

MERCHANT HOROVITZ & TILLEY

Peter A. Horovitz 6920-0
2073 Wells Street, Suite 101
Wailuku, HI 96793
Tel: 808.242.5700
Fax: 808.442.1255
Email: pah@mhmaui.com

Attorneys for Intervenor
Waikapu Development Venture LLC

LAND USE COMMISSION
STATE OF HAWAII

2019 JAN 31 A 8:01

**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

ORDER GRANTING

1. INTERVENOR WAIKAPU
DEVELOPMENT VENTURE LLC'S:
 - a. MOTION TO APPROVE
SALE OF A PORTION OF
THE PETITION AREA;
 - b. MOTION TO ALLOW FOR
SUBDIVISION OF PETITION
AREA; AND
 - c. MOTION TO BIFURCATE
 - d. MOTION FOR
MODIFICATION

HEARING

DATE: November 29, 2018

TIME: 9:30 a.m.

LOCATION: Malcolm Center, Kihei, Maui,
Hawaii

ORDER GRANTING INTERVENOR WAIKAPU DEVELOPMENT VENTURE LLC'S:

- 1. MOTION TO APPROVE SALE OF A PORTION OF THE PETITION AREA;**
- 2. MOTION TO ALLOW FOR SUBDIVISION OF PETITION AREA; AND**
- 3. MOTION TO BIFURCATE**
- 4. MOTION FOR MODIFICATION**

On October 12, 2018, Intervenor WAIKAPU DEVELOPMENT VENTURE, LLC ("**Intervenor**") filed its 1. Motion to Approve Sale of a Portion of the Petition Area, 2. Motion to Allow for Subdivision of Petition Area, and 3. Motion to Bifurcate (the "October 12 Intervenor Motions").

On October 26, 2018, Intervenor filed its Motion for Modification (the "October 26 Intervenor Motion")

On November 11, 2018, the State of Hawaii Office of Planning filed its Response to the October 12 Intervenor Motions.

On November 14, 2018, Intervenor filed its Errata relating to the October 26 Intervenor Motion (collectively with the October 26 Intervenor Motion the "October 26 Intervenor Motion").

On November 19, 2018, the State of Hawaii Office of Planning filed its Response to the October 26 Intervenor Motion.

On November 21, 2018, the Department of Planning of the County of Maui filed its Position Statement with regard to the October 12 Intervenor Motions as well as Petitioner Emanuel Lutheran Church of Maui's Motion for Modification filed herein on October 12, 2018 (the "ELC Motion").

On November 29, 2018, the October 12 Intervenor Motions, the October 26 Intervenor Motion, and the ELC Motion came on for hearing.

CONCLUSIONS OF LAW

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).

ORDER

This Commission, having duly considered the written reports, pleadings, and oral and written statements and testimony, and oral arguments of the parties, and motions and seconds having been made at hearing on November 29, 2018 in Kihei, Maui, Hawaii, and the October 12 Intervenor Motions and the October 26 Intervenor Motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for said motions:

HEREBY ORDERS:

The October 12 Motions Intervenor Motions are GRANTED as follow:

1. Condition 20 of that certain Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A07-773, filed herein on March 7, 2008 ("**D&O**") requiring Commission approval to sell a portion of the Petition Area described in the D&O is hereby deleted. By such deletion ELC has the permission of this Commission to sell a

portion of the Petition Area to Intervenor.

2. The Commission finds the ELC, and subsequently Intervenor has the authority to subdivide the Petition Area.
3. The present Docket is hereby bifurcated. ELC shall continue under the present Docket No. A07-773 with regard to any portion of the Petition Area retained by it, being Lot 1-B of the proposed Waikapu East Subdivision No. 3; Subdivision File No. 3.2390 (the “Subdivision”) further detailed in the October 12 Intervenor Motions. After Bifurcation, Intervenor shall be assigned its own Land Use Commission Docket Number with regard to its development of Lot 1-A of the proposed Subdivision. Intervenor shall have “Petitioner” status in said Docket and ELC shall not be a party to said Docket.

Thereafter, only those conditions set forth expressly or by reference in this Order shall apply to Intervenor, and Intervenor shall otherwise not be subject to any terms and conditions applicable to ELC in the present Docket. For reference, those pleadings filed by Intervenor herein shall be cross-referenced and made part of the new Docket.

The October 26 Intervenor Motion is GRANTED AS FOLLOW:

1. Condition 1 of the D&O is hereby modified to allow Intervenor to construct a Workforce Housing Project under HRS Chapter 201H (the “201H Project”) on Lot 1-A of the Subdivision as approved by the Maui County Council by way of Resolution 18-150 as the same may be subsequently modified or amended by the Maui County Council. ELC’s proposed development of its church and school as set forth in the D&O shall be wholly on the proposed Lot 1-B of the Subdivision.
2. Condition 2 of the D&O is modified to reflect that development of the 201H Project shall occur within four (4) years or such other time as may be allowed by the Maui

County Council or appropriate Maui County Department or Agency.

3. Intervenor shall commission a Cultural Impact Assessment for the proposed Lot 1-A and its 201H Project, and shall reasonably comply with the recommendations of the same.
4. The following conditions set forth in the D&O shall remain applicable to Intervenor's development of Lot 1-A of the Subdivision (some of which are in process or complete through the 201H application/approval process):
 - a. D&O Condition 3: Water Resource Allocation.
 - b. D&O Condition 4: Wastewater.
 - c. D&O Condition 5: Highways and Road.
 - d. D&O Condition 6 Storm Water.
 - e. D&O Condition 7 Civil Defense.
 - f. D&O Condition 8: Archeological Field Report and Historic Preservation
 - g. D&O Condition 9: Previously Unidentified Burial/Archeological/Historic Sites.
 - h. D&O Condition 10: Soil Analysis.
 - i. D&O Condition 11: Air Quality.
 - j. D&O Condition 12: Established Access Rights Protected
 - k. D&O Condition 13: Notification of Potential Nuisances.
 - l. D&O Condition 14: Provisions of the Hawaii Right to Farm Act.
 - m. D&O Condition 15 Integrated Solid Waste Management Plan except to the extent that refuse collection for residents is serviced by the County of Maui.
 - n. D&O Condition 16: Best Management Practices.

- o. D&O Condition 17: Water Conservation Measures.
- p. D&O Condition 18: Energy Conservation Measures.
- q. D&O Condition 19: Annual Reports.
- r. D&O Condition 21: Release of Conditions.
- s. D&O Condition 22: Notice of Imposition of Conditions (the "Notice")
provided, however, that the Notice shall not encumber any unit within the
201H Project transferred to a qualified individual purchaser of said unit.
- t. D&O Condition 23: Recordation of Conditions (the "Recordation") provided
however that the Recordation shall not encumber any unit within the 201H
Project transferred to a qualified individual purchaser of said unit.

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ADOPTION OF PROPOSED ORDER

The undersigned Chairperson and Commission, being familiar with the record and proceedings, hereby adopts and approve the foregoing ORDER this _____ day of _____, 2019. This ORDER may be executed in counterparts.

Done at _____, Hawai'i, this _____ day of _____, 2019 per motion on _____.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I

Deputy Attorney General

By: _____
JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on

Certified by:

DANIEL E. ORODENKER
Executive Officer