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Attorneys for Petitioner

**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 PARTNERS, LLC; WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated APRIL 3, 2000; and WAIALE 905 PARTNERS, LLC,	)	MOTION TO AMEND CONDITIONS 1, 4 AND 8(b) OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018; MEMORANDUM IN SUPPORT OF MOTION; EXHIBIT "1"; ATTACHMENT "A"; DECLARATION OF MICHAEL ATHERTON; CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situate 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 situate 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).	)	

MOTION TO AMEND CONDITIONS 1, 4 AND 8(b) OF  
DECISION AND ORDER FILED ON FEBRUARY 26, 2018


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 "Petitioners") ask this Land  
Use Commission to amend Conditions 1, 4 and 8(b) of the  
*Findings of Fact, Conclusions of Law, and Decision and  
Order* dated February 26, 2018 (the "D&O"). The amendments  
will allow Petitioners to increase the size of the school  
site made the subject of the Educational Contribution  
Agreement for WAIKAPU COUNTRY TOWN, undated but executed as  
of January 31, 2017 and to increase the number of  
Residential Workforce Housing Units to be provided in the  
Project in lieu of providing direct funding and/or  
participating in the construction of: (1) traffic  
improvements; and (2) private or public wastewater  
facilities.

This motion is made pursuant to Hawaii Revised  
Statutes ("HRS") §205-4 and Hawaii Administrative Rules  
("HAR") §§ 15-15-70 and 15-15-94, which authorize the  
filing of this motion and empower the Commission to modify  
Decisions & Orders previously entered.

This motion is based on the attached memorandum, the attached Declaration of Michael Atherton, and matters to be presented at the hearing on the Motion.

Petitioner also requests a hearing on this motion pursuant to HAR §15-15-70(c).

DATED: Kahului, Hawaii, 7/19/2022.

  
\_\_\_\_\_  
PAUL R. MANCINI  
JEFFREY T. UEOKA  
Attorneys for Petitioner

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

In the Matter of the Petition     ) DOCKET NO. A15-798  
of:                                     )  
  ) MEMORANDUM IN SUPPORT OF  
WAIKAPU PROPERTIES, LLC; MTP     ) MOTION  
LAND PARTNERS, LLC; WILLIAM S.   )  
FILIOS, Trustee of the William    )  
S. Filios Separate Property       )  
Trust dated APRIL 3, 2000; and    )  
WAIALE 905 PARTNERS, LLC,         )  
  )  
To Amend the Agricultural Land     )  
Use District Boundaries into       )  
the Rural Land Use District for    )  
certain lands situate 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 situate 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).                 )  

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MEMORANDUM IN SUPPORT OF MOTION

Following a hearing, this Land Use Commission ("Commission") entered an order on February 16, 2018 that reclassified about 145.286 acre, situated at Waikapu, Maui, Hawaii (identified as Tax Map Key No. (2) 3-6-004:003 (por.)) from State

Land Use Agricultural District to State Land Use Rural District and that reclassified other parcels totaling about 342.373 acres (identified as Tax Map Key Nos. (2) 3-6-004:006, (2) 3-6-004:007, and (2) 3-6-002:003 (por.)) from State Land Use Agricultural District to State Land Use Urban District. The Decision and Order ("D&O") imposed 32 conditions involving, among other things, education (Condition 1), wastewater (Condition 4), and traffic (Condition 8)<sup>1</sup>.

Petitioner wishes to amend Conditions 1, 4 and 8(b) of the D&O to authorize amendment of the Educational Contribution Agreement to provide for an increased school site and to authorize additional Residential Workforce Housing Units, as defined in Maui County Code Chapter 2.96 ("RWHUs"), to be provided for the project in lieu of direct funding and/or participation in the construction of certain traffic and wastewater project related improvements.

