

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT

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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)	OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S RESPONSE TO PETITIONER'S MOTION FOR EXTENSION OF TIME TO COMPLETE PROJECT AND NOTIFICATION OF AMENDMENT TO THE HRS 201H WAIKAPU AFFORDABLE HOUSING PROJECT; ATTACHMENT 1; CERTIFICATE OF SERVICE
To Amend the Land Use District Boundary of Certain Lands Situated at Wailuku, Island of Maui, State of Hawaii, Consisting of 25.263 Acres from The Agricultural District To The Urban District, Tax Map Key No. (2) 3-5-002:011)	
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OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S RESPONSE TO PETITIONER'S MOTION FOR EXTENSION OF TIME TO COMPLETE PROJECT AND NOTIFICATION OF AMENDMENT TO THE HRS 201H WAIKAPU AFFORDABLE HOUSING PROJECT

Pursuant to Hawaii Administrative Rules ("HAR") § 15-15-70(f), the Office of Planning and Sustainable Development ("OPSD") submits this response in support of Petitioner's Motion for extension of time to September 7, 2027 to complete the Project and notification of amendment to the Hawaii Revised Statutes ("HRS") Chapter 201H Waikapu Affordable Housing Project ("Motion"). OPSD's position is based on the representations of the Petitioner and documents filed in these proceedings, consultation with affected State agencies, and the statutes and regulations applicable to these proceedings.

BACKGROUND

2008 LUC Decision and Order

On March 7, 2008, the Land Use Commission (“LUC”) issued its Findings of Fact, Conclusions of Law, and Decision and Order (“2008 D&O”) reclassifying approximately 25.263 acres of land identified as TMK No. (2) 3-5-002:011 (“Petition Area”) from the State Agricultural District to the State Urban District, subject to 23 conditions.

Due to several reasons, Petitioner Emmanuel Lutheran Church of Maui (“ELC”) was unable to proceed with the new campus project under the 2008 D&O (“Campus Project”). Petitioner ELC decided to reduce the scope of its original Campus Project, subdivide the Petition Area into two lots, and sell one of the lots to Waikapu Development Venture, LLC (“WDV”) for the development of a HRS Chapter 201H Waikapu Affordable Workforce Housing Project (“Project” or “Workforce Housing Project”).

2018 LUC Decision and Order

Subsequently on July 11, 2019, in response to motions submitted by ELC and Intervenor WDV, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order (“2018 D&O”) approving: 1. The sale of a 12.5-acre portion of the Petition Area to WDV; 2. The subdivision of the Petition Area; 3. The modification of Condition No. 2 of the 2008 D&O to require the construction of the Project no later than four years from the date of the 2018 D&O; and 4. The bifurcation of the original docket into Docket No. A07-773(a) related to that portion of the Petition Area retained by ELC and into Docket No. A07-773(b) related to the portion of the Petition Area acquired by WDV.

In addition, the 2018 D&O required that WDV’s description of the HRS Chapter 201H Waikapu Affordable Workforce Housing Project in its Application for Affordable Workforce Housing Subdivision be considered WDV’s representations to the LUC for all purposes, including the application of Condition No. 1 of the 2008 D&O. WDV was also required to have a Cultural Impact Analysis (“CIA”) of the Petition Area completed prior to commencement of construction on either bifurcated property of the Petition Area, and that WDV and ELC adhere to the recommendations of the CIA.

Maui County Council and WDV Actions

On September 7, 2018, prior to the LUC issuing its 2018 D&O, the Maui County Council approved WDV's Workforce Housing Project through Resolution No. 18-150 and required that construction commence within two years and be completed within four years. After the LUC issued its 2018 D&O, WDV submitted plans for the subdivision of the Petition Area, which led to a requirement to extend the County's 12-inch waterline within Waiale Road near the Petition Area. In March 2020, the Covid-19 shutdowns began, and progress stopped on the Project as a whole. In July 2020, the Maui County Council extended the deadlines for commencement and completion of the Project by two years to September 7, 2022 and September 7, 2024, respectively.

The Project resumed in November 2021 when WDV submitted construction plans to County and State agencies. In early 2022, WDV determined that the Project needed to be modified to meet market demands and to reduce the cost of construction, and resubmitted construction plans for review. In March 2022, Honu Consulting submitted its Ethnographic Survey report for the Project area to WDV. WDV obtained grading and road permits on June 24, 2022 and July 11, 2022, respectively, and in August 2022, WDV commenced construction of the Project by starting construction of the extension of the County's 12-inch waterline and the installation of fire hydrants.

