

ANNUAL REPORT
2023



WAIKAPU COUNTRY TOWN

DOCKET NO. A15-798



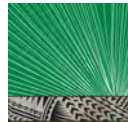
Prepared for:

Waikapu Properties, LLC
1670 Honoapiilani Highway
Waikapu, Maui, Hawaii

Prepared by:

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PLANNING
CONSULTANTS
HAWAII, LLC

March 6, 2023



Land Use Planning • Sustainability Services • Community Planning • Development Permits

March 6, 2023

Mr. Daniel E. Orodenker
Executive Director
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

Dear Mr. Orodenker:

Re: **ANNUAL REPORT** for **2023** for the WAIKAPŪ COUNTRY TOWN (WCT) at 1670 Honoapi'ilani Highway Waikapū, Hawai'i on property identified as Tax Map Key Nos. (2) 3-6-004:003 (por); (2) 3-6-002:003 (por), (2) 3-6-004:006 and (2) 3-6-004:007 (por)
(Docket No. A15-798)

On behalf of Waikapu Properties, LLC; MTP Land Partners, LLC; William F. Filios, Trustee of the William S. Filios Separate Property Trust dated April 3, 2000; and Waiale 905 Partners, LLC, the owners of the above-referenced properties, we are pleased to file the Annual Report for 2023 in support of the Waikapū Country Town.

On February 26, 2018, the State Land Use Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order, and Certificate of Service. The Decision and Order reclassified the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District and from the State Land Use Agricultural District to the State Land Use Rural District. The Decision and Order was subject to thirty-two conditions. Condition No. 28 below, requires that an Annual Report be filed with the State Land Use Commission, the State Office of Planning, and the Maui Planning Department in accordance with the following:

Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the State Office of Planning, and the County of Maui Planning Department, and their respective successors, in connection with the status of the development of the Petition Area 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. The annual report shall consist of one original, one paper copy and one electronic copy and shall be due prior to or on the anniversary date of the approval of the Petition.

This Annual Report for 2023 is being filed in accordance with the above-referenced condition.

Status of the Development of the Petition Area

The 2023 Annual Report provides a summary of the project's status since the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order on February 28, 2018.

Since the County of Maui's adoption of the project's community plan amendments and zoning ordinances, the Owners are initiating the following tasks to move the project towards development:

1. On December 16, 2019, Waikapu Properties, LLC filed a State Land Use Commission Special Permit application with the County of Maui's Department of Planning for the twelve-acre wastewater reclamation facility, which is proposed within the State Agricultural District.
2. On March 4, 2021, Waikapu Properties, LLC filed an Updated State Land Use Commission Special Permit application for the wastewater reclamation facility. The Updated Special Permit proposes an alternative wastewater treatment technology than the one proposed in the earlier application. This application is presently on hold, as the County of Maui, Department of Environmental Management, intends to develop a Central Maui Wastewater Reclamation Facility that will service the development and other neighboring existing and planned future projects.
3. On July 2, 2021, the Petitioner filed a motion for modification of Condition 8(b) of Decision and Order Filed on February 26, 2018. On March 8, 2022, the Commission ordered that the Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018, be amended to read as follows (**See Exhibit 1**):

Petitioner shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of Maui. Petitioner shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Memorandum of Agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the Project.

4. On April 28, 2022, the Petitioner entered into a Public Private Partnership Agreement (PPPA) with the County of Maui, whereas the WCT may provide additional Residential Workforce Housing Units (RWHUs) along with additional acreage for a school site in the Development in-lieu of monetary contributions for infrastructure improvements. The agreement will not become effective until certain conditions of the CIZ and DBA are amended to reflect the terms of the Agreement, including the use of RWHUs to satisfy infrastructure requirements (**See Exhibit 2**).
5. On July 19, 2022, the Petitioner filed a motion to amend conditions 1, 4, and 8(b) of the Decision and Order filed on February 26, 2018. The amendments will allow the Petitioner to increase the

size of the school site as described in the Educational Contribution Agreement executed on January 31, 2017, and to increase the number of Residential Workforce Housing Units to be provided in the project in lieu of providing direct funding and/or participating in the construction of: (1) traffic improvements; and (2) private or public wastewater facilities (**See Exhibit 3**).

6. On November 3, 2022, the County of Maui, Department of Planning, initiated a Change in Zoning on behalf of the Petitioner requesting amendments to conditions of zoning of Ordinance No. 4998, Bill No. 45 (2019) relating to changes in zoning for the Waikapu County Town District, and to Title 19, Maui County Code, relating to Waikapu County Town District of Ordinance No. 4997, Bill No. 44 (2019), located at 1670 Honoapiilani Highway, Tax Map Keys (2) 3-6-002:003 (POR), (2) 3-6-004:003 (POR), (2) 3-6-004:006 (POR), (2) 3-6-005:007 (POR), and (2) 3-6-006:036, Waikapu, District of Wailuku, Island and County of Maui (**See Exhibit 4**). The purpose of the requests is to align WCT's conditions of zoning, County Zoning designations, and its zoning code with the PPPA.
7. On December 13, 2022, the Maui Planning Commission conducted a public hearing on the Planning Department initiated amendments to the above-referenced conditions of zoning, WCT zoning ordinance, and community plan map. The Planning Commission voted unanimously to recommend approval of the subject amendments to the Maui County Council.
8. The National Park Service (NPS) recently received and accepted HAER documents for WSCo Reservoir No. 1 (HAER HI-161) and the Waihee Ditch (HAER HI-162).
9. The Petitioner prepared a Reconnaissance Level Survey Report and Historic Context Study for proposed impacts to the Waihee Ditch and Reservoir No. 1 (SIHP # 50-50-04-07881 Feature 3) as requested by the SHPD.
10. Compliance with the conditions of the Commission's Decision and Order.
11. Compliance with the conditions of zoning.
12. Preparation of engineering plans and supporting documentation for approval of the backbone infrastructure, including: water source and transmission systems, wastewater treatment and transmission systems; off-site roadway improvements; and utilities.
13. Preparation of Neighborhood Plans for County Neighborhood Plan Approval.
14. Preparation of Preliminary Subdivision applications.

Status of Compliance with Conditions Imposed by the Decision and Order

The following documents the Owners compliance with the remaining thirty-two conditions.

DOCKET NO. A15-798 CONDITIONS

Condition No. 1	<u>Education Contribution Agreement</u> . Petitioner shall contribute to the development, funding, and/or construction of school facilities in compliance with the Educational Contribution Agreement for Waikapū Country Town undated but executed as of January 31, 2017 entered into by Petitioner and the DOE. Petitioner shall ensure that prospective buyers, purchasers, and subsequent owner builders of lots are given notice of the requirement to pay the Central Maui District Impact Fee in
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	accordance with the Educational Contribution Agreement. Such notice shall be recorded and shall run with the land.
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Petitioner Response: The Petitioner and the DOE entered into an Educational Contribution Agreement for Waiakpū Country Town on January 31, 2017 (**See Exhibit 5**). On July 19, 2022, the Petitioner filed a motion to increase the size of the school site to align the agreement with the provisions of a Public Private Partnership Agreement entered into between the Petitioner the County of Maui (**See Exhibit 3**).

Petitioner understands that prospective buyers, purchasers, and subsequent owner builders of lots shall be given notice of the requirement to pay the Central Maui District Impact Fee in accordance with the Educational Contribution Agreement. Such notice will be recorded and will run with the land.

Condition No. 2	<u>Storm Water Management and Drainage</u> . Petitioner shall maintain existing drainage patterns and shall implement applicable Best Management Practices a) to minimize infiltration and runoff from construction and vehicle operations, b) to reduce or eliminate the potential for soil erosion and ground water pollution, and c) to formulate dust control measures to be implemented during and after the construction process in accordance with Department of Health guidelines and County of Maui ordinances and rules. The Best Management Practices shall include a program for the maintenance of drainage swales within the Project Area.
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Petitioner Response: The Petitioner's Storm Water Management and Drainage Plan will address infiltration and runoff, soil erosion and runoff, and dust in accordance with the requirements of Condition No. 2, the Department of Health's guidelines, and the County of Maui's ordinances and rules. The Petitioner's Best Management Practices (BMP's) will include a program for the maintenance of the drainage swales within the project area.

Condition No. 3	<u>Residential Workforce Housing</u> . Petitioner shall design and construct the Project, and provide residential workforce housing opportunities in accordance with the County of Maui's residential workforce housing requirements.
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Petitioner Response: The Petitioner filed a draft Residential Workforce Housing agreement with the County Department of Housing and Human Concerns in November 2021.

Condition No. 4	<u>Wastewater</u> . Petitioner shall participate in the funding and/or construction of adequate private or public wastewater source, storage, and transmission facilities to accommodate the proposed uses for each portion of the Petition Area. The private wastewater source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui. If applicable, the public wastewater source, storage, and transmission facilities shall be controlled or operated by the County of Maui. If the private wastewater source, storage, and transmission facilities are located outside the Petition Area and within the State and County agricultural districts, Petitioner shall apply for a State Special
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	Permit in accordance with the provisions of HRS Chapter 205. If Petitioner participates in a regional wastewater system which is controlled or operated by the County of Maui, Petitioner may request to be released from this condition applicable to private wastewater source, storage and transmission facilities.
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Petitioner Response: The Petitioner understands the scope of the above-referenced condition. The Petitioner initially intended to develop private wastewater source, storage, and transmission facilities in accordance with the applicable State and County requirements. In accordance with the condition, the Petitioner filed an updated HRS Chapter 205 State Special Permit for the proposed wastewater reclamation facility (WWRF) on March 4, 2021, to operate the WWRF within the State Agricultural District.

However, the Petitioner is aware and collaborating with the County regarding the planned development of a County controlled and operated regional wastewater system for Central Maui. The Petitioner understands that it may request to be released from this condition applicable to private wastewater source, storage, and transmission facilities should it participate in a public system.

