

**OFFICE OF PLANNING
AND SUSTAINABLE DEVELOPMENT**

Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawaii 96813
Telephone: (808) 587-2846
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**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)	OFFICE OF PLANNING AND
LAND PARTNERS, LLC; WILLIAM S.)	SUSTAINABLE DEVELOPMENT'S
FILIOS, TRUSTEE OF THE WILLIAM S.)	RESPONSE TO PETITIONER'S MOTION
FILIOS SEPARATE PROPERTY TRUST)	TO AMEND CONDITIONS 1, 4 AND 8(b)
DATED APRIL 3, 2000; AND WAIALE)	OF DECISION AND ORDER FILED ON
905 PARTNERS, LLC,)	FEBRUARY 26, 2018; OPSD EXHIBIT 1;
)	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,)	
bearing Tax Map Key No. (2) 3-6-002: 003)	
(por), (2) 3-6-005: 007 (por).)	
)	

**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S RESPONSE TO
PETITIONER'S MOTION TO AMEND CONDITIONS 1, 4 AND 8(b) OF DECISION
AND ORDER FILED ON FEBRUARY 26, 2018**

The Office of Planning and Sustainable Development ("OPSD") recommends approval,
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 (“Petitioners”) Motion to Amend Conditions 1, 4 and 8(b) of Decision and Order Filed on February 26, 2018 (“Motion”).

The Motion requests that the Land Use Commission (“LUC”) modify Conditions 1, 4 and 8(b) to authorize an 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 (“RWHRs”). According to the Motion, additional RWHRs will be provided for the project in lieu of direct funding and/or participation in the construction of certain traffic and wastewater project related improvements.

OPSD’s response is based on the representations and documents filed by the Petitioners, including a letter received from the Department of Transportation (“DOT”) on potential impacts to their facilities, programs, statutes and regulations applicable to these proceedings.

Condition No. 1

Petitioner’s proposed modification to Condition 1 is as follows (existing condition proposed to be deleted and the following condition in its place. New text is underlined, and text proposed to be deleted in final condition is in strike through text.)

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.

OPSD Comments:

OPSD requested comments from the State Department of Education (DOE), and is still awaiting comments. However, comments are not necessary since the proposed revisions to the existing condition is minor, and according to the Petitioner is being proposed in order to provide a larger than originally proposed school site for DOE’s middle school in the district. Because

DOE approval is necessary before any amendment can be made and because a larger school site is being provided, OPSD is satisfied that the proposed amendments to Condition 1 are reasonable.

Condition No. 4

Petitioners proposed modification to Condition 4 is as follows (existing condition proposed to be deleted in strikethrough text, proposed new text is underlined):

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 provide or public wastewater facilities to accommodate the proposed uses for a 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.

OPSD Comments: Because the provision of access to wastewater infrastructure is a county matter, OPSD defers to the County of Maui.

Condition No. 8

On March 8, 2022 the Land Use Commission (“LUC”) approved a revision to Condition 8(b) by Order Granting Motion For Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018. Petitioner is proposing new modifications to this revised condition as

follows (existing condition proposed to be deleted in strikethrough text, proposed new text is underlined):

“8. Transportation – Highways.

- a. Petitioner shall submit to the State Department of Transportation and the County of Maui for review and approval a supplemental analysis to evaluate the “No Waiale Bypass” with Petitioner’s Project in 2022 (Phase I), due to the current memorandum/addendum limited only to build-out year 2026 (Phase II). Petitioner shall also submit copies to OP, Maui County Planning Department, and the Commission.
- 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 fundi8ng or constructing traffic improvements to mitigate the traffic related impacts of the Project. Petitioner shall initiate, coordinate, and meet with the 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 for the Project by to the County of Maui ~~for the Project.~~

OPSD Comments:

OPSD notes on Page 2-3 of the Petitioner’s Memorandum in Support of Motion indicates that members of the State Legislators and the County determined that the additional school land and additional RWHRs could be included in the Petition Area if this was provided in lieu of Petitioners direct funding and/or participation in the construction of certain traffic and wastewater improvements related to the Project.

OPSD referred the Motion to the State DOT for their review and comments. The DOT submitted comments to OPSD dated August 24, 2022, indicating that the Department has no

objections to the Motion. See OPSD Exhibit 1. Consequently, OPSD has no objections to the proposed amendment to Condition 8(b).

Conclusion

Based on the above information and Petitioner's Motion and Memorandum, and DOT's support of the proposed revision of the transportation condition, OPSD recommends approval of Petitioner's motion to modify condition no.s 1 and 8(b), and defers condition 4 to the County.

DATED: Honolulu, Hawaii, this September 19, 2022.

OFFICE OF PLANNING
AND SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
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JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
EDWIN H. SNIFFEN

IN REPLY REFER TO:

DIR 0749
STP 8.3444

August 24, 2022

VIA EMAIL: lorene.k.maki@hawaii.gov

TO: MARY ALICE EVANS, DIRECTOR
OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT (OPSD)

ATTENTION: LORENE MAKI
PLANNER
OPSD, LAND USE DIVISION

FROM: JADE T. BUTAY 
DIRECTOR OF TRANSPORTATION

SUBJECT: A15-798 WAIKAPU PROPERTIES, LLC
MOTION TO AMEND CONDITIONS 1, 4, AND 8(B) OF DECISION AND
ORDER (D&O) FILED ON FEBRUARY 26, 2018
WAIKAPU, MAUI, HAWAII
TAX MAP KEY: (2) 3-6-004:003 (POR.); 3-6-002:006; 3-6-005:007 (POR.)

Thank you for your letter dated July 26, 2022, requesting the State of Hawaii Department of Transportation's (HDOT) review and comments on the subject Motion to Amend. HDOT understands that Waikapu Properties, LLC is seeking to amend Condition 1 (related to education), Condition 4 (related to wastewater), and Condition 8(b) (related to transportation) of the D&O filed on February 26, 2018.

The Petitioner and the County of Maui recently entered into a Public Private Partnership Agreement (PPP), where the Petitioner will provide additional affordable housing units in the project in lieu of providing direct funding and/or participating in the construction of certain traffic infrastructure improvements. The PPP requires that this arrangement be explicitly set forth in the Conditions of the D&O. The Petitioner will still be required to enter into a separate Traffic Memorandum of Agreement with HDOT, and the proposed modification to the D&O does not bind or obligate HDOT in any way.

HDOT has no objections to the Motion.

If there are any questions, please contact Mr. Blayne Nikaido of the HDOT Statewide Transportation Planning Office at (808) 831-7979 or via email at blayne.h.nikaido@hawaii.gov.

OPSD EXHIBIT 1

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003(por), (2) 3-6-005: 007 (por).)	
)	
)	

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.

PAUL R. MANCINI
JEFFREY T. UEOKA
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MOANA M. LUTEY, ESQ.
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PLANNING COMMISSION
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One Main Plaza, Suite 315
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, September 19, 2022.

OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR