



**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I**

In the Matter of the Petition 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,)
)
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)
Hawai'i, 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 Hawai'i, 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).)

DOCKET NO. A15-798
ORDER GRANTING MOTION TO
AMEND CONDITIONS 1,4, AND
8(b) OF DECISION AND ORDER
FILED ON FEBRUARY 26, 2018
CERTIFICATE OF SERVICE

**ORDER GRANTING MOTION TO AMEND CONDITIONS 1,4, AND 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.

Oct 26, 2022 _____ by

Executive Officer



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Property Trust dated APRIL 3, 2000; and)	FILED ON FEBRUARY 26, 2018
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53.775 acres, and 45.054 acres, bearing Tax Map)	
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ORDER GRANTING MOTION TO AMEND CONDITIONS 1,4, AND 8(b)
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018

On July 19, 2022, 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 “Petitioner” or “Movant”), filed
a Motion to Amend Conditions 1, 4, and 8(b) of Decision and Order Filed on February 26,
2018 (the “Motion”), Memorandum in Support of Motion, Exhibit 1, Attachment A,
Declaration of Michael Atherton, and Certificate of Service, pursuant to Hawai'i Revised

Statutes (“HRS”) §205-4 and Hawai‘i Administrative Rules (“HAR”) §§ 15-15-70 and 15-15-94.

The Motion sought an order amending the 2018 Decision and Order for Conditions 1, 4, and 8(b) covering the Education Contribution Agreement, Wastewater, and Transportation-Highways conditions.

The Land Use Commission (“LUC” or “Commission”), having examined the testimony, evidence and arguments of counsel presented at hearing, along with pleadings filed herein, hereby makes the following findings of fact, conclusions of law, and decision and order.

FINDINGS OF FACT

1. Between July 19 and 21, 2022, Petitioner filed a Motion to Amend Conditions 1, 4, and 8(b) of Decision and Order Filed on February 26, 2018 (the “Motion”), Memorandum in Support of Motion, Exhibit 1, Attachment A, Declaration of Michael Atherton, and Certificate of Service; paid the filing fee; and, provided a signed hard copy of the Motion to the Commission.
2. On July 29, 2022, the Office of Planning and Sustainable Development (“OPSD”) requested a time extension for filing responses on the Motion after conferring with each of the other parties; until September 19, 2022.
3. On July 29, 2022, the Executive Officer of the State Land Use Commission granted the requested time extension for the filing of responses to the Motion.
4. On August 12, 2022, Maui County Planning Department (“County”) electronically filed its Memorandum, Position Statement, and Certificate of Service.
5. On August 17, 2022, the County filed a hard copy of its Memorandum, Position Statement, and Certificate of Service.

6. On September 20, 2022, OPSD filed its Response to the 2022 Motion to Amend Conditions, Exhibit 1, and Certificate of Service.
7. On September 26, 2022, the Commission mailed and emailed the October 5-6, 2022 meeting notice and agenda to the Parties and the Statewide and Maui mailing and email lists.
8. On September 27, 2022, the Commission posted its Staff Report on Petitioner's Motion to Amend to its website; sent electronic copies to all parties; and made a hard copy available for public review at its office.
9. The Motion was heard at an in-person meeting on October 5, 2022, held in Kahului, Maui. Jeffrey Ueoka, Esq., Mike Atherton, and Duane Ting appeared on behalf of Movant; Bryan Yee, Esq., and Lorene Maki, appeared on behalf of OPSD; and Michael Hopper, Esq., Michele McLean, and Danny Dias appeared on behalf of the County of Maui.
10. There was no written public testimony received. Johanna Kamauna and Carol Lee Kamekona provided public testimony in support of the project and expressed concerns regarding traffic.
11. At the hearing, movant presented information describing the Public-Private Partnership Agreement ("PPA") and how it provides an alternative method for Petitioner in meeting conditions for wastewater and transportation infrastructure through increased provision of affordable workforce housing units. This would require additional agreements with County and State agencies. The movant also provided an update of progress to date on the Project and mitigation efforts.
12. Movant requested that Condition 1 regarding the Education Contribution Agreement be amended to allow Petitioner and the State Department of Education to amend the agreement to address potential expansion of the Project's school site. An adjacent

master-planned project that was scheduled to be the location of a middle school site will no longer be moving forward.