In addition, on July 19, 2022, the Petitioner filed a motion to amend conditions 1, 4, and 8(b) of the Decision and Order filed on February 26, 2018. The amendments to Condition 4 will allow the Petitioners to increase the size of the school site and to increase the number of Residential Workforce Housing Units for the project in lieu of providing direct funding and/or participating in the construction of private or public wastewater facilities. The amendment seeks to align the above-referenced conditions with the provisions of a Public Private Partnership Agreement entered into between the Petitioner the County of Maui (**See Exhibits 2 and 3**).

Condition No. 5	<u>Air Quality</u> . Petitioner shall participate in an air quality monitoring program if so required by the Department of Health.
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Petitioner Response: The Petitioner understands that it shall participate in an air quality monitoring program if so required by the Department of Health.

Condition No. 6	<u>Energy Conservation Measures</u> . Petitioner shall implement, to the extent feasible and practicable, measures to promote energy conservation, sustainable design and environmental stewardship, such as the use of solar water heating and photovoltaic systems, into the design and construction of the Project and development of the Petition Area. Petitioner also shall provide information to home purchasers regarding energy conservation measures that may be undertaken by individual homeowners within the Project.
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Petitioner Response: The Petitioner intends to incorporate energy conservation measures into the design, construction, and development of the Waikapū Country Town. Information will be provided to home purchasers regarding energy conservation measures that may be undertaken by individual homeowners within the project.

Condition No. 7	<u>Notification of Proximity to Kahului Airport.</u> Petitioner, and all subsequent owners, shall notify and disclose to all prospective developers, purchasers, and/or lessees within any portion of the Project, as part of any conveyance document (deed, lease, or agreement of sale, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from the Kahului Airport, such as noise, right of flight, emissions, vibrations and other incidences of aircraft operations.
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Petitioner Response: The Petitioner is aware of the above-referenced disclosure requirements of the potential adverse impacts of aircraft activity at and from the Kahului Airport. The disclosure requirements will be made part of any conveyance document required for the sale or transfer of real property or any interest in real property within any portion of the project.

Condition No. 8	<u>Transportation - Highways.</u> a. Petitioner shall submit to the State Department of Transportation and the County of Maui for review and approval a supplemental analysis to evaluate the "No Waiale Bypass" with Petitioner's Project in 2022 (Phase I), due to the current memorandum/addendum limited only to build-out year 2026 (Phase II). Petitioner shall also submit copies to OP, Maui County Planning Department, and the Commission. b. Petitioner shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of Maui. Petitioner shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Memorandum of Agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the Project.
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Petitioner Response: The Petitioner partially fulfilled Condition No. 8a on July 10, 2018, by transmitting a supplemental analysis to evaluate the "No Waiale Bypass" scenario with Petitioner's Project in 2022 (Phase 1). As shown in Exhibit 6, the supplemental analysis was transmitted to the State Department of Transportation, the County's Department of Public Works, and the County's Department of Planning (See Exhibits 6 and Exhibit 7).

The Petitioner transmitted the No Waiale Bypass 2022 Analysis via USPS to the Office of Planning and the State Land Use Commission on January 30, 2020 to satisfy Condition No. 8a.

Petitioner acknowledges that it shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Petitioner understands that a Memoranda of Agreement will be executed prior to the approval of the first subdivision application to the County of Maui. The Petitioner is consulting with the State and County regarding its compliance with the above-referenced conditions.

Condition No. 9	<u>Transportation- Regional Planning.</u> Petitioner shall continue to work with the County of Maui to develop a timetable for the construction of the Waiale Bypass and shall work with appropriate County of Maui and State of Hawai'i agencies, including the Metropolitan Planning Organization of the County of Maui, to develop a comprehensive traffic review of the Central Maui region.
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Petitioner Response: The Petitioner acknowledges that it will work with the County of Maui regarding the timing and construction of the Waiale Bypass in accordance with its pro-rata share requirements. In addition, the Petitioner will work with the applicable State and County agencies and the Metropolitan Planning Organization to develop a comprehensive review of the Central Maui region. The Petitioner is consulting with the State and County regarding its compliance with the above-referenced conditions.

Condition No. 10	<u>Transportation-Airports.</u> Petitioner shall work with the State Department of Transportation to minimize hazards to aircraft operations from Kahului Airport, including but not limited to impacts from wildlife attractants, photovoltaic glint and glare, electromagnetic radiation, aviation easements, notices of proposed construction or alteration, and prospective purchaser/owner liability and covenants. As deemed necessary by the State Department of Transportation to minimize the hazards to aircraft operations from Kahului Airport, Petitioner shall fund and implement a program to control any birds nesting or occupancy and any insect, pest or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, wastewater treatment facilities or associated settling ponds) serving the Project. Petitioner shall enter into a Memorandum of Agreement with State Department of Transportation before final subdivision approval of the initial phase of on-site development by Petitioner outlining measures to be taken by Petitioner to address impacts.
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Petitioner Response: The Petitioner understands the scope of the above-referenced condition, and will enter into a Memorandum of Agreement with the State Department of Transportation before final subdivision approval of the initial phase of on-site development by Petitioner outlining measures to be taken by Petitioner to address impacts to Kahului Airport aircraft operations from the project.

Condition No. 11	<u>Water Conservation Measures.</u> Petitioner shall implement water conservation measures and best management practices such as the use of indigenous plants to the extent practicable and as required by the County of Maui.
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Petitioner Response: The Petitioner acknowledges that it will implement water conservation measures and best management practices such as the use of indigenous plants to the extent practicable and as required by the County of Maui.

Condition No. 12	<u>Water System.</u> Petitioner shall participate in the funding and/or construction of adequate private or public water source, storage, and transmission facilities to accommodate the proposed uses for each phase of the Project. The private water source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui, with plans submitted for approval by the appropriate agency. In the event that Petitioner participates in a regional water system which is controlled or operated by the County of Maui, Petitioner may request the release of this condition applicable to a private water system. Additionally, Petitioner shall work with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapū aquifer. Further, Petitioner shall submit such information as may be requested by the County of Maui to reflect changes in water demand forecasts and to supply the proposed uses for the County of Maui's Water Use and Development Plan.
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Petitioner Response: The Petitioner understands the scope of the above-referenced condition. The Petitioner intends to develop private water source, storage, and transmission facilities in accordance with the applicable State and County requirements. The Petitioner acknowledges that should it participate in a regional water system which is controlled or operated by the County of Maui, Petitioner may request to be released from this condition applicable to private water source, storage and transmission facilities.

In addition, the Petitioner acknowledges that it shall work with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapū aquifer. Further, the Petitioner understands that it shall submit such information as may be requested by the County of Maui to reflect changes in water demand forecasts and to supply the proposed uses for the County of Maui's Water Use and Development Plan.

Condition No. 13	<u>Street Lights.</u> Petitioner shall use fully-shielded street lights within the Petition Area to avoid impacts to avifauna and other populations and to prevent light diffusion upward into the night sky.
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Petitioner Response: The Petitioner understands that fully-shielded street lights within the project area shall be installed to avoid impacts to avifauna and other populations and to prevent light diffusion upward into the night sky.

Condition No. 14	<u>Sirens</u> . Petitioner shall fund and install three (3) civil defense warning sirens as specified by and in the locations identified by the State Department of Defense.
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Petitioner Response: The Petitioner is aware that it must fund and install three civil defense warning sirens as specified by and in the locations identified by the State Department of Defense.

PROJECT SPECIFIC CONDITIONS

Condition No. 15	<u>Parks</u> . Petitioner shall comply with the park dedication requirements of the County of Maui.
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Applicant Response: The Petitioner is in the process of working with the County of Maui to formalize a Parks Dedication Agreement.

Condition No. 16	<u>Established Gathering and Access Rights Protected</u> . Pursuant to Article XII, Section 7 of the Hawai'i State Constitution, Petitioner shall preserve and protect any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, gathering, and religious practices or for access to other areas for such purposes.
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Petitioner Response. The Applicant is aware that pursuant to Article XII, Section 7 of the Hawai'i State Constitution, Petitioner shall preserve and protect any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, gathering, and religious practices or for access to other areas for such purposes.

Condition No. 17	<u>Agriculture Easement</u>. Petitioner shall submit an executed copy of the conservation easement or relevant instrument for at least 800 acres of adjacent agricultural lands to the Commission. No dwelling or structure shall or may be used for a residence or residential use, including farm dwellings or farm worker housing, on the adjacent agricultural lands which are subject to the agricultural easement or conservation easement, and such easement shall include this restriction. If any development is proposed in the area made subject to the conservation easement or relevant instrument, SHPD shall be notified and shall make a determination on whether an archaeological inventory survey is to be provided by Petitioner for such area. The Commission shall also be notified of any proposed development within the conservation easement lands and any determination made by SHPD.
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Petitioner Response: The Petitioner has prepared an Agricultural Conservation Easement with the Hawaiian Islands Land Trust (HILT). The agreement is in the process of being reviewed and finalized by HILT and the Petitioner.

Condition No. 18	<u>Notification of Agricultural Use.</u> Petitioner, and all subsequent owners, shall notify and disclose to developers, purchasers, and/or lessees of the provisions of HRS Chapter 165, the Hawai'i Right to Farm Act. The notice and disclosure shall be a part of any conveyance document such as a deed, lease or agreement of sale. The notice and disclosure shall contain at least the following information: a) that the developers, purchasers and/or lessees shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District; and b) that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. For the purpose of this condition, the term "farming operations" shall have the same meaning as provided in HRS § 165-2.
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Petitioner Response: The Petitioner acknowledges and understands the scope of its responsibilities to notify and disclose to developers, purchasers, and/or lessees of the provisions of HRS Chapter 165, the Hawai'i Right to Farm Act.

Condition No. 19	<u>Previously Unidentified Burials and Archaeological/Historic Sites.</u> In the event that historic or archaeological resources, including human skeletal remains, are found and/or identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division shall be contacted immediately as required by HRS Chapter 6E and its applicable rules. Without limitation to any condition found herein, if any burials or archaeological or historic sites or artifacts not previously identified in studies referenced to in these Findings of Fact and Conclusions of Law are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the State Historic Preservation Division that mitigation measures have been implemented to its satisfaction.
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to previously unidentified burials, archaeological, and historic sites.

