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STATE OF HAWAII

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2015 APR 16 A 7:31

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LETTER OF TRANSMITTAL

April 15, 2015

To: Land Use Commission
State of Hawaii
235 South Beretania Street, Room 406
Honolulu, HI 96804

Hand Delivery

Attn: Riley Hakoda

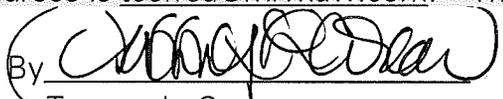
Re: **In the Matter of the Petition of Waikapu Properties, LLC, et al.;**
Docket No. A15-798

We are sending you the following:

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- | | |
|-------------------|---|
| Original + 1 copy | Petition for Land Use District Boundary Amendment; Petitioners' Exhibits "1"- "18"; Verification of Michael Atherton; Affidavit of Mailing; Certificate of Service |
| Original + 1 Copy | Petitioners' Motion to Designate the Land Use Commission as Approving Agency for Environmental Statement Under HRS Chapter 343 and for Authority to Prepare Environmental Impact Statement; Memorandum in Support of Motion; Appendix "1"; Certificate of Service |
| Original | Mancini, Welch & Geiger Check No. 29127 dated April 10, 2015, payable to Land Use Commission in the amount of \$5,000.00 |
| 1 flash drive | Containing digital copies of filings |

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- | | |
|--|---|
| <input type="checkbox"/> For your information | <input type="checkbox"/> For necessary action |
| <input type="checkbox"/> For review and comment | <input type="checkbox"/> For signature & return |
| <input checked="" type="checkbox"/> See remarks | <input checked="" type="checkbox"/> For filing |

REMARKS: Please email me a file-stamped cover page of the petition and motion for our records. My email address is tcorrea@mrwlaw.com. Thank you.

By 
Tammy L. Correa
Assistant to JAMES W. GEIGER

MANCINI, WELCH & GEIGER LLP

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STATE OF HAWAII

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2015 APR 16 A 7:30

Attorneys for Petitioners

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition	)	DOCKET NO. A15-798
of:)	
	)	PETITIONERS' MOTION TO
WAIKAPU PROPERTIES, LLC; MTP	)	DESIGNATE THE LAND USE
LAND PARTNERS, LLC; WILLIAM S.	)	COMMISSION AS APPROVING AGENCY
FILIOS, Trustee of the William	)	FOR ENVIRONMENTAL STATEMENT
S. Filios Separate Property	)	UNDER HRS CHAPTER 343 AND FOR
Trust dated APRIL 3, 2000; and	)	AUTHORITY TO PREPARE
WAIALE 905 PARTNERS, LLC,	)	ENVIRONMENTAL IMPACT
	)	STATEMENT; MEMORANDUM IN
To Amend the Agricultural Land	)	SUPPORT OF MOTION; APPENDIX
Use District Boundaries into	)	"1"; CERTIFICATE OF SERVICE
the Rural Land Use District for)	
certain lands situate at)	
Waikapu, District of Wailuku,)	
Island and County of Maui,)	
State of Hawaii, consisting of)	
92.394 acres and 57.454 acres,)	
bearing Tax Map Key No. (2) 3-)	
6-004:003 (por) and to Amend)	
the Agricultural Land Use)	
District Boundaries into the)	
Urban Land Use District for)	
certain lands situate at)	
Waikapu, District of Wailuku,)	
Island and County of Maui,)	
State of Hawaii, consisting of)	
236.326 acres, 53.775 acres,)	
and 45.054 acres, bearing Tax)	
Map Key No. (2) 3-6-002:003)	
(por), (2) 3-6-004:006 and (2))	
3-6-005:007 (por).)	

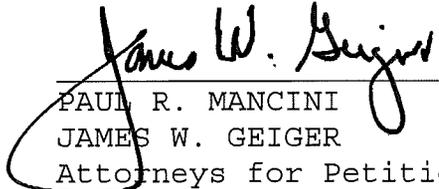
PETITIONERS' MOTION TO DESIGNATE THE LAND USE
COMMISSION AS APPROVING AGENCY FOR ENVIRONMENTAL
STATEMENT UNDER HRS CHAPTER 343 AND FOR
AUTHORITY TO PREPARE ENVIRONMENTAL IMPACT STATEMENT

WAIKAPU PROPERTIES, LLC, MTP LAND PARTNERS, LLC,
WILLIAM S. FILIOS, Trustee of the William S. Filios
Separate Property Trust dated APRIL 3, 2000, and WAIALE 905
PARTNERS, LLC (collectively "Petitioners"), by and through
their counsel, respectfully ask this honorable Land Use
Commission (the "Commission"): (1) to determine that it
will be the approving agency for an environmental statement
under HRS Chapter 343; (2) to determine, through its
judgment and experience, that an Environmental Impact
Statement ("EIS") is likely to be required; and (3) to
authorize Petitioners to prepare an Environmental Impact
Statement Preparation Notice ("EISPN").