13. Movant argued that good cause existed to allow the amendment of the 2018 Order in satisfaction of section 15-15-94(b), Hawai‘i Administrative Rules as the proposed modification would expedite the construction of much needed affordable workforce housing on Maui. The Project would supply up to 213 additional residential workforce housing units 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 PPA and any additional agreements with the State Department of Transportation as appropriate.
14. The County spoke in support of the proposed amendments and provided argument that the County of Maui has the authority and ability to carry out the conditions in the PPA. The County believes that the PPA provides a way for the County to provide wastewater and traffic mitigation infrastructure in exchange for more affordable workforce housing units to address a county-wide housing crisis.
15. OPSD supported the Petitioner’s Motion and asked that the PPA be included in any amended Decision and Order as an attachment or by reference to a finding of fact.
16. Before the Commission went into deliberation, and after all parties had concluded their presentations, the acting chair opened the meeting up for additional public testimony. There were no members of the public wishing to testify at that time.
17. After hearing argument of the parties, discussion, questioning, public testimony, and deliberation by the Commissioners, a motion was made and seconded to grant Movant’s Motion for Modification of Conditions 1, 4, and 8(b) of the 2018 Order, and to require that a copy of the Public Private Partnership Agreement dated April 28, 2022 between the County of Maui and Petitioner be incorporated in this Decision and

Order as attached Exhibit 1. There being a vote tally of 8 ayes and 0 nays, the motion carried.

RULINGS ON PROPOSED FINDINGS OF FACT

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to HRS Chapter 205, and the LUC rules under HAR Chapter 15-15, and upon consideration of the LUC decision-making criteria under HRS §205-16, the LUC concludes, upon the clear preponderance of the evidence, that the proposed amendments to Conditions 1, 4, and 8(b) are reasonable, not violative of HRS §205-2 and are consistent with the policies and criteria established pursuant to HRS §§205-16, 205-17 and 205A-2.
2. Article XII, section 7, of the Hawai‘i State Constitution requires the LUC to protect native Hawaiian traditional and customary rights. The State of Hawai‘i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai‘i v. Hawai‘i Cnty Planning Comm’n*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (1996).

3. The LUC is required to preserve and protect customary and traditional rights of native Hawaiians. *Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000).
4. Article XI, Section 1, of the Hawai‘i State Constitution requires the State to conserve and protect Hawai‘i’s natural beauty and all natural resources, including land, water, air minerals, and energy sources. In parallel, the State and its agencies must “promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.” *In re Maui Elec. Co.*, 150 Hawai‘i 528, 536, 506 P.3d 192, 200 (2022) (citing Article XI, Section 1).
5. Article XI, Section 1 directs the State and its agencies to assess and balance protection of public natural resources and the utilization of those resources. *In re Conservation Dist. Use Application (CDUA) HA-3568*, 143 Hawai‘i 379, 400, 431 P.3d 752, 773 (2018).
6. Article XI, Section 3, of the Hawai‘i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.
7. The Petition Area is not classified as Important Agricultural Land under Part III of HRS Chapter 205.
8. Article XI, Section 7, of the Hawai‘i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai‘i’s water resources for the benefit of its people.
9. The LUC concludes that its decision and finding of good cause to amend the 2018 Order is consistent with its duties arising under Article XI, Section 1, Article XI, Section 3, Article XI, Section 7 and Article XII, Section 7 of the Hawai‘i State

Constitution, based on the records and files in this matter and the factual findings above.

10. Based on the record and files herein and the findings set forth above, the LUC concludes good cause has been shown to amend conditions 1, 4, and 8(b) of the 2018 Order, as set forth below.

DECISION AND ORDER

This Commission, having duly considered the Motion for Modification of Condition 1, 4, and 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 Conditions 1, 4, and 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 Conditions 1, 4, and 8(b) of Decision and Order Filed on February 26, 2018, be GRANTED and that Conditions 1, 4, and 8(b) of Decision and Order Filed on February 26, 2018, are amended to read as follows:

Condition 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:

“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. The Commission is not rendering an opinion or decision on whether placement of a wastewater treatment facility within the State Agricultural District is appropriate.

