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LAND USE COMMISSION
STATE OF HAWAII

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Attorneys for Petitioner
Emmanuel Lutheran Church of Maui

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

In the Matter of the Petition of:

EMMANUEL LUTHERAN CHURCH OF
MAUI

To Amend the Land Use District Boundary of
Certain Lands Situated at Wailuku, Island of
Maui, State of Hawai'i, Consisting of 25.263
Acres from the Agriculture District to the
Urban District, Tax Map Key No. 3-5-002:011.

DOCKET NO. A07-773

MOTION FOR MODIFICATION;
MEMORANDUM IN SUPPORT OF
MOTION; AFFIDAVIT OF MICHAEL
REILEY; PETITIONER'S EXHIBIT "1";
CERTIFICATE OF SERVICE

MOTION FOR MODIFICATION

I. RELIEF SOUGHT

Petitioner EMMANUEL LUTHERAN CHURCH OF MAUI ("**Petitioner**"), by and through its legal counsel, CARLSMITH BALL LLP, hereby respectfully requests that the STATE OF HAWAII LAND USE COMMISSION issue an order modifying the Commission's *Findings of Fact, Conclusions of Law, and Decision and Order*, filed March 7, 2008, to authorize Petitioner's modified project.

II. GROUND FOR MOTION

This Motion is made pursuant to Chapter 205, Hawai'i Revised Statutes, and Title 15,

Subtitle 3, Chapter 15 of the Hawai'i Administrative Rules ("HAR"), §§ 15-15-70, 15-15-79, and 15-15-94, the other authorities and arguments stated in the attached Memorandum in Support of Motion, and the pleadings and files herein.

Petitioner requests a hearing on this Motion pursuant to HAR § 15-15-70(c).



JENNIFER A. LIM

DEREK B. SIMON

Attorneys for Petitioner

**EMMANUEL LUTHERAN CHURCH OF
MAUI**

Dated: Honolulu, Hawai'i, October 12, 2018.

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OF THE STATE OF HAWAII

In the Matter of the Petition of:

EMMANUEL LUTHERAN CHURCH OF
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To Amend the Land Use District Boundary of
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MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. BACKGROUND

The Land Use Commission of the State of Hawai'i ("**Commission**") reclassified approximately 25.263 acres of land in Wailuku ("**Petition Area**") into the State Land Use ("**SLU**") Urban District by Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A07-773, filed on March 7, 2008 ("**D&O**"). EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawai'i nonprofit corporation ("**Petitioner**" or "**ELC**"), was the petitioner in that proceeding and is the current fee simple owner of the Petition Area.

On April 9, 2018, Petitioner filed with the Commission a *Motion for Extension of Time to Complete Project; Memorandum in Support of Motion; Affidavit of Michael Reiley; Affidavit of William Frampton; Petitioner's Exhibit's A thru F* (the "**Extension Motion**"). In the Extension Motion, Petitioner requested that the Commission modify D&O Condition No. 2 to provide Petitioner an additional ten years, until March 7, 2028, to complete development of the Updated

ELC Project, as defined in said Extension Motion.¹

Petitioner maintains its request as set forth in the Extension Motion. However, in recognition that the Commission may be hesitant to extend the development timeframe for an additional ten-years in this case, and at this stage of progress, Petitioner acknowledges that a shorter timeframe, such as three years, may be more acceptable, or that the Commission may elect to condition its approval upon a requirement that Petitioner return to the Commission within a certain period of time, *e.g.*, three years, to present a status report (in addition to the requirement to file annual reports).

In the Extension Motion, ELC explained that it anticipated filing a future motion formally requesting modification to the D&O to authorize development of the modified ELC project (the **“Updated ELC Project”**). ELC also contemplated that additional requests related to the uses of the Petition Area would be filed by Waikapu Development Venture LLC, a Hawaii limited liability company (**“WDV”**) in relation to its proposed affordable housing project (the **“Waikapu Affordable Workforce Housing Project”**) proposed for a portion (approximately half) of the Petition Area.

On April 12, 2018, WDV filed with the Commission a *Motion to be Co-Petitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene* (the **“WDV Party Motion”**). On April 19, 2018, ELC filed its *Memorandum in Support of Waikapu Development Venture LLC’s Motion to be Co-petitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene*.

¹ Except as otherwise provided herein, Petitioner incorporates by reference all background information and discussion set forth in, and Exhibits attached to, the Extension Motion.

The Commission held a hearing on the WDV Party Motion at the Maui Arts & Cultural Center on May 9, 2018. The Commission granted WDV intervenor status at the hearing, and on June 22, 2018, the Commission issued its Order Granting Waikapu Development Venture LLC's Motion to Intervene.

Also on May 9, 2018, the Commission held a hearing on the Extension Motion, and voted to defer action on the Extension Motion. At that time the Commission ordered ELC to 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 present D and O." As requested by the Commission, attached hereto and incorporated herein by reference as Petitioner's **Exhibit 1** is ELC's Timeline for Development of Updated Project (the "**Development Timeline**").

II. REQUEST FOR MODIFICATION

A. THE UPDATED ELC PROJECT

This Motion for Modification is Petitioner's request that the Commission authorize modifications to the Original ELC Project, as generally described in the Extension Motion and repeated in greater detail below, to allow for the development of the Update ELC Project.

Consistent with Petitioner's original development proposal, Petitioner's development plans for the Petition Area continue to be the creation of a new campus for its church and school. However, Petitioner has scaled down the development plans it originally presented to the Commission in 2008. As detailed in the Extension Motion, and presented at the Commission's hearing on May 9, 2018, due to funding complications, the Great Recession and associated reduction in enrollment numbers, and increased construction costs, Petitioner had to re-evaluate

its present and projected future needs.

ELC's original development proposal (the "**Original ELC Project**") included a pre-school building, upwards of 18 classrooms for grades K through 8, a multi-purpose complex, and other buildings accessory to school functions, and a 450-seat sanctuary for religious and school-related functions. At full build-out, the Original ELC Project was intended to accommodate 450 students. Petitioner has reevaluated and concluded that the Original ELC Project is likely too large and the costs are not justified by expected needs, at least not in the short term. As such, Petitioner revised the Original ELC Project to a more modest, multi-phase project that remains substantially consistent with the project the Commission approved, but scaled-down to more appropriately suit Petitioner's needs. The result is the Updated ELC Project.