In 2021, it became known that a nearby housing project, the Waiale Project, in which a middle school site was proposed, would not proceed. Recognizing the need for a middle school facility in the area, members of the State Legislature approached Petitioners to discuss possible expansion of the school site in the Project. Petitioners were willing to discuss

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<sup>1</sup> On March 8, 2022, Condition 8(b) of the D&O was amended to make the conditions of the D&O consistent with the conditions imposed by the Maui County ordinance changing the zoning for the lands within the Waikapu Country Town.

such an expansion but had concerns about making changes to the Project given the existence of that certain Educational Contribution Agreement for WAIKAPU COUNTRY TOWN, undated but executed as of January 31, 2017 (the "ECA") and the reduction of the size of the adjacent community park.

At about the same time, members of the State Legislature and representatives of the County of Maui ("County") approached Petitioners seeking additional RWHUs in the Project given the lack of affordable housing on the island of Maui. Petitioners discussed the requests with the State legislators and the County. Ultimately, Petitioners, the State legislators and the County determined that additional school land and additional RWHUs could be included in Waikapu Country Town only if such were provided in lieu of Petitioners' direct funding and/or participation in the construction of certain traffic and wastewater improvements related to the Project.

County and Petitioners entered into a Public Private Partnership Agreement dated April 28, 2022 ("PPP") to provide for more RWHUs than required of Petitioners under Chapter 2.96, Maui County Code, in lieu of providing direct funding and/or participating in the construction of certain infrastructure improvements. A copy of the executed PPP is attached as Exhibit "1."

As the D&O did not contemplate additional RWHUs, or additional acreage for the school, the PPP requires the D&O be amended to approve the changes contemplated herein. The requested amendments are shown on Attachment "A" which is incorporated by reference.

Conditions 4 on traffic and 8(b) on wastewater would be changed to explicitly allow for additional RWHUs in lieu of providing direct funding and/or participating in the construction of certain traffic improvements and wastewater improvements, subject to agreement with the government agencies charged with oversight of those improvements.

Condition 1 on education would be changed to clarify that Petitioners may work with the State Department Education to amend the ECA to address the potential expansion of the Project's school site.

Section 15-15-94(b), HAR, 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."

With the loss of the proposed middle school site in the Waiale Project District additional acreage being dedicated to school purposes in the Project will benefit the community as a whole. The ECA may be amended to incorporate the concept of the expansion of the school site and Condition 1 would be amended to allow for amendment to the ECA.

It is acknowledged that Maui is in a housing crisis, especially affordable and residential workforce housing. The proposed modifications to Conditions 4 and 8(b) will allow Petitioners to provide up to 213 additional RWHUs in lieu of providing direct funding and/or participation in the construction of certain traffic and wastewater improvements related to the Project, subject to the terms of the PPP.

In accordance with HRS §205-16, the action conforms to the State Plan, as the modification would assist in providing greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more rental and for sale affordable housing is made available to extremely low-, very low-, lower-, moderate-, and above moderate-income segments of Hawaii's population.

Based on the above, and the attached declaration, Petitioners ask that amendments to Conditions 1, 4 and 8(b) of the D&O, as shown on Attachment A, be adopted. Petitioners also ask that the Commission find that in the event of an inconsistency between the Findings of Fact and the Conditions, as modified, the modified Conditions shall control and that all



other conditions of the D&O shall remain in full force and effect.

DATED: Kahului, Hawai'i, 7/19/2022.


  
\_\_\_\_\_  
PAUL R. MANCINI  
JEFFREY T. UEOKA  
Attorneys for Petitioner

EXHIBIT 1

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

TMK: (2) 3-6-004:003 & 006  
(2) 3-6-005:007  
(2) 3-6-006:036  
(2) 3-6-002:003

Total No. of Pages: 13

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

County of Maui – Waikapu Country Town

THIS PUBLIC PRIVATE PARTNERSHIP AGREEMENT (the “Agreement”) made this 28<sup>th</sup> day of April, 2022, by and between WAIKAPU PROPERTIES, LLC, a Hawaii limited liability company; MTP LAND PARTNERS, LLC, a Hawaii limited liability company; WAIALE 905 PARTNERS, LLC, a Hawaii limited liability company; and WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated April 3, 2020, all of whose address is 1670 Honoapiilani Highway, Wailuku, Hawaii 96793 (collectively “WCT”), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (“County”).

