclassify approximately 149.848 acres of land, identified as Tax Map Key No. (2) 3-6-004: por. 003, from the State Land Use Agricultural District to the State Land Use Rural District, and approximately 335.155 acres of land, identified as Tax Map Key Nos. (2) 3-6-002: 003 (por.), (2) 3-6-004: 006 and (2) 3-6-005: 007 (por.), from the State Land Use Agricultural District to the State Land Use Urban District, at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai'i for the Waikapū Country Town (“Project”); Petitioner’s Exhibits 1

– 18, Verification of Michael Atherton, and Affidavit of Mailing, and Certificate of Service. Petitioner also filed a motion, memorandum in support of the motion, and Appendix 1 with the State Land Use Commission (“Commission”) on April 16, 2015, requesting the Commission: to determine that it will be the approving agency for an environmental statement under HRS Chapter 343; to determine, through its judgement and experience, that an Environmental Impact Statement (“EIS”) is likely to be required; and to authorize Petitioner to prepare an EIS Preparation Notice (“EISPN”).¹ Petitioner’s motion and memorandum identifies actions necessary for the Project that will trigger mandatory compliance with Chapter 343, Hawai`i Revised Statutes (HRS) and several administrative criteria for significance that are likely to be met by development of the Project.

The Project is subject to the environmental review process as it proposes to use State and County lands in the development of water, wastewater, and roadway construction, pursuant to Section 343-5(a)(1), HRS and Section 11-200-6(b)(1)(A), Hawai`i Administrative Rules (HAR); and requires an amendment to the Wailuku-Kahului Community Plan, pursuant to Section 343-5(a)(6), HRS, and Section 11-200-6(b)(2)(A), HAR.

On April 21, 2015, the Commission mailed a meeting notice and agenda to all Parties and the Statewide and Maui mailing lists, for its meeting on April 29, 2015 at Kahului, Maui.

On April 23, 2015, the Petitioner filed an Affidavit of Notice of Filing Petition, and Exhibits 1 – 3.

On April 27, 2015, the County of Maui, Department of Planning (“County”) filed Maui County Planning Department’s Statement of No Opposition to Petitioner’s Motion, signed by deputy Corporation Counsel – Michael Hopper, Esq.

On April 30, 2015, the County filed Maui County Planning Department’s Statement of No Opposition to Petitioner’s Motion, signed by County Planning Director – Will Spence, which was intended to supplement the Statement of No Opposition filed by the Corporation Counsel on behalf of the County.

¹ Petitioner’s Motion acknowledged that the Project may have a significant effect upon the environment, and therefore will require the preparation of an Environmental Impact Statement (“EIS”). Section 343-5, HRS, as amended by Act 172, SLH 2012, allows an approving agency to determine “...through its judgment and experience...” that an EIS is warranted and direct an applicant to go directly to preparing an EIS Preparation Notice (EISPN) rather than an Environmental Assessment.

On April 29, 2015, the Commission met at Kahului, Maui, Hawai'i, to consider Petitioner's Motion to have the Commission (i) determine that it will be the approving² agency for an environmental statement under HRS Chapter 343; (ii) determine, through its judgement and experience, that an EIS is likely to be required; and (iii) authorize Petitioner to prepare an EISPN. James Geiger, Esq., and Michael Atherton appeared on behalf of Petitioner. Also present were Bryan C. Yee, Esq., and Rodney Funakoshi on behalf of the State Office of Planning ("OP"); and Michael Hopper, Esq., and Kurt Wollenhaupt on behalf of the County of Maui.

At the meeting, there was public testimony from Lucienne De Naie supporting the motion to require an EIS. Petitioner provided a summary of their Motion: that the proposed Project triggers Chapter 343 compliance; that the Commission is the appropriate accepting authority for the EIS because the filing of the Petition represents the earliest practicable time to determine whether an EIS is warranted; and that, as identified in their motion, the Project as proposed met several of the significance criteria in Section 11-200-12(b), HAR, for determining that an action may have a significant impact on the environment. The County of Maui and OP had no objections to the motion.

