

OFFICE OF PLANNING

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LAND USE COMMISSION
STATE OF HAWAII

2018 JAN 12 P 3:30

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A15-798
)	
WAIKAPU PROPERTIES, LLC; MTP)	OFFICE OF PLANNING'S COMMENTS
LAND PARTNERS, LLC; WILLIAM S.)	TO PETITIONERS' PROPOSED
FILIOS, TRUSTEE OF THE WILLIAM)	FINDINGS OF FACT, CONCLUSIONS
FILIOS SEPARATE PROPERTY TRUST)	OF LAW, DECISION AND ORDER;
DATED APRIL 3, 2000; AND WAIALE)	CERTIFICATE OF SERVICE
905 PARTNERS, LLC)	
)	
To Amend the Agricultural Land Use District)	
Boundaries into the Rural Land Use District)	
for certain lands situate at Waikapu, District)	
of Wailuku, Island and County of Maui, State)	
of Hawaii, consisting of 92.394 acres and)	
57.454 acres, bearing Tax Map Key No. (2))	
3-6-004:003 (por) and to Amend the)	
Agricultural Land Use District Boundaries)	
into the Urban Land Use District for certain)	
lands situate at Waikapu, District of Wailuku,)	
Island and County of Maui, State of Hawaii,)	
consisting of 236.326 acres, 53.775 acres, and)	
45.054 acres, bearing Tax Map Key No. (2) 3-)	
6-002:003 (por), (2) 3-6-004:006 and (2) 3-6-)	
005:007 (por))	
)	

**OFFICE OF PLANNING’S COMMENTS TO PETITIONER’S PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

Pursuant to Hawaii Administrative Rules (HAR) Section 15-15-82, the Office of Planning (“OP”) submits comments to Waikapu Properties, LLC, MTP Land Partners, LLC, William S. Filios, Trustee of the William S. Filios Separate Property Trust, and Waiale 905 Partners, LLC’s (“Petitioners”) Proposed Findings of Fact, Conclusions of Law, Decision and Order, filed with the State Land Use Commission (“Commission or LUC”) on December 26, 2017 (“Petitioners’ Proposed D&O”).

The comments offered herein are regarding substantive matters to help supplement the Petitioners’ Proposed D&O. OP’s comments on specific findings of fact (“FOFs”) and conditions are provided below with suggested new language in bold.

Except as set forth below, OP has no comments or objections to the Petitioner’s Proposed D&O.

I. FINDINGS OF FACT

OP recommends adding the following FOFs under the appropriate subheadings under “3) The impact of the reclassification on areas of State concern,” which begins on page 49 of Petitioners’ Proposed D&O.

Cultural Impacts

“#. The Cultural Analysis advised that the Petitioner consult with the neighboring south kuleana loi kalo farmers and Hui O Na Wai Eha to ensure that infrastructure improvements have minimal to no adverse effects to traditional and customary rights and practices. (TR: 12-6-17, page 142, lines 6-14)”

“#. The Cultural Analysis consultant indicated that there was a sand dune system within the northeast corner of the Petition Area. Much of the sand dune has been impacted by the sugar plantation, however, there may still be burials within the sand dune. The consultant recommended that the area be subject to archaeological monitoring should any work be conducted within that area. (TR: 12-6-17, page 156, lines 3-25, page 157, lines 1-17)”

Traffic Impacts

“#. The Department of Transportation has indicated that Petitioner should provide additional information and enter into a Memorandum of Agreement with the DOT prior to the submittal of a Subdivision application with the County of Maui. (OP Exhibit 2).”

Airports

“#. The State Department of Transportation (DOT) submitted a letter dated September 12, 2017 indicating that the Petition Area is approximately 4.3 miles away from Kahului Airport. The DOT has the following concerns related to the Petition area because of the proximity to airport operations. (OP Exhibit 2)

1. Petitioners should be aware that this project must conform with the requirements of the Technical Assistance Memorandum relating to wildlife attractants around airports, and other land uses, available at http://files.hawaii.gov/dbedt/op/docs/TAM-FAA-DOT-Airports_08-01-2016.pdf. Any activity that can potentially attract wildlife within 5 miles from the airport must meet the requirements of FAA Advisory Circular 150/5200-33B Hazardous Wildlife Attractants on or Near Airports.
2. If photovoltaic (PV) systems are proposed, the Petitioners should be aware that PV systems, if located in or near the approach path of an aircraft into Kahului Airport, can create a hazardous condition for a pilot due to possible glint and glare from the PV array. If a PV system is proposed, a Federal Aviation Administration (“FAA”) form may be required. Also, Petitioners should insure that any PV system not create interference or disrupt radio frequency air-to-ground communications.”

State Department of Defense Hawaii Emergency Management Agency

“# The State Department of Defense submitted a letter dated July 18, 2017 indicating that they recommend that three (3) Omni-directional 121-dbc solar-powered sirens mounted on 45-foot H2 composite poles be provided within the project area. (OP Exhibit 2)”

OP recommends amending FOF 388 consistent with verbal testimony provided by Petitioners' witness Michael Atherton, as follows: "Petitioners, as part of the entitlement process, will dedicate about 800 acres to agricultural use with a restriction that no residential structures, **including farm dwellings**, will be permitted on that land." (FOF 102; TR: 12/6/17, pg. 110, line 6)

II. CONDITIONS

OP recommends the following revisions and substitutions to the Petitioners' Proposed D&O.

