

# WAIKAPU DEVELOPMENT VENTURE LLC

305 E. Wakea Ave., Suite 100  
Kahului, Maui, Hawaii 96732

Phone: (808) 877-4202  
Fax: (808) 877-9409

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  
2200 Main Street  
Wailuku, HI 96793

Re: 2018 – 2023 Annual Reports for 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

EXHIBIT 3

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 further ordered:

1. Condition 2 of the 2008 D&O be amended to reflect a four (4) year requirement to complete construction of the Workforce Housing Project.
2. 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 representations to the Commission for all purposes, including the application of Condition No. 1 of the 2008 D&O.
3. 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 and ELC shall adhere to the recommendations of said Cultural Impact Assessment.
4. 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.

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**.

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.** 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 decision and order. If Waikapu Development Venture LLC fails to complete the development within four (4) 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 Intervener to appear before the Commission to explain why the land should not revert to its previous Agricultural classification.

As noted in 2018, ELC still does not have the ability to begin or complete construction by the March 7, 2018 deadline of ten years. 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.

- 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.**

WDV will comply with this condition. The CIA was completed by Honua Consulting in March 2022, attached hereto as **Attachment 2**.

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@westmauiland.com. Your acceptance of this report is appreciated.

Mr. Orodener, Ms. Evans, and Ms. Aoki

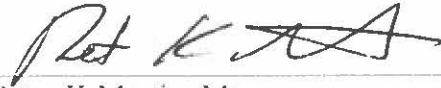
April 7, 2023

Page | 9

**WAIKAPU DEVELOPMENT VENTURE LLC**

By Waiale Road 201 LLC

Its Member



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Peter K Martin, Manager

**EMMANUEL LUTHERAN CHURCH OF MAUI**

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Michael Riley, President

---

Russell Wilson, Treasurer

**WAIKAPU DEVELOPMENT VENTURE LLC**  
By Waiale Road 201 LLC  
Its Member

---

Peter K. Martin, Manager

**EMMANUEL LUTHERAN CHURCH OF MAUI**

  
\_\_\_\_\_  
Michael Riley, President

  
\_\_\_\_\_  
Russell Wilson, Treasurer



ATTACHMENT 1



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

REGULAR SYSTEM

Return by Mail ( x ) Pickup ( ) To:

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)*




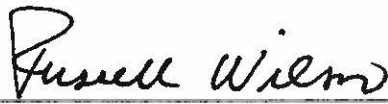
IN WITNESS WHEREOF, the parties hereto have cause this First Amendment to be executed on the date first written above.

**WAIKAPU DEVELOPMENT VENTURE LLC**

  
\_\_\_\_\_  
Beverly Kurokawa, Vice President

**EMMANUEL LUTHERAN CHURCH OF MAUI**

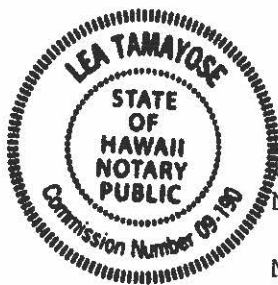
  
\_\_\_\_\_  
By Michael Reley  
Its President

  
\_\_\_\_\_  
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).



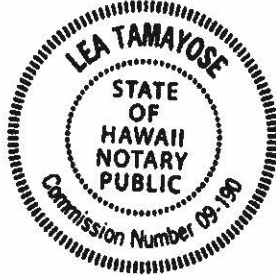
A handwritten signature in black ink, appearing to read "Lea Tamayose".

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 Reilly, 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).



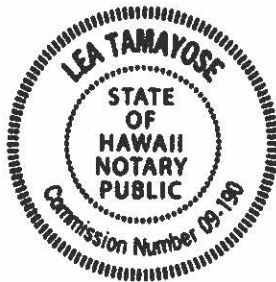
A handwritten signature in black ink, appearing to read "Lea Tamayose", written over a horizontal line.

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

My commission expires: 17 May 2022

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

of February 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: \_\_\_\_\_



86  
241



R-847

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

MAY 13, 2008 01:00 PM

Doc No(s) 2008-078764



/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 8<sup>th</sup> 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");

**WITNESSETH:**

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

)

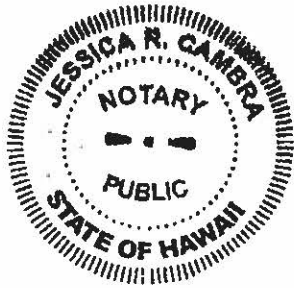
COUNTY OF MAUI

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ss.

