

WAIKAPU DEVELOPMENT VENTURE LLC

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May 10, 2023

Mr. Daniel E. Orodenker
Executive Officer
State of Hawaii Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804-2359



Mary Alice Evans
Director
State Office of Planning and Sustainable Development
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Kathleen Aoki
Director
County of Maui
Department of Planning
One Main Plaza, Suite 335
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Wailuku, HI 96793

Re: AMENDED 2018 – 2023 Annual Reports
LUC Docket Nos. A07-773(a) and (b)
Petition of Emmanuel Lutheran Church of Maui and
Waikapu Development Venture LLC

Dear Mr. Orodenker, Ms. Evans, and Ms. Aoki,

Pursuant to Condition 19 of the Decision and Order for the above referenced dockets, Emmanuel Lutheran Church of Maui (“ELC”) and Waikapu Development Venture (“WDV”), hereinafter collectively referred to as “Petitioner”, provide this report to the State of Hawaii Land Use Commission (the “Commission”), the State Office of Planning and Sustainable Development, and the Maui Planning Department concerning the current status of compliance with the conditions of approval.

With this report Petitioner would like to become current with its reporting obligations and note that the last report was dated February 17, 2018. We apologize for the gap in reporting and respectfully request your acceptance of this report satisfying reporting requirements for 2018, 2019, 2020, 2021, 2022, and 2023.

PROJECT DEVELOPMENTS:

On July 11, 2019, the Commission granted WDV'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 Decision and Order resulted in the bifurcation of Docket No. A07-773 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.

The July 11, 2019 Decision and Order for WDV's motion further ordered:

- 1.o Condition 2 of the 2008 D&O be amended to reflect a four (4) year requirement to complete construction of the Workforce Housing Project.o
- 2.o WDV's description of the HRS 201H Waikapu Affordable Workforce Housing Project in its Application for Affordable Workforce Housing Subdivision (Exhibit E to WDV's Motion for Modification) is considered to be WDV's representation to the Commission for all purposes, including the application of Condition No. 1o of the 2008 D&O.o
- 3.o WDV shall have a Cultural Impact Assessment of the Petition Area completed prior to commencement of construction on either bifurcated property of the Petition Area, and WDV shall adhere to the recommendations of said Cultural Impact Assessment.o
- 4.o WDV 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 condition relating to the Cultural Impact Assessment.o

The First Amendment to Declaration of Conditions Applicable to an Amendment of District Boundary Amendment from Agricultural to Urban, dated February 9, 2022, was recorded on February 24, 2022, in the Bureau of Conveyances of the State of Hawaii as Document No. A-80900119, attached hereto as **Attachment 1**.

On July 11, 2019, the Commission granted ELC's Motion for Extension of Time to Complete Project. The Decision and Order granted ELC's motion and ordered the following:

- 1.o Condition 2 of the 2008 D&O be amended to reflect a twenty (20) year requirement to complete construction of the Project from the date of 2008 D&O.o
- 2.o The Updated ELC Project on a portion of the Petition Area is hereby considered to ELC's representations to the Commission for all purposes, including the application of Condition No. 1 of the 2008 D&O.o

3. ELC shall complete the initial two phases of the Updated ELC Project within six (6) years of the Commission's issuance of the Order.
4. ELC shall have a Cultural Impact Assessment of the Petition Area completed prior to Petitioner's completion of Phase 1 of the Updated ELC Project, and ELC shall adhere to the recommendations of said Cultural Impact Assessment.
5. ELC 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, the addition of the condition relating to the Cultural Impact Assessment, and the addition of the requirement of completion of the initial two phases of the Updated ELC Project within six (6) years of the Order.

STATUS OF COMPLIANCE WITH CONDITIONS:

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.

At present there has not been any development of the ELC Petition Area, except to grub and clear a 10 foot wide area that is within the ELC Petition Area. A 6 wide gravel pathway will be installed in the 10 foot corridor that is abutting the Waiale Road right-of-way. ELC understands that any proposed changes to the originally presented development plan will need Commission approval.

WDV intends to develop its 12.5-acre portion of the Petition area in substantial compliance with the description of the HRS 201H Waikapu Affordable Workforce Housing Project in its Application for Affordable Workforce Housing Subdivision.

2. **Reversion of District Classification.**

Docket No. A07-0773(a)

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.

Docket No. A07-0773(b)

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.