In early 2023, WDV determined that increased interest rates and the higher cost of construction made the Project unfeasible and approached the Maui County Council for financial support. The Council agreed to appropriate \$10,650,000 for the Project in the County's Fiscal Year 2024 Budget.

As represented by the Petitioner in their 2023 Motion, WDV is currently working with the Maui County Department of Housing and Human Concerns to request that the Council amend its HRS Chapter 201H approval to extend the deadline for completion of construction from September 7, 2024 to September 7, 2027, and for modifications to the Project layout. WDV's Motion to modify Condition No. 2 of the 2018 D&O to extend the deadline for completion of construction to September 7, 2027 would provide the additional time needed to

complete the Workforce Housing Project and align the LUC’s deadline with the HRS Chapter 201H deadline extension being sought from the Maui County Council.

HRS CHAPTER 201H PROJECT MODIFICATIONS

Approved HRS Chapter 201H Project

The HRS Chapter 201H Project approved by the Maui County Council and incorporated via a Project modification into the LUC’s 2018 D&O includes workforce housing consisting of 68 single-family dwellings and 6 duplex dwellings (12 units) for a total of 80 units on 74 lots (12.5 acres). The units will be available to the following income levels:

- 12 duplex units 70-80% Area Median Income (“AMI”)
- 12 single-family units 81-100% AMI
- 40 single-family units 101-120% AMI
- 16 single-family units 121-140% AMI

The Project also included 26,400-square foot neighborhood green and interior roadways.

Proposed 2023 Project Modifications

The proposed Project modifications for Maui County Council approval will include: *(See June 5, 2023 WDV Status Report Presentation, Project Layout)*

- Replacing duplexes units with 12 single-family dwellings
- Elimination of the neighborhood green to allow for the change from 6 duplex units to 12 single-family dwellings
- Elimination of a dead-end interior roadway
- Other road improvements to reduce project costs

While the number of proposed lots have increased from 74 to 80, the location of the units on the 12.5-acre Petition Area remains the same. The Project will still provide 80 units of 100% affordable housing at the same affordable housing income categories as originally approved. Instead of some units offered as duplexes, all units in the Project will be single-family. The Project has been reconfigured to reduce costs while maintaining health and safety. WDV should confirm that the number of units to be sold at the AMI levels as described in the approved HRS Chapter 201H Project above will remain the same.

LUC Concerns

During the June 7, 2023 LUC hearing on the status of the Project, the Commission expressed concern about the applicability of HRS Chapter 343, the Project's traffic impacts, and the elimination of the neighborhood green.

HRS Chapter 343

The Maui County Council's recent appropriation of funds to support the Project is a trigger for an HRS Chapter 343 environmental review under HAR § 11-200.1-9(a). However, it appears that the Project is eligible for an exemption from HRS Chapter 343 under HAR § 11-200.1-15(c)(10) that exempts "new construction of affordable housing, where affordable housing is defined by the controlling law applicable for the state or county proposing agency or approving agency," provided it meets four criteria:

- Has the use of state or county lands or funds or is within Waikiki as the sole triggers for compliance with HRS Chapter 343 review;
- As proposed conforms with the existing State Urban Land Use Classification;
- As proposed is consistent with the existing county zoning classifications that allows housing; and
- As proposed does not require variances for shoreline setbacks or siting in an environmentally sensitive area, as stated in section 11-200.1-13(b)(11).

WDV should clarify the Project's HRS Chapter 343 status and indicate whether Maui County has granted or will grant the Project an exemption. Otherwise, the likelihood of WDV meeting the extended deadline requested is in jeopardy.

Impact to State Highway Facilities

Petitioner WDV stated in its annual report that Condition No. 5 of the 2018 D&O is only applicable to Petitioner ELC and not to WDV. (*See* WDV June 11, 2023 Amended Annual Report 2018-2023.) OPSD agrees. Condition No. 5 specifically references only ELC's Campus Project and its traffic impacts and does not include WDV's Workforce Housing Project.

Furthermore, WDV's HRS Chapter 201H Application to the County Council included a Traffic Impact Analysis Report ("TIAR") that identified potential impacts of the Workforce Housing Project and recommended mitigation measures to county roads in the area but not to State highway facilities. The State Department of Transportation ("DOT") reviewed the Chapter HRS 201H Application and the TIAR in 2018 and determined that the Project is not likely to have significant impacts to State highway intersections. (*See* OPSD Attachment 1.) On June 9, 2023, OPSD consulted with the DOT about the proposed 2023 Motion to extend the Project deadline and informed them of the conversion of 6 duplex units into 12 single-family units. DOT confirmed that its original determination of no significant impact remains valid.

