

**MANCINI, WELCH & GEIGER LLP**

JEFFREY T. UEOKA                      8402-0  
305 East Wakea Avenue, Suite 200  
Kahului, Hawaii 96732  
Telephone:   (808) 871-8351  
Facsimile:   (808) 871-0732



Attorney for Petitioner

**BEFORE THE LAND USE COMMISSION**

**OF THE STATE OF HAWAII**

In the Matter of the Petition of:	)	DOCKET NO. A07-773(b)
	)	
EMMANUEL LUTHERAN CHURCH OF MAUI	)	MOTION FOR EXTENSION OF TIME TO COMPLETE PROJECT AND NOTIFICATION OF AMENDMENT TO THE HRS 201H WAIKAPU AFFORDABLE HOUSING PROJECT;
	)	
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	)	MEMORANDUM IN SUPPORT OF MOTION; ATTACHMENT 1; DECLARATION OF TERRANCE MICHAEL KEONI GOMES; CERTIFICATE OF SERVICE
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	)	
	)	

MOTION FOR EXTENSION OF TIME TO COMPLETE PROJECT  
AND NOTIFICATION OF AMENDMENT TO THE HRS 201H WAIKAPU  
AFFORDABLE HOUSING PROJECT

Petitioner WAIKAPU DEVELOPMENT VENTURE, LLC

("Petitioner"), by and through its legal counsel, MANCINI, WELCH, AND GEIGER, LLP, hereby respectfully requests that this Land Use Commission issue an order modifying the Commission's Findings of Fact, Conclusions of Law in Docket

No. A07-773, filed on March 7, 2008, to amend Condition 2 to extend the completion of construction deadline to September 7, 2027.

This motion is made pursuant to Hawaii Revised Statutes ("HRS") §205-4 and Hawaii Administrative Rules ("HAR") §§ 15-15-70, 15-15-79 and 15-15-94, which authorize the filing of this motion and empower the Commission to modify Decisions & Orders previously entered.

This motion is based on the attached memorandum, the attached declaration of Terrance Michael Keoni Gomes, and matters to be presented at the hearing on the Motion.

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

DATED: Kahului, Hawaii, June 6, 2023.

  
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JEFFREY T. UEOKA  
Attorney for Petitioner

**BEFORE THE LAND USE COMMISSION**

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In the Matter of the Petition ) DOCKET NO. A07-773(b)  
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) MOTION FOR EXTENSION OF TIME  
EMMANUEL LUTHERAN CHURCH OF ) TO COMPLETE PROJECT AND  
MAUI ) NOTIFICATION OF AMENDMENT TO  
) THE HRS 201H WAIKAPU  
To Amend The Land Use District ) AFFORDABLE HOUSING PROJECT  
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 )  
)  
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MEMORANDUM IN SUPPORT OF MOTION

The Land Use Commission of the State of Hawai'i ("Commission") reclassified approximately 25.263-acres of land in Waikapu, Maui, Hawaii ("Petition Area") into the State Land Use ("SLU") Urban District by Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A07-773, filed on March 7, 2008 ("D&O"). The petitioner in that matter was EMMANUEL LUTHERAN CHURCH OF MAUI, a Hawai'i nonprofit corporation ("ELC").

For various reasons ELC was forced to modify and update its project concept and on about April 2018 filed a Motion for Extension of Time to Complete Project with the Commission. ELC also outlined the concept of selling a portion of the Petition Area to Waikapu Development Venture, LLC ("Petitioner" or "WDV")

for the development of a 80-unit, 100% affordable, HRS Chapter 201H project (hereinafter the "Project").

On about September 2018, the Maui County Council, through Resolution 18-150, approved the Project with modifications, and required that construction commence on the Project within two (2) years and that construction be completed within four (4) years.

On about October 2018, WDV filed a 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.

On July 11, 2019, the Commission issued Findings of Fact, Conclusions of Law, and Decision and Order Granting ELC's Motion for Extension of Time and Motion for Modification.

On July 11, 2019, the Commission also issued 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 (hereinafter the "WDV D&O").

The WDV D&O amended Condition 2 of the D&O to require that WDV complete the Project within four (4) years of the date of D&O (March 7, 2018).

