

DOCKET NO. A07-773
Emmanuel Lutheran Church (a)

Status Report

STAFF REPORT

ACTION MEETING

February 19, 2025



Daniel E. Orodener, Executive Officer

Submitted: February 13, 2025

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1. EXPLANATION OF PROCEEDING

Status and Progress Report hearings provide the Petitioner an opportunity to update the Commission on progress or problems in compliance with the representations and conditions of the decision and order.

Any decisions by the Commission should be based on good cause (or lack of) shown by the Petitioner for its lack of progress and evidence put on the record. If the Commission finds that Emmanuel Lutheran Church (“ELC”) is not going to or is not capable of compliance with the 2019 Decision and Order, they may request staff to schedule a hearing for Order to Show Cause proceedings.

AUTHORITY

Pursuant to HAR 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.”

Pursuant to HRS 205 and HAR 15-15-79(a): “Petitioners granted district boundary amendments shall make substantial progress within a reasonable period, as specified by the commission, from the date of approval of the boundary amendment, in developing the property receiving the boundary amendment. The Commission may act to amend, nullify, change, or reverse its decision and order if the petitioner fails to perform as represented to the Commission within the specified time period.”

Condition 19 of the 2008 Decision and Order Relating to Annual Reports “Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning and Sustainable Development, 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.”

After hearing from the Petitioner and other parties, the Commission may decide whether additional time may be needed to move forward or that there is a reason to believe that Petitioner is non-compliant with representations and conditions in the D&O and set an Order to Show Cause hearing pursuant to HAR 15-15-79 and 15-15-93(b).

2. BACKGROUND INFORMATION

Please note that the background information includes information that involves Waikapū Development Venture, LLC (“WDV”) due to the interdependence and close relationship with the two projects in the Docket.

The proceeding before the Land Use Commission (“LUC”) is to hear a status report by ELC. The A07-773 docket originally involved the reclassification of approximately 25.263 acres of land from the State Land Use Agricultural District to the State Land Use Urban District at Wailuku, Island of Maui, State of Hawai‘i, TMK No. 3-5-002:011.

The DBA was granted on March 7, 2008, subject to 23 conditions ([see 2008 Decision and Order](#)).

The Project was anticipated to be completed in three phases, and each phase was anticipated to take 13 months to complete. Condition 2 of the 2008 Decision and Order states

“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.”

Petitioner submitted [2016 Annual Report](#) on 06/28/2016

Petitioner Submitted [2017 Annual Report](#) on 03/19/2018, and the LUC received [County Comments](#) on 05/31/2018

- The 2017 Annual Report identifies that Emmanuel Lutheran Church was in the process of selling half of the Petition area to Waikapū Development Venture once the land was subdivided.
- The 2017 Annual Report states that WDV’s plan is to develop a 100% affordable and workforce housing project on that property. The WDV project is proposed to have 80 residential units that will be available for sale to qualified individuals earning within 70% to 140% of the Maui area median income.

Please note the following portion of the background information is divided into Petitioners Motions, in this docket numerous motions were made subsequently.

**2018 Motion ELC
for Time to Complete
Project**

On April 9, 2018, ELC filed its [Motion for Extension of Time to Complete Project](#); Memorandum in Support of Motion; Affidavit of Michael Reiley; Affidavit of William Frampton; Petitioner’s Exhibits “A” through “F” (collectively “Motion for Extension”)

On April 27, 2018, The Land Use Commission received [OPSD Response to Petitioner Emmanuel Luther Church of Maui’s Motion for Extension of Time to Complete Project](#)

On July 11, 2019, the LUC Mailed 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](#); COS

**2018 WDV
Subsequent Motion (1)
to be a co-petitioner
with Emmanuel
Lutheran Church of
Maui, or in the
alternative (2) to
become a Party
herein, or in the
alternative (3) to
intervene**

On April 12, 2018, WDV made a [subsequent motion](#) (1) to be a co-petitioner with Emmanuel Lutheran Church of Maui, or in the alternative (2) to become a Party herein, or in the alternative (3) to intervene.

On April 19, 2018, LUC Received [ELC’s Memorandum in Support](#) of Waikapū Development Venture LLC’s Motion to be co-petitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene,

On April 19, 2018, the LUC received [OPSD’s Letter of No Opposition](#) to WDV LLC’s Motion

On April 26, 2018, [County of Maui- Department of Planning’s Statement of No Objection](#) to (1) Emmanuel Lutheran Church of Maui Motion for Extension of Time to Complete Project and (2) Waikapū Development Venture LLC’s Motion to be Co-petitioner; or in the Alternative to Become a Party; or in the Alternative to Intervene.