Condition No. 20	Archeological/Historic Sites. Petitioner shall provide the following prior to any ground disturbance, as agreed upon with SHPD's acceptance of the Petitioner's Archeological Inventory Survey: a. Archeological monitoring, which shall include data recovery of archaeological and historic sites; b. If site 50-50-04-5197 is impacted by the Project, it will be further documented in consultation with SHPD; c. Archeological monitoring shall be conducted for all ground disturbing activities, including the Na Wai 'Eha sand dune system area. An archaeological monitoring plan shall be developed and submitted for SHPD's review and acceptance prior to commencing Project work; d. If any development is proposed for the area to be dedicated to agriculture, SHPD shall be notified and SHPD will make a determination on whether an archaeological inventory survey is to be provided by Petitioner; e. Petitioner shall submit a preservation plan to SHPD for two (2) sites: the irrigation features (Site 50-50-04-7884) and the WWII bunker (Site 50-50-04-7883). The preservation plan shall be submitted to the SHPD for review and acceptance prior to the initiation of the Project. Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the SHPD. Petitioner shall confirm in writing to the Commission that the SHPD has found Petitioner's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented. The SHPD shall be notified at the initiation of the Project.
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to archaeological monitoring and preservation of applicable lands within the project area. In addition, the Petitioner understands that if any development is proposed for the area to be dedicated to agriculture, SHPD shall be notified and SHPD will make a determination on whether an archaeological inventory survey is to be provided by Petitioner. In accordance with this condition, the Petitioner filed an HRS 6e submittal form to the State Historic Preservation Division for the WWRF. The Log in Number is 2019.02347. Through consultation with SHPD, it was determined that an AIS would be conducted for the WWRF site. The Petitioner filed the AIS with SHPD's HICRIS system using SHPD Log in Number 2020PR32511. The Petitioner, through its archaeologist Cultural Survey's Hawaii, filed a Monitoring Plan with the SHPD on August 28, 2019, which was logged in under SHPD Log in Number 2019.01953. The Petitioner also filed HAER documents for potential project impacts to Reservoir No. 1 (HAER No. HI-161) and the Waihee Ditch (HAER No. HI-162). In addition, through consultation with SHPD, the Petitioner prepared a Reconnaissance Level Survey and Historic Context

Study, which its consultant, Mason Architects, filed with HICRIS on November 16, 2022. The Petitioner is preparing its Preservation Plan.

Condition No. 21	<u>Archaeological/Archaeological Monitoring</u> . Petitioner shall employ archaeological monitors to ensure that all ground disturbances associated with mass grading of the Petition Area, and the trenching and excavation related to the installation of utilities, do not impact any subsurface cultural remains within the Petition Area. Petitioner shall submit an archaeological monitoring plan for ground disturbing activities within the Petition Area to the State Historic Preservation Division for its review and acceptance or approval. Acceptance or approval of the archaeological monitoring plan shall be a condition to performing any ground disturbing activities. Data obtained from the archaeological monitoring plan shall be provided to the State Historical Preservation Division upon the completion of the monitoring of the Project. In the event that Site 50-50-04-5197 is impacted by any ground disturbances, Petitioners shall document the site in accordance with the directions of the State Historic Preservation Division.
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to archaeological monitoring prior to mass grading of the project area. As noted, the Petitioner, through its archaeologist Cultural Survey's Hawaii, filed a Monitoring Plan with the SHPD on August 28, 2019, which was logged in under SHPD Log in Number 2019.01953.

Condition No. 22	<u>Cultural</u> . Petitioner shall consult with those persons known as Waikapū Stream south kuleana lo'i kalo farmers and Hui o Na Wai 'Eha to minimize the impacts on their traditional customary rights and practices from any development in the Petition Area. Additionally, Petitioner shall grant access easements over the appropriate portions of the Petition Area in favor of the owners of the Mahi-Puleloa parcels, identified as LCA 2944:3 to Ehunui (TMK (2) 3-6-005:010) and as Grant 1513 to Ehunui (TMK (2) 3-6-005:009) and in favor of the owners of the Kauihou parcels, identified as LCA 3340:1 (por.) to Nahau (TMK (2) 3-6-005:067), as LCA 3103 to Kalawaia (TMK (2) 3-6-005:014) and as LCA 3110:3.2 to Kuolaia (TMK (2) 3-6-005:066). Such easements will run with the land.
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to consultation with the Waikapū Stream south kuleana lo'i kalo farmers and Hui o Na Wai 'Eha to minimize impacts to traditional customary rights and practices. The Petitioner is also aware of and understands the scope of the access easements in favor of the owners of the Mahi-Puleloa parcels.

Condition No. 23	<u>Endangered Species.</u> Petitioner shall implement the following procedures to avoid potential impacts to endangered species. Petitioner shall not clear dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area during the period from June 1 to September 15 of each year which is the time that the Hawaiian hoary bat may be carrying young and thus could be at risk from the clearing activities. Petitioner shall consult with the United States Fish & Wildlife Service to determine measures needed with regard to the endangered Blackburn's Sphinx Moth and shall implement such measures in connection with the development of the Petition Area. Additionally, for any nighttime work required during any construction within the Petition Area and Project Area, and for long term operation of any private wastewater treatment facility servicing the Project, exterior lighting shall be shielded so as to reduce the potential for interactions of nocturnally flying Hawaiian Petrels and Newell's Shearwaters with external lights and man-made structures.
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Petitioner Response: The Petitioner acknowledges and understands the scope of the above-referenced condition related to procedures to avoid potential impacts to endangered species. Petitioner shall consult with the United States Fish & Wildlife Service to determine measures needed with regard to the endangered Blackburn's Sphinx Moth and will implement exterior lighting that is shielded to mitigate impacts to Hawaiian Petrels and Newell's Shearwaters.

Condition No. 24	<u>Development in Compliance with Maui Island Plan.</u> Petitioner shall develop the Project in substantial compliance with the Planned Growth Area Rationale and goals, objectives, policies and implementing actions described in the Maui Island Plan for the Project identified as the "Waikapū Tropical Plantation Town."
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Petitioner Response: The Petitioner understands that it will implement the Project in substantial compliance with the Planned Growth Area Rationale and goals, objectives, policies, and implementing actions described in the Maui Island Plan for the Project identified as the "Waikapū Tropical Plantation Town."

Condition No. 25	<u>Infrastructure Deadline.</u> Petitioner shall complete construction of the proposed backbone infrastructure, which consists of primary roadways and access points, internal roadways, on- and off-site water, sewer, and electrical system improvements, and storm water/drainage and other utility system improvements, within ten years from the date of the Decision and Order approving the Petition.
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Petitioner Response: The Petitioner understands that the Project's backbone infrastructure shall be completed within ten years from the date of the Decision and Order approving the Petition.

Condition No. 26	<u>Order to Show Cause.</u> If Petitioner fails to complete the construction of the proposed backbone infrastructure within ten (10) years from the date of the Decision and Order approving reclassification of the Petition Area, the Commission may issue and serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use District Agricultural Classification or be changed to a more appropriate classification.
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Petitioner Response: The Petitioner acknowledges that the Commission may issue and serve upon Petitioner an Order to Show Cause to appear before the Commission if the construction of the proposed backbone infrastructure is not completed within ten years from the date of the Decision and Order approving reclassification of the Petition Area.

Condition No. 27	<u>Compliance With Representations to the Commission.</u> Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in these Findings of Fact, Conclusions of Law, and Decision and Order. Failure to so develop the Petition Area in accordance with such representations may result in reversion of the Petition Area to its former classification or a change to a more appropriate classification.
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Petitioner Response: The Petitioner acknowledges that the Project Area shall be developed within substantial compliance with the representations made to the Commission and that failure to do so may result in the reversion of the Petition Area to its former classification or a change to a more appropriate classification.

Condition No. 28	<u>Annual Reports.</u> Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the State Office of Planning, and the County of Maui Planning Department, and their respective successors, in connection with the status of the development of the Petition Area 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. The annual report shall consist of one original, one paper copy and one electronic copy and shall be due prior to or on the anniversary date of the approval of the Petition.
-------------------------	---

Petitioner Response: The Petitioner understands that annual reports to the Commission, State Office of Planning, and the County of Maui Planning Department shall be filed to document the status of the development of the Petition Area and Petitioner's progress in complying with the conditions of the approval.

This annual compliance report is being filed in fulfillment of this condition for February 2023.

Condition No. 29	<u>Release of Conditions.</u> The Commission may fully or partially release conditions provided herein as to all or any part of the Petition Area upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by Petitioner or their permitted successors and/or assigns.
-------------------------	--

Petitioner Response: The Petitioner understands that the Commission may fully or partially release conditions provided herein upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by Petitioner or their permitted successors and/or assigns.

Condition No. 30	<u>Notice of Change of Ownership.</u> Petitioner shall provide notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area.
-------------------------	--

Petitioner Response: The Petitioner understands that it shall provide notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area.

Condition No. 31	<u>Notice of Imposition of Conditions.</u> Petitioner shall (a) within seven (7) days of issuance of the Commission's Decision and Order reclassifying the Petition Area, record with the Bureau of Conveyances of the State of Hawai'i and/or the Office of the Assistant Registrar of the Land Court, a statement that the Petition Area is subject to the conditions imposed in this Decision and Order by the Commission and (b) promptly thereafter file a copy of such recorded statement with the Commission.
-------------------------	--

Petitioner Response: Exhibit 8 is the Notice of Imposition of Conditions. Exhibits 9 and 10 are the Declaration of Conditions and the recorded document numbers for the Notice of Imposition and Recordation of Conditions (**See Exhibits 8, 9, and 10**).

Condition No. 32	<u>Recordation of Conditions.</u> Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances of the State of Hawai'i, and/or the Office of the Assistant Registrar of the Land Court, pursuant to HAR Section 15-15-92.
-------------------------	---

Petitioner Response: The Imposition and Declaration of Conditions were recorded with the Bureau of Conveyances of the State of Hawai'i on December 20, 2019. The recorded document numbers are A-72930472 and A72930473 (**See Exhibit 9 and Exhibit 10**).

Thank you for your prompt review of this Annual Report filed for 2023. Should you have any questions, please contact me at (808) 269-6220 or e-mail at msummers@planningconsultantsHawaii.com.