WHEREAS, WCT intends to develop Waikapu Country Town (the “Development”), a mixed use residential community consisting of 1,433 dwelling units, with the potential for 146 ‘ohana units, commercial uses, an agricultural/conservation easement area, a park, and a school site, on approximately 1400 acres of land;

WHEREAS, the Development is subject to the requirements of the Findings of Fact, Conclusions of Law, and Decision and Order, entered on February 26, 2018, in Docket No. A15-798, which reclassified portions of Development from the State Land Use Agricultural District to the State Land Use Rural and Urban Districts (the “DBA”);

WHEREAS, the Development is also subject to the requirements of the conditions of zoning set forth in Ordinance 4998 (2019), the ordinance which changed the zoning for portions of WCT (the “CIZ”);

WHEREAS, the Development is currently configured with a 12-acre school site, however the State of Hawaii Department of Education (the “DOE”) desires to expand the area of school site;

WHEREAS, in accordance with Chapter 2.96, Maui County Code (“MCC”), upon full buildout the Development shall include a minimum of 287 residential workforce housing units (“RWHUs”) as part of the 1,433 permitted dwelling units, resulting in a breakdown of 287 RWHUs and 1146 market units;

WHEREAS, the State of Hawaii and the County desire additional RWHUs in the Development;

WHEREAS, pursuant to Chapter 2.96, MCC, the sales price for RWHUs are established by the County’s Affordable Housing Price Guidelines;

WHEREAS, the Development is limited in the total number of units that may be developed;

WHEREAS, by committing to provide the additional RWHUs, WCT is foregoing the opportunity to sell those same units at market prices, and one potential opportunity cost is shown on Exhibit “A”, attached hereto;

WHEREAS, WCT anticipates that the Development will produce, on average, 650,000 gallons per day of wastewater;

WHEREAS, WCT originally intended to construct a private wastewater treatment facility for the Development;

WHEREAS, the State of Hawaii has committed matching funds for the construction of a Central Maui Regional Wastewater Treatment Facility (“Central WWTF”);

WHEREAS, County and WCT now desire the Development to connect to the Wailuku/Kahului Wastewater Treatment Facility (“Kahului WWTF”) in the interim while the Central WWTF is being constructed;

WHEREAS, WCT is required to provide the Development's pro rata share for the total anticipated costs for design and construction of the Waiale Road Extension ("WRE") and other traffic improvements;

WHEREAS, the County and State of Hawaii are working together to secure a funding source for the construction of the WRE;

WHEREAS, the County and WCT desire to establish an agreement where WCT will provide additional RWHUs along with additional acreage for the school site in the Development in-lieu of monetary contributions for infrastructure improvements;

WHEREAS, WCT requires a commitment from the County in regards to its ability to deliver the Development's wastewater to a County treatment facility prior to the commencement of subdivision improvements for the Development;

WHEREAS, before the terms of this agreement may take effect, WCT will be required to amend certain conditions of the DBA and CIZ to make them consistent with this agreement; and

NOW THEREFORE, County and WCT, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby agree as follows:

**I. AMENDMENTS TO THE CIZ AND THE DBA**

The covenants herein shall not become effective until the conditions of the CIZ and DBA are amended to reflect the terms of this Agreement, including the use of RWHUs to satisfy infrastructure requirements. Nothing herein shall be deemed a commitment on the part of County to amend the terms of the CIZ or support an amendment of the DBA.