Elimination of the Neighborhood Green

The LUC expressed concern over the impact the elimination of the neighborhood green might have on climate change. OPSD finds this change to be acceptable for the following reasons. First, open space such as the neighborhood green is often called a "pocket park," which is typically a small park accessible to the public. While the locations, elements, and uses of pocket parks vary considerably, the common defining characteristic of a pocket park is its small size, in this case only 26,400 square feet. Pocket parks often provide needed open space for multi-family dwellings, such as duplex units, that do not have yards like single-family homes. In this case, WDV removed the park to create space for more single-family dwellings, which would have yards, and the Project no longer includes any multi-family dwellings. Six lots were added to the Project to accommodate the change from 6 duplex units to 12 single-family units. Second, even if the park was determined to be a net carbon sink, its impact on the overall carbon footprint of the 80-unit residential project would have been negligible. With or without the park, the Project will have a positive carbon impact. While the elimination of the pocket park is unfortunate, OPSD understands that the market in this area prefers single-family homes over duplexes and supports WDV's Motion.

RECOMMENDATION

The proposed modifications to the Project do not significantly alter the nature of the Project or its impact to the surrounding area; it remains an 80-unit, 100% affordable housing

Project. WDV also provided an Ethnographic Survey of the Project Area that was completed in March 2022 prior to the start of WDV's work on the County water line main in August 2022, in compliance with the LUC's 2018 D&O. The Ethnographic Survey found no adverse effects to cultural resources or practices. As such, the Project adheres to the guidelines established by the Hawaii Supreme Court's Ka Paakai ruling. (See WDV's April 13, 2023 Annual Report, Attachment 2, pg. 66.)

WDV has been making efforts to move forward with the Project and the County appears to be supportive of the Project. Recent efforts by WDV include submission of revised construction plans for County and State agency review. WDV obtained the necessary grading and work permits and has begun constructing the extension of the County waterline necessary for the Project. WDV is also currently seeking County approval of the HRS Chapter 201H modifications, the subdivision, and the release of county funds to support the Project. The appropriation of over \$10 million by the County Council is an indication of the County's commitment to the Project.

Given WDV's efforts to date and the acute need for affordable housing, WDV's request for an extension of the deadline for Project completion to September 7, 2027 is reasonable. OPSD recommends that the LUC approve the Motion.

DATED: Honolulu, Hawaii, this 11th day of July, 2023.

OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
Interim Director

Docket No. A07-773(b)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawaii, this 11th day of July, 2023.

Mary Alice Evans

MARY ALICE EVANS
Interim Director
Office of Planning and Sustainable Development

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February 6, 2018

Mr. Vince Bagoyo
Bagoyo Development Consultant Group
1500 Kilinoe Place
Wailuku, Hawaii 96793

Dear Mr. Bagoyo:

Subject: Waikapu Development Venture, LLC
Draft 201H Application for Proposed Workforce Housing Project
Wailuku, Hawaii
TMK: (2) 3-5-002:011 (por.)

The Department of Transportation has reviewed the subject draft 201H application for Waikapu Development Venture, LLC's proposed development of 80 affordable workforce residential housing units on a 12.5-acre site in the Waikapu area.

Comments on the subject project are as follows:

Highways Division

In reviewing the provided Traffic Impact Analysis Report dated August 11, 2017, it was determined that the project appears to have no significant impacts to State highway intersections.

Airports Division

1. The proposed project site is located approximately four miles from Runway 2 of the Kahului Airport. Any proposed development within five miles of an airport is subject to the State of Hawaii, Office of Planning, Technical Assistance Memorandum.

You can find out more details through this link:

http://files.hawaii.gov/dbedt/op/docs/TAM-FAA-DOT-Airports_08-01-2016.pdf

If any of the project features attract hazardous wildlife, create glint and glare hazard, or create an aerial obstruction hazard to flight operations, the Applicant/Property Owner must coordinate with proper officials and agencies and must implement appropriate mitigation to address the hazards.

2. The drainage basin design shall mitigate potentially hazardous wildlife attraction by minimizing landscape that may be used for nesting and foraging. Stranding water shall be eliminated and water must be drained or pumped out within 48 hours of peak weather events.

It is strongly recommended that you consult the Federal Aviation Administration Advisory Circular 150/5200-33B, *Hazardous Wildlife Attractants On or Near Airports* for guidance.

3. Although the project is located outside of the 55 Day-Night Sound Level noise contours on the 2008 Noise Exposure Map, the applicant and future residents should be aware of the proximity of the airport and potential single event noise from aircraft operations.

If there are any questions, please contact Mr. Norren Kato of the Department of Transportation, Statewide Transportation Planning Office at telephone number (808) 831-7976.

Sincerely,



JADE T. BUTAY
Interim Director of Transportation