)

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

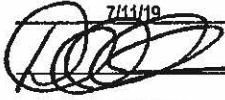
7/11/19 by  
  
Executive Officer

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  
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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  
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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

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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup>

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,<sup>3</sup> and further considered ELC's Motion for Modification,

WDV's Three-Part Motion, and WDV's Motion for Modification at the Malcolm Center

in Kīhei, Maui, Hawai'i.

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

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<sup>2</sup> ELC's Motion for Modification is addressed under a separate order.

<sup>3</sup> 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.<sup>4</sup>

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.

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<sup>4</sup> 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.<sup>5</sup>

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

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<sup>5</sup> 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



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 Kīhei, 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 11<sup>th</sup> 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. Aishiyama

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



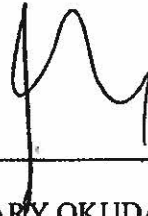
BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

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



---

GARY OKUDA

Commissioner



ARNOLD WONG

Commissioner

Filed and effective on: July 11<sup>th</sup>, 2019

Certified by:



DANIEL ORODENKER

Executive Officer

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Honolulu, Hawaii 96813

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250 South High Street  
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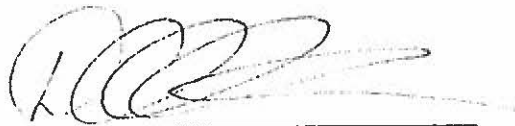
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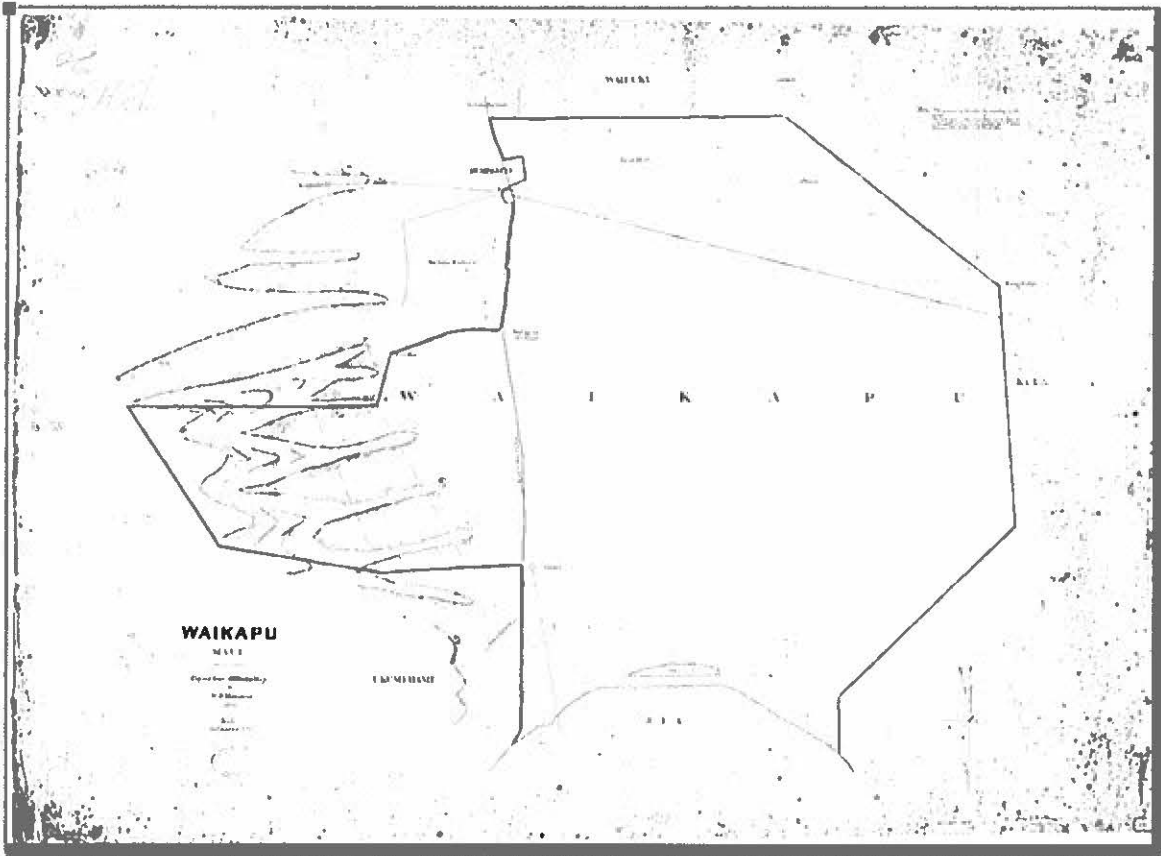
Attorney for Petitioner  
WAIKAPU DEVELOPMENT VENTURES, LLC.