The Updated ELC Project consists of a multipurpose building that will house Petitioner's preschool program, approximately three classrooms for Petitioner's middle school (grades 6-9) program, and office space for Petitioner's pastor and preschool director, with the potential in the future for additional classrooms for Petitioner's elementary school program, a sanctuary, and other accessory buildings.

As set forth in the Development Timeline, the Updated ELC Project will proceed in at least three phases, with the potential for a fourth phase.² Phase 1 will focus primarily on securing necessary funding. If approved by the Commission, ELC will first use the proceeds from the sale of a portion of the Petition Area to WDV to pay off the mortgage currently encumbering the Petition Area. Then, with the Petition Area free and clear of any debt, ELC will

² The Extension Motion set forth the Updated ELC Project in two phases with the possibility of future phases. In drafting the Development Timeline, Petitioner determined that it was appropriate to include an additional, preliminary phase devoted to removing the debt encumbering the Petition Area and raising funds for the development of the Updated ELC Project.

commence a fundraising campaign.³ Petitioner previously engaged Creative Fundraising Associates, Inc., a Hawai'i firm with experience in fundraising and capital campaigns for nonprofit entities, to assist with fundraising for the Original ELC Project, and anticipates retaining similar expertise in support of the Updated ELC Project.

ELC's fundraising campaign will target its existing network of church families and mainland visitors who have supported ELC and expressed an interest in seeing the Updated ELC Project come to fruition, present and past school families, and the local business community. ELC will also approach Hawai'i-based foundations that provide grant funding to and otherwise support private education institutions. Some of ELC's fundraising for the Original ELC Project was done through these foundations, including obtaining planning grants from the Castle Foundation. However, many foundations require an applicant's property to be debt-free, or at a minimum take the existing debt on the property into consideration when awarding funds. ELC will be able to clear that obstacle with the sale of a portion of the Petition Area to WDV. Phase 1 is anticipated to commence in February 2019 (assuming the Commission authorizes the sale to WDV), and be completed prior to proceeding with Phase 2.

Phase 2 is planned to start in 2021 and will consist of the construction of a multi-purpose building and necessary site work and infrastructure. The multi-purpose building will house Petitioner's preschool during the week and then be converted over the weekend to host worship services and other church functions. The multi-purpose building may also function as a gym

³ Shortly after the Commission reclassified the Petition Area in 2008, Petitioner commenced a fundraising campaign to finance, at least in part, the Original ELC Project. ELC's fundraising efforts between 2008 and 2011 were largely successful, with contributions received from friends and families of the church and school. The funds raised were put toward architectural, civil engineering and entitlements efforts, leaving no funds to go toward site work and construction. Although donations have since tapered off, Petitioner receives regular inquiries from school families regarding how to best help once the Updated ELC Project begins to move forward again, whether through financial or in-kind contributions (many school parents are contractors and other tradesmen). Petitioner is confident that it will once again be successful in its fundraising efforts.

space during the week after preschool hours.

Prior to any groundbreaking activities for Phase 2, ELC will first obtain Department of Land and Natural Resources, State Historical Preservation Division approval for an Archaeological Monitoring Plan for the Petition Area, as required by D&O Condition No. 8.⁴ If required by the State Department of Health, Hazard Evaluation and Emergency Response Office, ELC will conduct the soil analysis study required under D&O Condition No. 10.⁵

The cost of the site work and necessary infrastructure for Phase 2, including water and wastewater transmission, is presently estimated at \$1,500,000, and the cost of constructing the multi-purpose building is presently estimated at \$2,000,000. Costs to modify ELC's existing plans and obtain construction and related ministerial permit approvals are estimated at \$350,000. Phase 2 is anticipated to commence in 2021 and be completed sometime between 2023 and 2024.

Phase 3 is planned to start in 2025. Phase 3 will involve the construction of approximately three classrooms and necessary site work and infrastructure. The classrooms will become the new home of ELC's middle school (grades 6-8) and office space for ELC's pastor and preschool director. At the conclusion of Phase 3, Petitioner will evaluate the necessity for Phase 4.

The present estimate for the additional site work and infrastructure for Phase 3 is

⁴ D&O Condition No. 8 provides that: "Prior to commencement of any ground-altering activities, Petitioner shall obtain written approval and acceptance of the Petitioner's archaeological field report and monitoring plan from the State of Hawai'i Department of Land and Natural Resources, State Historic Preservation Division ("SHPD"). A copy of the approval of the monitoring plan from SHPD shall be provided to the Commission within thirty (30) days of receipt by the Petitioner."

⁵ D&O Condition No. 10 provides that: "Petitioner shall conduct a soil analysis study of the Petition Area in consultation with the DOH, Hazard Evaluation and Emergency Response Office ("HEER"), to determine any impacts on the proposed use from fertilizers, pesticides, and other chemical contaminants that may be present at elevated levels in the Petition Area. Petitioner shall undertake measures to abate and remove any hazardous materials identified during said study, to the satisfaction of HEER."

\$500,000, and the construction of the three classrooms and office space is estimated to cost \$1,500,000. Construction plan preparation and related approvals is currently estimated at \$200,000. Phase 3 is anticipated to commence in 2025, and be completed at sometime between 2026 and 2027. ELC will evaluate whether to proceed with Phase 4 between 2027 and 2028.

If pursued, Phase 4 would consist of constructing additional classrooms sufficient to support ELC's elementary school (grades K-5), a sanctuary, and potentially other accessory buildings. Depending upon need and funding, the ultimate goal may be for ELC to move the entirety of its preschool-to-8th-grade school program to the Updated ELC Project site, and sell ELC's Kahului campus. To do so, ELC would begin Phase 4 by exploring the marketability of its existing Kahului campus in 2028. ELC has not yet obtained cost estimates or determined projected start and completion years for Phase 4 because Phase 4 is too speculative at this point.

