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LAND USE COMMISSION

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October 22, 2018

To: Bryan Yee, Esq. and Dawn T. Apuna, Esq.
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Honolulu, HI 96813

From: Jonathan Scheuer 
Chair, State Land Use Commission

Subject: Requests for Extension for Filings, etc. for Land Use Commission Docket
No. A07-773/Emmanuel Lutheran Church of Maui

This letter is to acknowledge the receipt of Mr. Simon's extension and 60-day waiver request and OP's stipulated request for an extension of the response filing date to November 21, 2018.

To coincide with the granting of Waikapu Development Venture, LLC's ("WDV") request, Emmanuel Lutheran's request is also granted. Unfortunately, we cannot fully grant OP's stipulated request. The LUC will delay the hearing of this matter till November 29, 2018, however, to ensure an orderly progression of the proceedings, the latest we can extend the deadline for filings is noontime, November 19, 2018.

C: Michael Hopper, Esq.
David Galazin, Esq.
Tara Furukawa
Peter Horovitz, Esq.

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2018 OCT 19 AM 05

October 19, 2018

Jonathan Likeke Scheuer – Chair
Hawaii State Land Use Commission
235 S. Beretania Street, #406
Honolulu, HI 96813

RE: Request for Extension of Time to Respond to Petitioner's Motion for Modification, dated October 12, 2018; and Intervenor's Motions to Approve Sale of a Portion of the Petition Area, to Allow Subdivision of Petition Area, and to Bifurcate, dated October 12, 2018;
Docket No. A07-773/Emmanuel Lutheran Church of Maui

Dear Mr. Scheuer:

Pursuant to section 15-15-42, Hawaii Administrative Rules, and the Land Use Commission's (Commission) oral decision on May 9, 2018, the Office of Planning ("OP") respectfully requests that the hearing on the various motions in Emmanuel Lutheran Church of Maui (ELC), Docket No. A07-773 not be heard until November 29, 2018, and that the parties have until November 21, 2018 to file their responses.

On May 9, 2018, the Commission continued ELC's motion for an extension of time to complete their project for six months, required ELC and Intervenor Waikapu Development Venture (WDV) to submit a timetable sixty (60) days before the continued hearing, and authorized the chair to reasonably extend the hearing date.

On October 12, 2018, Emmanuel Lutheran Church (ELC) filed a motion for modification, which included its timetable. On that same day, Waikapu Development Venture (WDV) filed a motion to (1) purchase a portion of the petition area; (2) subdivide the petition area; and (3) bifurcate the docket. OP understands that WDV will also be filing a motion which will, perhaps among other things, ask to amend the decision and order on the bifurcated docket to allow for WDV to proceed as a 201H project.

On October 16, 2018, upon request by WDV, the Chair allowed for the hearing to take place after the six month period, set the hearing date for November 15, 2018, and waived the Commission's requirement that the timetable be submitted sixty (60) days before the hearing.

OP was not aware that the Chair was going to waive the Commission-ordered sixty (60) day period to review the timetable, and has not yet seen the motion in which WDV will be asking, perhaps among other things, to amend the decision and order on the bifurcated docket to allow for WDV to proceed as a 201H project. Although WDV has previously submitted a 201H application and we acknowledge the policy favoring prompt action on affordable housing projects, OP will nevertheless need additional time to consult with other state agencies and analyze the final proposal in order to ensure that all impacts from the residential project have been considered and that appropriate conditions are placed into the decision and order to ensure appropriate mitigation.

OP contacted all the parties. We further understand that the Commission is currently scheduled to meet on November 29, 2018 on Maui. The parties have no objection if all of the motions are heard on November 29, 2018, and have no objection to allowing the filing of responses on November 21, 2018.

Given the short period of the extension, the agreement among all the parties, the lack of any prejudice to the parties or the Commission, and the need for additional time to consider the as yet unfiled motion, OP respectfully requests that the hearing on all the motions be heard on November 29, 2018 or thereabouts, and that the parties be given until November 21, 2018 to file their responses.

Very truly yours,



Bryan C. Yee
Deputy Attorney General

cc: Jennifer Lim, Esq.
Peter Horovitz, Esq.
Michael Hopper, Esq.

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OUR REFERENCE NO.:
017016-00004

October 19, 2018

VIA HAND DELIVERY

Dr. Jonathan Likeke Scheuer, Chair
State of Hawai'i Land Use Commission
235 S. Beretania Street, Suite 406
Honolulu, Hawai'i 96813

Re: Docket No. A07-773: Extension of Deadline to Return to Commission and File Timetable

Dear Chair Scheuer:

This firm represents Emmanuel Lutheran Church of Maui, a Hawai'i nonprofit corporation ("ELC"), the petitioner in Docket No. A07-773.

At its May 9, 2018 meeting, the State of Hawai'i Land Use Commission (the "**Commission**") heard ELC's Motion for Extension of Time to Complete Project (the "**Extension Motion**"). At the hearing, the Commission deferred action on the Extension Motion, and instructed the parties (ELC and intervenor Waikapu Development Venture, LLC ("**WDV**") to return within six (6) months and provide a detailed timetable of the approvals and actions needed to bring the property into compliance with the Commission's Decision and Order of June 10, 2008, and to provide that timetable 60 days prior to the Commission's next hearing on the matter. The Commission further authorized its Chair to grant an extension for up to an additional six (6) months upon request by the parties.

On September 4, 2018, we were informed by the Commission's Clerk that the Commission wished to hear the ELC and WDV motions on November 15, 2018. ELC filed its detailed timetable as an exhibit to its Motion for Modification on October 12, 2018. On the same day, WDV filed its Motion: to Approve Sale of a Portion of the Petition Area; to Allow for Subdivision of Petition Area; and to Bifurcate. ELC acknowledges that its development timetable was not filed 60 days prior to the previously scheduled November 15, 2018 hearing. We regret this delay. We understand that the Chair authorized a waiver to the 60-day filing requirement by letter dated October 16, 2018, addressed to Peter Horovitz, Esq., attorney for WDV. However, because Mr. Horovitz's request to the Chair was made only on behalf of WDV, and not also ELC, we respectfully request a similar waiver on behalf of ELC.

As matters have developed further, it appears that the Commission will likely hear the currently filed motions, and WDV's forthcoming motion for modification to allow for its Hawai'i Revised Statutes Chapter 201H affordable housing development, on November 29, 2018, which is 48-days after ELC's detailed timetable was filed, rather than the 60-days ordered by the Commission. By letter dated October 19, 2018, the State of Hawai'i Office of Planning ("OP") requested that the Commission hold a hearing on ELC's and WDV's motions on November 29th or thereabouts, and that OP be given to November 21, 2018 to file responses to those motions. OP correctly reported that ELC has no objections to OP's requested extension to its filing deadline.

Please accept this as ELC's formal request for a short extension of time to return to the Commission, and a waiver of the 60-day filing requirement for the detailed timetable. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Derek B. Simon', with a stylized, flowing script.

Derek B. Simon

cc: Bryan C. Yee, Esq.
Michael Hopper, Esq.
David Galazin, Esq.
Tara Furukawa
Peter Horovitz, Esq.