This motion is brought pursuant to HAR § 15-15-
70, HRS § 343-5, and HAR § 11-200-12. In this docket,
Petitioners seek to amend the agricultural land use
district boundaries into the rural land use district for
about 149.848 acres and to amend the agricultural land use
district boundaries into the urban land use district for
about 335.155 acres. The project for which the amendments
are sought will require the use of state or county lands
and an amendment of an existing community plan. These

actions require compliance with HRS Chapter 343. Further, Petitioners ask this Commission to exercise its discretion to determine, based upon its judgment and experience, that an EIS is needed for review of this project as it will likely have significant impacts upon the environment. Accordingly, Petitioners ask this Commission to determine that it act as the approving agency for compliance with HRS Chapter 343, that this Commission determine that an EIS shall be required, and that Petitioners should prepare an EISPN.

DATED: Kahului, Hawai'i, APR 15 2015.



PAUL R. MANCINI
JAMES W. GEIGER
Attorneys for Petitioners

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition) DOCKET NO. A15-798
of:)
) MEMORANDUM IN SUPPORT OF
WAIKAPU PROPERTIES, LLC; MTP) MOTION
LAND PARTNERS, LLC; WILLIAM S.)
FILIOS, Trustee of the William)
S. Filios Separate Property)
Trust dated APRIL 3, 2000; and)
WAIALE 905 PARTNERS, LLC,)
)
To Amend the Agricultural Land)
Use District Boundaries into)
the Rural Land Use District for)
certain lands situate at)
Waikapu, District of Wailuku,)
Island and County of Maui,)
State of Hawaii, consisting of)
92.394 acres and 57.454 acres,)
bearing Tax Map Key No. (2) 3-)
6-004:003 (por) and to Amend)
the Agricultural Land Use)
District Boundaries into the)
Urban Land Use District for)
certain lands situate at)
Waikapu, District of Wailuku,)
Island and County of Maui,)
State of Hawaii, consisting of)
236.326 acres, 53.775 acres,)
and 45.054 acres, bearing Tax)
Map Key No. (2) 3-6-002:003)
(por), (2) 3-6-004:006 and (2))
3-6-005:007 (por).)

MEMORANDUM IN SUPPORT OF MOTION

WAIKAPU PROPERTIES, LLC, MTP LAND PARTNERS, LLC,
WILLIAM S. FILIOS, Trustee of the William S. Filios
Separate Property Trust dated APRIL 3, 2000, and WAIALE 905
PARTNERS, LLC (collectively "Petitioners"), own about

485.003 acres of land located near the town of Waikapu on Maui. The project, known as Waikapu Country Town Project (the "Project"), is proposed as a complete community where residents can live, work, shop and play in a friendly, healthy and environmental sustainable manner. The master-planned community is expected to include affordable and market-priced housing in a mixture of types such as live-work, single-family, multi-family and rural-residential. Supporting commercial, employment and civic uses are expected to form the complete community. Higher density housing and mixed uses are proposed for a village center and along a pedestrian oriented main street. Facilitation of walking and biking between different land uses is expected to be a major objective of the Project.

Petitioners' concept is that the Project will include about 1,400 residential units. Existing buildings and grounds of the Maui Tropical Plantation are planned for incorporation into the village center providing commercial uses such as a town grocery, farmer's market, specialty and boutique retail stores, professional offices, personal service businesses, restaurants, cafés and artist and craft studios. Encircling the village center in the Petition Area that lies mauka of Honoapiilani Highway will be single-family residential neighborhoods of mixed lot sizes.

Beyond the single-family residential neighborhoods will be rural lands. The rural lots are proposed to be between 0.5 acre and 1.5 acres in size. On the makai side of Honoapiilani Highway, the concept is a pedestrian oriented main street, surrounded by single-family and multi-family residences. An area of about 12 acres may be set aside for a school and parks will be incorporated into the Project.

The Project will require use of state or county lands. For example, connections to, and repair and improvements of, wastewater transmission lines and water service lines operated by the County of Maui will be required. Use of state or county lands is an action which triggers an environmental assessment under HRS § 343-5(a)(1). In addition, the community plan for Wailuku-Kahului will require amendment. The amendment will result in a designation other than agriculture, conservation or preservation and as such, an amendment would trigger the provisions of HRS Chapter 343.

Petitioners filed a petition seeking a boundary amendment change contemporaneously with this motion. Filing of the petition is the earliest practicable time for an accepting agency to determine whether an EIS shall be required to assess the Project pursuant to HRS Chapter 343.