The spatial footprint of the Updated ELC Project is substantially similar to the Original ELC Project. Although the Petition Area is slightly over 25 acres, the Original ELC Project was anticipated to be developed within an envelope of approximately half that size, with the remainder being reserved for open space and unidentified future uses. *See* Petitioner's **Exhibit A** filed with the Extension Motion, with a copy attached hereto for reference.⁶ The Updated ELC Project easily fits within the 12.76-acre portion of the Petition Area that Petitioner is retaining. *See* Petitioner's **Exhibit D** filed with the Extension Motion, with a copy attached hereto for reference, for a rendering showing the much larger Original ELC Project fitting within the ELC 12.76-acre lot.

The use of the site for the Updated ELC Project is not significantly different from the

⁶ ELC's Campus Plan and ELC's Option B, both of which were included with Exhibit 6 to Petitioner's Petition for District Boundary, filed March 19, 2007.

Original ELC Project, and the Updated ELC Project will incrementally provide space for the growing needs of students and families within the church community. However, rather than leaving half of the Petition Area undeveloped for open space and unidentified future uses (as originally proposed and approved by the Commission), now the remainder of the Petition Area will be utilized by WDV for the development of the Waikapu Affordable Workforce Housing Project.

B. THE WAIKAPU AFFORDABLE WORKFORCE HOUSING PROJECT

As described in the Extension Motion, WDV is pursuing the development of a 100% affordable housing project to be contained within approximately half (12.5-acres) of the Petition Area. The Waikapu Affordable Workforce Housing Project is planned for a total of 80 residential units, consisting of 68 improved lots with single-family dwellings and 12 duplex units. These homes will be offered to Maui residents earning between 70% to 140% of Maui's AMI. In addition to the 80 affordable homes, the Waikapu Affordable Workforce Housing Project will include a neighborhood park approximately 29,000 sq. ft. in size. WDV will provide all site work and infrastructure needed for the Waikapu Affordable Workforce Housing Project, such as internal roadways, drainage systems, utilities, and grading, and will construct the homes.

On September 7, 2018, through Resolution No. 18-150, the Maui County Council approved WDV's Hawai'i Revised Statutes ("HRS") Chapter 201H proposal for the Waikapu Affordable Workforce Housing Project (the "**201H Resolution**"). Under the 201H Resolution, WDV obtained exemptions from certain County permit and fee requirements, as well as exemptions from the Wailuku-Kahului Community Plan, existing zoning, and a modification of lot sizes and related subdivision criteria. The 201H Resolution requires WDV to commence construction of the Waikapu Affordable Workforce Housing Project within two years. The 201H

Resolution is void in the event that the Commission does not approve the sale of a portion of the Petition Area to WDV within six months of the effective date of the 201H Ordinance, *i.e.*, by March 7, 2019.

III. ARGUMENT

A. GOOD CAUSE SHOWN FOR MODIFICATION TO THE ORIGINAL D&O

1. Legal Standard

HAR § 15-15-94(b) provides that “[f]or good cause shown, the [C]ommission may act to modify or delete any of the conditions imposed or modify the [C]ommission’s order.” “The term ‘good cause’ has been defined to mean ‘a substantial reason amounting in law to a legal excuse for failing to perform an act required by law. ““ *Miller v. Tanaka*, 80 Hawai’i 358, 363, 910 P.2d 129, 134 (Ct. App. 1995) (citation omitted). “‘Good cause’ also ‘depends upon [the] circumstances of [the] individual case, and [a] finding of its existence lies largely in [the] discretion of [the] officer or court to which [the] decision is committed. ““ *Id.* at 363-64, 910 P.2d at 134-35 (citation omitted). “As a general rule, ‘good cause’ means a substantial reason; one that affords a legal excuse.” *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981) (citations omitted). There is good cause to modify the D&O to allow for the development of the Updated ELC Project and the Waikapu Affordable Workforce Housing Project.

2. Good Cause to Modify the D&O to Allow for the Updated ELC Project

When Petitioner presented the Original ELC Project to the Commission in 2007/2008, Petitioner believed in good faith that the project was of an appropriate size and scale to meet the projected future needs of its school and church. However, as previously explained in the Extension Motion, a series of events forced Petitioner to reevaluate the appropriateness and feasibility of the Original ELC Project.

First, there were significant transitions in Petitioner's leadership, including its Land Use Committee, which was the driving force behind the development of the Original ELC Project. Several key members of that committee are no longer with ELC and have passed away. After several years of transition, Petitioner has a new team heading its efforts to develop the Updated ELC Project, which team is led by Dr. Michael Reiley, Pastor Joshua Schneider, and David Hobus.⁷ This newly reinvigorated team jumpstarted the Updated ELC Project by negotiating for the sale of a portion of Petition Area to WDV with the goal of eliminating the debt that currently encumbers the Petition Area.⁸ By eliminating the debt on the property, ELC will have opportunities for the development of the Updated ELC Project, while at the same time supporting the development of badly needed affordable housing for local families on Maui.

Second, like many other businesses and organizations, the Great Recession had significant economic consequences on ELC, its real estate holdings, and the availability of viable financing options. The Great Recession also caused secondary effects in the form of reduced enrollment numbers at the school. The Great Recession also prevented the sale of the existing campus property. One source of anticipated development funding for the Original ELC Project was the proceeds from the sale of Petitioner's Kahului campus. However, among the known effects of the Great Recession are the financial regulations that imposed more strict underwriting

⁷ Dr. Reiley is ELC's congregational president, and president of HNu Photonics and HNu Energy, a Maui-based electrical engineering firm specializing in renewable energy.

Pastor Schneider has served as ELC's full-time pastor since Reverend Fricke's retirement, prior to that he served as a teacher and part-time pastor, and has been involved with the Land Use Committee in some capacity since 2006.

Mr. Hobus is the principal of ELC's K-8 program (since 2016) and has also recently become involved with advancing the Updated ELC Project.

⁸ The Purchase and Sale Agreement for the portion of the Petition Area was originally executed between Petitioner and William Frampton. Mr. Frampton is a member of the Hawai'i limited liability company that is the manager of WDV, and assigned his interests under the purchase and sale agreement to WDV on April 6, 2018.

standards on banks. This reduced access to capital for many business owners who could no longer pursue new opportunities, thereby depressing the demand for niche properties such as the Kahului campus. The ELC Kahului campus was put on the market in 2009, in the midst of the Great Recession, and was eventually taken off the market after a year due to a lack of buyer response and a drop in appraised value from a high of \$5.6 million to a low of \$3.5 million in 2012 (a reduction of 37.5%).