Mr. Daniel E. Orodener
Executive Director
State Land Use Commission
March 6, 2023
Page 16

Sincerely yours,

A handwritten signature in black ink, reading "Michael J. Summers". The signature is written in a cursive style with a large, stylized "M" and "J".

Michael J. Summers
President

Attachment

c: Mr. Michael Atherton
Mr. Albert Boyce

Exhibit 1

**Order Granting Motion for
Modification of Condition 8(b) of
Decision and Order Filed on February
26, 2018**



LAND USE COMMISSION
STATE OF HAWAII
2022 MAR -8 A 9:35

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:) DOCKET NO. A15-798
)
WAIKAPU PROPERTIES, LLC; MTP LAND) ORDER GRANTING MOTION FOR
PARTNERS, LLC; WILLIAM S. FILIOS,) MODIFICATION OF CONDITION 8(b) OF
Trustee of the William S. Filios Separate) DECISION AND ORDER FILED ON
Property Trust dated APRIL 3, 2000; and) FEBRUARY 26, 2018
WAIKALE 905 PARTNERS, LLC,)
) CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use District)
Boundaries into the Rural Land Use District for)
certain lands situated 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 situated 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).)

**ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b)
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018**

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.

March 8, 2022 _____ by

Executive Officer



LAND USE COM.
STATE OF HAWAII

2022 MAR -8 A 9:35

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:	)	DOCKET NO. A15-798
	)	
WAIKAPU PROPERTIES, LLC; MTP LAND	)	ORDER GRANTING MOTION FOR
PARTNERS, LLC; WILLIAM S. FILIOS,	)	MODIFICATION OF CONDITION 8(b) OF
Trustee of the William S. Filios Separate	)	DECISION AND ORDER FILED ON
Property Trust dated APRIL 3, 2000; and	)	FEBRUARY 26, 2018
WAIKALE 905 PARTNERS, LLC,	)	
	)	CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use District	)	
Boundaries into the Rural Land Use District for	)	
certain lands situated at Waikapu, District of	)	
Wailuku, Island and County of Maui, State of	)	
Hawaii, consisting of 92.394 acres and 57.454	)	
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Land Use District Boundaries into the Urban	)	
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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).	)	

**ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b)
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018r**



LAND USE COM.
STATE OF HAWAII

2022 MAR -8 A 9:35

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:	)	DOCKET NO. A15-798
	)	
WAIKAPU PROPERTIES, LLC; MTP LAND	)	ORDER GRANTING MOTION FOR
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Trustee of the William S. Filios Separate	)	DECISION AND ORDER FILED ON
Property Trust dated APRIL 3, 2000; and	)	FEBRUARY 26, 2018
WAIKALE 905 PARTNERS, LLC,	)	
	)	
To Amend the Agricultural Land Use District	)	
Boundaries into the Rural Land Use District for	)	
certain lands situated at Waikapu, District of	)	
Wailuku, Island and County of Maui, State of	)	
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acres, bearing Tax Map Key No. (2) 3-6-	)	
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Land Use District Boundaries into the Urban	)	
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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).	)	

**ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b)
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018**

On July 2, 2021, WAIKAPU PROPERTIES, LLC; MTP LAND PARTNERS, LLC; WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated APRIL 3, 2000; and WAIKALE 905 PARTNERS, LLC (collectively "Movant"), filed a Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018 (the "Motion"), Memorandum in Support of Motion, Appendices 1-2, Declaration of Michael

Atherton, and Certificate of Service, pursuant to Hawaii Revised Statutes (“HRS”) §205-4 and Hawaii Administrative Rules (“HAR”) §§ 15-15-70 and 15-15-94.

On July 7, 2021, the Office of Planning and Sustainable Development (“OPSD”) requested a 60-day time extension for filing responses on the Motion after conferring with each of the other parties.

On July 8, 2021, the Executive Officer of the State Land Use Commission granted the requested time extension for the filing of responses to the Motion.

On September 10, 2021, OPSD filed its response to the Motion, in which OPSD, based on the Department of Transportation’s comments, recommended approval of the Motion.

On September 13, 2021, Movant filed a Stipulation of the Parties on Petitioner’s Motion for Modification dated July 2, 2021, evidencing that the County of Maui (“County”) and OPSD did not oppose the Motion.

The Motion was heard via Zoom Webinar Virtual Meeting on September 23, 2021. Paul Mancini, Esq., Jeffrey Ueoka, Esq., and Mike Atherton appeared on behalf of Movant; Alison Kato, Esq., Lorene Maki, and Rodney Funakoshi appeared on behalf of OPSD; and Michael Hopper, Esq., and Kurt Wollenhaupt appeared on behalf of the County of Maui.

There was no public testimony.

At the hearing, movant presented information describing the challenges presented by Condition 8(b) of the Decision and Order filed on February 26, 2018 (“D&O”). The motion requested that condition 8(b) of the D&O be modified to be consistent with the county approval process. Condition 8(b) of the D&O requires that the movant enter into a memorandum of agreement with the State Department of Transportation, Highways Division, and another memorandum of agreement with the County of Maui. The memoranda of agreement is required to be executed prior to submittal of a subdivision application to the County of Maui. The motion requested that this condition be modified to allow the

memoranda of agreement be executed prior to the approval of the first subdivision application to the County of Maui for the Project. This change would remove the identified inconsistency with Condition 1(a) of Ordinance 4998 (2019), which approved the change in zoning of the subject property and would allow the movant to begin the subdivision process while working with the County and the Department of Transportation on the agreements.

Movant argued that good cause existed to allow the modification of the D&O in satisfaction of section 15-15-94(b), Hawaii Administrative Rules as the proposed modification would expedite the construction of much needed housing on Maui. The Project would supply at least 280 residential workforce housing units in accordance with chapter 2.96, Maui County Code. By allowing the movant to work concurrently towards subdivision approval and reaching an agreement with the County of Maui and the Department of Transportation on the mitigation of Project-generated traffic impacts, the movant should be able to deliver housing to residents at an earlier date which would help with the County of Maui's housing crisis.

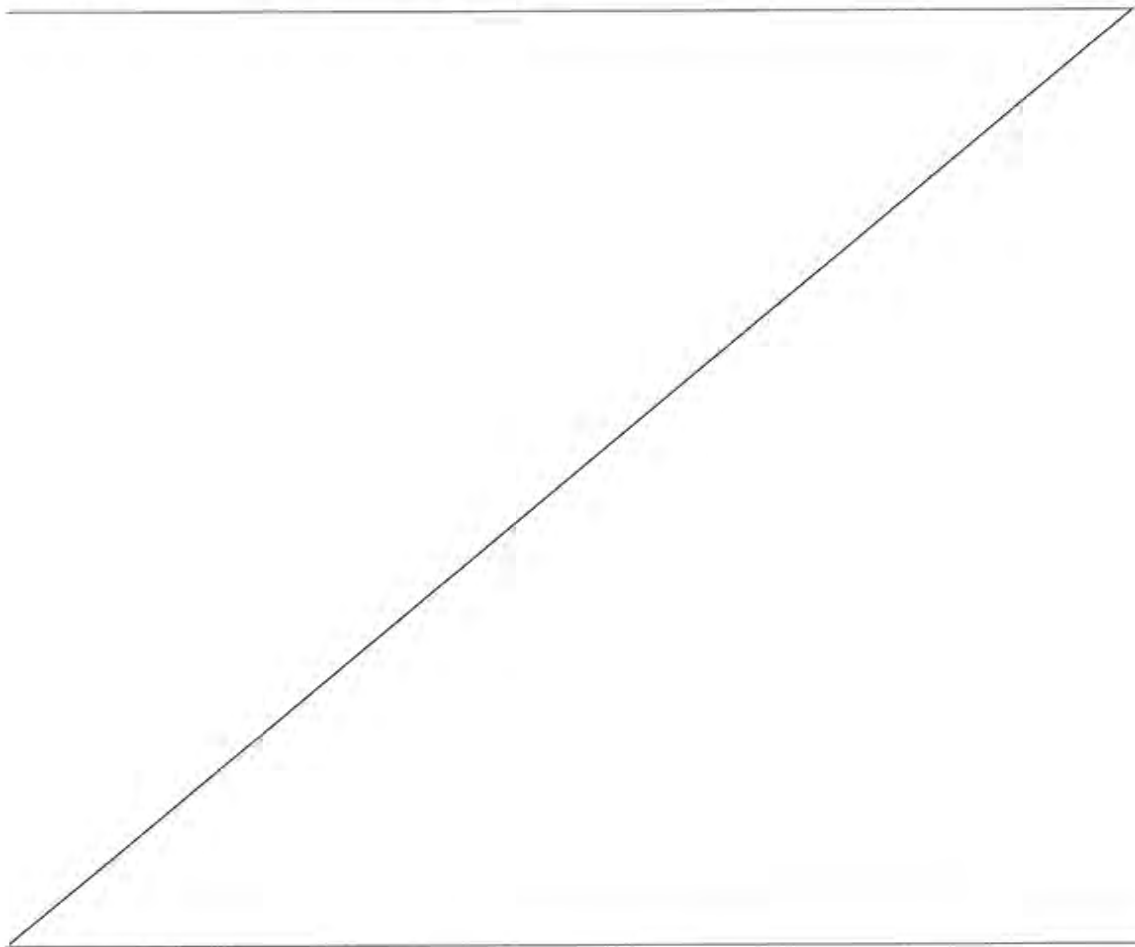
After hearing argument of the parties, discussion, questioning, and deliberation by the Commissioners, a motion was made and seconded to grant Movant's Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018, to require that the traffic memoranda of agreement be executed prior to the approval of the first subdivision application to the County of Maui for the Project. There being a vote tally of 8 ayes and 0 nays, the motion carried.

This Commission, have duly considered the Motion for Modification of Condition 8(b) of Decision and Order filed on February 26, 2018, the arguments and representations by the parties, and the record of this docket, hereby finds and concludes that Movant has supported its position for the amendment of Condition 8(b) of the Decision and Order filed on February 26, 2018. Therefore, for good cause shown,

IT IS HEREBY ORDERED that the Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018, be GRANTED and that Condition 8(b) of Decision and Order Filed on February 26, 2018, is amended to read as follows:

Petitioner shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of Maui. Petitioner shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Memoranda of Agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the Project.

