



LAND USE COMMISSION  
STATE OF HAWAII  
2022 MAR -8 A 9:35

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

In the Matter of the Petition of:	)	DOCKET NO. A15-798
	)	
WAIKAPU PROPERTIES, LLC; MTP LAND	)	ORDER GRANTING MOTION FOR
PARTNERS, LLC; WILLIAM S. FILIOS,	)	MODIFICATION OF CONDITION 8(b) OF
Trustee of the William S. Filios Separate	)	DECISION AND ORDER FILED ON
Property Trust dated APRIL 3, 2000; and	)	FEBRUARY 26, 2018
WAIALE 905 PARTNERS, LLC,	)	
	)	CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use District	)	
Boundaries into the Rural Land Use District for	)	
certain lands situated at Waikapu, District of	)	
Wailuku, Island and County of Maui, State of	)	
Hawaii, consisting of 92.394 acres and 57.454	)	
acres, bearing Tax Map Key No. (2) 3-6-	)	
004:003 (por) and to Amend the Agricultural	)	
Land Use District Boundaries into the Urban	)	
Land Use District for certain lands situated at	)	
Waikapu, District of Wailuku, Island and	)	
County of Maui, State of Hawaii, consisting of	)	
236.326 acres, 53.775 acres, and 45.054 acres,	)	
bearing Tax Map Key No. (2) 3-6-002:003	)	
(por), (2) 3-6-004:006 and (2) 3-6-005:007	)	
(por).	)	

**ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b)  
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018**

This is to certify that this is a true and correct  
copy of the document on file in the office of the  
State Land Use Commission, Honolulu, Hawai'i.

March 8, 2022 \_\_\_\_\_ by

Executive Officer



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WAIKAPU PROPERTIES, LLC; MTP LAND PARTNERS, LLC; WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated APRIL 3, 2000; and WAIALE 905 PARTNERS, LLC,	)	ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b) OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018
	)	
To Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situated at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, consisting of 92.394 acres and 57.454 acres, bearing Tax Map Key No. (2) 3-6-004:003 (por) and to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, consisting of 236.326 acres, 53.775 acres, and 45.054 acres, bearing Tax Map Key No. (2) 3-6-002:003 (por), (2) 3-6-004:006 and (2) 3-6-005:007 (por).	)	

**ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b)  
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018**

On July 2, 2021, WAIKAPU PROPERTIES, LLC; MTP LAND PARTNERS, LLC; WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated APRIL 3, 2000; and WAIALE 905 PARTNERS, LLC (collectively “Movant”), filed a Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018 (the “Motion”), Memorandum in Support of Motion, Appendices 1-2, Declaration of Michael

Atherton, and Certificate of Service, pursuant to Hawaii Revised Statutes (“HRS”) §205-4 and Hawaii Administrative Rules (“HAR”) §§ 15-15-70 and 15-15-94.

On July 7, 2021, the Office of Planning and Sustainable Development (“OPSD”) requested a 60-day time extension for filing responses on the Motion after conferring with each of the other parties.

On July 8, 2021, the Executive Officer of the State Land Use Commission granted the requested time extension for the filing of responses to the Motion.

On September 10, 2021, OPSD filed its response to the Motion, in which OPSD, based on the Department of Transportation’s comments, recommended approval of the Motion.

On September 13, 2021, Movant filed a Stipulation of the Parties on Petitioner’s Motion for Modification dated July 2, 2021, evidencing that the County of Maui (“County”) and OPSD did not oppose the Motion.

The Motion was heard via Zoom Webinar Virtual Meeting on September 23, 2021. Paul Mancini, Esq., Jeffrey Ueoka, Esq., and Mike Atherton appeared on behalf of Movant; Alison Kato, Esq., Lorene Maki, and Rodney Funakoshi appeared on behalf of OPSD; and Michael Hopper, Esq., and Kurt Wollenhaupt appeared on behalf of the County of Maui.

There was no public testimony.

At the hearing, movant presented information describing the challenges presented by Condition 8(b) of the Decision and Order filed on February 26, 2018 (“D&O”). The motion requested that condition 8(b) of the D&O be modified to be consistent with the county approval process. Condition 8(b) of the D&O requires that the movant enter into a memorandum of agreement with the State Department of Transportation, Highways Division, and another memorandum of agreement with the County of Maui. The memoranda of agreement is required to be executed prior to submittal of a subdivision application to the County of Maui. The motion requested that this condition be modified to allow the

memoranda of agreement be executed prior to the approval of the first subdivision application to the County of Maui for the Project. This change would remove the identified inconsistency with Condition 1(a) of Ordinance 4998 (2019), which approved the change in zoning of the subject property and would allow the movant to begin the subdivision process while working with the County and the Department of Transportation on the agreements.

Movant argued that good cause existed to allow the modification of the D&O in satisfaction of section 15-15-94(b), Hawaii Administrative Rules as the proposed modification would expedite the construction of much needed housing on Maui. The Project would supply at least 280 residential workforce housing units in accordance with chapter 2.96, Maui County Code. By allowing the movant to work concurrently towards subdivision approval and reaching an agreement with the County of Maui and the Department of Transportation on the mitigation of Project-generated traffic impacts, the movant should be able to deliver housing to residents at an earlier date which would help with the County of Maui's housing crisis.