The reduction in ELC's enrollment in the wake of the Great Recession was also significant. Ten years ago when Petitioner was before the Commission, enrollment in Petitioner's K-8 program was at capacity for the Kahului campus (approximately 175 students), which was a major consideration in pursuing the Original ELC Project. During the Great Recession, however, enrollment dropped to as low as 120 students. Currently, enrollment is at a healthy 137 students. Petitioner is working diligently towards the goal of returning its enrollment to return to the 175-180 student range.⁹

Finally, existing debt encumbering the Petition Area has complicated Petitioner's ability to pursue the Updated ELC Project, but the proposed sale to WDV will resolve that complication. Petitioner took out a loan to fund its purchase of the Petition Area in 2004. The sale of a portion of the Petition Area to WDV will allow ELC to pay off the remaining balance on its mortgage. With the Petition Area no longer encumbered by the mortgage, ELC will be better positioned to pursue grant funding and other currently unavailable funding opportunities, many of which require an applicant's property to be unencumbered by debt.

⁹ Petitioner is actively pursuing ways to increase its enrollment, and is currently in the process of seeking accreditation from the Western Association of Schools and Colleges ("WASC"), whose accreditation committee will be visiting Petitioner's Kahului campus this spring and evaluating its report. Petitioner strongly believes that WASC accreditation will strengthen its marketability and increase its enrollment numbers.

For these reasons, Petitioner determined that the Updated ELC Project represents a more prudent and feasible approach to developing the Petition Area. Amending the D&O to allow for the Updated ELC Project will allow Petitioner to significantly improve the facilities it provides for its students and congregation, and ensure that Petitioner is able to continue to provide its invaluable services to the community. Critically, the requested modification to the D&O is not a significant change from the project the Commission already approved. Therefore, Petitioner respectfully submits that good cause exists to amend the D&O to allow for the development of the Updated ELC Project.

3. Good Cause to Modify the D&O to Allow Use of Half of the Petition Area for the Waikapu Affordable Workforce Housing Project

WDV has filed a Motion requesting that the Commission: Approve Sale of a Portion of the Petition Area; Allow for Subdivision of Petition Area; and Bifurcate this Docket (the “**WDV Motion**”). WDV is seeking the Commission’s approval to close on the purchase and sale agreement between ELC and WDV, to complete the subdivision of the Petition Area into two separate lots,¹⁰ as well as a bifurcation of this Docket.

Pursuant to D&O Condition No. 20,¹¹ Commission approval is required before ELC can sell all or a portion of the Petition Area, and Commission approval for the sale is also a condition of the 201H Resolution.

WDV has requested that the Commission bifurcate this Docket so that each of the two lots to be created from the Petition Area will have a geographically distinct docket, which will allow the Commission to make modifications to the D&O and impose conditions appropriate for

¹⁰ There is no condition imposed under the D&O that prohibits subdivision of the Petition Area.

¹¹ D&O Condition No. 20 provides that: “Petitioner shall secure prior approval of the Commission of any sale of the Petition Area or any portion thereof.”

each respective project. The proposed bifurcation is similar to the Commission's procedures in Docket A99-728, which initially covered some 1,300 acres, and was split into three separate sub-dockets as follows: (1) Docket A99-728(a) (University of Hawai'i at West Oahu), which covered 500 acres; (2) Docket A99-728(b) (The Salvation Army), which covered 15 acres; and (3) and Docket A99-728(c) (Department of Hawaiian Homelands), which covered 785 acres.

In the near term, and prior to a hearing on this Motion, WDV will be filing a Motion to request the Commission's approval of the development of the HRS 201H Waikapu Affordable Workforce Housing Project on that portion of the Petition Area proposed for sale to WDV. ELC is in full support of the WDV Motion, and anticipates being in full support of WDV's Motion for approval of the 201H project.

Amending the D&O to authorize the Updated ELC Project is an important first step not only for ELC, but also for the development of WDV's Waikapu Affordable Workforce Housing Project (which the Commission will be asked to consider through WDV's Motion for approval of the 201H project). Because the requested modification to the D&O is necessary both to allow for the Waikapu Affordable Workforce Housing Project to proceed, and to allow ELC to pursue the Updated ELC Project and provide a new campus and sanctuary for its students and congregation, ELC respectfully submits that good cause exists to amend the D&O as requested.

B. AREA WIDE CHANGES PROVIDE ADDITIONAL GOOD CAUSE

At the time of the D&O, the area immediately surrounding the Petition Area was relatively undeveloped. D&O FOF ¶28. In the ensuing years, however, the surrounding area has been identified for additional residential development in County plans, and residential projects have been approved on adjacent properties.

In the time since the Commission's issuance of the D&O, the County adopted the Maui Island Plan through Ordinance No. 4004, effective as of December 28, 2012 ("MIP"). The MIP provides direction for future growth, economic, social, and environmental decisions on Maui through 2030. The Petition Area is within the "Urban Growth Boundary" of the MIP's Directed Growth Boundaries land use maps. *See* Petitioner's **Exhibit F** filed with the Extension Motion, a copy of which is attached hereto for reference. The Urban Growth Boundary identifies areas within which urban-density development requiring a full range of services, such as new multi-user sewer and water systems, is supported in accordance with applicable land use laws. *See* MIP at 8-4. "Growth boundaries are a long-range planning tool that will be used on Maui to evaluate proposals involving community plan amendments, changes in zoning, development proposals or utility extensions." *Id.*

The Petition Area continues to be identified for Public/Quasi Public use under the Wailuku-Kahului Community Plan, last updated in 2002. Anticipated uses within the Public/Quasi Public areas include schools, libraries, fire/police stations, government buildings, public utilities, hospitals, churches, cemeteries, and community centers. *See* Wailuku-Kahului Community Plan at 59.

The Kehalani Village Center, a retail shopping center, is to the north of the Petition Area, within the 550-acre master-planned Kehalani Village. The Village Center was opened in 2014, several years after the Commission's approval of the ELC D&O. About 2 miles southeast of the Petition Area is A&B Properties Hawaii, Inc.'s proposed 545-acre Waiale Master Planned Residential Project. The Commission granted a SLU Agricultural to Urban District reclassification for that project area in 2012 (Docket A10-798).

In June 2016, the County Council approved Resolution 16-81 authorizing the development of the Waiale Affordable Housing Project under HRS § 201H-38 on a 10.4-acre property immediately south of the Petition Area (at TMK (2) 3-5-002:012 (por.)). The Waiale Affordable Housing Project will have a total of 71 lots consisting of 70 single-family lots and one lot designed as a park lot. The residential lots will be 100% affordable and offered to qualified families or individuals earning between 80% and 140% of Maui's AMI. The Waiale property was within the SLU Agricultural District, but pursuant to HRS § 201H-38, the County Council exempted the project from having to obtain a District Boundary Amendment.¹²

The Waiale Affordable Housing Project is like a template for the Updated ELC Project and the Waikapu Affordable Workforce Housing Project. Valley Isle Fellowship, Inc., a Hawai'i nonprofit corporation that operates a Southern Baptist Church, sold roughly half of its property to an affordable housing developer, Waiale Road 201 LLC, in October 2016. According to the Maui News (May 20, 2016),¹³ Senior Pastor Stephen Kaneshiro explained that the church sold the property to help fund construction of a new church for Valley Isle Fellowship. Selling a portion of the church property for the development of affordable housing was particularly attractive because so many Maui families are priced out of the residential housing market. Certain of the principals involved in the acquisition, entitlement, and development of the Waiale Affordable Housing Project are closely involved in the proposed Waikapu Affordable Workforce Housing Project.

¹² Property acquisition and due diligence for the Waiale Affordable Housing Project began in April 2015. The large-lot subdivision, creating the separate lot for purchase, began in January, 2016, and concluded in the late summer 2016.

¹³ <http://www.mauinews.com/news/local-news/2016/05/panel-advances-waiale-affordable-housing-project/>. As the article suggests, both Petitioner and Valley Isle Fellowship are in similar positions in that, even once subdivided and sold, both have sufficient land to meet their institutional needs, and were able to find a developer committed to providing much needed affordable housing to the Central Maui community. Both situations present a win-win-win for the landowners, the developer, and the Central Maui community.

C. AMENDING D&O CONDITION NO. 1 IS IN COMPLIANCE WITH THE STATE PLAN

HRS § 205-16 provides that no action by the Commission shall be adopted unless the action conforms to the State Plan. The State Plan is a comprehensive guide for the future long-range development of the State of Hawai'i. Amending the D&O to allow for the Updated ELC Project is consistent with applicable goals, objectives, and policies of the State Plan, HRS Chapter 226. The Commission already determined that the reclassification of the Petition Area to the SLU Urban District for the development of the Original ELC Project conformed to the State Plan. *See* D&O FOF ¶¶127-133. The Updated ELC Project is substantially the same project, just on a smaller, more appropriate scale, and therefore remains consistent with the State Plan.

In addition, any actions taken to further development of affordable housing is also compliant with the State Plan. *See* HRS § 226-19. One of the primary objectives of the State Plan with respect to housing is to provide

Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, and livable homes . . . , through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more . . . for sale affordable housing is made available to extremely low-, very low-, lower-, moderate-, and above moderate-income segments of Hawaii's population.

HRS § 226-19(a)(1).


To achieve this objective, it is the express policy of the State to: (1) stimulate and promote feasible approaches that increase affordable for sale housing choices for low-income households; and (2) increase homeownership opportunities and choices in terms of quality, location, cost, densities, style, and size of housing. *Id.* at § 226-19(b)(2)&(3). The requested

modification to the D&O is consistent with these objectives and policies because it is a necessary step towards the development of the Waikapu Affordable Workforce Housing Project.

IV. SUMMARY AND CONCLUSION

Based on the foregoing, HAR §§ 15-15-70, 15-15-94, and the records and files in this Docket, Petitioner respectfully requests that the Commission issue an order amending the D&O to allow for the Updated ELC Project. Petitioner reserves rights its under HAR § 15-15-70(a) to modify this request before, during, or after the close of the hearing on this Motion.

DATED: Honolulu, Hawai'i, October 12, 2018.



JENNIFER A. LIM
DEREK B. SIMON
Attorneys for Petitioner
Emmanuel Lutheran Church of Maui

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AFFIDAVIT OF MICHAEL REILEY

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MICHAEL REILEY, being duly sworn on oath, deposes and says:

1. I am the President of Emmanuel Lutheran Church of Maui, a Hawai'i nonprofit corporation ("**Petitioner**" or "**ELC**").
2. As President of ELC, my responsibilities include conducting all congregational voters' meetings, reviewing and executing all documents on behalf of ELC, and various other executive functions.
3. I am competent and authorized to testify to the matters set forth herein, and unless otherwise indicated, I make this affidavit based upon personal knowledge.
4. I submit this affidavit in support of Petitioner's Motion for Modification (the "**Motion**").
5. Attached to the Motion as Petitioner's Exhibit 1 is a copy of ELC's Timeline for Development of Updated Project (the "**Development Timeline**").
6. As set forth in the Development Timeline, the Updated ELC Project (as defined in the Motion) will proceed in at least three phases, with the potential for a fourth phase.
7. Phase 1 will focus on securing necessary funding for the Updated ELC Project.