All other conditions to this Commission's Decision and Order filed on February 26, 2018, shall continue in full force and effect.



ADOPTION OF ORDER

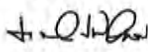
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 8th, day of March, 2022, per motion on September 23, 2021.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I



Deputy Attorney General

By 

JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

March 8, 2022_____

Certified by:



DANIEL ORODENKER
Executive Officer



**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:	)	DOCKET NO. A15-798
	)	
WAIKAPU PROPERTIES, LLC; MTP LAND	)	
PARTNERS, LLC; WILLIAM S. FILIOS,	)	CERTIFICATE OF SERVICE
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 situated 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)	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following
ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b) OF
DECISION AND ORDER FILED ON FEBRUARY 26, 2018 on March 8, 2022.

MARY ALICE EVANS, DIRECTOR
Office of Planning, State of Hawai'i
235 South Beretania Street
Room 600, Leiopapa A Kamehameha Bldg.
Honolulu, HI 96813

REGULAR MAIL

ALISON KATO, ESQ.
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

REGULAR MAIL

MICHELE CHOUTEAU MCLEAN
PLANNING DIRECTOR
Maui County Planning Department
County of Maui, State of Hawai'i
2200 Main Street
One Main Plaza, Suite 315
Wailuku, HI 96793

REGULAR MAIL

MICHAEL J. HOPPER, ESQ.
Deputy Corporation Counsel
County of Maui, State of Hawai'i
200 South High Street
Kalana O Maui Bldg., Floor 3
Wailuku, HI 96793

REGULAR MAIL

JEFF UEOKA, Esq. and PAUL MANCINI, Esq.
MANCINI, WELCH & GEIGER
305 E. Wakea Avenue, Suite 200
888 Mililani Street, Suite #308
Kahului, Hawai'i 96732

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Dated March 8, 2022
Honolulu, Hawai'i.



DANIEL E. ORODENKER
Executive Office

Exhibit 2

Public Private Partnership Agreement

LAND COURT SYSTEM REGULAR SYSTEM

Return by Mail () Pickup () To:

TMK: (2) 3-6-004:003 & 006 Total No. of Pages: 13
(2) 3-6-005:007
(2) 3-6-006:036
(2) 3-6-002:003

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

County of Maui – Waikapu Country Town

THIS PUBLIC PRIVATE PARTNERSHIP AGREEMENT (the “Agreement”) made this 28th day of April, 2022, by and between WAIKAPU PROPERTIES, LLC, a Hawaii limited liability company; MTP LAND PARTNERS, LLC, a Hawaii limited liability company; WAIALE 905 PARTNERS, LLC, a Hawaii limited liability company; and WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated April 3, 2020, all of whose address is 1670 Honoapiilani Highway, Wailuku, Hawaii 96793 (collectively “WCT”), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (“County”).

WHEREAS, WCT intends to develop Waikapu Country Town (the “Development”), a mixed use residential community consisting of 1,433 dwelling units, with the potential for 146 ‘ohana units, commercial uses, an agricultural/conservation easement area, a park, and a school site, on approximately 1400 acres of land;

WHEREAS, the Development is subject to the requirements of the Findings of Fact, Conclusions of Law, and Decision and Order, entered on February 26, 2018, in Docket No. A15-798, which reclassified portions of Development from the State Land Use Agricultural District to the State Land Use Rural and Urban Districts (the “DBA”);

WHEREAS, the Development is also subject to the requirements of the conditions of zoning set forth in Ordinance 4998 (2019), the ordinance which changed the zoning for portions of WCT (the “CIZ”);

WHEREAS, the Development is currently configured with a 12-acre school site, however the State of Hawaii Department of Education (the “DOE”) desires to expand the area of school site;

WHEREAS, in accordance with Chapter 2.96, Maui County Code (“MCC”), upon full buildout the Development shall include a minimum of 287 residential workforce housing units (“RWHUs”) as part of the 1,433 permitted dwelling units, resulting in a breakdown of 287 RWHUs and 1146 market units;

WHEREAS, the State of Hawaii and the County desire additional RWHUs in the Development;

WHEREAS, pursuant to Chapter 2.96, MCC, the sales price for RWHUs are established by the County’s Affordable Housing Price Guidelines;

WHEREAS, the Development is limited in the total number of units that may be developed;

WHEREAS, by committing to provide the additional RWHUs, WCT is foregoing the opportunity to sell those same units at market prices, and one potential opportunity cost is shown on Exhibit “A”, attached hereto;

WHEREAS, WCT anticipates that the Development will produce, on average, 650,000 gallons per day of wastewater;

WHEREAS, WCT originally intended to construct a private wastewater treatment facility for the Development;

WHEREAS, the State of Hawaii has committed matching funds for the construction of a Central Maui Regional Wastewater Treatment Facility (“Central WWTF”);

WHEREAS, County and WCT now desire the Development to connect to the Wailuku/Kahului Wastewater Treatment Facility (“Kahului WWTF”) in the interim while the Central WWTF is being constructed;

WHEREAS, WCT is required to provide the Development's pro rata share for the total anticipated costs for design and construction of the Waiale Road Extension ("WRE") and other traffic improvements;

WHEREAS, the County and State of Hawaii are working together to secure a funding source for the construction of the WRE;

WHEREAS, the County and WCT desire to establish an agreement where WCT will provide additional RWHUs along with additional acreage for the school site in the Development in-lieu of monetary contributions for infrastructure improvements;

WHEREAS, WCT requires a commitment from the County in regards to its ability to deliver the Development's wastewater to a County treatment facility prior to the commencement of subdivision improvements for the Development;

WHEREAS, before the terms of this agreement may take effect, WCT will be required to amend certain conditions of the DBA and CIZ to make them consistent with this agreement; and

NOW THEREFORE, County and WCT, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby agree as follows:

I. AMENDMENTS TO THE CIZ AND THE DBA

The covenants herein shall not become effective until the conditions of the CIZ and DBA are amended to reflect the terms of this Agreement, including the use of RWHUs to satisfy infrastructure requirements. Nothing herein shall be deemed a commitment on the part of County to amend the terms of the CIZ or support an amendment of the DBA.

II. WRE and TEMPORARY CONNECTION TO THE KAHULUI WWTF

If allowed by the DBA and CIZ conditions, in consideration of WCT providing an additional 63 RWHUs (the "Initial RWHUs") in the Development, resulting in 350 RWHUs and 1,083 market units at full buildout, the County agrees as follows:

- A. The opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT's obligations under this Section II.
- B. Pursuant to condition 8(b) of the DBA, County and WCT shall enter into a Traffic Memorandum of Agreement, discussed further in Section III, below, where WCT's traffic impact mitigation obligations and the associated costs will be agreed upon by the County and WCT, including a determination in regards to the Project's pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ. The Traffic Memorandum of Agreement shall allow WCT to

provide RWHUs in lieu of cash contributions to satisfy the requirements of said Agreement, including WCT's obligations to:

1. Contribute the Development's pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ;
 2. Mitigate all traffic impacts generated by the Development as recommended or required by the County per Condition 8(b) of the DBA;
 3. Fully fund the intersection at Honoapiilani Highway and the WRE, per Condition 1(b) of the CIZ; and
 4. Provide a pedestrian crossing at the intersection of Honoapiilani Highway and the WRE, per Condition 1(d) of the CIZ.
- C. Upon execution of this Agreement, provided the DBA and CIZ conditions are amended to allow the Initial RWHUs to satisfy WCT's obligations to fund adequate wastewater facilities, WCT shall be able to temporarily connect and transmit a maximum amount of 100,000 gallons per day of wastewater to the Kahului WWTF for the Development (the "Temporary Connection"), granting WCT the ability to connect at least 300 dwelling units to the Kahului WWTF. Upon completion of the Central WWTF, the Temporary Connection shall expire and the wastewater shall be diverted to the Central WWTF. If allowed by the DBA and CIZ conditions, the opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development.

III. TRAFFIC MEMORANDUM OF AGREEMENT

As required by conditions 8(b) of the DBA, County and WCT shall enter into a memorandum of agreement ("MOA") concerning WCT's satisfaction of the conditions of the CIZ and the DBA relating to traffic impact mitigation, including, but not limited to those listed in Subsection II.B, above, through the contribution of the Initial RWHUs.

The amount of WCT's pro rata share for the total anticipated cost for the design and construction of the WRE shall be based on the County's anticipated cost, as agreed to by the parties, shall be included in the MOA, less any State or Federal funds received for such purposes.

County and WCT shall reach an agreement regarding the cost of the various traffic impact mitigation obligations set forth in Subsection II.B, above. In the event that the agreed upon cost exceeds the opportunity cost of the Initial RWHUs, as shown on Exhibit A, by more than fifteen percent (15%), then WCT shall have the ability to 1) elect to re-assume specific traffic impact mitigation obligation(s); 2) adjust the number of Initial RWHUs to satisfy the deficit; or 3) come to an agreement with the County in the MOA to satisfy the deficit.

Upon execution of the MOA, WCT shall be deemed to have satisfied the requirement of Condition 8(b) of the DBA and Condition 1(a) of the CIZ for the purpose of allowing subdivision of the property, provided such conditions are amended to allow WCT to provide RWHUs in lieu of cash contributions to satisfy the requirements of the conditions, as each relates

to the execution of a MOA with the County. WCT will still be required to perform its obligations under such agreement even after subdivision approval, and failure to perform the terms of the agreement may constitute a violation of the conditions.

WCT and the State of Hawaii shall enter into a separate MOA in regards to the requirements of the State of Hawaii.

Nothing in this Agreement shall limit the ability of the County to negotiate the terms of the MOA, provided however, the conditions of the CIZ and DBA, and any amendments thereto, as well as the opportunity cost of the Initial RWHUs, as shown on Exhibit A, shall not be subject to further negotiation, as long as the opportunity cost is consistent with the DBA and CIZ conditions as amended.