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



DANIEL ORODENKER  
Executive Officer

ATTACHMENT 2



**Ethnographic Survey for the Waikapū East Subvision No. 3  
Waikapū Ahupua‘a, Wailuku District, Maui Island  
TMKs: [2] 3-5-002:011 (por.)**

Prepared for

**Waikapū Development Venture, LLC**

Prepared by



March 2022

### **Authors and Lead Researchers**

Trisha Kehaulani Watson, J.D., Ph.D.

### **Assistant Authors and Researchers**

Matt Kawaiola Sproat

Kepā Maly

Onaona Maly

### **Note on Hawaiian Language Use**

In keeping with other Hawaiian scholars, we do not italicize Hawaiian words. Hawaiian is both the native language of the pae'āina of Hawai'i and an official language of the State of Hawai'i. Some authors will leave Hawaiian words italicized if part of a quote; we do not. In the narrative, we use diacritical markings to assist our readers, except in direct quotes, in which we keep the markings used in the original text. We provide translations contextually when appropriate. Unless otherwise noted, all translations are by Honua Consulting authors.

### **Front Cover Credit**

#### **State of Hawai'i**

1885 Portion of Map of Waikapū, Maui. M.D. Monsarrat. Reg. Map 782.

### **Suggested Citation**

#### **Watson, T.K., Thetford, C., Sproat, M., McKown, E. and Watson, P.E.**

2022 *Ethnographic Survey for the Waikapū East Division, No. 3, Wailuku District, Island of Maui, TMKs: [2] 3-5-002:011 (por.)*, Prepared for Waikapū Development Ventures, LLC, Honua Consulting, Honolulu, Hawai'i.

## Executive Summary

Waikapū Development Ventures, LLC is proposing an affording housing project qualified under HRS 201-H. The proposed Project involves construction of a 100% workforce housing project with 80 units on 74 lots: 68 single family homes and 12 multi-family units (six duplexes).

Research in preparation of this report consisted of a thorough search of Hawaiian language documents, including but not limited to the Bishop Museum Mele Index and Bishop Museum archival documents, including the Hawaiian language archival caché. All Hawaiian language documents were reviewed by Hawaiian language experts to search for relevant information to include in the report. Documents considered relevant to this analysis are included herein, and translations are provided when appropriate to the discussion. Summaries of interviews with lineal and cultural descendants with ties to the project area are included in the study, and information on other past oral testimonies are also provided herein. Data was extrapolated from these sources that provide an unprecedented comprehensive look at the previous cultural resources on this 'āina.

This survey thoroughly identified valued cultural, historical, and natural resources in the project area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the project area. It also identifies the impacts that may potentially result from the proposed action and identified alternatives. Research and ethnographic research showed that any cultural resources that may have once been in the area were likely long ago destroyed by intensive planation use of the land. The only remaining available cultural resource is 'uhaloa, which is widely found throughout the area. Any impact to these plants would not constitute an adverse effect, because the plants will remain widely available to practitioners in the area. There is also the 'ōpe'ape'a in the area, but state and federal laws prohibit any taking of this species, even for cultural uses. The project should nonetheless employ best management practices to minimize the potential taking of this species. Interviewees also noted that there is the potential for iwi kūpuna in the area, but this is not confirmed and consideration of of these resources will be addressed through the HRS 6E compliance process.



