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LAND USE COMMISSION
STATE OF HAWAII

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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 MAUI)	OFFICE OF PLANNING'S RESPONSE TO EMMANUEL LUTHERAN CHURCH OF MAUI'S MOTION FOR
)	MODIFICATION; CERTIFICATE OF SERVICE
To Amend the Land Use District Boundary of Certain Lands Situated at Wailuku, Island of Maui, State of Hawaii, Consisting of 25.263 Acres from the Agricultural District to the Urban District,)	
Tax Map Key No. (2) 3-5-002:011.)	
)	

OFFICE OF PLANNING'S RESPONSE TO EMMANUEL LUTHERAN CHURCH OF MAUI'S MOTION FOR MODIFICATION

THE OFFICE OF PLANNING, STATE OF HAWAII ("OP"), recommends approval of EMMANUEL LUTHERAN CHURCH OF MAUI's ("Petitioner") Motion for Modification ("Motion"). Petitioner's Motion requests the following of the Land Use Commission ("LUC").

1. 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, or a shorter timeframe of three years, or for the LUC to condition its approval that Petitioner return within a certain time to the LUC for a status report.

2. Authorize modifications to the original project to allow for the development of the Updated ELC Project, described as follows:
 - a. Phase 1. 2019 to 2021. Securing the necessary funding. The sale of a portion of the Petition Area to Waikapu Development Ventures LLC would allow Petitioner to pay off the mortgage currently encumbering the Petition Area. Subsequently, Petitioner will begin a fundraising campaign for development of the project.
 - b. Phase 2. 2021 to 2024. Construct a multi-purpose building and necessary site work and infrastructure. This building will house the preschool and provide gym space during the week and convert to host worship services and other church functions over the weekend.
 - c. Phase 3. 2025 to 2027. Construction of approximately three (3) classrooms, site work and infrastructure. These classrooms will house Petitioner's middle school and office space for the pastor and preschool director.
 - d. Phase 4. 2027 to 2028. Petitioner will evaluate this phase after Phase 3, which would consist of Petitioner's elementary school, a sanctuary, and other accessory buildings.

- e. Waikapu Affordable Workforce Housing Project. Waikapu Development Venture (“WDV”) or (“Intervenor”) is proposing, via a separate Motion for Modification to the LUC, to allow use of a portion of the Petition Area for a workforce affordable housing project within 12.5 acres, or approximately one-half of the original Petition Area. The project will consist of 80 residential units, with 68 single family dwellings and 12 duplex units. On September 7, 2018, the Maui County Council approved the Intervenor’s proposal under Hawaii Revised Statutes Chapter 201H. The County Council’s approval under Resolution No. 18-150 requires the Intervenor to obtain the LUC’s approval to proceed with the sale of the site to the Intervenor within six months of the effective date of the Resolution or March 7, 2019.
- f. The Intervenor is requesting that the LUC amend the D&O to allow the sale of the Petition Area to bifurcate the docket for the Petition Area; and finally to allow the subdivision of the Petition Area. The Petitioner is in full support of the Intervenor’s Motion.

I. Original Project:

Under the original D&O, the Petitioner proposed to develop a new school on 25.263 acres in Wailuku. Petitioner’s Kahului campus, 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 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. The loss of the Petitioner’s Land Use Committee Chair 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. OP Comments on Petitioner's Compliance with Conditions.

OP notes that Petitioner has not complied with Conditions 1, 2, and 19 of the D&O. In addition, no reasons have been given for why Petitioner has not complied with Condition 19 to provide annual reports to the LUC.

OP is not proposing any changes to Conditions Nos. 1, 3 to 19, and 21 to 23.

Detailed below are OP's proposed revisions and comments on Petitioner's conditions:

Proposed revision of Condition 2.

2. **Reversion of District Classification.** Petitioner shall develop the Petition Area and complete ~~construction of Phases 1 and 2~~ of the Project no later than ~~ten (10)~~ six (6) years from the date of the amended decision and order. If Petitioner fails to complete Phases 1 and 2 of the Project ~~construction~~ within ~~ten (10)~~ six (6) years from the date of the amended 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 the Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.

Notwithstanding the economic recession and personnel issues, the Petitioner has had ten (10) years to develop the project area with no visible progress shown. Given the revised schedule for development, OP recommends that the Petitioner be held accountable at least for the initial two phases which encompass six (6) years as reflected in Petitioner's timetable. This would ensure use of the property as envisioned.

Proposed deletion of Condition 20.

20. **Sale of Petition Area.** Petitioner shall secure prior approval of the Commission of any sale of the Petition Area or any portion thereof.

OP has no objection to the proposed deletion of Condition 20.

Comment on Condition 19.

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.

OP would like assurances that the Petitioner and Intervenor will provide timely submittals of annual reports including the status of development and compliance with conditions of approval. Petitioner thus far has failed to comply with this Condition by only submitting two (2) annual reports since the D&O's adoption in 2008.

IV. D&O Finding of Fact ("FOF") No. 79.

OP is concerned that a cultural impact analysis ("CIA") and a *Ka Pa'akai O Ka'aina v. Land Use Commission, State of Hawaii, 94 Hawaii 31, 7 P.3d 1068 (2000)* ("Ka Pa'akai") analysis have not been performed for the Petition Area. D&O FOF No. 79 indicated that there was a CIA for the Petition Area. However, there is no record of a CIA, and testimony during the district boundary amendment hearing indicates that Petitioner's consultant researched parcels in the vicinity of the Petition Area, but not specifically the Petition Area¹.

¹ The transcript for the district boundary hearing on July 27, 2007, pages 72-74 and 80-82, states that the Petitioner's Planning consultant Mathew Slepik testified under cross examination that there was, "not a specific cultural impact assessment report produced in this case. We did do an analysis of the cultural impact of the project, as I stated earlier, based on the history of the parcel and research on documentation produced for parcels or properties in the vicinity which included what might be referred to as a specific Cultural Impact Assessment report." On cross examination by OP's counsel: "I take it you don't personally have expertise in Native Hawaiian cultural resources or impacts or practices?" Mr. Slepik answered, "I wouldn't say that I would have expertise in cultural practices."

Intervenor has since submitted an Errata to Motion for Modification, filed on November 15, 2018, that includes an “Analysis of Existing Cultural Impact Assessment for Proposed Affordable Residential Subdivision Wailuku and Waikapu Ahupua’a Wailuku District, Maui Island, TMK: (2) 3-5-001:011” (“Analysis”) that utilizes CIAs performed for properties surrounding or in the vicinity of the Petition Area. However, the Analysis, which refers to TMK: (2) 3-5-001:011 rather than the subject TMK: (2) 3-5-002:011, does not include an analysis specific to the Petition Area. Intervenor has further represented that additional witnesses will be provided at the upcoming LUC hearing.

Conclusion and Recommendations

Other than the cultural concern cited above, OP has no substantive concerns with the Petitioner’s requested Motion regarding Condition 2 for an extension of time to complete the Project, provided that the Petitioner is held to completing at least the initial two phases within six (6) years as represented. Further, OP has no objections to the deletion of Condition 20 relating to the sale of the Petition Area.

DATED: Honolulu, Hawaii, November 19, 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, November 19, 2018.

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LEO R. ASUNCION
Director