IV. PRIVATE WASTEWATER TREATMENT FACILITY

The County and WCT recognize that it is the County's intent to construct the Central WWTF and that the construction of the Central WWTF eliminates the need for WCT to construct a private wastewater treatment facility to service the Development. Upon completion of the Central WWTF, the County acknowledges that the Development is within the service area of the Central WWTF and the remainder of the Development shall be able to connect to the Central WWTF (the "Central Connection"). In the event that WCT elects to utilize the Central Connection, an additional 150 RWHUs (the "Private WWTF RWHUs") shall be provided in the Development, resulting in 500 RWHUs and 933 market units at full buildout. If allowed by the DBA and CIZ conditions, the opportunity cost of the Private WWTF RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development, along with those matters discussed in Sections V and VIII, below. In the event that WCT does not utilize the Central Connection, the Private WWTF RWHUs will not be provided in the Development.

Upon request by WCT, County shall provide updates to WCT on the capacity of the Kahului WWTF and the status of construction of the Central WWTF. In the event that WCT utilizes the entire Temporary Connection prior to the completion of the Central WWTF, the Director is authorized to permit the Development to connect to the Kahului WWTF upon application for building permit, provided capacity is available at the Kahului WWTF.

V. WASTEWATER ASSESSMENT FEES

In addition to the matters discussed in Section II above, and if allowed by the DBA and CIZ conditions, the opportunity cost of the Initial RWHUs, shall be considered an in-lieu contribution for all wastewater assessment fees, including any connection fees, assessed to those units utilizing the initial 100,000 gallons per day of wastewater transmission.

In addition to the matters discussed in Sections IV and VIII, and if allowed by the DBA and CIZ conditions, the opportunity cost of the Private WWTF RWHUs, shall be considered an

in-lieu contribution for all wastewater assessment fees, including connection fees, assessed to the remainder of the Development and no wastewater assessment fees, including connection fees, shall be assessed to the remainder of the Development.

This Agreement shall not exempt the Development from the County's monthly rates and fees for wastewater service.

VI. ADDITIONAL RESIDENTIAL WORKFORCE HOUSING UNITS

The Initial RWHUs and the potential Private WWTF RWHUs (hereinafter collectively the "Additional RWHUs") shall be subject to the terms and conditions of the Residential Workforce Housing Agreement, and any amendments thereto, that is required by Section 2.96.080, MCC. The Additional RWHUs shall not be considered a requirement of the Development per Condition 3 of the DBA or Condition 5 of the CIZ. The Additional RWHUs shall be "for-sale" units and shall be marketed and sold in accordance with the Residential Workforce Housing Agreement. 2.96.060, MCC requires that RWHUs be made available for occupancy either before or concurrently with market rate units at the same ratio required of the development, and that certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the RWHUs concurrently or sooner. The income group distribution for the Initial RWHUs and the Private WWTF RWHUs are set forth in Exhibit B, attached hereto and made a part hereof.

VII. SATISFACTION OF REQUIREMENT FOR WASTEWATER SERVICE

County and WCT agree that if allowed by the DBA and CIZ conditions, the opportunity cost for the Additional RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development in satisfaction of the DBA and CIZ conditions. The Temporary Connection and any determination made in Section IV, above, if applicable, shall satisfy the requirement of Condition 6 of the CIZ relating to the availability of County wastewater facilities prior to the issuance of building permits, for the first 300 units or the remainder of the Development, as applicable.

VIII. RECLAIMED WATER FROM THE CENTRAL WWTF

The Development shall be required to construct a reclaimed water storage/distribution system and shall utilize reclaimed water in an amount approximately equal to the amount of wastewater delivered to the Central WWTF for irrigation purposes. In consideration of the Private WWTF RWHUs, and if allowed by the DBA and CIZ conditions, connection fees for reclaimed water service shall not be assessed to the Development in addition to the matters discussed in Sections IV and VI, above.

IX. DEVELOPMENT OF PRIVATE WASTEWATER TREATMENT FACILITY

Nothing in this Agreement shall preclude WCT from constructing a private wastewater treatment facility for the Development.

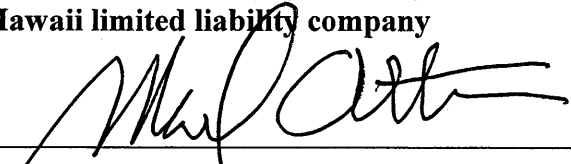
X. MISCELLANEOUS

- A. Binding Effect. All the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and assigns and shall run with the land. This Agreement shall be for the benefit of parties herein.
- B. Severability. If any provision of this Agreement, or any section, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Agreement and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected.
- C. Applicable Law: Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Hawaii. Any legal action under this Agreement shall be filed in the Hawaii judicial system only, and the parties hereby unconditionally submit themselves to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii, and waive the right to assert that such courts are in an inconvenient forum.
- D. Entire Agreement; Amendments; Interpretation. This Agreement constitutes the entire agreement between the parties regarding subject matter. Any modifications of this Agreement must be in writing and signed by the parties hereto. The headings of sections in this Agreement are inserted only for convenience and shall in no way define, describe or limit the scope or intent of any provision of this Agreement. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter.
- E. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

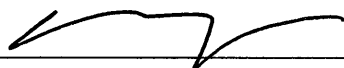
(Signatures on the following page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

WAIKAPU PROPERTIES, LLC,
a Hawaii limited liability company

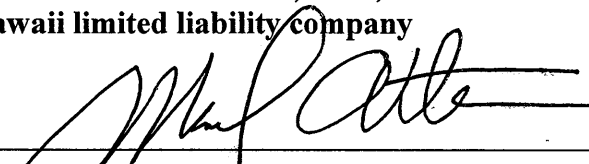

By Michael W. Atherton

Its manager


By Albert G. Boyce V

Its manager

MTP LAND PARTNERS, LLC,
a Hawaii limited liability company

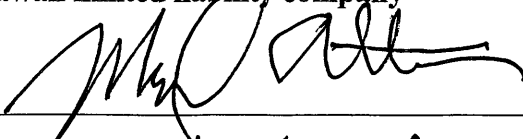

By Michael W. Atherton

Its manager

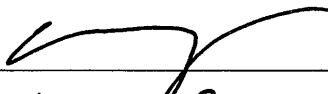

By Albert G. Boyce V

Its manager

WAIALE 905 PARTNERS, LLC,
a Hawaii limited liability company


By Michael W. Atherton

Its Manager


By Albert G. Boyce

Its Manager

WILLIAM S. FILIOS SEPARATE PROPERTY
TRUST DATED APRIL 3, 2020


William S. Filios, Trustee

COUNTY OF MAUI

By Michael P. Victorino
MICHAEL P. VICTORINO
Its Mayor

APPROVAL RECOMMENDED:

Lori Tsuhako
LORI TSUHAKE
Director of Housing and Human Concerns

Jordan Molina
JORDAN MOLINA
Director of Public Works

Michele Chouteau McLean
MICHELE CHOUTEAU MCLEAN
Director of Planning

Scott Teruya
SCOTT TERUYA
Director of Finance

Eric Nakagawa
ERIC NAKAGAWA
Director of Environmental Management

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel
Deputy Corporation Counsel

EXHIBIT A

OPPORTUNITY COST OF ADDITIONAL RWHUS

Assumption that “market” price is the sales price for a 3-bedroom unit using a 4% interest rate, which is priced for the 180% area median income group, estimated to be \$951,500 (based on 2021 Maui County Affordable Sales Price Guidelines).

Initial RHWUs (63) – \$22,368,100

	Below-Moderate 81-100	Moderate 101-120	Above-Moderate 121-140
Number of RHWUs	19	32	12
Average Sales Price	\$502,200	\$607,900	\$713,650
Opportunity Cost of Each RWHU	\$449,300	\$343,600	\$237,850
Total Value of Add'l RHWUs	\$8,491,770	\$10,823,400	\$2,996,910

Private WWTF RHWUs (150) – \$53,124,000

	Below-Moderate 81-100	Moderate 101-120	Above-Moderate 121-140
Number of RHWUs	45	75	30
Average Sales Price	\$502,200	\$607,900	\$713,650
Opportunity Cost of Each RWHU	\$449,300	\$343,600	\$237,850
Total Value of Add'l RHWUs	\$20,218,500	\$25,770,000	\$7,135,500

The total opportunity cost for the Additional RHWUs is **\$75,510,100**.

EXHIBIT B

INCOME GROUP DISTRIBUTIONS

The income group distribution for Initial RWHUs shall be as follows:

- i. 19 units shall be marketed to “below-moderate income” residents;
- ii. 32 units shall be marketed to “moderate income” residents; and
- iii. 12 units shall be marketed to “above-moderate income” residents.

The income group distribution for Private WWTF RWHUs shall be as follows:

- i. 45 units shall be marketed to “below-moderate income” residents;
- ii. 75 units shall be marketed to “moderate income” residents; and
- iii. 30 units shall be marketed to “above-moderate income” residents.

Exhibit 3

**Motion to Amend Conditions 1, 4
and 8(b) of Decision and Order Filed
on February 26, 2018**



LAND USE COM.
STATE OF HAWAII
2022 MAR -8 A 9:35

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:) DOCKET NO. A15-798
)
WAIKAPU PROPERTIES, LLC; MTP LAND) ORDER GRANTING MOTION FOR
PARTNERS, LLC; WILLIAM S. FILIOS,) MODIFICATION OF CONDITION 8(b) OF
Trustee of the William S. Filios Separate) DECISION AND ORDER FILED ON
Property Trust dated APRIL 3, 2000; and) FEBRUARY 26, 2018
WAIKALE 905 PARTNERS, LLC,)
) CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use District)
Boundaries into the Rural Land Use District for)
certain lands situated 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 situated 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).)

**ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b)
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018**

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.