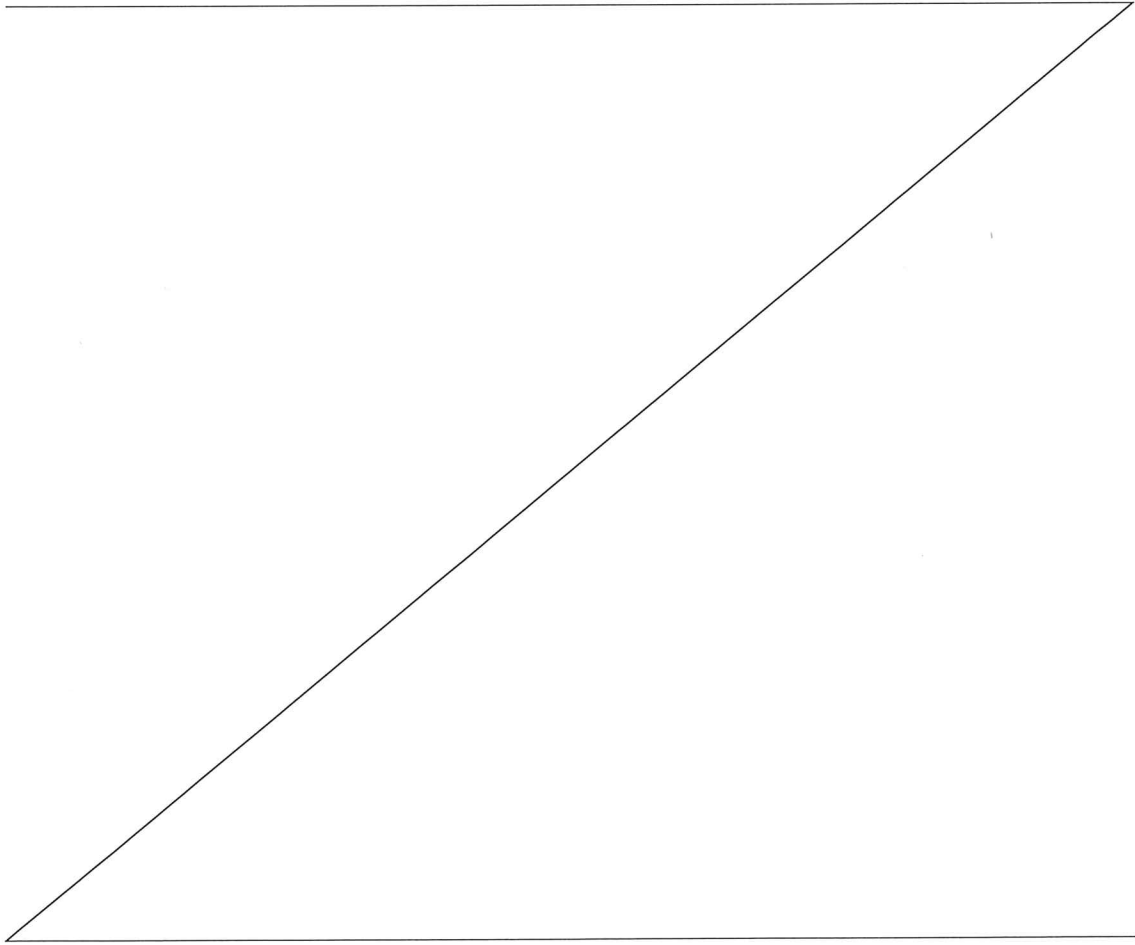
After hearing argument of the parties, discussion, questioning, and deliberation by the Commissioners, a motion was made and seconded to grant Movant's Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018, to require that the traffic memoranda of agreement be executed prior to the approval of the first subdivision application to the County of Maui for the Project. There being a vote tally of 8 ayes and 0 nays, the motion carried.

This Commission, have duly considered the Motion for Modification of Condition 8(b) of Decision and Order filed on February 26, 2018, the arguments and representations by the parties, and the record of this docket, hereby finds and concludes that Movant has supported its position for the amendment of Condition 8(b) of the Decision and Order filed on February 26, 2018. Therefore, for good cause shown,

IT IS HEREBY ORDERED that the Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018, be GRANTED and that Condition 8(b) of Decision and Order Filed on February 26, 2018, is amended to read as follows:

Petitioner shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of Maui. Petitioner shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Memoranda of Agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the Project.

All other conditions to this Commission's Decision and Order filed on February 26, 2018, shall continue in full force and effect.



ADOPTION OF ORDER

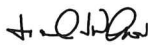
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 8<sup>th</sup>, day of March, 2022, per motion on September 23, 2021.

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:

March 8, 2022\_\_\_\_\_

Certified by:

  
\_\_\_\_\_  
DANIEL ORODENKER  
Executive Officer





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Deputy Attorney General  
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CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

Dated March 8, 2022  
Honolulu, Hawai'i.



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DANIEL E. ORODENKER  
Executive Office