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 and 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.”

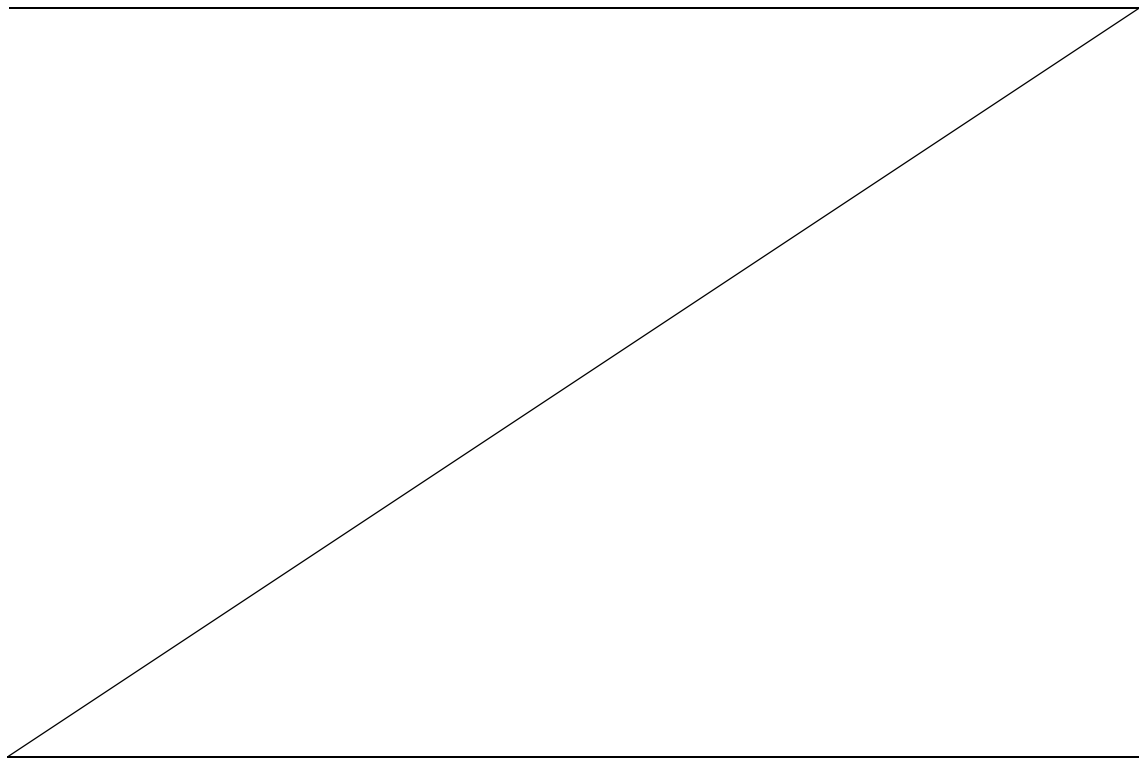
Condition 8(b) Transportation-Highways:

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 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.

IT IS FURTHER ORDERED that a copy of the Public-Private Partnership Agreement dated April 28, 2022 between the County of Maui and Petitioner is incorporated in this Decision and Order as attached Exhibit 1.



ADOPTION OF ORDER

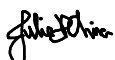
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, on Oct 26, 2022, per motion on October 5, 2022.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I



Deputy Attorney General

Nancy Cabral
By _____

NANCY CABRAL
Acting Chairperson and Commissioner

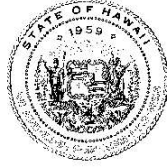
Filed and effective on:

Oct 26, 2022

Certified by:



DANIEL ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following ORDER GRANTING MOTION TO AMEND CONDITIONS 1,4, AND 8(b) OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018 on Oct 26, 2022.

MARY ALICE EVANS, DIRECTOR
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RETURN RECEIPT
REQUESTED

Dated Oct 26, 2022
Honolulu, Hawai'i.



DANIEL E. ORODENKER
Executive Office