On May 1, 2018, the [County of Maui Department of Housing and Human Concerns](#) sent a comment letter in support of WDV’s Motion to support the development of affordable housing.

On June 22, 2018 the LUC sent the [Order granting Waikapū Development Venture LLC’s motion to intervene](#)

2018 ELC Motion for Modification

On October 12, 2018, ELC filed a Motion [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. Which consists of four phases:

Phase 1. (2019 to 2021) Securing the necessary funding. Sale of a portion of the Petition Area to Waikapū Development Ventures LLC would allow Petitioner to pay off the mortgage currently encumbering the Petition Area. Subsequently, Petitioner will begin a fundraising campaign for development of the project.

Phase 2. (2021 to 2024) Construct a multi-purpose building and necessary site work and infrastructure. This building will house the preschool and provide gym space during the week and convert to host worship services and other church functions over the weekend.

Phase 3. (2025 to 2027) Construction of approximately three (3) classrooms, site work and infrastructure. These classrooms will house Petitioner’s middle school and office space for the pastor and preschool director.

Phase 4 (2027 to 2028) Petitioner will evaluate this phase after Phase 3, which would consist of Petitioner’s elementary school, a sanctuary, and other accessory buildings.

On November 19, 2018, The OPSD, Submitted their response to [Emmanuel Lutheran Church of Maui’s Motion for Modification](#)

On November 21, 2018, the County of Maui Planning Department filed their [Response to ELC’s Motion for Modification](#)

On July 11, 2019, the LUC Mailed 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](#); COS

The Commission amended Condition Two of the 2008 Decision and Order to read as follows:

“Reversion of District Classification. Petitioner shall develop the Petition Area and complete the construction of the Project no later than twenty (20) years from the date of the decision and order. If Petitioner fails to complete Project construction within twenty (20) years from the date of the decision and order, the Commission may, on its own motion or at the request of any party, file an Order to Show Cause and require Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification”

It was further ordered that the foregoing amendments and modifications to the 2008 D&O shall be subject to the following conditions:

1. Petitioner shall complete the initial two phases of the Updated ELC Project within six (6) years of the Commission’s issuance of this Order.
 - Six years from issuance is July 11, 2025
2. Petitioner shall have a CIA of the Petition Area completed prior to Petitioner’s completion of Phase 1 of the Updated ELC Project, and Petitioner shall adhere to the recommendations of said CIA.

2018 WDV Motion to Approve Sale, Motion to Allow Subdivision, and Motion to Bifurcate

On September 7, 2018, Maui County adopted [Resolution No. 18-150](#) approving with modification the affordable workforce housing project by Waikapū Development Venture LLC, pursuant to section 201H-38, Hawai’i Revised Statutes. Which states:

“Construction of the Waikapū Development Venture LLC Affordable Workforce Housing

Project ("Project") shall commence within two years of the effective date of this resolution. Commencement of construction shall mean the visible start of grading, pursuant to a valid grading permit as needed for the development of the 12.5 acres upon which the 80 residential workforce housing units shall be constructed ("Property"). Waikapū Development Venture LLC shall act in good faith and with its reasonable best efforts to complete construction of the 80 residential workforce housing units, with all related roads and infrastructure, no later than four years after the effective date of this resolution.”

On October 12, 2018, WDV made a [Motion to Approve Sale, Motion to Allow Subdivision, and Motion to Bifurcate](#)

On November 19, 2018, The OPSD, Submitted their response to [WDV’s Motion to Approve Sale; Motion to Allow Subdivision and Motion to Bifurcate](#)

On July 11, 2019, the LUC sent the [2018 Findings of Fact, Conclusions of Law, Decision and Order Granting WDV’s 1\) Motion to Approve Sale of a Portion of the Petition Area; 2\) Motion to Allow for Subdivision of Petition Area; 3\) Motion to Bifurcate; and 4\) Motion for Modification; COS](#)

The Decision and Order approved the sale of a portion of the Petition Area, deleted Condition 20 of the 2008 D&O, granted WDV’s Motion for Modification, amended Condition two (2) of the 2008 Decision and Order, and granted bifurcation.

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.

The Commission 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).

2018 WDV Motion for Modification

On October 26, 2018, WDV made a [Motion for Modification; Memorandum in Support of Motion](#) that requested the Land Use Commission issue an order modifying the Findings of Fact, Conclusion of Law, and Decision and Order filed on March 7, 2008. Allowing for use of the Petition Area acquired by WDV to develop workforce housing project, that was previously approved by the County of Maui.

