



LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Waikapu Development Venture LLC
305 East Wakea Avenue, Suite 100
Kahului, Hawaii 96732

TMK: (2) 3-5-002:011

Total No. of Pages: 80

SECOND AMENDMENT TO DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF
DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN

THIS SECOND AMENDMENT TO DECLARATION OF CONDITIONS is made this 10th day of May, 2023, by WAIKAPU DEVELOPMENT VENTURE LLC, a Hawaii limited liability company, whose mailing address is 305 East Wakea Avenue, Suite 100, Kahului, Hawaii 96732 (hereinafter "WDV"), as Intervenor in State of Hawaii Land Use Commission Docket No. A07-773, subsequently bifurcated into Docket Nos. A07-773(a) and A07-773(b), and EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawaii nonprofit corporation, whose mailing address is 520 West One Street, Kahului, Hawaii 96732 ("ELC"), as Petitioner in State of Hawaii Land Use Commission Docket No. A07-773;

WITNESSETH:

WHEREAS, the State of Hawaii Land Use Commission (the "Commission"), by the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed on March 7, 2008, in Docket No. A07-773 (the "D&O"), amended the State Land Use district boundaries and reclassified the area identified as Tax Map Key No. (2)

3-5-002:011, area approximately 25.263 acres, as more particularly described in Exhibit A of the Declaration, as defined below (the “Petition Area”); and

WHEREAS, in accordance with Section 15-15-92 of the Commission’s Rules, the conditions imposed by the Commission in Docket No. A07-773 were required to be recorded in the Bureau of Conveyances of the State of Hawaii;

WHEREAS, the Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban, dated May 8, 2008, was recorded in the said Bureau of Conveyances as Document No. 2008-076764 (the “Declaration”), attached as Exhibit 1 to Exhibit A of this instrument;

WHEREAS, on April 12, 2018, ELC filed a Motion for Extension of Time to Complete Project;

WHEREAS, on October 12, 2018, WDV as an Intervenor, filed a motion with the Commission to modify the D&O to (1) allow for the sale of an approximately 12.5-acre portion of the Petition Area to WDV; (2) allow for the subdivision of the Petition Area to accommodate the proposed sale; (3) to allow for the 12.5-acre portion of the Petition Area to be used for WDV’s Waikapu Affordable Housing Project; and (4) upon subdivision and sale bifurcate Docket No. A07-773 to allow the portion of the Petition Area being sold to WDV to be released from the docket;

WHEREAS, on July 11, 2019, the Commission by the Findings of Fact, Conclusions of Law, and Decision and Order Granting 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; (3) Motion to Bifurcate; and (4) Motion for Modification, attached hereto as Exhibit 2, granted WDV’s October 12, 2018 motion, subject to certain conditions;

WHEREAS, the conditions of the granting of WDV’s October 12, 2018 motion are reflected in the First Amendment to Declaration of Conditions Applicable to an Amendment of District Boundary Amendment from Agricultural to Urban, dated February 9, 2022, recorded on February 24, 2022, in the Bureau of Conveyances of the State of Hawaii as Document No. A-80900119, attached hereto as Exhibit A;

WHEREAS, on July 11, 2019, the Commission by the Findings of Fact, Conclusions of Law, and Decision and Order Granting ELC’s Motion for Extension of Time and Motion for Modification (the “Time Extension”), attached hereto as Exhibit B, granted ELC’s April 12, 2018 motion, subject to certain conditions;

WHEREAS, the Time Extension required that the Declaration be amended to reflect certain changes in the Conditions of the D&O; and

NOW, THEREFORE, in accordance with the Time Extension, WDV and ELC hereby further amend the Declaration as follows:

1. Condition 2 is amended to read as follows:

2. **Reversion of District Classification.** Emmanuel Lutheran Church of Maui (“ELC”) shall develop the portion of the Petition Area not sold to Waikapu Development Venture LLC, and complete the construction of the Project no later than twenty (20) years from the date of the decision and order. If ELC fails to complete Project construction within twenty (20) years from the date of the decision and order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and require ELC to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.

Waikapu Development Venture LLC shall develop the 12.5-acre portion of the Petition Area and complete the construction of the Workforce Housing Project no later than four (4) years from the date of the Findings of Fact, Conclusions of Law, and Decision and Order Granting 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; (3) Motion to Bifurcate; and (4) Motion for Modification. If Waikapu Development Venture LLC fails to complete the development within four (4) years from the date of said Order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and require Intervener to appear before the Commission to explain why the land should not revert to its previous Agricultural classification.

2. Condition 24, is amended to read as follows:

24. **Cultural Impact Assessment.** Emmanuel Lutheran Church of Maui shall have a Cultural Impact Assessment (“CIA”) of the Petition Area completed prior to Emmanuel Lutheran Church of Maui's completion of Phase 1 of the Updated ELC Project, and Emmanuel Lutheran Church of Maui shall adhere to the recommendations of said CIA

Waikapu Development Venture LLC shall have a CIA of the Petition Area completed prior to commencement of construction of either bifurcated property of the Petition Area, and Waikapu Development Venture LLC and Waikapu Development Venture LLC shall adhere to the recommendations of said CIA.

3. A new condition, Condition 25, is added and shall read as follows:

Emmanuel Lutheran Church of Maui shall complete the first two phases of the Updated ELC Project within six (6) years of the Commission's issuance of this Order.

4. All other conditions of the D&O shall continue in full force and effect and shall further apply to ELC and WDV in Docket Nos. A07-773(a) and (b), respectively.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have cause this Second Amendment to be executed on the date first written above.

WAIKAPU DEVELOPMENT VENTURE LLC



Beverly Kurokawa, Vice President

EMMANUEL LUTHERAN CHURCH OF MAUI



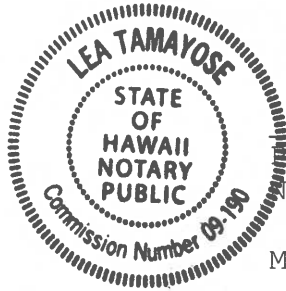
Michael Riley, President



Russell Wilson, Treasurer

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On May 10, 2023, before me personally appeared BEVERLY KUOKAWA, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 80-page SECOND AMENDMENT TO DECLARATION OF CONDITIONS APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN dated May 10, 2023, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



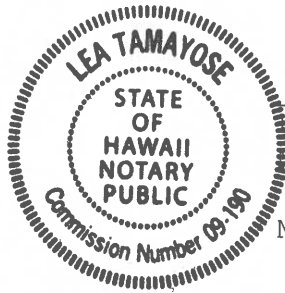
A handwritten signature in black ink, appearing to be 'Lea Tamayose', written over a horizontal line.

Print Name: Lea Tamayose
Notary Public, State of Hawaii.

My commission expires: 17 May 2025

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On 10 May 2023, before me personally appeared MICHAEL RILEY, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 80-page SECOND AMENDMENT TO DECLARATION OF CONDITIONS APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN dated May 10, 2023, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



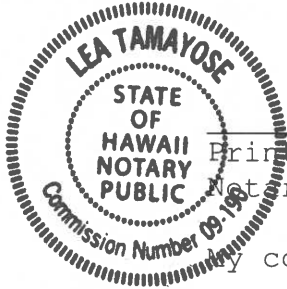
A handwritten signature in black ink, appearing to read "Lea Tamayose".

Print Name: Lea Tamayose
Notary Public, State of Hawaii.

My commission expires: 17 May 2025

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On 10 MAY 2023, before me personally appeared RUSSELL WILSON, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 80-page SECOND AMENDMENT TO DECLARATION OF CONDITIONS APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN dated May 10, 2023, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



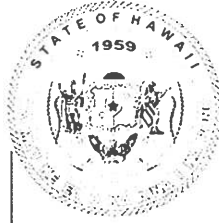
A handwritten signature in black ink, appearing to read "Lea Tamayose".

Print Name: Lea Tamayose
Notary Public, State of Hawaii.

My commission expires: 17 May 2025

EXHIBIT A

FIRST AMENDMENT TO DECLARATION



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

February 24, 2022 8:01 AM
Doc No(s) A - 80900119

Doc 1 of 1
Pkg 11970675 ICL

/s/ LESLIE T KOBATA
REGISTRAR

LAND COURT SYSTEM

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RS

Waikapu Development Venture LLC
305 East Wakea Avenue, Suite 100
Kahului, Hawaii 96732

This instrument is delivered to the Recorder's
office as an accommodation by Old Republic
Title for physical convenience only.
It has not been examined as to its validity,
execution or its effect upon title, if any.