On about July 2020, the Maui County Council, in recognition of the effects of the Covid-19 Pandemic, through Resolution 20-107 extended the commencement of construction and completion of

construction deadlines for the Project by two (2) years, to September 7, 2022 and September 7, 2024, respectively.

On about August 2022, construction for the Project commenced with the installation of offsite waterline and fire hydrants.

Due to increased interest rates, which resulted in higher financing costs and lower sales prices, a dramatic increase in the cost of materials, and the County passing legislation that served to lower affordable housing sales prices, WDV was prepared to abandon the project. During the County's Fiscal Year 2024 ("FY24") budget deliberations, WDV requested a grant from the County to subsidize the Project so that it may be completed. The County in acknowledging the value of the Project to the community placed a \$10,650,000 appropriation in the County's FY24 Budget for the Project. The appropriation is contingent upon the Maui County Council approving an extension of the completion of construction deadline for the Project.

WDV is working with the Maui County Department of Housing and Human Concerns to request that the Maui County Council amend the HRS Chapter 201H approval, to include, without limitation, the following:

1. An extension of the completion of construction deadline for an additional three (3) years, from September 7, 2024 to September 7, 2027; and

2. Modifications to the project layout to remove a road and the pocket park so that the six (6) duplexes may be converted to 12 single-family dwellings, as shown on Attachment 1.

WDV respectfully requests that the Commission issue an order modifying Condition 2 of the D&O to extend the completion of construction deadline for the Project to September 7, 2027. This modification provides the additional time required for WDV to complete the Project and additionally this modification will result in the completion construction deadline in the D&O consistent with the Project's 201H Resolution.

Section 15-15-94(b), HAR, provides that, "[f]or good cause shown, the [C]ommission may act to modify or delete any of the conditions imposed or modify the [C]ommission's order."

It is acknowledged that Maui is in a housing crisis, especially affordable and residential workforce housing. The proposed modifications to Condition 2 will grant WDV additional time so that it may provide 80 residential workforce housing units for residents of Maui County.

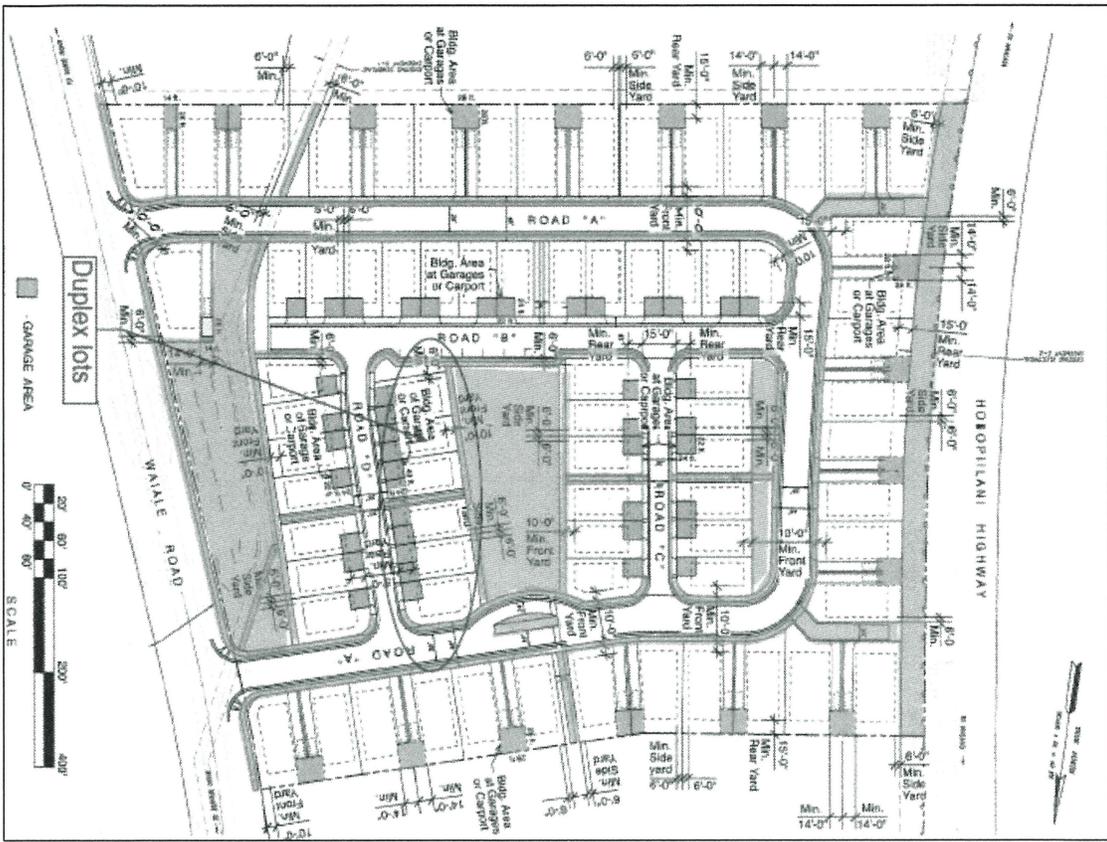
In accordance with HRS §205-16, the action conforms to the State Plan, please see HRS §226-19, as the amendment would assist in providing greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate