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## Abbreviations and Acronyms

AIS: Archaeological Inventory Survey

BMP: Best Management Practice

ESP: Environmental Review Project, Office of Planning and Sustainable Development

HAR: Hawaii Administrative Rules

HRS: Hawaii Revised Statutes

ILK: Indigenous Local Knowledge

*Ka Pa'akai: Ka Pa'akai O Ka 'Āina v. Land Use Commission*, 94 Haw. 31 (2000)

LRFI: Literature Review and Field Investigation

NRHP: National Register of Historic Places

OEQC: Office of Environmental Quality and Control

PPA: Power Purchase Agreement

Project: Waikapū East Subdivision No. 3

PUC: Public Utility Commission

ROI: Range of Influence

SHPD: State Historic Preservation Division

SIHP: State Inventory of Historic Places

SLH: Session Laws of Hawaii

TEK: Traditional Ecological Knowledge

TMK: Tax Map Key

USGS: U.S. Geological Survey



### 1.0 Project Description and Compliance

Waikapu Development Venture LLC is proposing the Waikapū East Subdivision No. 3 (Project) in the Wailuku district on the island of Maui (Figure 1) on 12.50 acres of undeveloped land located on TMK (2) 3-5-002:011. The proposed Project involves construction of a 100% workforce housing project with 80 units on 74 lots: 68 single family homes and 12 multi-family units (six duplexes) (Figure 2).