6829001708-LA

TMK: (2) 3-5-002:011

Total No. of Pages: 43

FIRST AMENDMENT TO DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF
DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN

THIS FIRST AMENDMENT TO DECLARATION OF CONDITIONS is made this 9th
day of February, 2022, by WAIKAPU DEVELOPMENT VENTURE LLC, a Hawaii
limited liability company, whose mailing address is 305 East Wakea Avenue, Suite 100, Kahului,
Hawaii 96732 (hereinafter "WDV"), as Intervenor in State of Hawaii Land Use Commission
Docket No. A07-773, subsequently bifurcated into Docket Nos. A07-773(a) and A07-773(b), and
EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawaii nonprofit corporation, whose mailing
address is 520 West One Street, Kahului, Hawaii 96732 ("ELC"), as Petitioner in State of Hawaii
Land Use Commission Docket No. A07-773;

WITNESSETH:

WHEREAS, the State of Hawaii Land Use Commission (the "Commission"), by the
Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District
Boundary Amendment filed on March 7, 2008, in Docket No. A07-773 (the "D&O"), amended
the State Land Use district boundaries and reclassified the area identified as Tax Map Key No. (2)

3-5-002:011, area approximately 25.263 acres, as more particularly described in Exhibit A of the Declaration, as defined below (the “Petition Area”); and

WHEREAS, in accordance with Section 15-15-92 of the Commission’s Rules, the conditions imposed by the Commission is Docket No. A07-773 were required to be recorded in the Bureau of Conveyances of the State of Hawaii;

WHEREAS, the Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban, dated May 8, 2008, was recorded in the said Bureau of Conveyances as Document No. 2008-076764 (the “Declaration”), attached hereto as Exhibit 1;

WHEREAS, on October 12, 2018, WDV as an Intervenor, filed a motion with the Commission to modify the D&O to (1) allow for the sale of an approximately 12.5-acre portion of the Petition Area to WDV; (2) allow for the subdivision of the Petition Area to accommodate the proposed sale; (3) to allow for the 12.5-acre portion of the Petition Area to be used for WDV’s Waikapu Affordable Housing Project; and (4) upon subdivision and sale bifurcate Docket No. A07-773 to allow the portion of the Petition Area being sold to WDV to be released from the docket;

WHEREAS, on July 11, 2019, the Commission by the Findings of Fact, Conclusions of Law, and Decision and Order Granting 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; (3) Motion to Bifurcate; and (4) Motion for Modification (the “Modification”), attached hereto as Exhibit 2, granted WDV’s October 12, 2018 motion, subject to certain conditions;

WHEREAS, the Modification required that the Declaration be amended to reflect certain changes in the Conditions of the D&O; and

NOW, THEREFORE, in accordance with the Modification, WDV and ELC hereby amend the Declaration as follows:

1. Condition 2 is amended to read as follows:

2. **Reversion of District Classification.** Petitioner shall develop the Petition Area and complete construction of the Project no later than ten (10) years from the date of the decision and order. If Petitioner fails to complete Project construction within ten (10) years from the date of the decision and order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and require Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.

Waikapu Development Venture LLC shall develop the 12.5-acre portion of the Petition Area and complete the construction of the Workforce Housing Project

no later than four (4) years from the date of the Findings of Fact, Conclusions of Law, and Decision and Order Granting 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; (3) Motion to Bifurcate; and (4) Motion for Modification. If Waikapu Development Venture LLC fails to complete the development within four (4) years from the date of said Order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and require Intervener to appear before the Commission to explain why the land should not revert to its previous Agricultural classification.

2. Condition 20, Sale of Petition Area, shall be deleted in its entirety.

3. A new condition, Condition 24, is added and shall read as follows:

24. **Cultural Impact Assessment.** Waikapu Development Venture LLC shall have a Cultural Impact Assessment ("CIA") of the Petition Area completed prior to commencement of construction of either bifurcated property of the Petition Area, and Waikapu Development Venture LLC and Petitioner shall adhere to the recommendations of said CIA.

4. All other conditions of the D&O shall continue in full force and effect and shall further apply to Waikapu Development Venture LLC in Docket No. A07-773(b).

(SIGNATURES ON THE FOLLOWING PAGE)

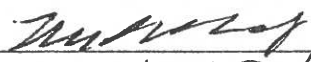
IN WITNESS WHEREOF, the parties hereto have cause this First Amendment to be executed on the date first written above.

WAIKAPU DEVELOPMENT VENTURE LLC

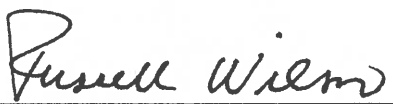


Beverly Kurokawa, Vice President

EMMANUEL LUTHERAN CHURCH OF MAUI



By Michael Reiley
Its President

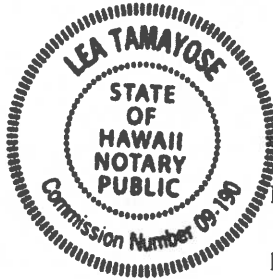


By Russell Wilson
Its Treasurer

By _____
Its _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On February 9, 2022, before me personally appeared BEVERLY KUROKAWA, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 43-page FIRST AMENDMENT TO DECLARATION OF CONDITIONS APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN dated February 9, 2022, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



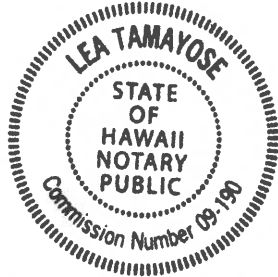
A handwritten signature in black ink, appearing to read 'Lea Tamayose', written over a horizontal line.

Print Name: Lea Tamayose
Notary Public, State of Hawaii.

My commission expires: 17 May 2025

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On 9 February 2022, before me personally appeared Michael Reiter, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 43-page FIRST AMENDMENT TO DECLARATION OF CONDITIONS APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN dated February 9, 2022, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



A handwritten signature in black ink, appearing to read "Lea Tamayose", written over a horizontal line.

Print Name: Lea Tamayose
Notary Public, State of Hawaii.

My commission expires: 17 May 2022

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On February 9, 2022, before me personally appeared Russell Wilson, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 43-page FIRST AMENDMENT TO DECLARATION OF CONDITIONS APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN dated February 9, 2022, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



Lea Tamayose

Print Name: Lea Tamayose
Notary Public, State of Hawaii.

My commission expires: 17 May 2025

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On _____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this _____-page FIRST AMENDMENT TO DECLARATION OF CONDITIONS APPLICABLE TO AN AMENDMENT OF DISTRICT BOUNDARY AMENDMENT FROM AGRICULTURAL TO URBAN dated _____, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

Print Name: _____
Notary Public, State of Hawaii.

My commission expires: _____

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241



R-847

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

MAY 13, 2008 01:00 PM

Doc No(s) 2008-076764



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 29

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

CARLSMITH BALL LLP
One Main Plaza, Suite 400
2200 Main Street
Wailuku, Maui, Hawaii 96793

Attention: Blaine J. Kobayashi
Telephone: (808) 242-4535

TITLE OF DOCUMENT:

**DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF
DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN**

PARTIES TO DOCUMENT:

DECLARANT: EMMANUEL LUTHERAN CHURCH OF MAUI
520 West One Street
Kahului, Hawaii 96732

TAX MAP KEY(S): (2) 3-5-002:011

(This document consists of 11 pages.)

**DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF
DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN**

THIS DECLARATION OF CONDITIONS is made this 8th day of May, 2008, by EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawaii non-profit corporation, whose mailing address is 520 West One Street, Kahului, Hawaii 96732, as Petitioner in State of Hawaii Land Use Commission Docket No. A07-773 (hereinafter called the "Declarant" or "Petitioner");

W I T N E S S E T H:

WHEREAS, Declarant will be developing certain real property situate at Wailuku, County of Maui, State of Hawaii, specifically identified as Tax Map Key No. (2) 3-5-002:011, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, (hereinafter called the "Petition Area"); and

WHEREAS, the State of Hawaii Land Use Commission (hereinafter called the "Commission"), by Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed on March 7, 2008, in said Docket No. A07-773 (hereinafter called the "Decision and Order"), amended the State Land Use district boundaries and reclassified the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District, subject to certain conditions enumerated therein; and

WHEREAS, pursuant to Section 15-15-92 of the Commission's Rules, the conditions imposed by the Commission in said Docket No. A07-773 shall be recorded at the Bureau of Conveyances of the State of Hawaii;

NOW, THEREFORE, Declarant hereby declares that the Petition Area described in said Exhibit "A", shall be subject to the following conditions, imposed by the Commission in Docket No. A07-773:

1. **Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification or change to a more appropriate classification.
2. **Reversion of District Classification.** Petitioner shall develop the Petition Area and complete construction of the Project no later than ten (10) years from the date of the decision and order. If Petitioner fails to complete Project construction within ten (10) years from the date of the decision and order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and require Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.
3. **Water Resource Allocation.** Petitioner shall provide drinking and irrigation water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area, to the satisfaction of the County of Maui Department of Water Supply and other appropriate State and County agencies. Petitioner shall notify the Commission of changes to its proposed water source for the Project's irrigation water needs.
4. **Wastewater.** Petitioner shall develop a wastewater collection and transmission system and other sewer improvements in the Petition Area, as required by the State of Hawaii Department of Health ("DOH") and the County of Maui Department of Environmental Management. Petitioner shall pay a pro-rata share of off-site wastewater treatment improvements, as determined by the County of Maui.

5. **Highways and Roads.** Petitioner shall prepare a revised TIAR, to be initiated after Phase 1 is completed and approximately three months after the date upon which the school opens for classes, using assumptions and methods that are mutually agreed upon by the State Department of Transportation (“DOT”) and the Petitioner, to determine the regional and local traffic impacts of the Project and recommended appropriate mitigation measures. In its assessment of current traffic conditions, the Petitioner’s revised TIAR shall use actual traffic counts and actual intersection turn counts taken during peak morning and afternoon periods approximately three months after the school opens.