**II. WRE and TEMPORARY CONNECTION TO THE KAHULUI WWTF**

If allowed by the DBA and CIZ conditions, in consideration of WCT providing an additional 63 RWHUs (the "Initial RWHUs") in the Development, resulting in 350 RWHUs and 1,083 market units at full buildout, the County agrees as follows:

- A. The opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT's obligations under this Section II.
- B. Pursuant to condition 8(b) of the DBA, County and WCT shall enter into a Traffic Memorandum of Agreement, discussed further in Section III, below, where WCT's traffic impact mitigation obligations and the associated costs will be agreed upon by the County and WCT, including a determination in regards to the Project's pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ. The Traffic Memorandum of Agreement shall allow WCT to

provide RWHUs in lieu of cash contributions to satisfy the requirements of said Agreement, including WCT's obligations to:

1. Contribute the Development's pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ;
  2. Mitigate all traffic impacts generated by the Development as recommended or required by the County per Condition 8(b) of the DBA;
  3. Fully fund the intersection at Honoapiilani Highway and the WRE, per Condition 1(b) of the CIZ; and
  4. Provide a pedestrian crossing at the intersection of Honoapiilani Highway and the WRE, per Condition 1(d) of the CIZ.
- C. Upon execution of this Agreement, provided the DBA and CIZ conditions are amended to allow the Initial RWHUs to satisfy WCT's obligations to fund adequate wastewater facilities, WCT shall be able to temporarily connect and transmit a maximum amount of 100,000 gallons per day of wastewater to the Kahului WWTF for the Development (the "Temporary Connection"), granting WCT the ability to connect at least 300 dwelling units to the Kahului WWTF. Upon completion of the Central WWTF, the Temporary Connection shall expire and the wastewater shall be diverted to the Central WWTF. If allowed by the DBA and CIZ conditions, the opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development.

### **III. TRAFFIC MEMORANDUM OF AGREEMENT**

As required by conditions 8(b) of the DBA, County and WCT shall enter into a memorandum of agreement ("MOA") concerning WCT's satisfaction of the conditions of the CIZ and the DBA relating to traffic impact mitigation, including, but not limited to those listed in Subsection II.B, above, through the contribution of the Initial RWHUs.

The amount of WCT's pro rata share for the total anticipated cost for the design and construction of the WRE shall be based on the County's anticipated cost, as agreed to by the parties, shall be included in the MOA, less any State or Federal funds received for such purposes.

County and WCT shall reach an agreement regarding the cost of the various traffic impact mitigation obligations set forth in Subsection II.B, above. In the event that the agreed upon cost exceeds the opportunity cost of the Initial RWHUs, as shown on Exhibit A, by more than fifteen percent (15%), then WCT shall have the ability to 1) elect to re-assume specific traffic impact mitigation obligation(s); 2) adjust the number of Initial RWHUs to satisfy the deficit; or 3) come to an agreement with the County in the MOA to satisfy the deficit.

Upon execution of the MOA, WCT shall be deemed to have satisfied the requirement of Condition 8(b) of the DBA and Condition 1(a) of the CIZ for the purpose of allowing subdivision of the property, provided such conditions are amended to allow WCT to provide RWHUs in lieu of cash contributions to satisfy the requirements of the conditions, as each relates

to the execution of a MOA with the County. WCT will still be required to perform its obligations under such agreement even after subdivision approval, and failure to perform the terms of the agreement may constitute a violation of the conditions.

WCT and the State of Hawaii shall enter into a separate MOA in regards to the requirements of the State of Hawaii.

Nothing in this Agreement shall limit the ability of the County to negotiate the terms of the MOA, provided however, the conditions of the CIZ and DBA, and any amendments thereto, as well as the opportunity cost of the Initial RWHUs, as shown on Exhibit A, shall not be subject to further negotiation, as long as the opportunity cost is consistent with the DBA and CIZ conditions as amended.