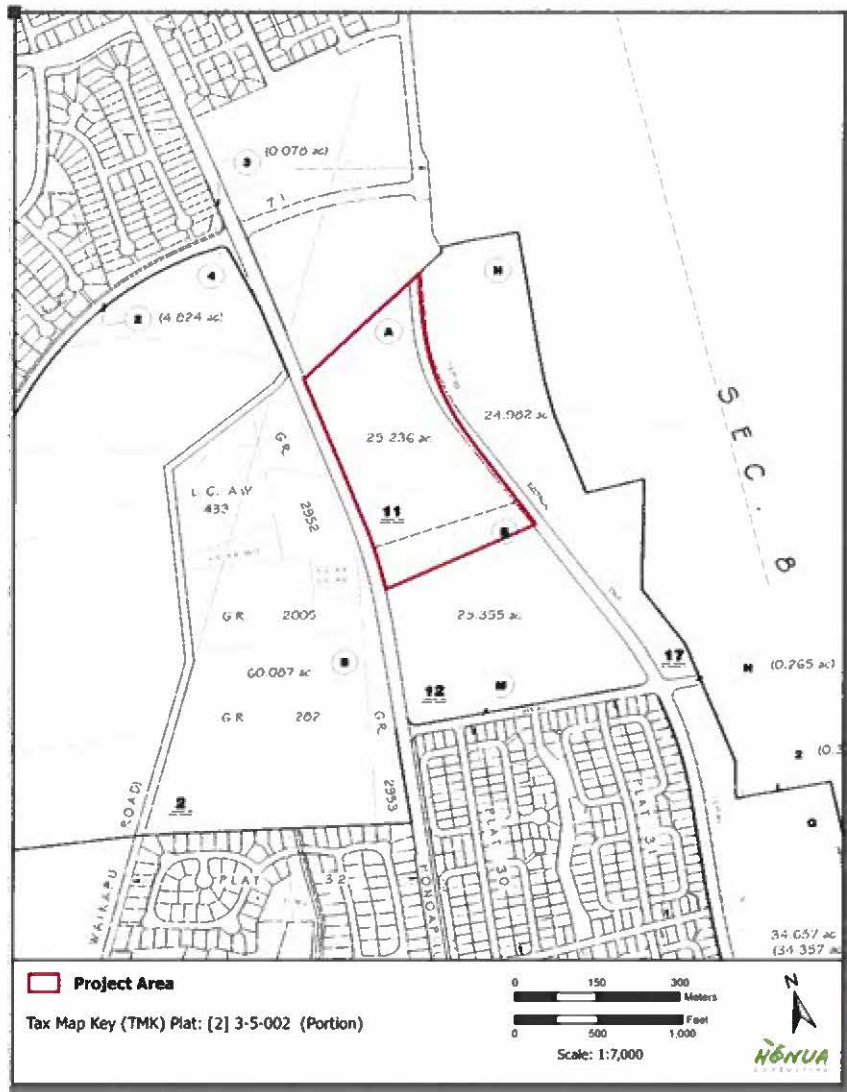


Figure 1. Tax Map Key map showing the Study Area

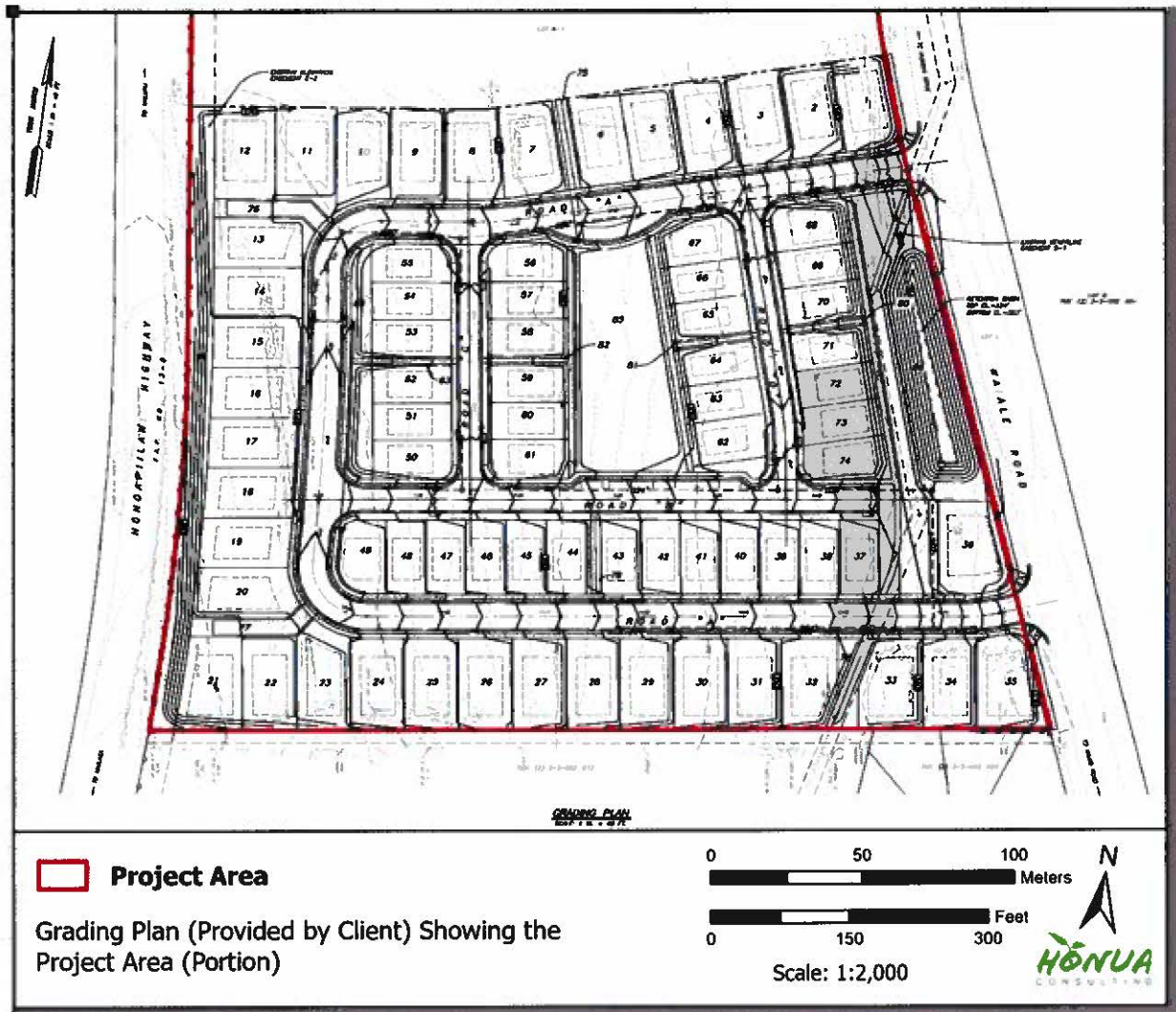


Figure 2. Grading Plan for the Waikapū East Subdivision No. 3

This project will require a 201H workforce housing approval. This approval triggers Hawaii Revised Statutes 6E-42. This ethnographic survey also supports the HRS 6E-42 review by using ethnography to help in the identification and inventory of historic sites and documenting consultation with area practitioners and organizations to identify resources that may be significant to Native Hawaiians or other ethnic groups.