Based on the findings and recommendations of the revised TIAR, the Petitioner shall contribute to or construct state highway improvements in the immediate vicinity of the Petition Area to alleviate the cumulative traffic improvements including those generated by the Project and uses, as agreed to by the Petitioner and DOT.

All state highway improvements shall be coordinated with and submitted for review and approval to DOT Highways Division. Such improvements must be planned, designed, and constructed in compliance with State requirements and the current standards established by the American Association of State Highway and Transportation Officials, and shall be provided at no cost to the State.

6. **Stormwater.** Petitioner shall fund, design, and construct drainage system improvements to manage runoff resulting from development of the Petition Area, to the satisfaction of appropriate State and County agencies, based on one-hour of runoff from a 50-year storm. Petitioner shall prevent runoff from adversely affecting State and County highway and roadway facilities or other properties located down grade from the Petition Area.

7. **Civil Defense.** Petitioner shall fund and construct, on a fair-share basis, adequate solar-powered civil defense measures to serve the Petition Area, as determined by the State of Hawaii Department of Defense, Office of Civil Defense, and County of Maui Civil Defense Agency.

8. **Archaeological Field Report and Historic Preservation Mitigation Plan.** Prior to commencement of any ground-altering activities, Petitioner shall obtain written approval and acceptance of the Petitioner's archaeological field report and monitoring plan from the State of Hawaii Department of Land and Natural Resources, State Historic Preservation Division ("SHPD"). A copy of the approval of the monitoring plan from SHPD shall be provided to the Commission within thirty (30) days of receipt by the Petitioner.

9. **Previously Unidentified Burial/Archaeological/Historic Sites.** Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from SHPD that mitigative measures have been implemented to its satisfaction.

10. **Soil Analysis.** Petitioner shall conduct a soil analysis study of the Petition Area in consultation with the DOH, Hazard Evaluation and Emergency Response Office ("HEER"), to determine any impacts on the proposed use from fertilizers, pesticides, and other chemical contaminants that may be present at elevated levels in the Petition Area. Petitioner shall undertake measures to abate and remove any hazardous materials identified during said study, to the satisfaction of HEER.

11. **Air Quality.** Petitioner shall implement soil erosion and dust control measures and participate in an air quality monitoring program as specified by the DOH.
12. **Established Access Rights Protected.** Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area for access to other areas to exercise subsistence, cultural, or religious practices.
13. **Notification of Potential Nuisances.** Petitioner shall disclose to all prospective buyers and/or lessees of the Petition Area that potential odor, noise, and dust pollution may result from agricultural uses on adjacent lands.
14. **Provisions of the Hawaii Right to Farm Act.** If any lands adjacent to the Petition Area remain in the Agricultural District, Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Hawaii Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.
15. **Integrated Solid Waste Management Plan.** Petitioner shall develop a Solid Waste Management Plan for the Petition Area in conformance with the Integrated Solid Waste Management Act, Chapter 342G, HRS, and the solid waste disposal requirements set forth by the County Department of Public Works and the County Department of Environmental Management.
16. **Best Management Practices.** Petitioner shall implement BMPs to preserve air quality and protect surface and groundwater resources. The BMPs shall be designed to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and groundwater pollution, and control dust during and after development of the Project in accordance with DOH guidelines and the County of Maui's grading ordinance.

17. **Water Conservation Measures.** Petitioner shall implement water conservation measures, as may be required by the applicable provisions of the Maui County Code, including, but not limited to, low-flow water fixtures, and shall also implement BMPs, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into the Project's landscape planting.

18. **Energy Conservation Measures.** Petitioner shall implement energy conservation and sustainable design measures, that are feasible and practicable, such as use of solar energy and solar heating and the standards and guidelines promulgated by the Building Industry Association of Hawaii, the U.S. Green Building Council, the Hawaii Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawaii, and the applicable county building codes, as amended, into the design and construction of the Project and the structures within the Petition Area.

19. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

20. **Sale of Petition Area.** Petitioner shall secure prior approval of the Commission of any sale of the Petition Area or any portion thereof.

21. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

22. **Notice of Imposition of Conditions.** Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file a certified copy of such recorded statement with the Commission.

23. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR.

The foregoing conditions shall run with the land and shall be binding upon the Petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer, pursuant to Section 15-15-91, Hawaii Administrative Rules.

The limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to the Petition Area included in this Declaration until such time that the Commission removes or releases the conditions relating to the Petition Area established through its Decision and Order filed March 7, 2008 in Docket No. A07-773.

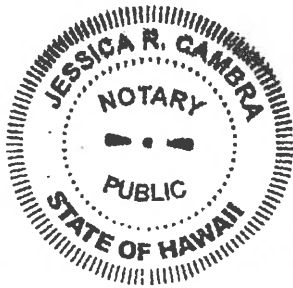
DATED: Wailuku, Hawaii, MAY 8 2008 , 2008.

EMMANUEL LUTHERAN CHURCH
OF MAUI

By Richard Sudheimer
RICHARD SUDHEIMER
Its President

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this ____ day of **MAY 8 2008**, 20____, before me personally appeared RICHARD SUDHEIMER, to me personally known, who, being by me duly sworn or affirmed, did say that he is the President of EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawaii non-profit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jessica R. Cambra

Name: Jessica R. Cambra

Notary Public, State of Hawaii

My commission expires: February 6, 2012

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 3152 to Henry Cornwell and Grant 3343 to Claus Spreckels) situate, lying and being on the easterly side of Honoapiilani Highway (F.A.P. No. 13-G) at Waikapu and Wailuku, Island and County of Maui, State of Hawaii, being LOT A of the "WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3" and thus bounded and described:

Beginning at a point at the southwesterly corner of this lot, being also the northwesterly corner of Lot B of Waikapu East (Large-Lot) Subdivision No. 3, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 5,563.76 feet south and 2,085.73 feet west and running by azimuths measured clockwise from true South:

1. Thence along the easterly side of Honoapiilani Highway (F.A.P. No. 13-G) on a curve to the left with the point of curvature azimuth from the radial point being: 271° 55' 48" and the point of tangency azimuth from the radial point being: 262° 39' 11", having a radius of 2,899.93 feet, the chord azimuth and distance being: 177° 17' 29.5" 469.02 feet to a point;
2. 172° 39' 11" 865.57 feet along same to a point;
3. 241° 16' 878.02 feet along R. P. 4529-B and 4549, L. C. Aw. 71 to Michael J. Nowlein, being also along Lot 9-A of Waiale Road and Kuikahi Drive Extension Subdivision to a point;
4. Thence along the remainder of Grant 3343 to Claus Spreckels, being also along Lot L of Waikapu East (Large-Lot) Subdivision No. 3 on a curve to the right with the

point of curvature azimuth from the radial point being: 104° 32' 45" and the point of tangency azimuth from the radial point being: 284° 39' 17", having a radius of 1,600.00 feet, the chord azimuth and distance being: 14° 36' 01" 3.04 feet to a point;

5. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 104° 39' 17" and the point of tangency azimuth from the radial point being: 99° 00', having a radius of 1,600.00 feet, the chord azimuth and distance being: 11° 49' 38.5" 157.85 feet to a point;
6. 9° 00' 84.93 feet along same to a point;
7. Thence along same on a curve to the left, having a radius of 1,560.00 feet, the chord azimuth and distance being: 354° 03' 30" 804.45 feet to a point;
8. 339° 07' 622.61 feet along the remainders of Grant 3343 to Claus Spreckels and Grant 3152 to Henry Cornwell, being also along Lot L of Waikapu East (Large-Lot) Subdivision No. 3 to a point;
9. 82° 00' 904.67 feet along the remainder of Grant 3343 to Claus Spreckels, being also along Lot B of Waikapu East (Large-Lot) Subdivision No. 3 to the point of beginning and containing an area of 25.263 acres, more or less.



LAND USE COMMISSION
STATE OF HAWAII

2019 JUL 11 P 1:51

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. (2) 3-5-002: 011

DOCKET NO. A07-773

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER
GRANTING WAIKAPŪ 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; (3) MOTION TO BIFURCATE;
AND (4) MOTION FOR MODIFICATION;
AND CERTIFICATE OF SERVICE

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
GRANTING WAIKAPŪ 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; (3) MOTION TO BIFURCATE; AND (4)
MOTION FOR MODIFICATION

AND

CERTIFICATE OF SERVICE

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

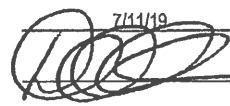
7/11/19 by _____

Executive Officer

EXHIBIT 2



LAND USE COMMISSION
STATE OF HAWAII

2019 JUL 11 P 1:51

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
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
GRANTING WAIKAPŪ 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; (3) MOTION TO BIFURCATE; AND (4)
MOTION FOR MODIFICATION

AND

CERTIFICATE OF SERVICE



LAND USE COMMISSION
STATE OF HAWAII

2019 JUL 11 P 1:52

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. (2) 3-5-002: 011

DOCKET NO. A07-773

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER
GRANTING WAIKAPŪ 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; (3) MOTION TO BIFURCATE;
AND (4) MOTION FOR MODIFICATION

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
GRANTING WAIKAPŪ 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; (3) MOTION TO BIFURCATE; AND (4)
MOTION FOR MODIFICATION

On October 12, 2018, WAIKAPŪ DEVELOPMENT VENTURE, LLC

("WDV" or "Intervenor"), filed (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;

Memorandum in Support of Motion; Affidavit of William Frampton; and Exhibits 1 to 3

(collectively "WDV's Three-Part Motion"), pursuant to Hawai'i Revised Statutes

Docket No. A07-773/Emmanuel Lutheran Church of Maui

Findings Of Fact, Conclusions Of Law, And Decision And Order Granting Waikapū 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; (3) Motion To Bifurcate; And (4) Motion For Modification

("HRS") Chapter 205 and Chapter 15-15 of the Hawai'i Administrative Rules ("HAR") §§ 15-15-70 and 15-15-94. In WDV's Three-Part Motion, WDV requested that the Land Use Commission, State of Hawai'i ("Commission"), issue an order modifying the Commission's Findings of Fact, Conclusions of Law, and Decision and Order filed March 7, 2008 ("2008 D&O"), to (1) allow for the sale of a portion of the Petition Area; and (2) allow for the subdivision of the Petition Area. Upon such subdivision and sale, WDV also requested that the pending docket be bifurcated, and the portion of the Petition Area sold to WDV be released from the pending docket.