#### **IV. PRIVATE WASTEWATER TREATMENT FACILITY**

The County and WCT recognize that it is the County's intent to construct the Central WWTF and that the construction of the Central WWTF eliminates the need for WCT to construct a private wastewater treatment facility to service the Development. Upon completion of the Central WWTF, the County acknowledges that the Development is within the service area of the Central WWTF and the remainder of the Development shall be able to connect to the Central WWTF (the "Central Connection"). In the event that WCT elects to utilize the Central Connection, an additional 150 RWHUs (the "Private WWTF RWHUs") shall be provided in the Development, resulting in 500 RWHUs and 933 market units at full buildout. If allowed by the DBA and CIZ conditions, the opportunity cost of the Private WWTF RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development, along with those matters discussed in Sections V and VIII, below. In the event that WCT does not utilize the Central Connection, the Private WWTF RWHUs will not be provided in the Development.

Upon request by WCT, County shall provide updates to WCT on the capacity of the Kahului WWTF and the status of construction of the Central WWTF. In the event that WCT utilizes the entire Temporary Connection prior to the completion of the Central WWTF, the Director is authorized to permit the Development to connect to the Kahului WWTF upon application for building permit, provided capacity is available at the Kahului WWTF.

#### **V. WASTEWATER ASSESSMENT FEES**

In addition to the matters discussed in Section II above, and if allowed by the DBA and CIZ conditions, the opportunity cost of the Initial RWHUs, shall be considered an in-lieu contribution for all wastewater assessment fees, including any connection fees, assessed to those units utilizing the initial 100,000 gallons per day of wastewater transmission.

In addition to the matters discussed in Sections IV and VIII, and if allowed by the DBA and CIZ conditions, the opportunity cost of the Private WWTF RWHUs, shall be considered an

in-lieu contribution for all wastewater assessment fees, including connection fees, assessed to the remainder of the Development and no wastewater assessment fees, including connection fees, shall be assessed to the remainder of the Development.

This Agreement shall not exempt the Development from the County's monthly rates and fees for wastewater service.

#### **VI. ADDITIONAL RESIDENTIAL WORKFORCE HOUSING UNITS**

The Initial RWHUs and the potential Private WWTF RWHUs (hereinafter collectively the "Additional RWHUs") shall be subject to the terms and conditions of the Residential Workforce Housing Agreement, and any amendments thereto, that is required by Section 2.96.080, MCC. The Additional RWHUs shall not be considered a requirement of the Development per Condition 3 of the DBA or Condition 5 of the CIZ. The Additional RWHUs shall be "for-sale" units and shall be marketed and sold in accordance with the Residential Workforce Housing Agreement. 2.96.060, MCC requires that RWHUs be made available for occupancy either before or concurrently with market rate units at the same ratio required of the development, and that certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the RWHUs concurrently or sooner. The income group distribution for the Initial RWHUs and the Private WWTF RWHUs are set forth in Exhibit B, attached hereto and made a part hereof.

#### **VII. SATISFACTION OF REQUIREMENT FOR WASTEWATER SERVICE**

County and WCT agree that if allowed by the DBA and CIZ conditions, the opportunity cost for the Additional RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development in satisfaction of the DBA and CIZ conditions. The Temporary Connection and any determination made in Section IV, above, if applicable, shall satisfy the requirement of Condition 6 of the CIZ relating to the availability of County wastewater facilities prior to the issuance of building permits, for the first 300 units or the remainder of the Development, as applicable.

#### **VIII. RECLAIMED WATER FROM THE CENTRAL WWTF**

The Development shall be required to construct a reclaimed water storage/distribution system and shall utilize reclaimed water in an amount approximately equal to the amount of wastewater delivered to the Central WWTF for irrigation purposes. In consideration of the Private WWTF RWHUs, and if allowed by the DBA and CIZ conditions, connection fees for reclaimed water service shall not be assessed to the Development in addition to the matters discussed in Sections IV and VI, above.

**IX. DEVELOPMENT OF PRIVATE WASTEWATER TREATMENT FACILITY**

Nothing in this Agreement shall preclude WCT from constructing a private wastewater treatment facility for the Development.

