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**LAND USE COMMISSION
STATE OF HAWAII**

2018 APR 27 P 3:53

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

In the Matter of the Petition of)	DOCKET NO. A07-773
)	
EMMANUEL LUTHERAN CHURCH OF)	OFFICE OF PLANNING'S RESPONSE
MAUI)	TO EMMANUEL LUTHERAN CHURCH
)	OF MAUI'S MOTION FOR EXTENSION
To Amend the Land Use District Boundary)	OF TIME TO COMPLETE PROJECT;
of Certain Lands Situated at Wailuku, Island)	CERTIFICATE OF SERVICE
of Maui, State of Hawaii, Consisting of)	
25.263 Acres from the Agricultural District)	
to the Urban District,)	
Tax Map Key No. 3-5-002:011.)	
)	

**OFFICE OF PLANNING'S RESPONSE TO EMMANUEL LUTHERAN CHURCH OF
MAUI'S MOTION FOR EXTENSION OF TIME TO COMPLETE PROJECT**

THE OFFICE OF PLANNING, STATE OF HAWAII ("OP"), recommends approval, subject to conditions, of EMMANUEL LUTHERAN CHURCH OF MAUI's ("ELC" or "Petitioner") Motion for Extension of Time to Complete Project ("Motion"), which seeks to amend Condition No. 2 of the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment, adopted on March 7, 2008 for Docket No. A07-773 ("D&O"), to allow for a ten-year extension of time, from March 7, 2018 to March 7, 2028 to complete construction of the project. OP's

recommendation for conditional approval stems from concerns with regard to Petitioner's compliance with certain conditions of the D&O.

I. Original Project:

Under the D&O, the Petitioner proposed to develop a new school on 25.263 acres in Wailuku. Their current school in Kahului, with students from pre-school to eighth grade and in service since 1972, is limited in space on 1.3 acres. The 25.263-acre site in Wailuku is bounded by Waiale Road and Honoapiilani Highway and is currently undeveloped. The school was intended to accommodate 450 students and have a separate pre-school building, 18 classrooms for students in K-8, a multi-purpose complex, along with a 450-seat sanctuary for functions ("Project").

The expanse of the Project was intended to cover approximately half the site (12.5 acres) with the remainder reserved for unidentified future uses and open space. The development of the Project was intended to span three phases: Phase 1 involved the construction on infrastructure, the preschool and some classrooms and multi-use buildings; Phase 1A covered the administration building, the library and another building for labs and classrooms; and Phase 2 covered the sanctuary and remaining classrooms.

II. Background:

The Petitioner's ability to garner funding to continue with the Project was impacted by the 2008 global economic crisis of the Great Recession. In 2009, the site was rezoned by the Maui County Council from the Agricultural District to the Public District. December 2014 marked the death of the Petitioner's Land Use Committee Chair. The combination of the gap in

leadership and dearth of funds delayed the Project. Waikapu Development Venture LLC (“WDV”) entered into a contract with ELC to purchase approximately 12.5 acres of ELC land in order to develop an affordable workforce housing project. The sale of approximately half the lands at the ELC’s Wailuku location is anticipated by ELC to provide the funding necessary to complete the proposed modified development detailed below.

III. Current Proposal (201H and smaller church and school site):

The modified ELC school project (“current Proposal”) is planned to be built in two phases. Phase 1 includes the construction of infrastructure, a multi-use building for the pre-school and weekend worship services. Phase 2 includes construction of 3 classrooms for the middle school and administrative space. Upon completion of Phase 2, ELC would evaluate additional phases to cover the construction of classrooms for grades K-5, the sanctuary, and other building allowing the entire school of K-8 to move to the Wailuku campus and allow selling of the 1.3 acres of the Kahului campus. By this Motion, Petitioner is requesting ten (10) more years (March 7, 2028) to complete the construction of the Project.