On October 26, 2018, WDV filed a Motion for Modification; Memorandum in Support of Motion; Affidavit of William Frampton; and Exhibits A to F (collectively "WDV's Motion for Modification"), pursuant to HRS Chapter 205 and Chapter 15-15 of HAR §§ 15-15-70 and 15-15-94. In the Motion for Modification, WDV requested that the Commission issue an order modifying the 2008 D&O to allow for use of a portion of the Petition Area for an HRS Chapter 201H workforce housing project that was recently approved by the County of Maui.

The Commission, having examined the testimony, evidence, and arguments of counsel presented during the hearings, along with the pleadings filed by all parties herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On March 7, 2008, the Commission filed the 2008 D&O, granting the reclassification of the Petition Area, consisting of approximately 25.263 acres of land and identified as TMK No. (2) 3-5-002: 011, from the State Land Use Agricultural District to the State Land Use Urban District, subject to 23 conditions of approval.

2. On January 2, 2018, Emmanuel Lutheran Church of Maui, a Hawai'i non-profit corporation ("ELC" or "Petitioner"), submitted a letter to the Commission explaining that there had been delays in completing the project approved under the 2008 D&O ("Original ELC Project"), the reasons for the delays, and the proposed subdivision and sale of a portion of the Petition Area to WDV to allow for WDV's development of affordable workforce housing pursuant to HRS Chapter 201H within approximately half of the Petition Area. ELC further informed the Commission that ELC and WDV would be returning to the Commission to request the necessary approvals for both projects to proceed.

3. On April 9, 2018, ELC filed a Motion for Extension of Time to Complete Project ("ELC's Motion for Extension"), seeking a ten-year extension to Condition No. 2 of the 2008 D&O.¹

¹ ELC's Motion for Extension is addressed under a separate order. Docket No. A07-773/Emmanuel Lutheran Church of Maui Findings Of Fact, Conclusions Of Law, And Decision And Order Granting Waikapū 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; (3) Motion To Bifurcate; And (4) Motion For Modification

4. On April 12, 2018, WDV filed its Motion to be Copetitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene (“WDV’s Motion for Intervention”).

5. On April 19, 2018, ELC filed its Memorandum in Support of WDV’s Motion for Intervention.

6. On April 19, 2018, the Office of Planning, State of Hawai`i (“OP”), filed its Response to WDV’s Motion for Intervention, stating that OP had no objections to said motion.

7. On April 26, 2018, the Department of Planning, County of Maui (“County”), filed its Statement of No Objection to WDV’s Motion for Intervention.

8. On May 9, 2018, the Commission held a hearing on WDV’s Motion for Intervention in Kahului, Maui, Hawai`i, and voted to grant WDV intervenor status. On June 22, 2018, the Commission issued its Order Granting Waikapū Development Venture LLC’s Motion to Intervene.

9. On October 12, 2018, ELC filed a Motion for Modification (“ELC’s Motion for Modification”), seeking approval of an Updated ELC Project, which was of a more modest scale than the Original ELC Project and would be developed within approximately half of the Petition Area, with the other half being identified for

development of WDV's Waikapū Affordable Workforce Housing Project.²

10. On October 12, 2018, WDV filed WDV's Three-Part Motion.

11. On October 26, 2018, WDV filed WDV's Motion for Modification.

12. On November 15, 2018, WDV filed its Errata To Motion for

Modification; Memorandum in Support of Motion; Affidavit of Counsel; and Exhibit A (collectively "WDV's Errata").

13. On November 19, 2018, OP filed its Response to WDV's Three-Part Motion and its Response to WDV's Motion for Modification.

14. On November 21, 2018, the County filed its Position Statement on WDV's Three-Part Motion.

15. On November 27, 2018, the County filed its Errata to Position Statement and Statement of No Position on WDV's Errata.

16. On November 29, 2018, the Commission continued its hearing on ELC's Motion for Extension,³ and further considered ELC's Motion for Modification, WDV's Three-Part Motion, and WDV's Motion for Modification at the Malcolm Center in Kihei, Maui, Hawai'i.

17. Peter A. Horovitz, Esq., and William Frampton appeared on behalf

² ELC's Motion for Modification is addressed under a separate order.

³ The Commission initially considered ELC's Motion for Extension on May 9, 2018, but deferred action on the matter for six months.

of WDV. Jennifer A. Lim, Esq., Dr. Michael Reiley, and Leif Sjostrand appeared on behalf of ELC. Michael Hopper Esq., Deputy Corporation Counsel, was present representing the County together with Deputy Planning Director Joseph Alueta and Planner Tara Furukawa. Deputy Attorney General, Dawn T. Apuna, Esq., and Lorene Maki appeared on behalf of OP.

18. Commissioners Scheuer, Cabral, Mahi, Okuda, Aczon, Ohigashi and Wong were present. Commissioner Ohigashi was excused at the lunch recess and not present to consider WDV's Motion.

19. In considering WDV's Three-Part Motion, the Commission first took up WDV's Motion to Approve Sale of a Portion of the Petition Area.⁴

20. The County expressed support for the sale of a portion of the Petition Area to WDV.

21. OP stated that it had no objections to the sale of a portion of the Petition Area to WDV.

22. ELC stated that it had no comments on the sale of a portion of the Petition Area to WDV.

⁴ Following action by the Commission on ELC's Motion for Extension but prior to consideration of WDV's Three-Part Motion, Tom Blackburn Rodrigues requested an opportunity to provide public testimony on behalf of Go Maui, Inc. As there were no objections by the parties to Mr. Blackburn Rodrigues' request, the Commission heard his late testimony in favor of WDV's Waikapū Affordable Workforce Housing Project.

23. Commissioner Cabral moved to approve the sale of a portion of the Petition Area to WDV. Commissioner Aczon seconded the motion.

24. There being a vote tally of 6 ayes, 0 nays, and 2 excused, the motion passed.⁵

25. The Commission next took up WDV's Motion to Allow for Subdivision of Petition Area.

26. The County stated that it supported WDV's Motion to Allow for Subdivision of Petition Area.

27. OP stated that it had no objections to WDV's Motion to Allow for Subdivision of Petition Area.

28. ELC stated that it supported WDV's Motion to Allow for Subdivision of Petition Area.

29. Commissioner Mahi moved to approve WDV's Motion to Allow for Subdivision of Petition Area. Commissioner Wong seconded the motion.

30. There being a vote tally of 6 ayes, 0 nays, and 2 excused, the motion passed.

31. The Commission then considered WDV's Motion for Modification.

32. In support of WDV's Motion for Modification, WDV provided oral

⁵ There are currently eight sitting members on the Commission. The Kaua'i seat is presently vacant. Docket No. A07-773/Emmanuel Lutheran Church of Maui Findings Of Fact, Conclusions Of Law, And Decision And Order Granting Waikapū 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; (3) Motion To Bifurcate; And (4) Motion For Modification

testimony from William Frampton.

33. The County expressed support for WDV's Motion for Modification.

34. OP had no objections to WDV's Motion for Modification.

35. ELC had no objections to WDV's Motion for Modification.

36. Commissioner Mahi moved to approve WDV's Motion for

Modification, provided that WDV's Waikapū Affordable Workforce Housing Project shall be developed within four years. Commissioner Aczon seconded the motion.

37. There being a vote tally of 6 ayes, 0 nays, and 2 excused, the motion passed.

38. The Commission next considered WDV's Motion to Bifurcate.

39. WDV described the basis for its Motion to Bifurcate and the need for WDV to be granted its own docket number in this matter.

40. The County expressed support for WDV's Motion to Bifurcate.

41. OP stated that it supported WDV's Motion to Bifurcate.

42. ELC stated that it supported WDV's Motion to Bifurcate.

43. Commissioner Cabral moved to approve WDV's Motion to

Bifurcate to split the Petition Area into two portions, with the understanding that both bifurcated properties shall be subject to the condition requiring the completion of a Cultural Impact Assessment ("CIA") prior to commencement of construction on either

property and the adherence of WDV to the recommendations of the CIA.

Commissioner Wong seconded the motion.

44. There being a vote tally of 6 ayes, 0 nays, and 2 excused, the motion passed.

DESCRIPTION OF THE PETITION AREA

45. The Petition Area is located in Wailuku, Maui, Hawai'i, and consists of approximately 25.263 acres of land, identified by Tax Map Key No. (2) 3-5-002: 011.