**X. MISCELLANEOUS**

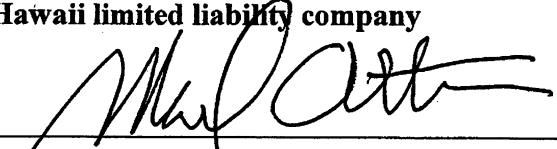
- A. Binding Effect. All the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and assigns and shall run with the land. This Agreement shall be for the benefit of parties herein.
- B. Severability. If any provision of this Agreement, or any section, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Agreement and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected.
- C. Applicable Law: Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Hawaii. Any legal action under this Agreement shall be filed in the Hawaii judicial system only, and the parties hereby unconditionally submit themselves to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii, and waive the right to assert that such courts are in an inconvenient forum.
- D. Entire Agreement; Amendments; Interpretation. This Agreement constitutes the entire agreement between the parties regarding subject matter. Any modifications of this Agreement must be in writing and signed by the parties hereto. The headings of sections in this Agreement are inserted only for convenience and shall in no way define, describe or limit the scope or intent of any provision of this Agreement. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter.
- E. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.




*(Signatures on the following page)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**WAIKAPU PROPERTIES, LLC,**  
a Hawaii limited liability company


  
By Michael W. Atherton

Its manager

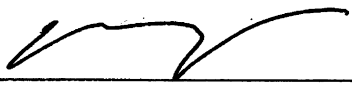
  
By Albert G. Boyce V

Its manager

**MTP LAND PARTNERS, LLC,**  
a Hawaii limited liability company

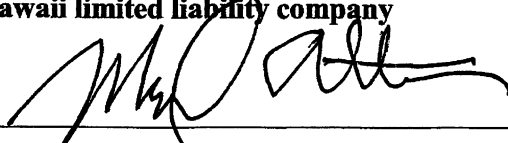
  
By Michael W. Atherton

Its manager

  
By Albert G. Boyce V

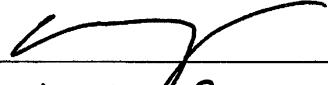
Its manager

**WAIALE 905 PARTNERS, LLC,  
a Hawaii limited liability company**



By Michael W. Atherton

Its Manager



By Albert G. Boyre

Its Manager

**WILLIAM S. FILIOS SEPARATE PROPERTY  
TRUST DATED APRIL 3, 2020**



William S. Filios, Trustee

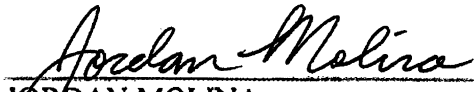
COUNTY OF MAUI

By Michael P. Victorino  
MICHAEL P. VICTORINO  
Its Mayor

APPROVAL RECOMMENDED:



\_\_\_\_\_  
LORI TSUHAKO  
Director of Housing and Human Concerns



\_\_\_\_\_  
JORDAN MOLINA  
Director of Public Works



\_\_\_\_\_  
MICHELE CHOUTEAU MCLEAN  
Director of Planning



\_\_\_\_\_  
SCOTT TERUYA  
Director of Finance



\_\_\_\_\_  
ERIC NAKAGAWA  
Director of Environmental Management

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
Deputy Corporation Counsel

**EXHIBIT A**

**OPPORTUNITY COST OF ADDITIONAL RWHUS**

Assumption that “market” price is the sales price for a 3-bedroom unit using a 4% interest rate, which is priced for the 180% area median income group, estimated to be \$951,500 (based on 2021 Maui County Affordable Sales Price Guidelines).