8. ELC will use the proceeds from the sale of a portion of the Petition Area to Waikapu Development Venture LLC to pay off the mortgage currently encumbering the property. Once the property is free and clear of any debt, ELC will commence a fundraising campaign.
9. Phase 1 (fundraising) is anticipated to begin in February 2019 and be completed prior to proceeding with Phase 2.
10. Phase 2, as described in the Motion, is planned to start in 2021 and be completed between 2023 and 2024.
11. The cost of the site work and necessary infrastructure for Phase 2, including water and wastewater transmission, is presently estimated at \$1,500,000, and the cost of constructing the multi-purpose building is presently estimated at \$2,000,000. Costs to modify ELC's existing plans and obtain construction and related ministerial permit approvals are estimated at \$350,000.
12. Phase 3, as described in the Motion, is planned to start in 2025 and be completed around 2027.
13. The present estimate for the additional site work and infrastructure for Phase 3 is \$500,000, and the construction of the Phase 3 improvements is estimated to cost \$1,500,000. Construction plan preparation and related approvals is currently estimated at \$200,000.
14. Upon the completion of Phase 3, ELC will evaluate whether to proceed with Phase 4.
15. The initial step toward development of Phase 3 would be exploration of the marketability of ELC's existing campus in Kahului.
16. Phase 4, if pursued, would consist of constructing additional classrooms sufficient to support ELC's elementary school (grades K-5), a sanctuary, and potentially other accessory buildings. Depending upon need and funding, the ultimate goal may be for ELC to move the entirety of its preschool-to-8th-grade school program to the Petition Area and sell the Kahului campus.
17. ELC has not yet obtained cost estimates or determined projected start and completion years for the development of Phase 4 because Phase 4 is too speculative at this point.

STATE OF HAWAII

)

) ss.

COUNTY OF MAUI

)

On this 12th day of October, 2018, before me personally appeared MICHAEL REILEY, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



A handwritten signature of Arliza M. Borja-Losano in black ink.

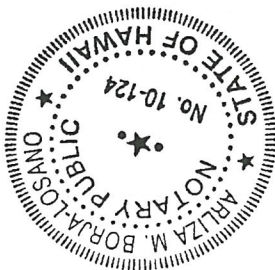
ARLIZA M. BORJA-LOSANO

My Commission expires 5.22.23

NOTARY PUBLIC CERTIFICATION
Arliza M. Borja-Losano, Second Judicial Circuit
Doc. Description: Affidavit of
Michael Reiley

No. of Pages: 4 Date of Doc. OCT 12 2018

OCT 12 2018
Notary Signature Date



Emmanuel Lutheran Church's Timeline for Development of Updated Project

	Timing¹	Action Item
1.	November 21, 2016	Purchase and Sale Agreement (the “PSA”) executed between Emmanuel Lutheran Church of Maui (“ELC”), as seller, and William Frampton, as buyer, for the sale of an approximately 12.5-acre portion of the 25.263-acre Petition Area.
2.	January 2, 2018	ELC formally notifies Land Use Commission of ELC's intent to: (1) subdivide and sell approximately one-half of the Petition Area to Waikapu Development Venture LLC (“WDV”) for the development of WDV's Hawai'i Revised Statutes Chapter 201H affordable housing project (the “ 201H Project ”); and (2) file motions requesting an extension of time for ELC to complete a modified/reduced project (the “ Updated ELC Project ”) and approve the 201H Project.
3.	April 6, 2018	Mr. Frampton assigns his rights under the PSA to WDV (with the consent of ELC).
4.	April 9, 2018	ELC's Motion for Extension of Time to Complete Project filed with the Land Use Commission.
5.	April 12, 2018	WDV's Motion to be a Copetitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene (“ WDV's Party Motion ”) filed with the Land Use Commission.
6.	April 19, 2018	ELC's Memorandum in Support of WDV's Party Motion filed with the Land Use Commission.
7.	May 9, 2018	Hearing on ELC's and WDV's Motions held by the Land Use Commission.
8.	June 1, 2018	Large lot subdivision application filed with County to subdivide Petition Area into Lot A-1 (12.5 acres) and Lot A-2 (12.763 acres).
9.	June 22, 2018	Land Use Commission grants WDV's Party Motion and admits WDV as an intervenor.
10.	July 16, 2018	County issues preliminary approval of large lot subdivision.

¹ Future dates are tentative and subject to modification, or changes due to delays in preceding actions.

11.	September 7, 2018	Maui County Council adopts HRS Chapter 201H Resolution (Resolution 18-150) authorizing the WDV affordable housing project.
12.	October 2018	ELC files timeline for development of the ELC Updated Project with the Land Use Commission.
13.	October 2018	WDV files Motion to: Approve Sale of a Portion of the Petition Area; to Allow for Subdivision of Petition Area; and to Bifurcate, with the Land Use Commission.
14.	October 2018	WDV files Motion to Approve WDV 201H Project with the Land Use Commission.
15.	November 15, 2018	Land Use Commission hearing on ELC's and WDV's respective motions.
16.	November/December 2018	Land Use Commission grants: <ul style="list-style-type: none"> • ELC's Motion for Extension of Time to Complete Updated ELC Project. • ELC's Motion for Modification. • WDV's Motion to: Approve Sale of a Portion of the Petition Area; to Allow for Subdivision of Petition Area; and to Bifurcate. • WDV's Motion to Approve 201H Project.
17.	December 2018	County Public Works issues Final Subdivision Approval Letter and Final Plat for 2-lot subdivision of the Petition Area.
18.	January/February 2019	Parties close on PSA for sale of Lot A-1 to WDV.
<u>ELC Phase 1 - Fundraising.</u>		
19.	February 2019	ELC pays off mortgage encumbering the Petition Area.
20.	February 2019	Kick off fundraising efforts for Updated ELC Project. Sources of grants and funding to be targeted include:

		<ul style="list-style-type: none"> • Our network of church families and mainland visitors who have supported in the past and expressed interest in the Updated ELC Project. • Our network of present school families and business people, as well as alumni and their families. • Hawai'i based foundations that support grants to private education. Some of ELC's initial fundraising was through these foundations, but many grants were contingent on all debts being cleared from the property. The sale of half of the property to WDV will clear that obstacle.
<u>Phase 2 - Multi-Purpose Building.</u>		
21.	2021	Prepare infrastructure and site work plans for Phase 2 (multi-purpose building).
22.	2021	Obtain DLNR-SHPD approval of Monitoring Plan for ELC property prior to ground-breaking activities (per D&O Condition No. 8).
23.	2021	Prepare soil analysis study of ELC property in consultation with the State Department of Health Hazard Evaluation and Emergency Response Office (per D&O Condition No. 10).
24.	2022 - 2023	Submit infrastructure and site work plans to County for review, approval, and issuance of necessary permits. Estimated cost: \$150,000
25.	2023 - 2024	Complete infrastructure and related site work, including water and wastewater transmission. Estimated cost: \$1,500,000
26.	2023 - 2024	Prepare construction plans for multi-purpose building and obtain County approval and required

		permits for construction. Estimated cost: \$200,000
27.	2023 - 2024	Construct multi-purpose building. Estimated cost: \$2,000,000
<u>Phase 3 - Construction of Three Middle School Classrooms and Office Space</u>		
28.	2025	Prepare site work plans for Phase 3 and obtain County approval and required permits for site work. Estimated cost: \$50,000
29.	2026	Complete infrastructure and related site work for Phase 3. Estimated cost: \$500,000
30.	2026-2027	Prepare construction plans for middle school classrooms and office space and obtain County approval and required permits for construction. Estimated cost: \$150,000
31.	2026 - 2027	Construct three middle school classrooms and additional offices. Estimated cost: \$ 1,500,000
32.	2027 - 2028	Evaluate necessity for and feasibility of Phase 4.