"3. Residential Workforce Housing. Petitioners shall design and construct the Project, and provide residential workforce housing opportunities in **accordance** substantial with the County of Maui's residential workforce housing requirements."

"4. Wastewater. . Petitioners shall **participate in the funding and/or construction of adequate private or public** wastewater source, storage, and transmission facilities to accommodate the proposed uses for each phase of the project. The private wastewater source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui. **The public wastewater source, storage, and transmission facilities shall be controlled or operated by the County of Maui.** If the private wastewater source, storage, and transmission facilities are located outside the Petition Area and within the State and County agricultural districts, Petitioners shall apply for a Land Use Commission special use permit in accordance with the provisions of HRS Chapter 205. In the event that Petitioners participate in a wastewater system which is controlled or operated by the County of Maui, the **requirements under this condition applicable to private wastewater source, storage, and transmission facilities**, shall no longer be applicable to the project.

"7. Notification of Proximity to Kahului Airport. Petitioners, 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, or agreement of sale, 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 the Kahului Airport**, such as noise, right of flight, emissions, vibrations and other incidences of aircraft operations, ~~at and from the~~

Kahului Airport. The notice and disclosure shall be a part of any conveyance document such as a deed, lease or agreement of sale.”

Deletion and substitution of Petitioners’ Proposed D&O Condition 8 with the following:

“Transportation – Highways.

a. Petitioners shall submit to Department of Transportation (DOT) and the County of Maui for review and approval a supplemental analysis to evaluate the “No Waiale Bypass” with Petitioners project in 2022 (Phase I), due to the current memorandum/addendum limited only to build-out year 2026 (Phase II).

b. Petitioners shall mitigate all project-generated traffic impacts as recommended and/or required by the DOT and the County of Maui. Petitioners shall initiate, coordinate, and meet with DOT Highways and the County of Maui, to agree upon the regional pro-rata share and to develop a Memorandum of Agreement, which is required to be executed prior to the submittal of a subdivision application to the County of Maui.”

Deletion and substitution of Petitioners’ Proposed D&O Condition 10 with the following:

“Transportation – Airports. Petitioners shall work with DOT to minimize hazards to aircraft operations from Kahului Airport, including but not limited to impacts from wildlife attractants, PV glint and glare, electromagnetic radiation, aviation easements, notices of proposed construction or alteration, and prospective purchaser/owner liability and covenants. As deemed necessary by the DOT to minimize the hazards to aircraft operations from Kahului Airport, Petitioners 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. Petitioners shall enter into an MOA with DOT prior to final subdivision approval of the initial phase of on-site development by Petitioners outlining measures to be taken by Petitioners to address impacts.”

“12. Water System. Petitioners shall participate in the funding and/or construction of adequate private or public water source, storage, and transmission facilities to accommodate the proposed uses for each phase of the project. The private water source, storage, and transmission facilities shall be in accordance with the applicable standards

and requirements of the Department of Health and/or the County of Maui, with plans submitted for approval by the appropriate department. In the event that Petitioner's participate in a water system which is controlled or operated by the County of Maui, **the requirements under this condition applicable to a private water system** shall no longer be applicable to the project.

Additionally, Petitioners shall work with the Commission on Water Resource Management regarding the overall impact of water pumpage on the Waikapu aquifer.

Further, Petitioners shall submit such information ~~as may be requested by the County of Maui~~ to the County of Maui to reflect changes in water demand forecasts and to supply the proposed uses in the County of Maui's water use and development plan."

Deletion and substitution of Petitioners' Proposed D&O Condition 16 with the following:

Established Gathering and Access Rights Protected. Pursuant to Article XII, Section 7 of the Hawaii State Constitution, Petitioners shall preserve any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural and religious practice, or for access to other areas for such purposes."

Deletion and substitution of Petitioners' Proposed D&O Condition 20 with the following:

Archaeological/Historic Sites. Petitioners shall provide the following prior to any ground disturbance, as agreed upon with the State Historic Preservation Division's ("SHPD") conditional acceptance of the AIS.

- a. Archaeological monitoring, which shall include data recovery of archaeological and historic sites.
- b. If site 50-50-04-5197 is impacted by the proposal, it will be further documented in consultation with SHPD.
- c. Archaeological monitoring shall be conducted for all ground disturbing activities, including the Na Wai Eha sand dune system area. An archaeological monitoring plan shall be developed and submitted for SHPD's review and acceptance prior to commencing project work.
- d. If any development is proposed for the area to be dedicated to agriculture, SHPD shall be notified and SHPD will make a determination

on whether an archaeological inventory survey is to be provided by the Petitioners.

- e. Petitioners shall submit a preservation plan to SHPD for two (2) sites: the irrigation features (Site 50-50-04-7884) and the WWII bunker(Site 50-50-04-7883). The preservation plan shall be submitted to the SHPD for review and acceptance prior to the initiation of the project. Petitioners shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the SHPD. Petitioners shall confirm in writing to the Commission that the SHPD has found Petitioners' preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented. The SHPD shall be notified at the initiation of the Project.”

“25. Infrastructure Deadline. Petitioners shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water sewer, and electrical system improvements, and stormwater/drainage **and other utility system** improvements, within ten (10) years from the date of the Decision and Order approving the Petition.”

CONCLUSION

OP respectfully requests that the Commission adopt the Petitioners proposed D&O incorporating the revisions as stated herein.

DATED: Honolulu, Hawaii, January 12, 2018

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STATE OF HAWAII



LEO R. ASUNCION
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, January 12, 2018.

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LEO R. ASUNCION
Director