46. ELC is the current fee owner of the Petition Area. WDV is under contract with ELC to purchase approximately 12.5 acres within the Petition Area shortly after final subdivision approval is issued by the County approving the subdivision of the Petition Area into two large lots (approximately 12.76 acres to be retained by ELC and approximately 12.50 acres to be conveyed to WDV).

DESCRIPTION OF PROJECT APPROVED UNDER THE 2008 D&O

47. Originally, ELC sought reclassification of the Petition Area to allow for the development of the Original ELC Project, which consisted of a new campus for Petitioner's church and school.

48. The Original ELC Project consisted of approximately 52,000 square feet of structures for the new school campus, which included a preschool building, 18 classrooms for grades K through 8, a multi-purpose complex, and other buildings

Docket No. A07-773/Emmanuel Lutheran Church of Maui
Findings Of Fact, Conclusions Of Law, And Decision And Order Granting Waikapū 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; (3) Motion To Bifurcate; And (4) Motion For Modification

accessory to school functions. The Original ELC Project was also to include a 450-seat sanctuary for religious and school-related functions.

49. At full buildout, the Original ELC Project would have accommodated approximately 450 students.

50. The Original ELC Project was to be completed in three phases. Phase 1 was to include the construction of necessary infrastructure, a preschool building, twelve regular classrooms, and a multi-purpose complex for art, music, and athletics. Phase 1A was to include an administration building and another building to accommodate a library, computer lab, and science room. Phase 2 was to include the 450-seat sanctuary and additional classrooms. At the time, it was anticipated that each phase would take approximately 13 months to complete.

51. Although the Petition Area is approximately 25.263 acres in size, the Original ELC Project was planned to be developed within an envelope of approximately half that size, with the remainder to be reserved for open space and unidentified future improvements.

UPDATED ELC PROJECT, DEVELOPMENT TIMELINE, AND COST ESTIMATES

52. Upon the completion of the subdivision process to split the Petition Area into two large lots, ELC will sell one of those lots to WDV. ELC will develop the Updated ELC Project on the portion of the Petition Area it retains. WDV will develop the workforce housing project authorized under County of Maui Resolution No. 18-150.

53. Consistent with the Original ELC Project, the Updated ELC Project will provide a new campus for Petitioner's church and school. However, the Updated ELC Project has been scaled down and will be developed in three phases, with the possibility of a fourth phase.

54. ELC has not obtained cost estimates or determined projected start and completion years for Phase 4 because Phase 4 is too speculative at this time.

55. Under the 2008 D&O, ELC was required to complete construction of the Original ELC Project within ten years of March 7, 2008, or by March 7, 2018.

56. Following the Commission's issuance of the 2008 D&O, ELC obtained a rezoning of the Petition Area to allow for development of the Original ELC Project.

57. Shortly after the rezoning, ELC had significant transitions within its internal leadership, including deaths of key members, which negatively affected its ability to timely develop the Original ELC Project. ELC's current efforts are now led Dr. Michael Reiley, Pastor Joshua Schneider, and David Hobus. Leif Sjostrand, one of ELC's long-standing members and a senior estimator at Goodfellow Bros., is also involved in developing the Updated ELC Project.

58. The Great Recession also adversely affected ELC's ability to develop the Original ELC Project. ELC's Kahului campus was placed on the market in 2009, but eventually taken off after a year due to a lack of buyer response and a drop in appraised value from a high of \$5.6 million to a low of \$3.5 million in 2012, which

represented a 37.5% reduction. The Great Recession also resulted in a significant reduction in ELC's enrollment numbers, from 175 students in 2008 to as low as 120 students.

59. ELC's current student enrollment is at approximately 137 students, with the goal of returning to the 175 to 180 enrollment range. ELC is in the process of seeking accreditation, which will further strengthen the school's marketability, increase its enrollment numbers, and open funding and scholarship opportunities.

60. The mortgage encumbering the Petition Area also affected ELC's ability to develop the Original ELC Project, as many grant funding opportunities either require an applicant's property to be unencumbered or take the property's existing encumbrances into consideration when awarding funds.

61. A time extension from the current deadline of March 7, 2018, will allow for the opportunity for development of the Updated ELC Project and the Waikapū Affordable Workforce Housing Project.

62. ELC has been active on Maui for more than 50 years. ELC's preschool was started in 1972.

63. ELC will use the proceeds from the sale of a portion of the Petition Area to WDV to pay off the mortgage currently encumbering the Petition Area. Remaining proceeds will also be used to fund the planning and development of the Updated ELC Project.

64. Condition 20 of the 2008 D&O prohibits the sale of the Petition Area or any portion thereof without prior Commission approval.

65. Earlier fundraising efforts by ELC had been hampered by the existing debt on the Petition Area. Certain grants are not accessible for properties that are subject to debt, such as a mortgage.

66. ELC has engaged with local and national individuals skilled in fundraising and grant writing for schools to begin the process of fundraising for the Updated ELC Project.

67. ELC's denomination, the Lutheran Church Missouri-Synod, has approved the head of its national Gift Planning Office, Michael Fisher, to work with ELC free-of-charge for 18 months to develop and execute gift planning strategies for the Updated ELC Project. Beginning in December 2018, Mr. Fisher will hold six different sessions in Hawai'i to assist ELC with gift planning. There is an executed Memorandum of Understanding in place between ELC and Mr. Fisher.

68. Chris Hart & Partners, Inc., conducted a CIA for the Petition Area prior to the 2008 D&O. Based on that CIA, the Commission found and concluded in the 2008 D&O that the Original ELC Project would not have any adverse effects on Native Hawaiian traditional and customary rights that would require protection under Article XII, Section 7, of the Hawai'i State Constitution.

69. Notwithstanding the Commission's previous findings and conclusions in the 2008 D&O, ELC and WDV have committed to conducting an additional CIA for the Petition Area.

CONCLUSIONS OF LAW

1. Pursuant to HAR § 15-15-94(b), “[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.”

2. WDV has demonstrated good cause to amend the 2008 D&O to approve the sale of a 12.5-acre portion of the Petition Area to WDV.

3. WDV has demonstrated good cause to allow for the subdivision of the Petition Area as a necessary step in the sale of a portion of the Petition Area.

4. WDV has demonstrated good cause to modify the 2008 D&O to allow for the use of a 12.5-acre portion of the Petition Area for its Waikapū Affordable Workforce Housing Project.

5. WDV has demonstrated good cause to bifurcate the subject docket, and to allow the portion of the Petition Area to be sold to WDV to be released from the docket.

6. 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.

ORDER

This Commission, having duly considered WDV's Three-Part Motion and Motion for Modification, the oral and written testimony of WDV, ELC, OP, and the County, and motions having been made and seconded at a meeting on November 29, 2018, in Kihei, Maui, Hawai'i, and the motions having received the affirmative votes required by HAR § 15-15-13(a), and there being good cause for the motions,

HEREBY ORDERS that WDV's Motion to Approve Sale of a Portion of the Petition Area be GRANTED.

Accordingly, Condition No. 20 of this Commission's 2008 D&O shall be deleted in its entirety.

IT IS ALSO ORDERED that WDV's Motion to Allow for Subdivision of Petition Area be GRANTED.

IT IS FURTHER ORDERED that WDV's Motion for Modification be GRANTED.

Accordingly, Condition No. 2 of this Commission's 2008 D&O as it applies to Intervenor shall be amended as follows:

2. Reversion of District Classification. Intervenor shall develop the 12.5-acre portion of the Petition Area and complete the construction of the Workforce Housing Project no later than four (4) years from the date of this Order. If Intervenor fails to complete the development within four (4) years from the date of

this Order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and require Intervenor to appear before the Commission to explain why the land should not revert to its previous Agricultural classification.

IT IS FURTHER ORDERED that WDV's Motion to Bifurcate is GRANTED.

Accordingly, this docket is henceforth bifurcated into Docket No. A07-773(a) consisting of the findings, conclusions, and conditions applicable to that portion of the Petition Area retained by ELC and into Docket No. A07-773(b) consisting of the findings, conclusions, and conditions applicable to that 12.5-acre portion of the Petition Area to be acquired by WDV.

IT IS ALSO FURTHER ORDERED that Intervenor's description of the HRS 201H Waikapū Affordable Workforce Housing Project in its Application for Affordable Workforce Housing Subdivision (Exhibit E to WDV's Motion for Modification) is hereby considered to be Intervenor's representations to the Commission for all purposes, including the application of Condition No. 1 of the 2008 D&O.

IT IS ALSO FURTHER ORDERED that the foregoing amendments and modifications to the 2008 D&O as it applies to Intervenor shall be subject to the following condition:

1. Intervenor shall have a CIA of the Petition Area completed prior to

commencement of construction on either bifurcated property of the Petition Area, and Docket No. A07-773/Emmanuel Lutheran Church of Maui Findings Of Fact, Conclusions Of Law, And Decision And Order Granting Waikapū 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; (3) Motion To Bifurcate; And (4) Motion For Modification

Intervenor and Petitioner shall adhere to the recommendations of said CIA.

IT IS ALSO FURTHER ORDERED that Intervenor shall record an amendment to the existing Declaration of Conditions Applicable to an Amendment of District Boundary From Agricultural to Urban, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2008-076764, to reflect the amendment to Condition No. 2, the deletion of Condition No. 20, and the addition of the new condition stated above.

