



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. A07-773 (A)
)	
)	
EMMANUEL LUTHERAN CHURCH OF)	
MAUI,)	
)	
To Amend the Agricultural Land Use District)	FINDINGS OF FACT, CONCLUSIONS OF
to the Urban Land Use District for)	LAW, DECISION AND ORDER, AND
Approximately 25.263 Acres of Land Situated)	CERTIFICATE OF SERVICE FOR THE
at Wailuku, Island of Maui, State of Hawai'i.)	CONTINUATION OF THE 2023 STATUS
Tax Map Key: (2) 3-5-002: 011.)	REPORT

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

Feb 6, 2024

BY 
DANIEL E. ORODENKER
Executive Officer



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DECISION AND ORDER FOR THE CONTINUATION OF THE 2023 STATUS REPORT

On June 7, 2023, the Land Use Commission of the State of Hawai‘i (“Commission”) held an In-Person Status Report hearing at the Maui Arts & Cultural Center, Haynes Room for both Petitioners to provide a Status and Progress Report and take action (if necessary) to address any compliance issues. The Commission deemed the information provided by both Petitioners insufficient and scheduled a continuation of the status report.

On October 18, 2023, the Commission held the continuation of the Status Report in-person at the Maui Arts & Cultural Center, Alexa Higashi Room. Both Petitioners were able to provide a Status and Progress Report to address compliance issues.

The Commission, having heard and examined the testimony, exhibits, evidence, and argument of counsel and parties presented during the status report hearing, and the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order for the October 18, 2023, Status Report for Emmanuel Lutheran Church of Maui.

PROCEDURAL HISTORY

1. On March 7, 2008, the Commission issued its Decision and Order (“2008 Decision and Order”) to Amend 25.263 acres in the Agricultural District to the Urban District in Wailuku, Island of Maui, State of Hawai‘i, TMK No. 3-5-002:011. The Commission ordered that the classification be subject to 23 conditions listed in the 2008 Decision and Order.
2. On April 9, 2018, the Emmanuel Lutheran Church of Maui (“ELC”) filed its Motion for the Extension of Time to Complete the Project, amending Condition Two of the 2008 Decision and Order which read “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. On April 12, 2018, Waikapū Development Venture made a subsequent Motion to be a co-competitor with ELC, or in the alternative to become a Party herein, or in the alternative to intervene.

4. On June 22, 2018, the Land Use Commission sent the Order granting Waikapū Development Venture LLC's ("WDV") motion to intervene.
5. On October 12, 2018, ELC filed a Motion for Modification; Memorandum in Support of Motion; Affidavit of Michael Reiley; Petitioner's Exhibit "1." This Motion included a change to the original ELC Project.
6. Subsequently, on October 12, 2018, WDV made a Motion to Approve Sale, Motion to Allow Subdivision, and Motion to Bifurcate.
7. On July 11, 2019, the Commission issued the Findings of Fact, Conclusions of Law, Decision and Order Granting Petitioner ELC's Motion for Extension of Time to Complete Project and Motion for Modification.
8. On July 11, 2019, the LUC sent the 2018 Findings of Fact, Conclusions of Law, Decision and Order Granting WDV's Motion to Approve Sale of a Portion of the Petition Area, Motion to Allow for Subdivision of Petition Area, Motion to Bifurcate, and Motion for Modification.
9. The LUC received the 2018-2023 Annual Report for A07-773(a) and (b) Petition of ELC and WDV on April 13, 2023.
10. On April 25, 2023, the Commission sent a letter to the Petitioners scheduling a status report on June 7, 2023, in response to the 2018-2023 Annual Report filed for both ELC and WDV.
11. On May 12, 2023, the Commission received the Amended 2018-2023 Annual Report with Attachments 1-3.

12. On May 25, 2023, the Agenda for the June 7, 2023, hearing was posted to the Commission Website and mailed to the Statewide and Maui County mailing and email lists.
13. On June 5, 2023, the signed Staff Report was posted to the Commission website and made available at the Commission office for public review.
14. On June 7, 2023, the LUC held a status report hearing for A07-773 Waikapū Development Venture, LLC. The Commission asked ELC to be at the hearing as party to the proceeding. During the hearing, the Commission deemed the information presented inadequate and scheduled a continuation of the status report.
15. On June 27, 2023, the Commission sent a letter regarding the continuation of the status report, which was originally scheduled for October 4, 2023, but was held on October 18, 2023.
16. On August 15, 2023, the Commission received a letter from ELC regarding updates to the status of their project.
17. On September 18, 2023, the Commission sent a letter to ELC with a list of concerns.
18. On October 9, 2023, the Agenda for the October 18-19, 2023, hearing was posted to the Commission website and mailed to the Statewide and Maui County mailing and email lists.
19. On October 12, 2023, the signed Staff Report was posted to the Commission website and made available at the Commission office for public review.