## 1.1 Background

The State and its agencies have an affirmative obligation to preserve and protect Native Hawaiians' customarily and traditionally exercised rights to the extent feasible.<sup>1</sup> State law further recognizes that the cultural landscapes provide living and valuable cultural resources where Native Hawaiians have and continue to exercise traditional and customary practices, including hunting, fishing, gathering, and religious practices. In *Ka Pa'akai*, the Hawai'i Supreme Court provided government agencies an analytical framework to ensure the protection and preservation of traditional and customary Native Hawaiian rights while reasonably accommodating competing private development interests. This is accomplished through:

- 1) The identification of valued cultural, historical, or natural resources in the project area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the project area;
- 2) The extent to which those resources—including traditional and customary Native Hawaiian rights—will be affected or impaired by the proposed action; and
- 3) The feasible action, if any, to be taken to reasonably protect Native Hawaiian rights if they are found to exist.

The appropriate information concerning the ahupua'a of Waikapū has been collected, focusing on areas near or adjacent to the project area. A thorough analysis of this project and potential impacts to cultural resources, historical resources, and archaeological sites is included in this survey.

This ethnographic survey provides an overview of cultural and historic resources in the project area using thorough literature review, community and cultural practitioner consultation, and high-level, project-specific surveys. This survey focuses on identifying areas in which disturbance should be avoided or minimized to reduce impacts to historic properties or culturally important features. The paramount goal is to prevent impacts through avoidance of sensitive areas and mitigating for impacts only if avoidance is not possible.

## 1.2 Geographic Extent

The geographic extent for impacts to cultural resources and historic properties includes the project area and localized surroundings. This CIA also reviews some of the resources primarily covered by the regulatory review. It primarily researches and reviews the range of biocultural resources identified through historical documents, traditional knowledge, information found

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<sup>1</sup> Article XII, Section 7 of the Hawai'i State Constitution, *Ka Pa'akai O Ka 'Āina v. Land Use Commission*, 94 Haw. 31 [2000] (*Ka Pa'akai*), Act 50 SLH 2000.

in the Hawaiian language historical cache, and oral histories and knowledge collected from cultural practitioners and experts. The best practice for ethnographic surveys is to define an geographic extent beyond the identified or typical boundaries of the geographic project area. The recommended area is typically the size of the traditional land area (ahupua'a) or region (moku), but this can be larger or smaller depending on what best helps to identify the resources appropriately.

The geographic extent of the survey is based on the position that the "Project Area" is part of a cultural landscape or cultural landscapes that therefore it is most appropriate to set and study the proposed alternatives within that cultural context. The Project Area or Study Area include the area where ground disturbance will occur and a portion of the neighboring parcel (Figures 3-4).