Under HRS Chapter 343, an action is to be reviewed by way of an environmental assessment to determine whether an EIS is needed. Recognizing that the environmental assessment step can be unnecessarily burdensome and costly for applicants and agencies in projects likely to have significant impacts on the environment, the Legislature in 2012, passed Act 172 which amended HRS Chapter § 343-5(b) and § 343-5(e). Under those sections, an agency may determine, through its judgment and experience, that an EIS is likely to be required and bypass the environmental assessment step. In making such a determination, certain elements should be addressed. The criteria to be reviewed by the Commission in making this determination include the significance criteria set forth under HAR § 11-200-12(b). A copy of that rule is attached as Appendix "1" for ease of reference.

With regard to the Project, the following significance criteria are relevant.

1. Agricultural Land Will Be Lost.

The Project will involve an irrevocable loss of agricultural lands. If approved, about 480 acres of agricultural lands will be taken from agricultural use and converted to residential use. Once residences are built, the land will not revert back to agricultural use.

2. Economic and Social Welfare Will Be Impacted.

The Project will substantially affect the economic or social welfare of the Maui community. The Project is proposed to add about 1,400 residences, a school, and about 150,000 square feet of commercial space to the inventory of those items on the island of Maui. In addition, the proposed Project will create additional burdens on public systems including fire protection, police, emergency medical, transportation systems, including both the roadway system and the public transportation system, and recreational facilities. The impacts are significant.

3. Population on Public Facilities Will Be Affected.

The Project, as proposed, will involve substantial secondary impact such as population changes and effects on public facilities. It is expected that more than 8,000 people will live or work in the proposed Waikapu Country Town Project. This will effect a significant population change in Central Maui as well as impact transportation and utility services in Central Maui.

4. Scenic Vistas and View Plains Will Be Impacted.

The Project, as proposed, will affect scenic vistas and view planes identified in County plans. Presently, there are unobstructed views of the West Maui Mountains from the Petition Area. When the Project is developed, housing and other structures will impact the views of the West Maui Mountains.

5. Energy Consumption Will Be Increased.

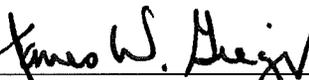
There will be substantial energy consumption as a result of the proposed Project. The addition of in excess of 1,400 residences and of in excess of 8,000 residents will cause an increase in energy consumption, the impacts of which must be analyzed.

Based on these significance criteria, the Commission, using its judgment and experience, can determine that a finding that the Project will place no significant impact on the environment is not probable. As such, an EIS should be required to assess the impacts of the Project on the environment and to identify mitigative measures which can be incorporated to lessen the impact on the environment that will arise from this Project.

For these reasons, Petitioners respectfully request that the Commission determine that it is the appropriate accepting authority for review under HRS

Chapter 343, that it authorize Petitioners to not prepare an environmental assessment, and that it authorize Petitioners to prepare an EIS beginning with the preparation of an EISPN pursuant to HRS § 343-5(e).

DATED: Kahului, Hawai'i, APR 15 2015.



PAUL R. MANCINI
JAMES W. GEIGER
Attorneys for Petitioners

West's Hawaii Administrative Code
Title 11. Department of Health
Subtitle 1. General Departmental Provisions
Chapter 200. Environmental Impact Statement Rules (Refs & Annos)
Subchapter 6. Determination of Significance

Haw. Admin. Rules (HAR) § 11-200-12

§ 11-200-12. Significance Criteria.

Currentness

(a) In considering the significance of potential environmental effects, agencies shall consider the sum of effects on the quality of the environment, and shall evaluate the overall and cumulative effects of an action.

(b) In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short-term and long-term effects of the action. In most instances, an action shall be determined to have a significant effect on the environment if it:

- (1) Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;
- (2) Curtails the range of beneficial uses of the environment;
- (3) Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders;
- (4) Substantially affects the economic or social welfare of the community or State;
- (5) Substantially affects public health;
- (6) Involves substantial secondary impacts, such as population changes or effects on public facilities;
- (7) Involves a substantial degradation of environmental quality;
- (8) Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
- (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
- (10) Detrimentially affects air or water quality or ambient noise levels;

§ 11-200-12. Significance Criteria., HI ADC § 11-200-12

(11) Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;

(12) Substantially affects scenic vistas and viewplanes identified in county or state plans or studies; or,

(13) Requires substantial energy consumption.

Credits

Adopted Dec. 6, 1985; Amended and Compiled Aug. 31, 1996

AUTHORITY: HRS Sections 343-5, 343-6. Imp: HRS Sections 343-2, 343-6

Current through the Hawaii Administrative Rules Listing of Filings, with amendments received through February 2015.

Haw. Admin. Rules (HAR) § 11-200-12, HI ADC § 11-200-12

End of Document

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CERTIFICATE OF SERVICE

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

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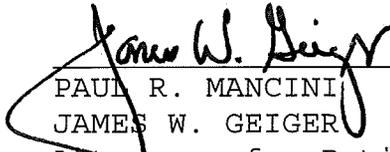
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APR 15 2015

DATED: Kahului, Hawai'i, _____.



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