On November 11, 2018, Waikapū Development Venture LLC's filed their [Errata to Motion for Modification](#).

On November 19, 2018, The OPSD, Submitted their response to [Motion for Modification](#).

On November 21, 2018, the County of Maui Planning Department filed their [Response to WDV's Motion to Approve Sale; Motion to Allow Subdivision and Motion to Bifurcate](#).

On November 27, 2018, The County of Maui Department of Planning filed their [Errata to Position Statement](#) and Statement of No Response on WDV Errata to for Modification

On January 31, 2019 the Land Use Commission revived the [WDV Intervenor's Draft Order for BOTH](#)

[Intervenor’s 2018 Motions](#)

On July 11, 2019, the LUC sent the [2018 Findings of Fact, Conclusions of Law, Decision and Order](#) Granting WDV’s 1) Motion to Approve Sale of a Portion of the Petition Area; 2) Motion to Allow for Subdivision of Petition Area; 3) Motion to Bifurcate; and 4) Motion for Modification; COS

The Commission granted WDV’s Motion for Modification. Accordingly, the Commission amended Condition Two which reads:

“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 was 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.

Staff contacted former Attorneys for the Petitioner regarding delinquent annual reports, the Petitioners submitted the joint [2018-2023 Annual Report](#), [Attachment 1](#), and [Attachment 2](#) on April 13, 2023. A synopsis of key sections is as follows;

Condition 1)
Compliance with
Representations to the
Commission

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

Condition 2)
Reversion of District
Classification

The Annual Report states “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”

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

Condition 5)
Highways and Roads

ELC will comply with this condition upon construction of their respective projects. Annual report states “This condition does not apply to WDV.”

2023 Status Reports

On April 25, 2023, The LUC Staff sent the [2023 Status Report Letter](#) scheduling a hearing for June 7th, 2023.

On May 12, 2023, The Petitioner filed [2018-2023 AMENDED Annual Report, Attachment 1, Attachment 2, and Attachment 3.](#)

On June 7th, 2023, the LUC held a status report hearing for A07-773 Waikapū Development Venture, LLC (b) at the hearing the Commission brought up the following issues to be presented on at the following status report hearing (scheduled for October 18-19, 2023):

The Commission asked Emmanuel Lutheran Church for the following information

- 1) **Need for an independent annual report**
- 2) **Ability to meet the deadlines of conditions that are applicable to both projects**
- 3) **Understanding of applicability of Condition no.5 relating to highways and roads**
- 4) **Financial capability to pay for improvements**
- 5) **Status of updated plans**

The Commission received a [letter from ELC](#) on August 15, 2023, which addresses the questions raised by the Commission. However, the answers

provided in the letter are ambiguous and unclear.

At the October 18-19, 2023, status report hearing the Commission **ordered** that Petitioner – Emmanuel Lutheran Church return before the Commission within six months from [February 6, 2024¹] the date of this [the [2023 Status Report](#)] [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:**

- 1. Identification of all individuals, organizations, or contractors responsible for plans, designs, engineering, and permitting for the proposed church facilities;**
- 2. 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;**
- 3. Identify the methods to be used in financing the Project;**
- 4. Updated traffic studies, site plans, Cultural Impact Statement (“CIA”), and Ka Pa‘akai analysis;**
- 5. 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;**
- 6. Provide recommendations to the Commission for how conditions in the Decisions and Orders should be apportioned between Waikapū Development Venture and Emmanuel**

¹ Six months from February 6, 2024, was August 6, 2024, however, at this time the Land Use Commission received three special use permits that are subject to tight 45-day deadlines. Land Use Commission staff prioritized the matters with time sensitivity.

- Lutheran Church;**
- 7. 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.**

Agenda & Minutes

June 7, 2023: [Agenda](#) | [Minutes](#) | [YouTube](#)

October 18-19, 2023: [Agenda](#) | [Minutes](#) | [YouTube](#)

2025 Continuation of the 2023 Status Report

ELC filed their [Project Update Letter/ 2024-2025 Annual Report](#), on January 28, 2025. ELC later followed up with the [Ethnographic Survey for the Waikapū East Division](#) on February 4, 2025.

3. OPSD POSITION

No comments received as of 02/12/2025.

4. COUNTY OF MAUI POSITION

No comments received as of 02/12/2025.

5. STAFF ANALYSIS

Please note that the staff analysis includes information that involves WDV due to the interdependence and close relationship with the two projects in the Docket.