**Initial RHWUs (63) – \$22,368,100**

	<b>Below-Moderate 81-100</b>	<b>Moderate 101-120</b>	<b>Above-Moderate 121-140</b>
<b>Number of RHWUs</b>	19	32	12
<b>Average Sales Price</b>	\$502,200	\$607,900	\$713,650
<b>Opportunity Cost of Each RWHU</b>	\$449,300	\$343,600	\$237,850
<b>Total Value of Add'l RHWUs</b>	\$8,491,770	\$10,823,400	\$2,996,910

**Private WWTF RHWUs (150) – \$53,124,000**

	<b>Below-Moderate 81-100</b>	<b>Moderate 101-120</b>	<b>Above-Moderate 121-140</b>
<b>Number of RHWUs</b>	45	75	30
<b>Average Sales Price</b>	\$502,200	\$607,900	\$713,650
<b>Opportunity Cost of Each RWHU</b>	\$449,300	\$343,600	\$237,850
<b>Total Value of Add'l RHWUs</b>	\$20,218,500	\$25,770,000	\$7,135,500

The total opportunity cost for the Additional RHWUs is **\$75,510,100**.

## **EXHIBIT B**

### **INCOME GROUP DISTRIBUTIONS**

The income group distribution for Initial RWHUs shall be as follows:

- i. 19 units shall be marketed to “below-moderate income” residents;
- ii. 32 units shall be marketed to “moderate income” residents; and
- iii. 12 units shall be marketed to “above-moderate income” residents.

The income group distribution for Private WWTF RWHUs shall be as follows:

- i. 45 units shall be marketed to “below-moderate income” residents;
- ii. 75 units shall be marketed to “moderate income” residents; and
- iii. 30 units shall be marketed to “above-moderate income” residents.

**ATTACHMENT "A"**

Condition 1, Education Contribution Agreement, shall be deleted and the following inserted:

1. Education Contribution Agreement. Petitioner shall contribute to the development, funding, and/or construction of school facilities in compliance with the Educational Contribution Agreement for WAIKAPU COUNTRY TOWN, undated but executed as of January 31, 2017, entered into by Petitioner and the DOE, as may be amended. Petitioner shall ensure that prospective buyers, purchasers, and subsequent owner builders of lots are given notice of the requirement to pay the Central Maui District Impact Fee in accordance with the Educational Contribution Agreement, as may be amended. Such notice shall be recorded and shall run with the land.

Condition 4, Wastewater, shall be deleted and the following inserted:

4. Wastewater. Petitioner shall participate in the funding and/or construction of adequate private or public wastewater source, storage, and transmission facilities to accommodate the proposed uses for each portion of the Petition Area. The private wastewater source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui. If applicable, the public wastewater source, storage, and transmission facilities shall be controlled or operated by the County of Maui. If the private wastewater source, storage, and transmission facilities are located outside the Petition Area and within the State and County agricultural districts, Petitioner shall apply for a State Special Permit in accordance with the provisions of HRS Chapter 205. Alternatively, Petitioner may, pursuant to separate agreement with the County of Maui, provide additional residential workforce housing units in the Project in lieu of participating in the funding and construction of adequate private or public wastewater facilities to accommodate the proposed uses for each portion of

the Petition Area. If Petitioner participates in a regional wastewater system which is controlled or operated by the County of Maui, or alternatively provides additional residential workforce housing units in the Project in lieu of participation, Petitioner may request to be released from this condition applicable to private wastewater source, storage and transmission facilities.

Section b of Condition 8, Transportation - Highways, shall be deleted and the following inserted:

- b. Petitioner shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of Maui. Alternatively, Petitioner may, subject to agreement with State Department of Transportation and the County of Maui, provide additional residential workforce housing units in the Project in lieu of providing funding or constructing traffic improvements to mitigate the traffic related impacts of the Project. Petitioner shall initiate, coordinate, and meet with State Department of Transportation, Highways Division, 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 Memorandum of Agreement shall be executed prior to the approval of the first subdivision application for the Project by the County of Maui.