<u>Phase 4 (Tentative) - Construction of Elementary Classrooms, Sanctuary and Accessory Structures</u>		
33.	2028	Explore marketing of existing Kahului campus.
34.	TBD	Fundraising for Phase 4 construction.
35.	TBD	If required, prepare updated Traffic Impact Analysis Report for ELC Project in coordination with the State Department of Transportation (per D&O Condition No. 5).
36.	TBD	Prepare construction plans for additional classrooms, sanctuary, and other accessory buildings, and obtain County approval and required permits for construction.
37.	TBD	Construct elementary school and/or sanctuary and/or other buildings.
38.	TBD	Market and sell existing Kahului campus.



EXHIBIT A

ATTACHED TO MOTION FOR EXTENSION OF TIME



This Beaux-arts/Village Green Scheme organizes the 25-acre site into an elegant campus. Set around a large oval, open green space, the sanctuary sits at the site highest point and on axis with the campus entrance road and views to the ocean. On the left are twelve of the eighteen classrooms, all single-story and clustered around landscaped courtyards. Next to the twelve K - 5 classrooms, the multi-purpose complex is a central element in the campus organization, close to multiple play-fields and parking. This option offers separate buildings for administration and specialty classrooms and the library, both buildings have front-rooms on the green. The pre-school is next to the sanctuary and close to the multipurpose complex for ease of access for the youngest children.

33 Middle school classrooms are single story and clustered around a courtyard also on the green. Option B develops a little more than half of the 25-acre site and supports magnificent views of the ocean and mountains.