the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more rental and for sale affordable housing is made available to extremely low-, very low-, lower-, moderate-, and above moderate-income segments of Hawaii's population.

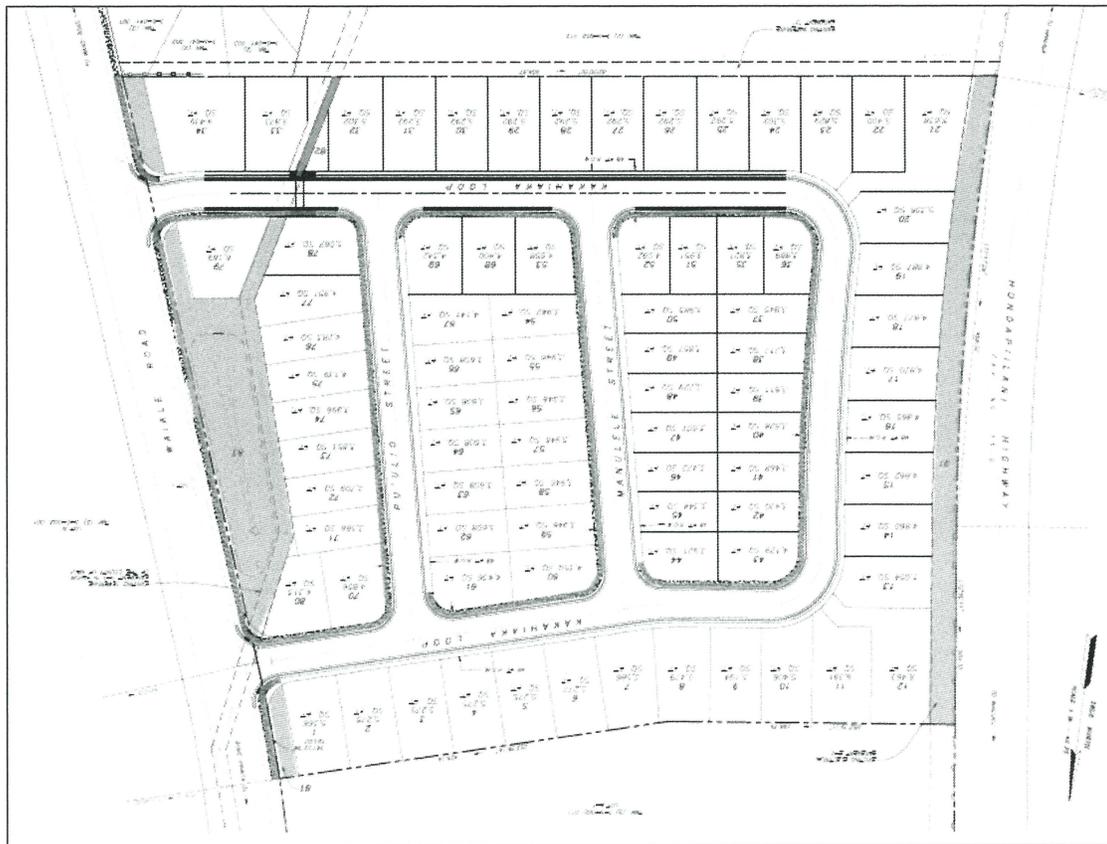
Based on the above, and the attached declaration, Petitioners ask that Condition 2 of the D&O be modified to extend the completion of construction deadline to September 7, 2027, to allow additional time to complete the Project. Petitioners also ask that the Commission find that for all purposes, including the application of Condition 1 of the D&O, WDV shall develop the project in accordance with Resolution 18-150, as may be amended from time to time.