Staff included the Commissions unanswered questions from the first status report hearing, the list of questions is listed in the background information portion of this staff report under section “2023 Status Report” in bold font.

Staff’s specific points of concern following review of the [Project Update Letter/ 2024-2025 Annual Report](#):

Condition 1 (2019)

Phases of Development
(Delay)

Condition One of the [2019 Decision and Order](#) granting the Petitioners Motion for Time extension and Motion for Modification states:

Petitioner shall complete the two initial phases of the Updated ELC Project within six (6) years of the Commissions issuance of this Order.

Two initial phases ([2019 Decision and Order](#), p.12-13) :

1. Securing Funding

2. Multipurpose Building for the
Preschool, Church, and Gymnasium
Effective six-year time period since issuance:
July 11, 2025

According to the [Project Update Letter/ 2024-2025 Annual Report](#) ELC sent to the Commission, at present there has not been any development of the ELC Petition Area.

ELC represents:
ELC will need to apply for an extension at a subsequent LUC meeting.

The Commission should ask ELC when they plan on filing their Motion to amend.

Note: When the Motion to amend is filed they must include an amendment to the development phase schedule as presented in the 2019 Decision and Order to support amendment to this Condition.

Condition 5 (2008)
Traffic Impact Report/ Study
(“TIAR”)

In the [Project Update Letter/ 2024-2025 Annual Report](#) ELC Sent to the Commission, ELC represents:

- They will be requesting relief from this condition
- A petition will be submitted at a later date
- ELC and WDV will work together on this process.

During a meeting with WDV and LUC Staff on September 14, 2023, WDV indicated that they are willing to update the TIAR on behalf of both parties.

LUC Staff suggests questioning on when ELC plans to file Motion to Amend to request relief from this condition.

It should be noted that WDV still has the obligation, but if relief is granted to ELC, it would reduce the obligation to one land

owner, which leaves questions on what will occur if WDV does not proceed with their development and ELC proceeds.

Condition 2 (2019)
Cultural Impact Assessment

Condition two from the [2019 Decision and Order](#) granting the Petitioners Motion for Time Extension and Motion for Modification states:

Petitioner shall have a CIA of the Petition Area completed prior to Petitioner's completion of Phase 1 of the Updated ELC Project, and Petitioner shall adhere to the recommendations of said CIA.

ELC filed their [Ethnographic Survey for the Waikapū East Division](#) on February 4, 2025.

Staff notes only two interviews were conducted as part of the ethnographic study, which could be interpreted as a small sample in turn limiting the validity of the information presented.

Ka Pa'akai analysis:

- 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.

Information presented in the Cultural Impact Assessment pertinent to conducting a Ka Pa'akai analysis:

- 1) 'Uhaloa remains present in petition area, area once had numerous species of native plants, petition area may

contain iwi , ‘ōpe‘ape‘a is present in are; however, interviewees indicated they were unaware of traditional cultural resources in the area that are used for traditional or customary practices (pg. 70)

Note: this does not mean there aren't any traditional cultural resources in the area that are used for traditional or customary practices

- 2) The project will likely impact the individual ‘uhaloa in the area, the CIA presents that ‘uhaloa is present elsewhere.
The project may potentially impact ‘ōpe‘ape‘a, which could be an adverse effect to practitioners who consider the species sacred or significant.
- 3) To mitigate impact to ‘ōpe‘ape‘a, best management practices could be implemented during development and after development. During development, if previously unidentified burial/archeological/historic sites are found during development, construction must stop near the vicinity of the discovery until the issuance of an archeological clearance from the State Historic Preservation Division that mitigate the impact to the discovery, pursuant to The Hawai‘i Constitution, Hawai‘i Revised Statutes, case law, and Native American Graves Protection and Repatriation Act (“NAGPRA”).

The Commission should ask the petitioner to explain how the CIA that included ELC differs from the one that only pertained to WDV, and what information changed.

Financial Capability

ELC stated that they are engaged in

preliminary financing review with the Lutheran Church Extension Fund (“LCEF”).

The Commission should ask Petitioner how the financing and funding will work, how much money is needed and how much money has been secured to date, and how long will this process take.

Staff Recommendation

Since the matter is a status report, no action is needed, but Staff recommends requesting a follow-up status report after July 11, 2025, if Petitioner ELC does not file a motion to amend prior.

Reasoning:

- Non-compliance with the 2019 Decision and Order Condition No.1
 - Effective six-year time period since issuance: July 11, 2025
- Petitioner would likely need to extend the initial construction date in this condition, as well as the overall completion date.