

OFFICE OF PLANNING

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LAND USE COMMISSION
STATE OF HAWAII

2018 NOV 19 A 7:55

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 WAIKAPU DEVELOPMENT VENTURE LLC’S MOTION TO APPROVE SALE OF A PORTION OF THE PETITION AREA; MOTION TO ALLOW FOR SUBDIVISION OF PETITION AREA; AND MOTION TO BIFURCATE; 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. 3-5-002:011.)	
)	

**OFFICE OF PLANNING’S RESPONSE TO
WAIKAPU DEVELOPMENT VENTURE LLC’S MOTION TO APPROVE
SALE OF A PORTION OF THE PETITION AREA; MOTION TO ALLOW FOR
SUBDIVISION OF PETITION AREA; AND MOTION TO BIFURCATE**

THE OFFICE OF PLANNING, STATE OF HAWAII (“OP”), recommends approval of Waikapu Development Venture LLC’s (“Intervenor”) Motions (“Motions”) brought before the Land Use Commission (“LUC”) to approve the sale of a portion of the Petition Area, to allow for subdivision of the Petition Area, and to bifurcate the Petition Area.

The Emmanuel Lutheran Church of Maui (“Petitioner” or “ELC”) is proposing to sell approximately 12.5 acres of the Petition Area (25 acres) to Intervenor in order to help finance the development and construction of their proposed school and church on the remainder of the Petition Area. The Intervenor is requesting the following:

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. OP Comments and Recommendations on Petitioner's Motions.

1. Sale of Petition Area. OP has no objection to the sale of a portion of the Petition Area. The Petitioner's ability to garner funding to continue with the Project was adversely impacted by the 2008 global economic crisis. In 2009, the site was rezoned by the Maui County Council from the Agricultural District to the Public District. 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 church and school complex.
2. Subdivision of the Petition Area into two parcels. OP has no objection to the subdivision. The subdivision is necessary for the sale of the portion of the Petition Area.
3. Bifurcation of the Docket and Petition Area. OP does not object to the bifurcation of the Docket and Petition Area because the Intervenor has already obtained approval from the County of Maui for the development and construction of the workforce housing project, which is separate and distinct from Petitioner's Project. Notably, OP understands Petitioner's use of the term "release" is not with regard to any D&O

Conditions but refers to the separation between Petitioner's Project and Intervenor's workforce housing by the bifurcation of the Docket.

OP's only concern in the bifurcation of Docket A07-773 is uncertainty as to whether cultural impacts have been properly considered and appropriate findings made for the Petition Area, in particular, the protection of customary and traditional native Hawaiian rights pursuant to the Hawaii Supreme Court's holding in *Ka Paakai O KaAina v. Land Use Commission*, State of Hawaii, 94 Hawaii 31, 7 P.3d 1068 (2000).

We note that Intervenor has submitted an Errata to Motion for Modification, including a summary of cultural impact assessments, and has represented that additional witnesses will be provided at the upcoming LUC hearing.

The OP otherwise recommends that the LUC grant the Intervenor's Motions to approve the sale of a portion of the Petition Area, to allow for subdivision of the Petition Area, and to bifurcate the Petition Area.

DATED: Honolulu, Hawaii, November 19, 2018

OFFICE OF PLANNING
STATE OF HAWAII



LEO R. ASUNCION
Director

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Acres from the Agricultural District to the)	
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<u>Tax Map Key No. (2) 3-5-002:011.</u>)	

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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STATE OF HAWAII



LEO R. ASUNCION
Director