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

In the Matter of the Petition        ) DOCKET NO. A15-798  
of:                                        )  
  ) DECLARATION OF MICHAEL  
WAIKAPU PROPERTIES, LLC; MTP        ) ATHERTON  
LAND PARTNERS, LLC; WILLIAM S.     )  
FILIOS, Trustee of the William     )  
S. Filios Separate Property        )  
Trust dated APRIL 3, 2000; and     )  
WAIALE 905 PARTNERS, LLC,         )  
  )  
To Amend the Agricultural Land        )  
Use District Boundaries into the     )  
Rural Land Use District for         )  
certain lands situate 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     )  
situate 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).         )  
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DECLARATION OF MICHAEL ATHERTON

I, Michael Atherton, declare as follows:

1. My name is Michael Atherton. I am over the age of 21 and am competent to make this declaration. I

have personal knowledge of the facts contained in this declaration which are true and correct.

2. I am an authorized representative of 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 Petitioners.

3. I read the foregoing MOTION TO AMEND CONDITIONS 1, 4 AND 8(b) OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018, and the Memorandum in Support of the Motion. The facts stated in the Motion and Memorandum are true to the best of my knowledge.

4. Petitioners understood that it would be required to comply with the terms of that certain Educational Contribution Agreement for WAIKAPU COUNTRY TOWN, undated but executed as of January 31, 2017.

5. Petitioners understood that it would be required to provide direct funding and/or participating in the construction of: (1) traffic improvements for the mitigation of Project-generated traffic impacts; and (2) adequate private or public wastewater facilities as required by the D&O.

6. At the time of the Decision and Order filed on February 26, 2018 ("D&O") and subsequently when the

Motion for Modification of Condition 8(b) filed on March 8, 2022, the Waiale Project was anticipated to proceed and the opportunity for Petitioner to provide additional Residential Workforce Housing Units in the Project in lieu of providing direct funding and/or participating in the construction of certain traffic and wastewater improvements related to the Project .

7. Petitioners would like to assist the State of Hawaii by providing additional acreage in the Project for an expanded school site to try and minimize the impact of the loss of the middle school site in the Waiale Project.

8. Petitioners and County entered into the Public Private Partnership agreement dated April 28, 2022 ("PPP"), where Petitioner, subject to modification of the D&O, will provide RWHUs in excess of the requirement set forth in Chapter 2.96, Maui County Code, in lieu of providing direct funding and/or participating in the construction of certain infrastructure improvements.

9. The PPP makes it financially feasible for Petitioner to provide up to 213 additional RWHUs in the Project.

10. Petitioner understands that it is still required to comply with the educational contribution requirements of the State of Hawaii.


11. Petitioner understands that it is still required to comply with the affordable housing and park assessment requirements of the County of Maui.

12. Petitioner respectfully asks this Commission to approve the modification to Condition 1 of the D&O to all for Petitioner to amend the Educational Contribution Agreement so that the Project's school site may be expanded.

13. Petitioner respectfully asks this Commission to modify Conditions 4 and 8(b) of the D&O to allow for Petitioner to provide additional RWHUs in the Project in lieu of direct financial contribution funding and/or participating in the construction of certain infrastructure improvements. This modification will allow for the County and Petitioner to move forward with the PPP resulting in additional RWHUs that would not otherwise be provided if Conditions 4 and 8(b) are not modified.

I, Michael Atherton, do declare under penalty of law that the foregoing is true and correct.

DATED: Wailuku, Hawaii, 19<sup>th</sup> July, 2022.

  
MICHAEL ATHERTON

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof I caused a copy of the foregoing to be duly served by depositing same in the United States mail, postage prepaid, to the following at their last known address:

Mary Alice Evans  
Director  
State of Hawaii  
Office of Planning and Sustainable Development  
P.O. Box 2359  
Honolulu, HI 96813


Maui Planning Commission  
c/o County of Maui  
Department of Planning  
One Main Plaza, Suite 335  
2200 Main Street  
Wailuku, HI 96793

Michele Chouteau McLean  
Director  
County of Maui  
Department of Planning  
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Byran C. Yee, Esq.  
State of Hawaii  
Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813

DATED: Kahului, Hawai'i, 7/19/2022.

  
\_\_\_\_\_  
PAUL R. MANCINI  
JEFFREY T. UEOKA  
Attorneys for Petitioner