All other conditions to this Commission's 2008 D&O filed March 7, 2008, shall continue in full force and effect and shall further apply to Intervenor in Docket No. A07-773(b).

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 11th day of July, 2019. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 11th day of July, 2019, per motions on November 29, 2018..

APPROVED AS TO FORM

LAND USE COMMISSION

STATE OF HAWAI'I

Randall S. Nishiyama

Deputy Attorney General

[Signature]

JONATHAN SCHEUER

Chairperson and Commissioner

[Signature]

NANCY CABRAL

Vice Chair and Commissioner



AARON MAHI

Vice Chair and Commissioner



EDMUND ACZON

Commissioner

Excused

DAWN N. CHANG

Commissioner

Vacant Seat

Kauai County

Commissioner

Excused

LEE OHIGASHI

Commissioner



GARY OKUDA

Commissioner



ARNOLD WONG

Commissioner

Filed and effective on: July 11th, 2019

Certified by:



DANIEL ORODENKER

Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of:) DOCKET NO. A07-773
)
EMMANUEL LUTHERAN CHURCH OF) CERTIFICATE OF SERVICE
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.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER GRANTING WAIKAPŪ 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; (3) MOTION TO BIFURCATE; AND (4) MOTION FOR MODIFICATION was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL. MARY ALICE EVANS, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

DAWN TAKEUCHI-APUNA, Esq.
Deputy Attorney General
425 Queen Street
Honolulu, Hawaii 96813

MICHELE MCLEAN, Director
County of Maui, Planning Department
250 South High Street
Wailuku, Hawaii 96793

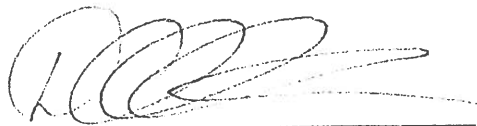
MICHAEL HOPPER, Esq.
Corporation Counsel
County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. JENNIFER LIM, Esq.
Carlsmith Ball LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Attorney for Petitioner
EMMANUEL LUTHERAN CHURCH OF MAUI

CERT. PETER A. HOROVITZ, Esq.
Merchant Horovitz & Tilley
2073 Wells Street, Suite 101
Wailuku, Hawaii 96793

Attorney for Petitioner
WAIKAPU DEVELOPMENT VENTURES, LLC.

Dated: Honolulu, Hawaii, 7/11/19.



DANIEL ORODENKER
Executive Officer

EXHIBIT B

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

FOR

EMMANUEL LUTHERAN CHURCH OF MAUI'S MOTION FOR EXTENSION OF TIME



LAND USE COMMISSION
STATE OF HAWAII

2019 JUL 11 P 1:47

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. (2) 3-5-002: 011

DOCKET NO. A07-773

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER
GRANTING PETITIONER'S MOTION
FOR EXTENSION OF TIME TO
COMPLETE PROJECT AND MOTION
FOR MODIFICATION; AND
CERTIFICATE OF SERVICE

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME TO COMPLETE
PROJECT AND MOTION FOR MODIFICATION

AND

CERTIFICATE OF SERVICE

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

7/12/19 by

Executive Officer



LAND USE COMMISSION
STATE OF HAWAII

2019 JUL 11 P 1:47

BEFORE THE LAND USE COMMISSION

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LAND USE COMMISSION
STATE OF HAWAII

2019 JUL 11 P 1:47

BEFORE THE LAND USE COMMISSION

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EMMANUEL LUTHERAN CHURCH OF
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FINDINGS OF FACT, CONCLUSIONS OF
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME TO COMPLETE
PROJECT AND MOTION FOR MODIFICATION

On April 9, 2018, EMMANUEL LUTHERAN CHURCH OF MAUI, a
Hawai`i non-profit corporation ("ELC" or "Petitioner"), filed its Motion for Extension of
Time to Complete Project; Memorandum in Support of Motion; Affidavit of Michael
Reiley; Affidavit of William Frampton; Petitioner's Exhibits "A" thru "F" (collectively
"Motion for Extension"), pursuant to Hawai`i Revised Statutes ("HRS") Chapter 205
and Chapter 15-15 of the Hawai`i Administrative Rules ("HAR") §§ 15-15-70, 15-15-79,

and 15-15-94. In the Extension Motion, ELC requested that the State of Hawai'i Land Use Commission ("Commission") issue an order modifying the Commission's Findings of Fact, Conclusions of Law, and Decision and Order, filed March 7, 2008 ("2008 D&O"), to amend Condition No. 2 to allow for a ten-year extension of time, from March 7, 2018, to March 7, 2028, to complete ELC's project.

On October 12, 2018, ELC filed a Motion for Modification; Memorandum in Support of Motion; Affidavit of Michael Reiley; and Exhibit "1" (collectively "Motion for Modification") under HRS Chapter 205 and Chapter 15-15 of HAR §§ 15-15-70, 15-15-79, and 15-15-94, requesting that the Commission issue an order modifying the 2008 D&O to allow for development of ELC's modified project ("Updated ELC Project"), including the deletion of Condition 20 of the 2008 D&O, which requires Commission approval prior to any sale of the Petition Area or any portion thereof.

The Commission, having examined the testimony, evidence, and arguments of counsel presented during the hearings, along with the pleadings filed by all parties herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On March 7, 2008, the Commission filed the 2008 D&O, granting the reclassification of approximately 25.263 acres at TMK No. (2) 3-5-002: 011 ("Petition

Area”) from the State Land Use Agricultural District to the State Land Use Urban District, subject to 23 conditions of approval.

2. On January 2, 2018, ELC submitted a letter to the Commission explaining that there had been delays in completing the project approved under the 2008 D&O (“Original ELC Project”), the reasons for the delays, and the proposed subdivision and sale of a portion of the Petition Area to Waikapū Development Venture, LLC (“WDV” or “Intervenor”), to allow for WDV’s development of affordable workforce housing pursuant to HRS Chapter 201H within approximately half of the Petition Area (“Waikapū Affordable Workforce Housing Project”). ELC further informed the Commission that ELC and WDV would be returning to the Commission to request the necessary approvals for both projects to proceed.

3. On April 9, 2018, ELC filed its Motion for Extension, seeking a ten-year extension to Condition No. 2 of the 2008 D&O.

4. On April 12, 2018, WDV filed its Motion to be Copetitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene (“WDV’s Motion for Intervention”).

5. On April 12, 2018, the Office of Planning, State of Hawai‘i (“OP”) submitted a request to the Commission for an extension of time until May 1, 2018, to respond to, inter alia, the Motion for Extension.

6. On April 13, 2018, the Commission responded to OP’s requested

extension and provided the parties until April 27, 2018, to make their respective filings.

7. On April 19, 2018, ELC filed its Memorandum in Support of WDV's Motion for Intervention.

8. On April 19, 2018, OP filed its Response to WDV's Motion for Intervention, stating that OP had no objections to said motion.

9. On April 26, 2018, the Department of Planning, County of Maui ("County"), filed its Statement of No Objection to ELC's Motion for Extension and WDV's Motion for Intervention.

10. On April 27, 2018, OP filed its Response to ELC's Motion for Extension, recommending approval of said motion subject to conditions.

11. On May 9, 2018, the Commission held a hearing on WDV's Motion for Intervention in Kahului, Maui, Hawai'i, and voted to grant WDV intervenor status. On June 22, 2018, the Commission issued its Order Granting Waikapū Development Venture LLC's Motion to Intervene.

12. On May 9, 2018, the Commission held a hearing on ELC's Motion for Extension. The Commission voted six to one to defer action on the Motion for Extension for six months and granted the Commission Chairperson discretion to grant an additional continuance of up to six months upon request by the parties.

13. The Commission further ordered ELC to provide, within 60 days of the Commission's next hearing on its Motion for Extension, a "detailed timetable of any

and all required state and county approvals and actions necessary for the current proposal to move forward and to bring Petitioner into full compliance with the [2008 D&O].”

14. On October 12, 2018, ELC filed the Motion for Modification, seeking approval of an Updated ELC Project, which was of a more modest scale than the Original ELC Project and would be developed within approximately half of the Petition Area, with the other half being identified for development of WDV’s Waikapū Affordable Workforce Housing Project. ELC’s Timeline for Development of Updated Project is identified in Exhibit 1 to its Motion for Modification.

15. On October 12, 2018, WDV filed (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; Affidavit of William Frampton; and Exhibits 1 to 3 (collectively “WDV’s Three-Part Motion”).¹

16. By letter dated October 2, 2018, but received by the Commission on October 15, 2018, WDV requested that the Commission Chairperson extend the six-month deadline imposed by the Commission at the May 9, 2018, hearing.

17. By letter dated October 16, 2018, the Commission Chairperson granted WDV’s request for an extension to the filing dates imposed by the Commission at its May 9, 2018, hearing.

¹ WDV’s Three-Part Motion is addressed under a separate order.

18. On October 19, 2018, ELC submitted its request to the Commission Chairperson for an extension of time to return to the Commission for further hearing on its Motion for Extension and for a waiver of the requirement that Petitioner's detailed timetable be filed at least 60 days prior to that hearing.