Figure 3. Aerial image of the project area showing adjacent uses and housing



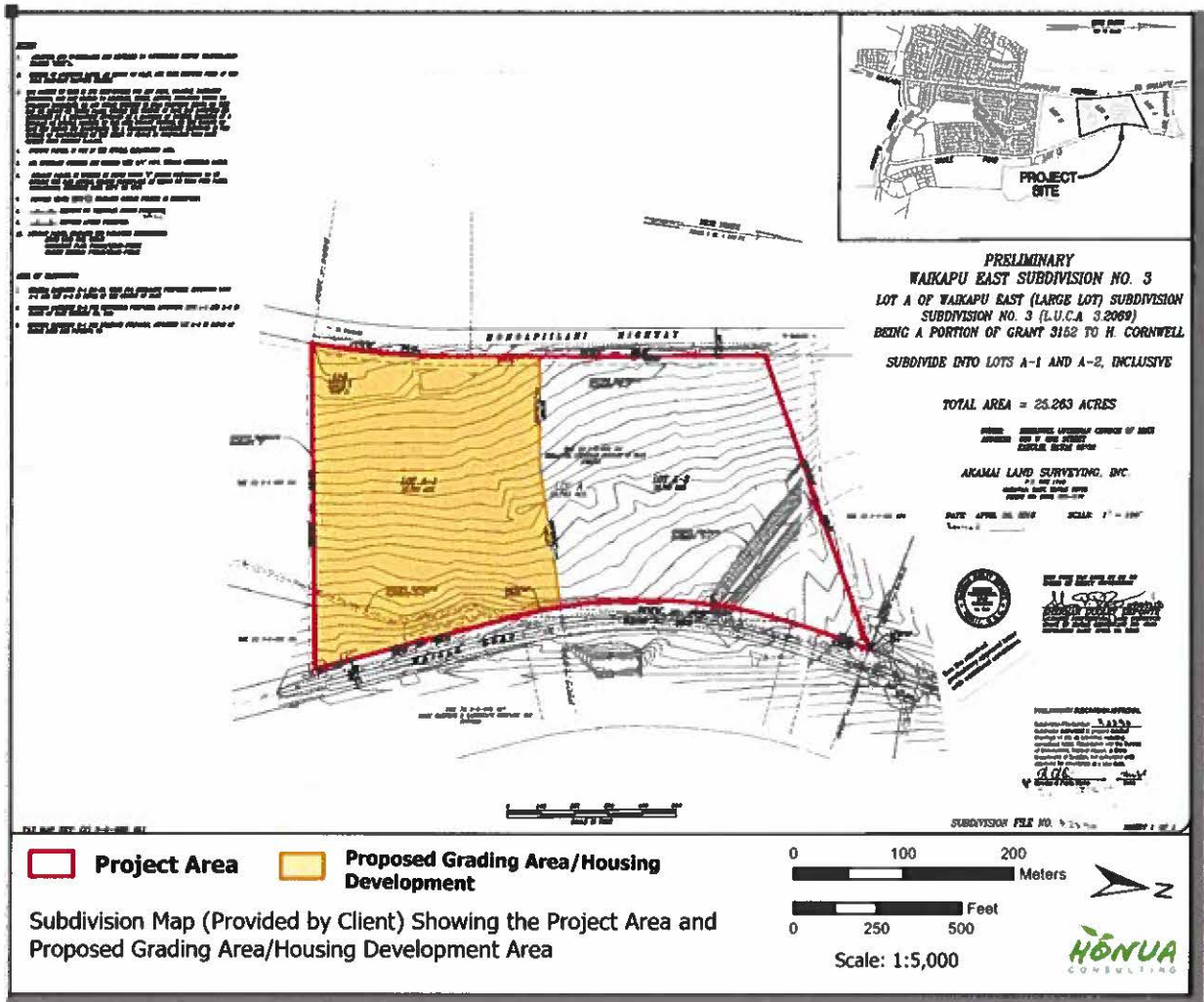


Figure 4. Subdivision Map Showing Proposed Grading Area and Housing Development

### 1.3 Goal of Ethnographic Survey

This survey, along with the archaeological work, looks to fulfill the requirement of taking into account the Project’s potential impacts on historic and cultural resources and, at a minimum, describe: a) any valued cultural, historic, or natural resources in the area in questions, including the extent to which traditional and customary native Hawaiian rights are exercised in the area, b) the extent to which those resources – including traditional and customary native Hawaiians rights – will be affected or impaired by the Project; and c) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist.

## 2.0 Methodology

The approach to developing the ethnographic survey is as follows:

- 1) Gather Best Information Available
  - a) Gather historic cultural information from stories and other oral histories about the affected area to provide cultural foundation for the report;
  - b) Inventory as much information as can be identified about as many known cultural, historic, and natural resources, including previous archaeological inventory surveys, CIAs, etc. that may have been completed for the possible range of areas; and
  - c) Update the information with interviews with cultural or lineal descendants or other knowledgeable cultural practitioners.
- 2) Identify Potential Impacts to Cultural Resources
- 3) Develop Reasonable Mitigation Measures to Reduce Potential Impacts
  - a) Involve the community and cultural experts in developing culturally appropriate mitigation measures; and
  - b) Develop specific Best Management Practices (BMPs), if any are required, for conducting the project in a culturally appropriate and/or sensitive manner as to mitigation and/or reduce any impacts to cultural practices and/or resources.