During discussion, Commissioner Wong discussed the triggers requiring development of an EIS for this Project. Commissioner Scheuer specifically identified several of the significance criteria that indicate there may be a significant impact on the environment: involves an irrevocable commitment to loss or destruction of any natural or cultural resource; substantially affects the economic or social welfare of the community or State; involves substantial secondary impacts; substantially affects scenic vistas and view planes; and, requires substantial energy consumption. Chair McDonald also reiterated Petitioner's own identification of potential impacts that may be significant.

Following discussion, a motion was made and seconded to:

1. identify the Land Use Commission as the "accepting authority" to review and accept the applicant's proposed actions pursuant to Chapter 343, HRS; and,

² Petitioner's Motion uses the term "approving agency" however the statute and administrative rules refer to "accepting authority."

2. direct the Petitioner to proceed directly to the preparation of an environmental impact statement preparation notice (EISPN) because the Commission has reviewed the Petition and based on its judgment and experience, the proposed action may have a significant impact on the environment.

There being a vote tally of 6 ayes, 0 nays, and 3 excused, the motion carried.

ORDER

This Commission, having duly considered Petitioner's pleadings and motion, the pleadings and comments of the County and OP in this proceeding, comments by the public, and a motion having been made at its meeting on April 29, 2015, at Kahului, Maui, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

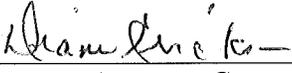
HEREBY ORDERS that the Commission agrees to be the accepting authority pursuant to chapter 343, HRS, that the Project may have a significant effect upon the environment to warrant the preparation of an EIS, and directs the Petitioner to file an EISPN available for a 30-day public review and comment period pursuant to Sections 343-5(c) and 343-5(e), HRS, and Section 11-200-15(b), HAR.

ADOPTION OF ORDER

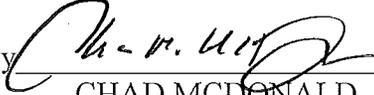
This ORDER shall take effect upon the date this ORDER is filed and certified by this Commission.

Done at Honolulu, Hawai'i, this 1st, day of May, 2015, per motion on April 29, 2015, in
Kahului, Maui.

APPROVED AS TO FORM

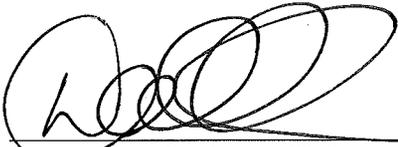

Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By 
CHAD MCDONALD
Chairperson and Commissioner

Filed and effective on:

May 1, 2015.

Certified by: 
DANIEL ORODENKER
Executive Officer
State Land Use Commission



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005: 007 (por.) At Waikapū, District of)
Wailuku, Island and County of Maui, State)
of Hawai'i)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER DETERMINING (1) THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAII REVISED STATUTES; AND (2) THAT THE PROPOSED ACTION MAY HAVE A SIGNIFICANT IMPACT UPON THE ENVIRONMENT TO WARRANT PROCEEDING DIRECTLY TO THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

CERTIFIED MAIL: JAMES W. GEIGER, Esq.
Mancini, Welch, & Geiger LLP
305 East Wākea Avenue, Suite 200
Kahului, Hawai`i 96732
Attorney for Petitioners – Waikapū, LLC; et.al.

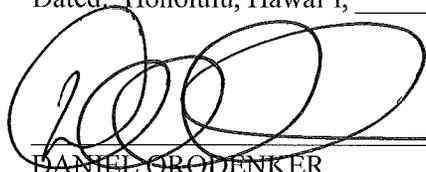
DEL.: LEO ASUNCION, Acting Director
State Office of Planning
P. O. Box 2359
Honolulu, Hawai`i 96804-2359

REGULAR MAIL: BRYAN.C. YEE, Esq.
Deputy Attorney General
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Honolulu, Hawai`i 96813
Attorney for State Office of Planning

REGULAR MAIL: PATRICK K. WONG, Esq.
MICHAEL J. HOPPER, Esq.
County of Maui, Department of the Corporation Counsel
200 South High Street
Wailuku, Maui 96793
Attorneys for the County of Maui

REGULAR MAIL: WILLIAM R. SPENCE, Planning Director
County of Maui, Department of Planning
One Main Plaza, Suite 335
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Wailuku, Maui 96793

Dated: Honolulu, Hawai`i, May 1, 2015



DANIEL GRODENKER
Executive Officer