19. On October 19, 2018, OP submitted to the Commission a request that the hearing on various motions filed by ELC and WDV, including ELC's Motion for Extension and ELC's Motion for Modification, not be heard until November 29, 2018, and that the parties be given until November 21, 2018, to file their responses.

20. On October 22, 2018, the Commission Chairperson responded to ELC's and OP's requests. The Chairperson granted ELC's time extension and waiver request. The Chairperson set further hearings on the parties' filings for November 29, 2018, and ordered that all filings be made by November 19, 2018.

21. On October 26, 2018, WDV filed its Motion for Modification; Memorandum in Support of Motion; Affidavit of William Frampton; and Exhibits A to F (collectively "WDV's Motion for Modification").²

22. On November 15, 2018, WDV filed an Errata To Motion for Modification; Memorandum in Support of Motion; Affidavit of Counsel; and Exhibit A (collectively "Errata").

² WDV's Motion for Modification is addressed under a separate order.

23. On November 19, 2019, OP filed its Response to ELC's Motion for Modification.

24. On November 19, 2018, OP filed its Response to WDV's Three-Part Motion and Motion for Modification.

25. On November 21, 2018, the County filed its Position Statement on ELC's Motion for Modification and WDV's Three-Part Motion, with Exhibits A - I.

26. On November 27, 2018, the County filed an Errata to Position Statement and Statement of No Position on WDV's Errata.

27. On November 29, 2018, the Commission continued its hearing on ELC's Motion for Extension, and further considered ELC's Motion for Modification, WDV's Three-Part Motion, and WDV's Motion for Modification Motion at the Malcolm Center in Kihei, Maui, Hawai'i.

28. Jennifer A. Lim, Esq., Dr. Michael Reiley, and Leif Sjostrand appeared on behalf of ELC. Peter A. Horovitz, Esq., and William Frampton appeared on behalf of WDV. Michael Hopper Esq., Deputy Corporation Counsel, was present representing the County together with Deputy Planning Director Joseph Alueta and Planner Tara Furukawa. Deputy Attorney General, Dawn T. Apuna, Esq., and Lorene Maki appeared on behalf of OP.

29. Commissioners Scheuer, Cabral, Mahi, Okuda, Aczon, Ohigashi

and Wong were present.³

30. In support of the Motion for Extension, ELC provided oral testimony from ELC's President, Dr. Michael Reiley.

31. The County supported ELC's Motion for Extension.

32. OP expressed concerns about the Ka Pa`akai O Ka `Aina analysis for the Petition Area.

33. Commissioner Ohigashi moved to grant ELC's Motion for Extension and provide ELC with an additional ten years to develop the Petition Area, subject to the Commission reserving the right to modify or condition the length of the extension upon the Commission's subsequent consideration of ELC's Motion for Modification. Commissioner Wong seconded the motion.

34. There being a vote tally of 6 ayes, 1 nay, and 1 excused, the motion passed.⁴

35. Following action by the Commission, Tom Blackburn Rodrigues requested an opportunity to provide public testimony on behalf of Go Maui, Inc. As there were no objections by the parties to Mr. Blackburn Rodrigues' request, the Commission heard his late testimony in favor of WDV's proposed Waikapū Affordable

³ At the meeting, Commissioner Okuda disclosed that his children had attended a Lutheran School in Kāne`ohe, O`ahu, but he believed he could remain fair and impartial in the proceedings. There were no objections by the parties to his continued participation in the proceeding.

⁴ There are currently eight sitting members on the Commission. The Kaua`i seat is presently vacant.

Workforce Housing Project.

36. In support of its Motion for Modification, ELC provided oral testimony from Dr. Michael Reiley. ELC also provided oral testimony from Leif Sjostrand, a senior estimator at Goodfellow Bros., who is also involved with ELC.

37. WDV called Lisa Rotunno-Hazuka to testify in support of ELC's Motion for Modification.

38. WDV called Kimokeo Kapahulehua to testify in support of ELC's Motion for Modification.

39. After Mr. Kapahulehua's direct testimony, but before cross-examination by the parties or questioning by the Commission, Commissioner Ohigashi was excused and the Commission took a lunch recess.

40. The County supported ELC's Motion for Modification.

41. OP did not object to ELC's Motion for Modification but requested that the previously approved ten-year extension to Condition No. 2 of the 2008 D&O be amended to require the first two phases of the Updated ELC Project (i.e., fund raising and construction of a multi-purpose building) be completed within six years.

42. OP did not object to the deletion of Condition No. 20 of the 2008 D&O.

43. OP noted that WDV's and ELC's commitment to prepare a new cultural impact assessment ("CIA") was significant to OP's support of ELC's Motion for

Modification.

44. Commissioner Wong moved to grant ELC's Motion for Modification by (a) amending Condition No. 2 to allow for ten years to complete the project, provided that the initial two phases of the project shall be completed within six years as represented by ELC; (b) deleting Condition No. 20; and (c) requiring that ELC complete a CIA of the Petition Area prior to completing Phase 1 and adhere to the recommendations of the CIA. Commissioner Mahi seconded the motion.

45. There being a vote tally of 6 ayes, 0 nays, and 2 excused, the motion passed.

DESCRIPTION OF THE PETITION AREA

46. The Petition Area is located in Wailuku, Maui, Hawai'i, and consists of approximately 25.263 acres of land, identified by Tax Map Key No. (2) 3-5-002: 011.

47. ELC is the current fee owner of the Petition Area. WDV is under contract with ELC to purchase approximately 12.5 acres within the Petition Area shortly after final subdivision approval is issued by the County approving the subdivision of the Petition Area into two large lots (approximately 12.76 acres to be retained by ELC and approximately 12.50 acres to be conveyed to WDV).

DESCRIPTION OF PROJECT APPROVED UNDER THE 2008 D&O

48. Originally, ELC sought reclassification of the Petition Area to allow for the development of the Original ELC Project, which consisted of a new campus for Petitioner's church and school.

49. The Original ELC Project consisted of approximately 52,000 square feet of structures for the new school campus, which included a preschool building, 18 classrooms for grades K through 8, a multi-purpose complex, and other buildings accessory to school functions. The Original ELC Project was also to include a 450-seat sanctuary for religious and school-related functions.

50. At full buildout, the Original ELC Project would have accommodated approximately 450 students.

51. The Original ELC Project was to be completed in three phases. Phase 1 was to include the construction of necessary infrastructure, a preschool building, twelve regular classrooms, and a multi-purpose complex for art, music, and athletics. Phase 1A was to include an administration building and another building to accommodate a library, computer lab, and science room. Phase 2 was to include the 450-seat sanctuary and additional classrooms. At the time, it was anticipated that each phase would take approximately 13 months to complete.

52. Although the Petition Area is approximately 25.263 acres in size, the Original ELC Project was planned to be developed within an envelope of

approximately half that size, with the remainder to be reserved for open space and unidentified future improvements.

UPDATED ELC PROJECT, DEVELOPMENT TIMELINE, AND COST ESTIMATES

53. Upon the completion of the subdivision process to split the Petition Area into two large lots, ELC will sell one of those lots to WDV. ELC will develop the Updated ELC Project on the portion of the Petition Area it retains. WDV will develop the workforce housing project authorized under County of Maui Resolution No. 18-150.

54. Consistent with the Original ELC Project, the Updated ELC Project will provide a new campus for Petitioner's church and school. However, the Updated ELC Project has been scaled down and will be developed in three phases, with the possibility of a fourth phase.

55. Phase 1 will focus on securing the funding necessary to develop the Updated ELC Project. Petitioner will use the proceeds from the sale of a portion of the Petition Area to WDV to pay off a mortgage currently encumbering the Petition Area, at which point Petitioner will commence its fundraising campaign.

56. Phase 1 will start in 2019 and is anticipated to be completed sometime between 2020 and 2021.

57. Phase 2 will consist of the construction of a multi-purpose building and necessary site work and infrastructure. The multi-purpose building will house Petitioner's preschool during the week and then be converted over the weekend to host

worship services and other church functions. The multi-purpose building may also function as a gym space during the week after preschool hours.

58. Prior to any groundbreaking activities for Phase 2, Petitioner will obtain State of Hawai'i Department of Land and Natural Resources, State Historic Preservation Division, approval of an Archaeological Monitoring Plan and conduct a soil analysis study in consultation with the State of Hawai'i Department of Health, Hazard Evaluation and Emergency Response office.

59. Phase 2 is planned to start in 2021 and be completed sometime between 2023 and 2024. The total estimated cost for Phase 2 is \$3,850,000.

60. Phase 3 will involve the construction of approximately three classrooms and necessary site work and infrastructure. The classrooms will house ELC's middle school (grades 6-8) and include office space for ELC's pastor and preschool director. Upon completion of Phase 3, ELC will evaluate the necessity for and feasibility of Phase 4.

61. Phase 3 is planned to start in 2025 and be completed sometime between 2027 and 2028. The total estimated cost for Phase 3 is \$2,200,000.

62. Phase 4, if pursued, would consist of constructing additional classrooms sufficient to support Petitioner's elementary school (grades K-5), a sanctuary, and potentially other accessory buildings. Depending upon need and funding, ELC may relocate the entirety of its preschool-to-8th-grade school program to

its portion of the Petition Area and sell its existing Kahului campus. Phase 4 would begin with ELC exploring the marketability of its existing Kahului campus in 2028, and end with the possible sale of the Kahului campus.