20. On October 18, 2023, the continuation of the status and progress report and action was held in person at the Maui Arts & Cultural Center, Alexa Higashi Room 1 Cameron Way, Kahului, HI 96732.

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT POSITION

21. The Office of Planning and Sustainable Development (“OPSD”) did not provide any written testimony for the status report.
22. During the initial status report held on June 6, 2023, OPSD had no position statement [Tr. 06/07/2023; pg 76].
23. At the continuation of status report hearing held on October 18, 2023, OPSD raised concerns regarding three Conditions from the 2008 Decision and Order that ELC must complete; requirement of a cultural impact assessment, completion of a Traffic Impact Analysis Report (“TIAR”), and the construction deadline [Tr. 10/18/2023; pg 52-56].

COUNTY OF MAUI DEPARTMENT OF PLANNING POSITION

24. The County of Maui did not provide any written testimony for the status report.
25. During the initial status report held on June 6, 2023, the County of Maui had no position statement [Tr. 06/07/2023; pg.73].
26. At the continuation of status report hearing held on October 18, 2023, the County of Maui had no position regarding the ELC portion of the status report [Tr. 10/18/2023; pg.96].

FINDINGS BY THE COMMISSION

27. ELCh intends to modify the development plan previously presented to the Commission.

Subject to Condition 1 of the 2008 Decision and Order, ELC will need to appear before

the Commission and modify or present (if deemed necessary) the changes to the development plan [Tr. 10/18/2023; pg.46-48,57]

28. ELC does not have an updated realistic timeline, the Commission suggested ELC put one together prior to appearing before the Commission again [Tr. 10/18/2023; pg.47-48].

29. All of the Conditions as they are currently drafted apply equally to ELC and WDV [Tr. 10/18/2023; pg.50].

30. OPSD and its deputy attorney general offered to assist ELC with better understanding the planning and permitting requirements for future filings [Tr.10/18/2023; pg.58].

31. WDV completed their ethnographic study for their portion of their Project. The WDV ethnographic study does not include ELC's portion of the parcel [Tr. 10/18/2023; pg.53].

32. WDV completed their TIAR as a part of the 201H process. The TIAR Does not include ELC's project [Tr. 10/18/2023; pg.120].

RULINGS ON FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

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.

CONCLUSIONS OF LAW

1. Pursuant to Hawai‘i Revised Statutes (“HRS”) Chapter 205 and the Commission Rules under Hawai‘i Administrative Rules (“HAR”) Chapter 15-15-90(c), “The commission may require the petitioner to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the commission.”

DECISION AND ORDER

The LUC, having duly considered the written and oral arguments presented by the Petitioners, Maui County, OPSD, and members of the public, and a motion having been made and seconded at the meeting on June 6 and October 18, 2023 held at the Maui Arts & Cultural Center, 1 Cameron Way, Kahului, HI 96732, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause:

HEREBY ORDERS that Petitioner – Emmanuel Lutheran Church return before the Commission within six months from the date of this Decision and Order to provide an updated Status Report to address compliance with all conditions of the existing Decisions and Orders, and all commissioner concerns raised during this hearing including, but not limited to the following:

- Identification of all individuals, organizations, or contractors responsible for plans, designs, engineering, and permitting for the proposed church facilities;
- Identify the phased schedule and timing for development and each of the tasks required within each phase, and to the extent possible the location on the property for each phase;

- Identify the methods to be used in financing the Project;
- Updated traffic studies, site plans, Cultural Impact Statement (CIA), and Ka Pa‘akai analysis;
- Identify what findings and conditions of the Decisions and Orders that you will need to amend or modify to conform with the church facilities you are now planning to construct, including any time extensions in meeting those conditions that would be required;
- Provide recommendations to the Commission for how conditions in the Decisions and Orders should be apportioned between Waikapu Development Venture and Emmanuel Lutheran Church;
- Work with the State Office of Planning and Sustainable Development to better understand the process and alternatives that might be available for your proposed project.

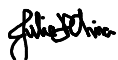
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER on Feb 6, 2024. 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 day of Feb 6, 2024, per motion on October 18, 2023.

APPROVED AS TO FORM

LAND USE COMMISSION



STATE OF HAWAI'I

JULIE CHINA, ESQ
Deputy Attorney General

By Dan V. Giovanni

DAN GIOVANNI
Chairperson and Commissioner

Filed and effective on:

Feb 6, 2024

Certified by:



DANIEL E. ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER ON THE CONTINUATION OF THE 2023 STATUS REPORT 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:

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Dated Feb 6, 2024
Honolulu, Hawai'i.



DANIEL E. ORODENKER
Executive Officer