Upon obtaining the appropriate permits and finalizing the sale of approximately half the acreage of the site, WDV intends to commence construction of affordable housing pursuant to Hawaii Revised Statutes § 201H-38. This 100% affordable housing development will consist of 68 single-family lots and 12 duplex units for total of 80 residential workforce units. According to Petitioner, future motions requesting relief from or modifications to other conditions within the D&O may include:

- a) the deletion of D&O Condition No. 18[20] (requiring Commission approval prior to the sale of any portion of the Petition Area);

- b) recognition of WDV as the successor in interest to a portion of the Petition Area;
- c) an amendment to the development proposed under the D&O so that Petitioner and WDV can be in substantial compliance with D&O Condition No. 1 (requiring development to be in substantial compliance with representations made to the Commission); and
- d) the bifurcation of this Docket No. A07-773 so that appropriate findings, conclusions, and conditions can be made separately for the Updated ELC Project and the Waikapu Affordable Workforce Housing Project.

IV. OP Concerns and Comments:

OP is concerned that Petitioner has not complied with Conditions 1, 2, and 19 of the D&O. Detailed below are OP's concerns and comments:

1. **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 has not complied with Condition 1 as the current Proposal and efforts to implement the current Proposal are not the same as the representations made to the Land Use Commission ("LUC"). The Project represented to the LUC in 2006-2007, included designs for a school, a worship area and a multi-use facility with open space. The current Proposal includes a substantially reduced design for the school and worship area, and an affordable housing development. This is a significant deviation from the original Project.

2. **Reversion of District Classification.** Petitioner shall develop the Petition Area and complete construction of the Project no later than ten (10) years from the date of the decision and order. If Petitioner fails to complete Project construction within ten (10) years from the date of the decision and Order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and

require Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.

Petitioner was allotted ten (10) years from the adoption of the D&O to develop the property as represented to the LUC. Petitioner has submitted this Motion to request an additional ten (10) years to complete the proposed project. While OP has no objection to this request, we are concerned that Petitioner has plans to revise the Project approved by the LUC, by including an affordable housing development that was not contemplated in the original Project. Petitioner has represented in its Motion that it will submit additional motions as detailed in Section III. above, that should bring Petitioner and the current Proposal into conformance with the D&O conditions.

We note that aside from grubbing a portion of the site, there have been no significant construction activities on the site. Petitioner should provide a detailed timetable of the required county and state approvals that are necessary for the current Proposal to move forward, including approximate dates of the anticipated requests identified on page 23 of the ELC's Memorandum in Support of the Motion.

19. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the Project 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.

It is concerning that Petitioner has failed to comply with this Condition by only submitting two (2) annual reports since the D&O's adoption in 2008.

V. Conclusion and Recommendations:

The OP has no substantive concerns with the Petitioner's requested Motion regarding Condition 2 for an extension of time to complete the Project. However, OP is

concerned that Petitioner has not complied with several relevant conditions from the Petition, including failure to provide timely annual reports, and moving forward with plans that are significantly different from the original Project. The addition of an affordable housing component to the Original ELC Project constitutes a significant change in the nature and scope of the original Project represented to the Commission.

Accordingly, OP recommends approval of the Motion for a time extension, subject to the following conditions:

1. Petitioner shall provide a detailed timetable of any and all required State and county approvals and actions necessary for the current Proposal to move forward and to bring the Petitioner into full compliance with the D&O, within 60 days of the approval of this Motion.
2. Petitioner shall provide a written status report and/or submit motions for approval to the LUC, regarding the actions detailed in the above required timetable and on Page 23 in Petitioners Motion and Memorandum in Support of Motion, within one (1) year from the date of the approval.

DATED: Honolulu, Hawaii, April 27, 2018

OFFICE OF PLANNING
STATE OF HAWAII

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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, April 27, 2018.

OFFICE OF PLANNING
STATE OF HAWAII



LEO R. ASUNCION
Director