While numerous studies have been conducted on this area, very few have effectively utilized Hawaiian language resources and Hawaiian knowledge. This appears to have impacted modern understanding of this location, as many of the relevant documents are native testimonies given by Kanaka Hawai'i (Hawaiians) who lived on this land.

While hundreds of place names and primary source historical accounts (from both Hawaiian and English language narratives) are cited on the following pages, it is impossible to tell the whole story of these lands in any given manuscript. A range of history, spanning the generations, has been covered. Importantly, the resources herein are a means of connecting people with the history of their communities—that they are part of that history. Knowledge of place will, in turn, promote appreciation for place and encourage acts of stewardship for the valued resources that we pass on to the future.

Background research for the literature review was conducted using materials obtained from the State Historic Preservation Division (SHPD) library in Kapolei and the Honua Consulting LLC. report library. On-line materials consulted included the Ulukau Electronic Hawaiian Database ([www.ulukau.com](http://www.ulukau.com)), Papakilo Database ([www.papakilodatabase.com](http://www.papakilodatabase.com)), the State Library on-line (<http://www.librarieshawaii.org/Serials/databases.html>), and Waihona 'Āina Māhele database (<http://www.waihona.com>). Hawaiian terms and place names were



translated using the on-line Hawaiian dictionaries (Nā Puke Wehewehe 'Ōlelo Hawai'i) ([www.wehewehe.com](http://www.wehewehe.com)), *Place Names of Hawai'i* (Pukui et al. 1974), and *Hawai'i Place Names* (Clark 2002). Historic maps were obtained from the State Archives, State of Hawai'i Land Survey Division website (<http://ags.hawaii.gov/survey/map-search/>), UH-Mānoa Maps, Aerial Photographs, and GIS (MAGIS) website (<http://guides.library.manoa.hawaii.edu/magis>). Maps were geo-referenced for this report using ArcGIS 10.3. GIS is not 100% precise and historic maps were created with inherent flaws; therefore, geo-referenced maps should be understood to have some built-in inaccuracy.

While conducting the research, primary references included, but were not limited to: land use records, including the Hawaiian L.C.A. records from the Māhele 'Āina (Land Division) of 1848; the Boundary Commission Testimonies and Survey records of the Kingdom and Territory of Hawai'i; and historical texts authored or compiled by: David Malo (1987); Samuel M. Kamakau (1964, 1991, 1992); records of the American Board of Commissioners of Foreign Missions (A.B.C.F.M.) (1820–1860); Charles Wilkes (1845); Alexander & Preston (1892–1894); Abraham Fornander (1916–1919); and many other native and foreign writers. The study also includes several native accounts from Hawaiian language newspapers (primarily compiled and translated from Hawaiian to English by K. Maly), and historical records authored by nineteenth century visitors, and residents of the region.

Historical and archival resources were located in the collections of the Hawai'i State Archives, Survey Division, Land Management Division, Survey Division, and Bureau of Conveyances; the Bishop Museum Library and Archives; the Hawaiian Historical Society and the Hawaiian Mission Children's Society Library; University of Hawai'i-Hilo Mo'okini Library; the National Archives and Records Administration (NARA), Maryland; the Library of Congress, Washington D.C.; the National Oceanic and Atmospheric Administration National Library, Maryland; the Smithsonian Institution Natural History and National Anthropological Archives libraries, Washington, D.C.; the Houghton Library at Harvard; the United States Geological Survey (USGS) Library, Denver; the Paniolo Preservation Society and Parker Ranch collections; private family collections; and in the collection of Kumu Pono Associates LLC. This information is generally cited in categories by chronological order of the period depicted in the narratives.

M. P. Nogelmeier (2010) discusses the adverse impacts of methodology that fails to properly research and consider Hawaiian language resources. He strongly cautions against a mono-rhetorical approach that marginalizes important native voices and evidence from consideration, specifically in the field of archaeology. For this reason, Honua Consulting consciously employs a poly-rhetorical approach, whereby all data, regardless of language, is researched and considered. To fail to access these millions of pages of information within the Hawaiian language cache could arguably be a violation of Act 50, as such an approach would