DATED: Kahului, Hawai'i, June 6, 2023.

  
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JEFFREY T. UEOKA  
Attorney for Petitioner



ORIGINAL SITE PLAN: 68 Single Family Lots, 6 Duplex Lots (12 duplexes)



PROPOSED AMENDED SITE PLAN: 80 Single Family Lots

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

In the Matter of the Petition	)	DOCKET NO. A07-773(b)
of:	)	
	)	DECLARATION OF TERRANCE
EMMANUEL LUTHERAN CHURCH OF	)	MICHAEL KEONI GOMES
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	)	
	)	
	)	
	)	
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DECLARATION OF TERRANCE MICHAEL KEONI GOMES

I, Terrance Michael Keoni Gomes, declare as follows:

1. My name is Terrance Michael Keoni Gomes. I am over the age of 21 and am competent to make this declaration. I have personal knowledge of the facts contained in this declaration which are true and correct.

2. I am an authorized representative of WAIKAPU DEVELOPMENT VENTURE LLC ("WDV").

3. I read the foregoing MOTION FOR EXTENSION OF TIME TO COMPLETE PROJECT AND NOTIFICATION OF AMENDMENT TO HRS 201H WAIKAPU AFFORDABLE HOUSING PROJECT AND MEMORANDUM IN SUPPORT OF MOTION. The facts stated in the Motion and Memorandum are true to the best of my knowledge.

4. WDV understood that it is required to comply with the Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A07-773, filed on March 7, 2008, as amended (the "D&O"), including the requirement to complete the HRS 201H Waikapu Affordable Workforce Housing Project (the "Project") by about March 7, 2022.

5. WDV also understood that the description of the Project in its Application for Affordable Workforce Housing Subdivision (Exhibit E to WDV's Motion for Modification) is considered to be its representations to the Commission for all purposes, including the application of Condition No. 1 of the 2008 D&O.

6. WDV commenced work on the project in August of 2022 through the initiation of construction of an offsite waterline and fire hydrants.

7. On about May 2023, WDV was prepared to abandon the Project due to increased interest rates and higher material costs.

8. WDV requested a subsidy for the Project from the County of Maui and understands that County funding is available for the Project.

9. WDV understands that the County funds are contingent upon the Maui County Council approving an extension of the completion of construction deadline in the Project's 201H Resolution.

10. The County funding makes it financially feasible for WDV to complete the Project.

11. In addition to requesting an extension of the completion of construction deadline, WDV is also proposing amendments to the plans and specifications approved by the Project's 201H Resolution to change the site layout to allow for the six (6) duplex units to be converted to twelve (12) single-family lots and for other cost saving design efficiencies.

12. WDV respectfully asks this Commission to approve the modification of Condition 2 of the D&O to extend the completion of construction deadline to September 7, 2027.

13. WDV also respectfully asks this Commission to find that for all purposes, including the application of Condition 1 of the D&O, WDV shall develop the project in accordance with Resolution 18-150, as may be amended from time to time.

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

DATED: Wailuku, Hawaii, June 6, 2023.

  
TERRANCE MICHAEL KEONI GOMES

CERTIFICATE OF SERVICE

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

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

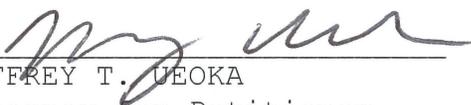
Maui Planning Commission  
c/o County of Maui  
Department of Planning  
One Main Plaza, Suite 335  
2200 Main Street  
Wailuku, HI 96793

Kathleen Ross Aoki  
Director  
County of Maui  
Department of Planning  
One Main Plaza, Suite 335  
2200 Main Street  
Wailuku, HI 96793

Victoria J. Takayesu, Esq.  
Corporation Counsel  
County of Maui  
Department of Corporation Counsel  
200 South High Street  
Wailuku, HI 96793

Alison S. Kato, Esq.  
State of Hawaii  
Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813

DATED: Kahului, Hawai'i, June 6, 2023.

  
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JEFFREY T. UEOKA  
Attorney for Petitioner