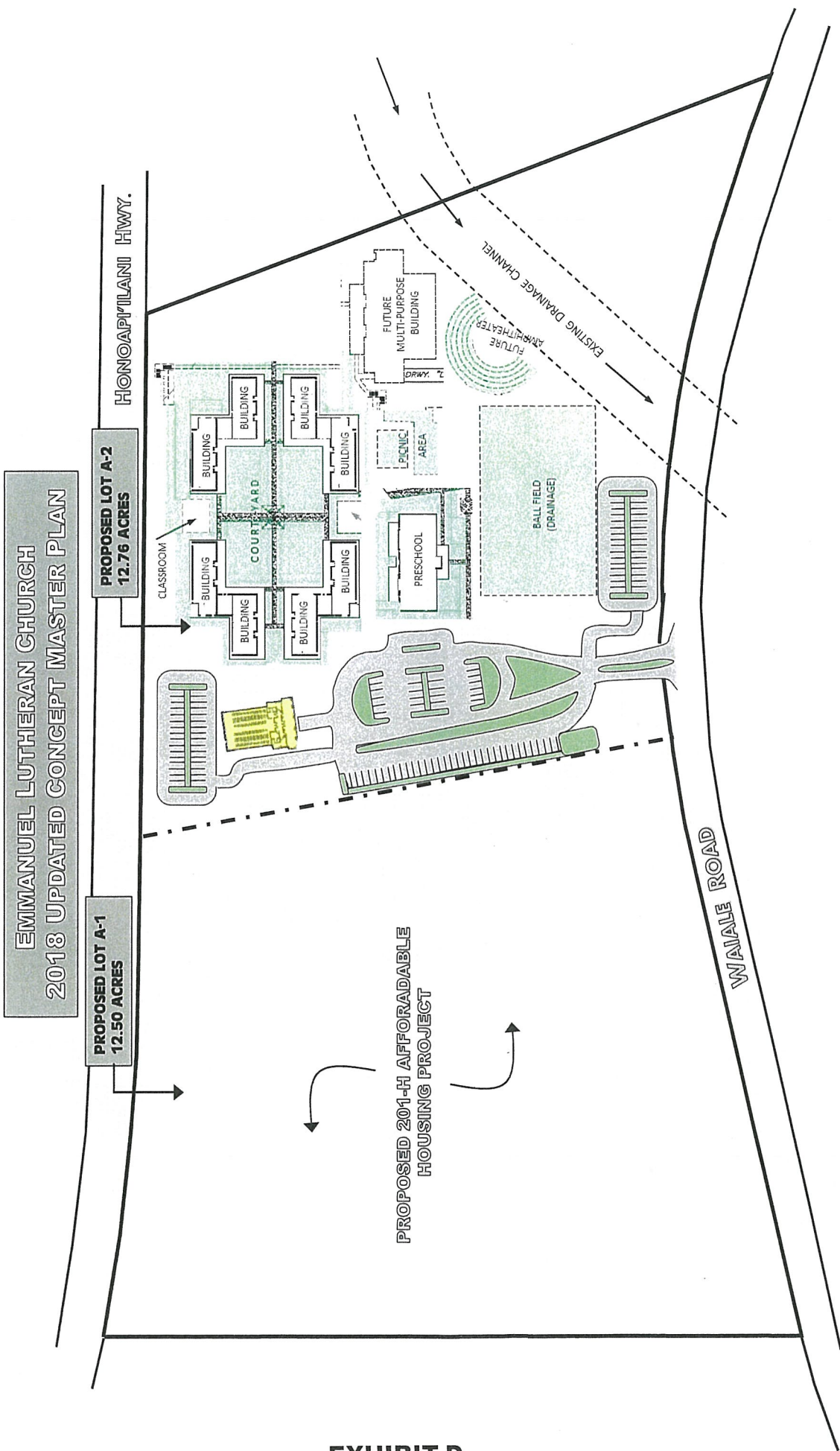


EXHIBIT D

ATTACHED TO MOTION FOR EXTENSION OF TIME

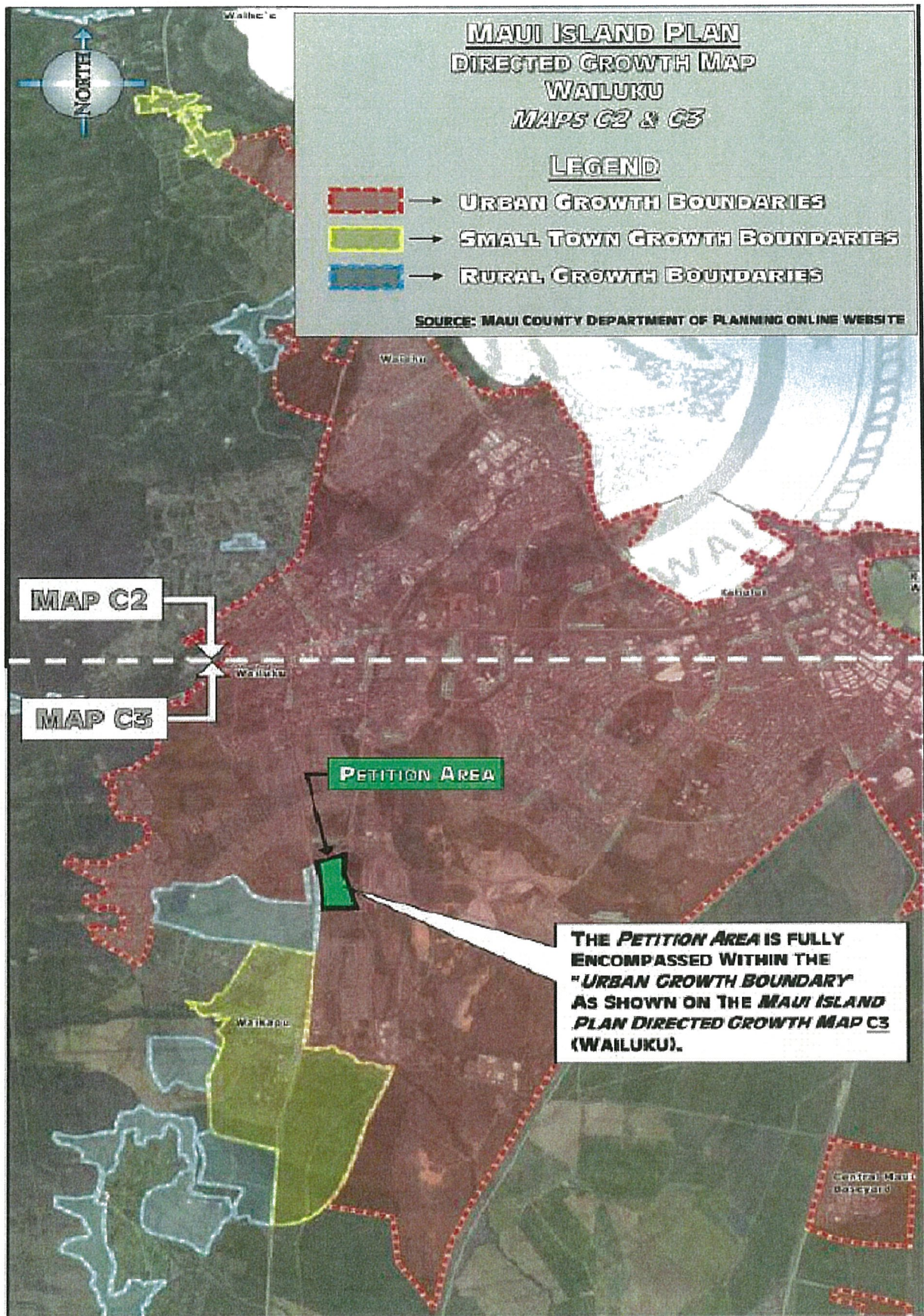


EXHIBIT F

ATTACHED TO MOTION FOR EXTENSION OF TIME

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of:

EMMANUEL LUTHERAN CHURCH OF
MAUI

To Amend the Land Use District Boundary of
Certain Lands Situated at Wailuku, Island of
Maui, State of Hawai'i, Consisting of 25.263
Acres from the Agriculture District to the
Urban District, Tax Map Key No. 3-5-002:011.

DOCKET NO. A07-773

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following by the methods indicated next to their names on October 12, 2018, to their last known addresses as shown below:

Patrick Wong, Esq. Corporation Counsel County of Maui 250 South High Street Wailuku, HI 96793	[Via U.S. Mail, postage prepaid]
Michael Hopper, Esq. Corporation Counsel County of Maui 250 South High Street Wailuku, HI 96793	[Via U.S. Mail, postage prepaid]
Michele Chouteau McLean, Planning Director Maui Planning Department County of Maui 2200 Main Street One Main Plaza, Suite 315 Wailuku, HI 96793	[Via U.S. Mail, postage prepaid]
Dawn T. Apuna, Deputy Attorney General Office of the Attorney General State of Hawaii 425 Queen Street Honolulu, Hawaii 96813	[Via Hand Delivery]

Leo Asuncion, Director Office of Planning State of Hawaii 235 South Beretania Street, 6th Floor Honolulu, HI 96813	[Via Hand Delivery]
Waikapu Development Venture, LLC c/o Peter A. Horovitz, Esq. 2073 Wells Street, Suite 101 Wailuku, HI 96793	[Via U.S. Mail, postage prepaid]
David Galazin, Esq. Deputy Corporation Counsel County of Maui 250 South High Street Wailuku, HI 96793	[Via U.S. Mail, postage prepaid]
Tara Furukawa Maui Planning Department County of Maui 2200 Main Street One Main Plaza, Suite 315 Wailuku, HI 96793	[Via U.S. Mail, postage prepaid]

DATED: Honolulu, Hawaii, October 12, 2018.



JENNIFER A. LIM
DEREK B. SIMON

Attorneys for Petitioner
Emmanuel Lutheran Church of Maui