March 8, 2022 _____ by

Executive Officer



LAND USE COM.
STATE OF HAWAII

2022 MAR -8 A 9:35

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:	)	DOCKET NO. A15-798
	)	
WAIKAPU PROPERTIES, LLC; MTP LAND	)	ORDER GRANTING MOTION FOR
PARTNERS, LLC; WILLIAM S. FILIOS,	)	MODIFICATION OF CONDITION 8(b) OF
Trustee of the William S. Filios Separate	)	DECISION AND ORDER FILED ON
Property Trust dated APRIL 3, 2000; and	)	FEBRUARY 26, 2018
WAIKALE 905 PARTNERS, LLC,	)	
	)	CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use District	)	
Boundaries into the Rural Land Use District for	)	
certain lands situated 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 situated 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).	)	

**ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b)
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018r**



LAND USE COM.
STATE OF HAWAII

2022 MAR -8 A 9:35

**BEFORE THE LAND USE COMMISSION
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In the Matter of the Petition of:	)	DOCKET NO. A15-798
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WAIKAPU PROPERTIES, LLC; MTP LAND	)	ORDER GRANTING MOTION FOR
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Trustee of the William S. Filios Separate	)	DECISION AND ORDER FILED ON
Property Trust dated APRIL 3, 2000; and	)	FEBRUARY 26, 2018
WAIKALE 905 PARTNERS, LLC,	)	
	)	
To Amend the Agricultural Land Use District	)	
Boundaries into the Rural Land Use District for	)	
certain lands situated at Waikapu, District of	)	
Wailuku, Island and County of Maui, State of	)	
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bearing Tax Map Key No. (2) 3-6-002:003	)	
(por), (2) 3-6-004:006 and (2) 3-6-005:007	)	
(por).	)	

**ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b)
OF DECISION AND ORDER FILED ON FEBRUARY 26, 2018**

On July 2, 2021, WAIKAPU PROPERTIES, LLC; MTP LAND PARTNERS, LLC;
WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated APRIL
3, 2000; and WAIKALE 905 PARTNERS, LLC (collectively "Movant"), filed a Motion for
Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018 (the
"Motion"), Memorandum in Support of Motion, Appendices 1-2, Declaration of Michael

Atherton, and Certificate of Service, pursuant to Hawaii Revised Statutes (“HRS”) §205-4 and Hawaii Administrative Rules (“HAR”) §§ 15-15-70 and 15-15-94.

On July 7, 2021, the Office of Planning and Sustainable Development (“OPSD”) requested a 60-day time extension for filing responses on the Motion after conferring with each of the other parties.

On July 8, 2021, the Executive Officer of the State Land Use Commission granted the requested time extension for the filing of responses to the Motion.

On September 10, 2021, OPSD filed its response to the Motion, in which OPSD, based on the Department of Transportation’s comments, recommended approval of the Motion.

On September 13, 2021, Movant filed a Stipulation of the Parties on Petitioner’s Motion for Modification dated July 2, 2021, evidencing that the County of Maui (“County”) and OPSD did not oppose the Motion.

The Motion was heard via Zoom Webinar Virtual Meeting on September 23, 2021. Paul Mancini, Esq., Jeffrey Ueoka, Esq., and Mike Atherton appeared on behalf of Movant; Alison Kato, Esq., Lorene Maki, and Rodney Funakoshi appeared on behalf of OPSD; and Michael Hopper, Esq., and Kurt Wollenhaupt appeared on behalf of the County of Maui.

There was no public testimony.

At the hearing, movant presented information describing the challenges presented by Condition 8(b) of the Decision and Order filed on February 26, 2018 (“D&O”). The motion requested that condition 8(b) of the D&O be modified to be consistent with the county approval process. Condition 8(b) of the D&O requires that the movant enter into a memorandum of agreement with the State Department of Transportation, Highways Division, and another memorandum of agreement with the County of Maui. The memoranda of agreement is required to be executed prior to submittal of a subdivision application to the County of Maui. The motion requested that this condition be modified to allow the

memoranda of agreement be executed prior to the approval of the first subdivision application to the County of Maui for the Project. This change would remove the identified inconsistency with Condition 1(a) of Ordinance 4998 (2019), which approved the change in zoning of the subject property and would allow the movant to begin the subdivision process while working with the County and the Department of Transportation on the agreements.

Movant argued that good cause existed to allow the modification of the D&O in satisfaction of section 15-15-94(b), Hawaii Administrative Rules as the proposed modification would expedite the construction of much needed housing on Maui. The Project would supply at least 280 residential workforce housing units in accordance with chapter 2.96, Maui County Code. By allowing the movant to work concurrently towards subdivision approval and reaching an agreement with the County of Maui and the Department of Transportation on the mitigation of Project-generated traffic impacts, the movant should be able to deliver housing to residents at an earlier date which would help with the County of Maui's housing crisis.

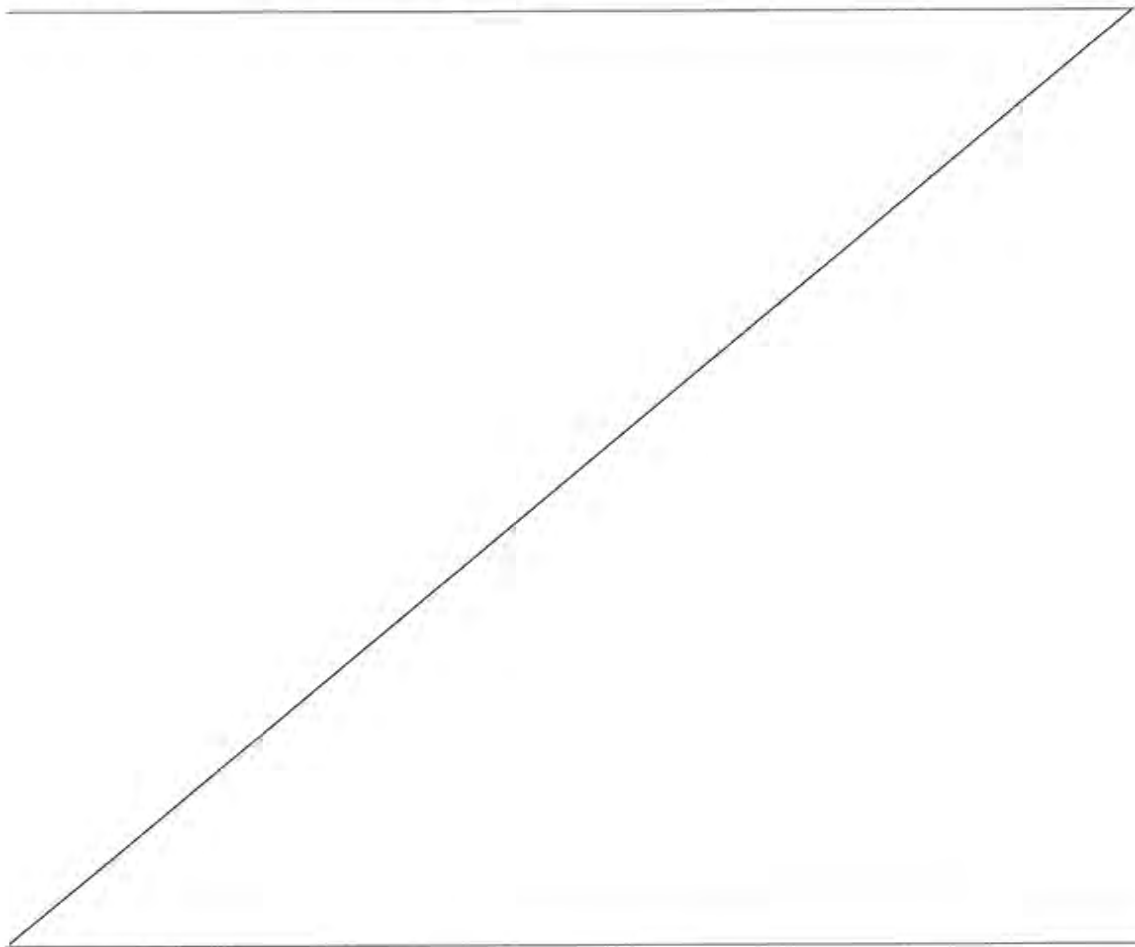
After hearing argument of the parties, discussion, questioning, and deliberation by the Commissioners, a motion was made and seconded to grant Movant's Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018, to require that the traffic memoranda of agreement be executed prior to the approval of the first subdivision application to the County of Maui for the Project. There being a vote tally of 8 ayes and 0 nays, the motion carried.

This Commission, have duly considered the Motion for Modification of Condition 8(b) of Decision and Order filed on February 26, 2018, the arguments and representations by the parties, and the record of this docket, hereby finds and concludes that Movant has supported its position for the amendment of Condition 8(b) of the Decision and Order filed on February 26, 2018. Therefore, for good cause shown,

IT IS HEREBY ORDERED that the Motion for Modification of Condition 8(b) of Decision and Order Filed on February 26, 2018, be GRANTED and that Condition 8(b) of Decision and Order Filed on February 26, 2018, is amended to read as follows:

Petitioner shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of Maui. Petitioner shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Memoranda of Agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the Project.

All other conditions to this Commission's Decision and Order filed on February 26, 2018, shall continue in full force and effect.



ADOPTION OF ORDER

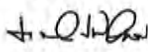
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 8th, day of March, 2022, per motion on September 23, 2021.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I



Deputy Attorney General

By 

JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

March 8, 2022_____

Certified by:



DANIEL ORODENKER
Executive Officer



**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of:	)	DOCKET NO. A15-798
	)	
WAIKAPU PROPERTIES, LLC; MTP LAND	)	
PARTNERS, LLC; WILLIAM S. FILIOS,	)	CERTIFICATE OF SERVICE
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 situated 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)	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following
ORDER GRANTING MOTION FOR MODIFICATION OF CONDITION 8(b) OF
DECISION AND ORDER FILED ON FEBRUARY 26, 2018 on March 8, 2022.

MARY ALICE EVANS, DIRECTOR
Office of Planning, State of Hawai'i
235 South Beretania Street
Room 600, Leiopapa A Kamehameha Bldg.
Honolulu, HI 96813

REGULAR MAIL

ALISON KATO, ESQ.
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

REGULAR MAIL

MICHELE CHOUTEAU MCLEAN
PLANNING DIRECTOR
Maui County Planning Department
County of Maui, State of Hawai'i
2200 Main Street
One Main Plaza, Suite 315
Wailuku, HI 96793

REGULAR MAIL

MICHAEL J. HOPPER, ESQ.
Deputy Corporation Counsel
County of Maui, State of Hawai'i
200 South High Street
Kalana O Maui Bldg., Floor 3
Wailuku, HI 96793

REGULAR MAIL

JEFF UEOKA, Esq. and PAUL MANCINI, Esq.
MANCINI, WELCH & GEIGER
305 E. Wakea Avenue, Suite 200
888 Mililani Street, Suite #308
Kahului, Hawai'i 96732

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Dated March 8, 2022
Honolulu, Hawai'i.