ELC intends to complete construction by the March 7, 2028 deadline. As explained in its 2016 report, ELC has faced numerous factors, such as economic troubles, lower enrollments over a period of years, and lack of financial grants, that have made the development of the project under the proposed timeline impossible. The Covid-19 Pandemic made development even more difficult.

Due to the Covid-19 Pandemic and current economic conditions, WDV does not anticipate completing construction of the Workforce Housing Project by July 11, 2023. Construction plans were submitted and routed to county and state agencies in November 2021. Several agencies have not initiated their review of the plans or have not responded to re-submittal of plans. WDV obtained grading and road permits on June 24, 2022 and July 11, 2022, respectively to extend a 12" county waterline within Waiale Road. Work commenced Aug. 2022 and is expected to be completed in June 2023. The approved plans include the 6 foot wide gravel pathway discussed above in Section 1.

- 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.**

WDV is in the process of extending a County 12" waterline main 2,200 linear feet from Kuikahi Drive to the project site. Improvements include fire hydrants along the 2,200 foot corridor. The agricultural water meter that was originally installed was never activated and has been removed by Wailuku Water Company. As such, ELC anticipates changes to its originally proposed source of irrigation water. Water and other utility hook ups within the projects will be addressed through the proposed development of the WDV's workforce housing project and ELC's site improvements.

- 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.

ELC and WDV will comply with this condition upon construction of their respective projects.

- 5. Highways and Roads. Petitioner shall prepare a revised TIAR, to be initiated after Phase I 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.

ELC will comply with this condition upon construction of their respective projects. This condition does not apply to WDV.

- 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.**

ELC and WDV will comply with this condition upon construction of their respective projects.

- 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.

ELC and WDV will comply with this condition upon construction of their respective projects.

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.**

ELC has previously submitted Archaeological Reports, ELC and WDV will continue to comply with this condition.

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.**

ELC and WDV will comply with this condition upon construction of their respective projects.

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.**

An Environmental Site Assessment Phase 1 Investigation of the Petition Area was performed by Malama Environmental, the resulting report is dated November 4, 2016.

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.**

ELC and WDV will comply with this condition upon construction of their respective projects.

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.

ELC and WDV are not aware of any past or present use of the Petition Area for the stated purposes, but will both comply with this condition.

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.

ELC and WDV will comply with this condition. However, please note that there are no current agricultural uses on lands adjacent to the Petition Area.

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.

ELC and WDV will comply with this condition.

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 3420, HRS, and the solid waste disposal requirements set forth by the County Department of Public Works and the County Department of Environmental Management.

ELC and WDV will comply with this condition upon construction of their respective projects.

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.

ELC and WDV will comply with this condition upon construction of their respective projects.

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.

ELC and WDV will comply with this condition upon construction of their respective projects.

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.**

ELC and WDV will comply with this condition upon construction of their respective projects.

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.**

With this report, ELC and WDV are current with this condition.

20. **DELETED**

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.**

ELC and WDV may seek release conditions upon satisfaction of conditions.

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.**

The Notice of Imposition of Conditions by the Land Use Commission was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-040595.

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 Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban, was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-076754, on May 8, 2008, amended by 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.

WDV and ELC are completing a Second Amendment to Declaration of Conditions Applicable to an Amendment of District Boundary Amendment from Agricultural to Urban, to reflect the conditions required by the Decision and Order for ELC's Motion for Extension of Time to Complete Project. The unrecorded Second Amendment is attached hereto **Attachment 2**.

24. **Cultural Impact Assessment.**

Docket No. A07-0773(a)

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

Docket No. A07-0773(b)

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.

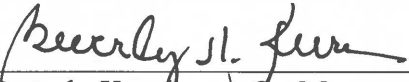
ELC and WDV will comply with this condition. The CIA was completed by Honua Consulting in March 2022, attached hereto as **Attachment 3**.

25. **Initial Two Phases of the Updated ELC Project.** 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.

ELC is working towards completing the first two phases of the Updated ELC Project (i.e., fund raising and construction of a multi-purpose building) by July 11, 2025.

Should you have any questions or requests regarding this report, please feel free to contact Heidi Bigelow at (808) 877-4202 or via email at heidi@westmauland.com. Your acceptance of this report is appreciated.

WAIKAPU DEVELOPMENT VENTURE LLC
By Waiale Road 201 LLC
Its Member



Beverly Kurokawa, Co-Manager

EMMANUEL LUTHERAN CHURCH OF MAUI



Michael Riley, President



Russell Wilson, Treasurer