63. ELC has not obtained cost estimates or determined projected start and completion years for Phase 4 because Phase 4 is too speculative at this time.

TIME EXTENSION REQUEST

64. Under the 2008 D&O, ELC was required to complete construction of the Original ELC Project within ten years of March 7, 2008, or by March 7, 2018.

65. Following the Commission's issuance of the 2008 D&O, ELC obtained a rezoning of the Petition Area to allow for development of the Original ELC Project.

66. Shortly after the rezoning, ELC had significant transitions within its internal leadership, including deaths of key members, which negatively affected its ability to timely develop the Original ELC Project. ELC's current efforts are now led Dr. Michael Reiley, Pastor Joshua Schneider, and David Hobus. Leif Sjostrand, one of ELC's long-standing members and a senior estimator at Goodfellow Bros., is also involved in developing the Updated ELC Project.

67. The Great Recession also adversely affected ELC's ability to develop the Original ELC Project. ELC's Kahului campus was placed on the market in 2009, but eventually taken off after a year due to a lack of buyer response and a drop in

appraised value from a high of \$5.6 million to a low of \$3.5 million in 2012, which represented a 37.5% reduction. The Great Recession also resulted in a significant reduction in ELC's enrollment numbers, from 175 students in 2008 to as low as 120 students.

68. ELC's current student enrollment is at approximately 137 students, with the goal of returning to the 175 to 180 enrollment range. ELC is in the process of seeking accreditation, which will further strengthen the school's marketability, increase its enrollment numbers, and open funding and scholarship opportunities.

69. The mortgage encumbering the Petition Area also affected ELC's ability to develop the Original ELC Project, as many grant funding opportunities either require an applicant's property to be unencumbered or take the property's existing encumbrances into consideration when awarding funds.

70. A time extension from the current deadline of March 7, 2018, will allow for the opportunity for development of the Updated ELC Project and the Waikapū Affordable Workforce Housing Project.

FINANCIAL CAPABILITY/FUNDRAISING FOR UPDATED ELC PROJECT

71. ELC has been active on Maui for more than 50 years. ELC's preschool was started in 1972.

72. ELC will use the proceeds from the sale of a portion of the Petition Area to WDV to pay off the mortgage currently encumbering the Petition Area.

Remaining proceeds will also be used to fund the planning and development of the Updated ELC Project.

73. Condition 20 of the 2008 D&O prohibits the sale of the Petition Area or any portion thereof without prior Commission approval.

74. Earlier fundraising efforts by ELC had been hampered by the existing debt on the Petition Area. Certain grants are not accessible for properties that are subject to debt, such as a mortgage.

75. ELC has engaged with local and national individuals skilled in fundraising and grant writing for schools to begin the process of fundraising for the Updated ELC Project.

76. ELC's denomination, the Lutheran Church Missouri-Synod, has approved the head of its national Gift Planning Office, Michael Fisher, to work with ELC free-of-charge for 18 months to develop and execute gift planning strategies for the Updated ELC Project. Beginning in December 2018, Mr. Fisher will hold six different sessions in Hawai'i to assist ELC with gift planning. There is an executed Memorandum of Understanding in place between ELC and Mr. Fisher.

CIA FOR PETITION AREA

77. Chris Hart & Partners, Inc., conducted a CIA for the Petition Area prior to the 2008 D&O. Based on that CIA, the Commission found and concluded in the 2008 D&O that the Original ELC Project would not have any adverse effects on Native

Hawaiian traditional and customary rights that would require protection under Article XII, Section 7, of the Hawai`i State Constitution.

78. Notwithstanding the Commission's previous findings and conclusions in the 2008 D&O, ELC and WDV have committed to conducting an additional CIA for the Petition Area.

CONCLUSIONS OF LAW

1. Pursuant to HAR § 15-15-94(b), "[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."

2. ELC has demonstrated good cause to amend Condition No. 2 of the 2008 D&O to allow for an additional ten years, or until March 7, 2028, for ELC to complete its development of the Updated ELC Project on a portion of the Petition Area.

3. ELC has demonstrated good cause to amend and modify the 2008 D&O to allow for the development of the Updated ELC Project and allow for a portion of the Petition Area to be developed as the Waikapū Affordable Workforce Housing Project.

4. ELC has demonstrated good cause for the deletion of Condition No. 20, which requires Commission approval prior to the sale of any portion of the Petition Area.

5. ELC's requested actions are consistent with HRS § 205-16 and relevant portions of the Hawai'i State Plan.

6. 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.

DECISION AND ORDER

Based upon the findings of fact and conclusions of law stated herein, and as stated in the Commission's 2008 D&O filed March 7, 2008, in Docket A07-773, it is hereby determined that the continued reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

This Commission, having duly considered ELC's Motion for Extension and Motion for Modification, the oral and written testimony of ELC, WDV, OP, and the County, and motions having been made and seconded at a meeting on November 29, 2018, in Kihei, Maui, Hawai'i, and the motions having received the affirmative votes required by HAR § 15-15-13(a), and there being good cause for the motions,

HEREBY ORDERS that ELC's Motion for Extension be GRANTED.

Accordingly, Condition No. 2 of this Commission's 2008 D&O shall be amended as follows:

2. Reversion of District Classification. Petitioner shall develop the Petition Area and complete the construction of the Project no later than twenty (20) years from the date of the decision and order. If Petitioner fails to complete Project construction within twenty (20) years from the date of the decision and order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and require Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.

IT IS ALSO ORDERED that Condition No. 20 of the 2008 D&O is hereby deleted in its entirety.

IT IS ALSO ORDERED that the Updated ELC Project on a portion of the Petition Area is hereby considered to be Petitioner's representations to the Commission for all purposes, including the application of Condition No. 1 of the 2008 D&O.

IT IS FURTHER ORDERED that the foregoing amendments and modifications to the 2008 D&O shall be subject to the following conditions:

1. Petitioner shall complete the initial two phases of the Updated ELC Project within six (6) years of the Commission's issuance of this Order.
2. Petitioner shall have a CIA of the Petition Area completed prior to Petitioner's completion of Phase 1 of the Updated ELC Project, and Petitioner shall adhere to the recommendations of said CIA.

IT IS ALSO FURTHER ORDERED that Petitioner shall record an amendment to the existing Declaration of Conditions Applicable to an Amendment of

District Boundary From Agricultural to Urban, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2008-076764, to reflect the amendment to Condition No. 2, the deletion of Condition No. 20, and the addition of the two new conditions stated above.

All other conditions to this Commission's 2008 D&O filed March 7, 2008, shall continue in full force and effect.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 11th day of July, 2019. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 11th day of July, 2019, per motions on November 29, 2018..

APPROVED AS TO FORM

LAND USE COMMISSION

STATE OF HAWAI'I

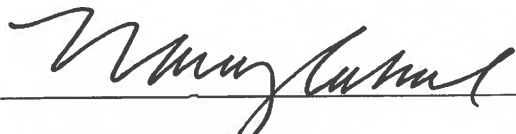
Randall S. Nishiyama

Deputy Attorney General



JONATHAN SCHEUER

Chairperson and Commissioner

* 

NANCY CABRAL*

Vice Chair and Commissioner

*Voted "No" on Motion for Extension of Time and "Yes" on Motion for Modification



AARON MAHI

Vice Chair and Commissioner



EDMUND ACZON

Commissioner

Excused

DAWN N. CHANG

Commissioner

Vacant Seat

Kauai County

Commissioner



LEE OHIGASHI

Commissioner



GARY OKUDA

Commissioner

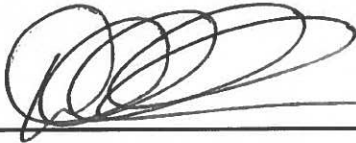


ARNOLD WONG

Commissioner

Filed and effective on: July 11th, 2019

Certified by:



DANIEL ORODENKER

Executive Officer



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of:) DOCKET NO. A07-773
)
EMMANUEL LUTHERAN CHURCH OF) CERTIFICATE OF SERVICE
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.)

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME TO COMPLETE PROJECT AND MOTION FOR MODIFICATION was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL. MARY ALICE EVANS, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

DAWN TAKEUCHI-APUNA, Esq.
Deputy Attorney General
425 Queen Street
Honolulu, Hawaii 96813

MICHELE MCLEAN, Director
County of Maui, Planning Department
250 South High Street
Wailuku, Hawaii 96793

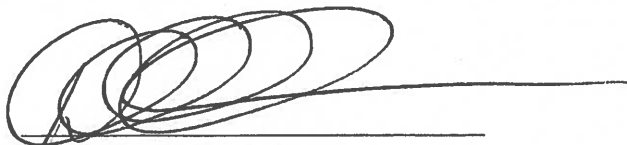
MICHAEL HOPPER, Esq.
Corporation Counsel
County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. JENNIFER LIM, Esq.
Carlsmith Ball LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Attorney for Petitioner
EMMANUEL LUTHERAN CHURCH OF MAUI

CERT. PETER A. HOROVITZ, Esq.
Merchant Horovitz & Tilley
2073 Wells Street, Suite 101
Wailuku, Hawaii 96793

Attorney for Petitioner
WAIKAPU DEVELOPMENT VENTURES, LLC.

Dated: Honolulu, Hawaii, 7/11/19.



DANIEL ORODENKER
Executive Officer