DANIEL E. ORODENKER
Executive Office

Exhibit 4

**A Bill for an Ordinance Amending
the Conditions of Zoning of
Ordinance 4998, Bill No. 45 (2019)
Relating to the Change in Zoning for
the Waikapu Country Town**

ORDINANCE NO. _____

BILL NO. _____

A BILL FOR AN ORDINANCE AMENDING THE CONDITIONS OF ZONING OF
ORDINANCE 4998, BILL NO. 45 (2019) RELATING TO THE CHANGE IN ZONING FOR
THE WAIKAPU COUNTRY TOWN DISTRICT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Condition 1.a on Exhibit C of Ordinance 4998, Bill No. 45 (2019),
Conditions of Zoning, shall be amended to read as follows:

“Landowners shall mitigate all Project-generated traffic impacts as required by the SDOT-H. Landowners shall enter into an agreement regarding the scope and timing of required traffic improvements to mitigate the traffic related impacts of the project on SDOT-H facilities as generally indicated in the project's Pro Rata Share Calculations for Waikapu Country Town Project dated June 29, 2018, as approved by SDOT-H. Alternatively, landowners may, subject to agreement with SDOT-H, provide additional residential workforce housing units in the project in lieu of providing funding or constructing traffic improvements to mitigate the traffic related impacts of the project. The agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the project.”

SECTION 2. Condition 1.b on Exhibit C of Ordinance 4998, Bill No. 45 (2019),
Conditions of Zoning, shall be amended to read as follows:

“Landowners shall fully fund the project [intersections] intersection with Honoapiilani Highway only at the Main Street Intersection (also referred to as Study Intersection #9 in the TIAR/EIS) [and at the Waiale Road Extension Intersection (also referred to as Study Intersection #13 in the TIAR/EIS.)] Landowners are solely responsible for funding the Main Street [and Waiale Road Extension] intersection improvements. Landowners may, pursuant to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended (the “PPP”), provide additional residential workforce housing units in the project in lieu of providing funding or constructing the intersection with Honoapiilani Highway at the Waiale Road Extension intersection (also referred to as Study Intersection #13 in the TIAR/EIS.)”

SECTION 3. Condition 1.d on Exhibit C of Ordinance 4998, Bill No. 45 (2019),
Conditions of Zoning, shall be amended to read as follows:

“Landowners shall provide pedestrian crossings on Honoapiilani Highway at the [intersections] intersection of Main Street [and Waiale Road Extension],

and ensure that the development layout provides pedestrian routes to [these] this pedestrian crossing [crossings]. Landowners are not constructing the Waiale Road Extension or the Waiale Road Extension intersection with Honoapiilani Highway. Landowners may, pursuant to the PPP, provide additional residential workforce housing units in the project in consideration of the County providing pedestrian crossings on Honoapiilani Highway at the intersection of the Waiale Road Extension.

SECTION 4. Condition 3.b on Exhibit C of Ordinance 4998, Bill No. 45 (2019), Conditions of Zoning, shall be amended to read as follows:

“Landowners shall enter into an agreement with DPW regarding the project's pro rata share contribution to the Waiale Road Extension from Waiko Road to Honoapiilani Highway. The agreement shall determine the project's pro rata share of the total anticipated costs for design and construction of the future Waiale Road Extension and the methods and timing by which the payments or similar contributions are made. Alternatively, landowners may, pursuant to the PPP, provide additional residential workforce housing units in lieu of contributing funding for the design and construction of the future Waiale Road Extension. [The agreement will also consider the project's actual traffic generated inasmuch as any reductions or increases in traffic than originally estimated may reduce or increase the pro rata share in the future.] Further, Landowners shall deed the Waiale Road Extension right-of-way to DPW, upon demand, the value of which shall not be considered towards the pro rata share used in the agreement. The agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the project. DPW shall confirm compliance with this condition.”

SECTION 5. Condition 5 on Exhibit C of Ordinance 4998, Bill No. 45 (2019), Conditions of Zoning, shall be amended to read as follows:

Residential Workforce Housing. Landowners shall provide residential workforce housing opportunities in accordance with the County of Maui's residential workforce housing requirements[. The required number of residential workforce housing units as determined by the County of Maui shall be completed according to a timetable associated with the issuance of building permits for market-rate dwelling units as required by the Maui County Code and as agreed to by the Department of Housing and Human Concerns.], provided that all residential workforce housing units in the project shall be subject to the following deed restriction periods:

- a. “Below-moderate income” twenty years.
- b. “Moderate income” fifteen years.
- c. “Above-moderate income” ten years.

Further provided, the first 300 units, which shall be a mix of 150 market rate units and 150 residential workforce housing units, and only for these first 300 units, the market rate units may be issued building permits, constructed, and made available for sale, occupancy, or both, prior to, or concurrently with the residential workforce housing units. The remaining residential workforce housing units in the project must be issued building permits, constructed, and made available for sale, occupancy, or both, either before, or concurrently with market rate units at the same ratio required of the project per Chapter 2.96, MCC.

Landowners will not seek project approvals authorized by Chapter 20IH, Hawaii Revised [Statues] Statutes, or similar project approvals for this project.

SECTION 6. Condition 6 on Exhibit C of Ordinance 4998, Bill No. 45 (2019), Conditions of Zoning, shall be amended to read as follows:

“Wastewater. Landowners shall participate in the funding and construction of adequate private or public wastewater facilities for the Project Area. The wastewater facilities shall be in accordance with the applicable standards and requirements of the DOH and the County of Maui as applicable. If Landowners' proposed wastewater facilities are to be located within the State agricultural district [districts], Landowners shall apply for a State Special Permit in accordance with the provisions of Chapter 205, Hawaii Revised Statutes (HRS). Alternatively, landowners may, pursuant to the PPP, provide additional residential workforce housing units in the project in lieu of participating in the funding and construction of adequate private or public wastewater facilities. Pursuant to the terms of the PPP, an interim connection to the Wailuku/Kahului Wastewater Treatment Facility for 100,000 gallons per day of wastewater shall be made available for the project, provided that upon the County's new wastewater treatment facility in the vicinity of the project coming online, the project's wastewater shall be diverted to the County's new wastewater treatment facility. [If Landowners desire to request an initial or interim connection to County wastewater facilities for any dwellings, an agreement must be made to the satisfaction of the Department of Environmental Management and other applicable agencies prior to the issuance of any building permit.] County or private operable wastewater facilities must be available to serve any use or structure prior to the issuance of the building permit for such use or structure.”

SECTION 7. Condition 8 on Exhibit C of Ordinance 4998, Bill No. 45 (2019), Conditions of Zoning, shall be amended to read as follows:

“Education Contribution Agreement. Landowners shall contribute to the development, funding, and construction of school facilities in compliance with the Educational Contribution Agreement for Waikapu Country Town, undated but executed as of January 31, 2017, entered into by Landowners and the Department of Education, as may be amended. Landowners shall ensure that prospective

buyers, purchasers, and subsequent owner-builders of lots are given notice of the requirement to pay the Central Maui District Impact Fee in accordance with the Educational Contribution Agreement, as may be amended. Such notice shall be recorded and run with the land.

SECTION 8. Upon adoption of this ordinance, Landowners shall cause the Unilateral Agreement and Declaration for Conditional Zoning, dated August 30, 2019, recorded in the State of Hawaii Bureau of Conveyances as Document No. A-71880997, to be amended to reflect the amendments herein.

SECTION 9. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed materials, or the underscoring.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
County of Maui

Exhibit 5

Educational Contribution Agreement

Educational Contribution Agreement for
WAIKAPU COUNTRY TOWN

THIS INDENTURE, made this _____ day of _____, 2016, by and between WAIKAPU 905 PARTNERS, LLC, WAIKAPU PROPERTIES, LLC, MTP LAND PARTNERS, LLC and the WILLIAM FILIOS SEPARATE PROPERTY TRUST (collectively "WCT") whose principal place of business and mailing address is PO Box 1870, Manteca, CA 95336 and the State of Hawai'i DEPARTMENT OF EDUCATION ("DOE") whose mailing address is Department of Education, Facilities Development Branch, 3633 Waiālae Avenue, Honolulu, Hawai'i 96816.

Each entity comprising WCT and executing this Agreement on behalf of WCT shall be jointly and severally liable for all of the obligations contained herein. In addition, each entity comprising WCT hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon each entity comprising WCT, and shall be binding upon all such entities.

WHEREAS WCT is the developer and recorded fee simple owner of those certain parcels of land comprised of 1,576.17 acres and identified as Tax Map Key parcels 3-6-002:003, 3-6-002:001, 3-6-005:007, 3-6-004:003, 3-6-006:036 and 3-6-004:006, also known as "WAIKAPU COUNTRY TOWN";

WHEREAS the WAIKAPU COUNTRY TOWN is anticipated to contain a total of 1,433 residential units in the entire project;

WHEREAS, pursuant to Hawai'i Revised Statutes ("HRS") Chapter 302A-1601 to 1612, DOE is authorized to collect school impact fees from all new residential development in designated areas or enter into education contribution agreements to satisfy its requirements;

WHEREAS, pursuant to HRS chapter 302A-1601, said impact fee obligation is comprised of two components, land and construction cost;

WHEREAS, for the land component, pursuant to Hawai'i Revised Statutes Chapter 302A-1606 (c), DOE has exclusive authority to determine whether the obligation shall be satisfied by actual acreage or fees in lieu thereof;

WHEREAS, the amount for the construction cost component shall be determined pursuant to HRS Chapter 302A-1607;

WHEREAS WCT and DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy all DOE requirements for WAIKAPU COUNTRY TOWN, based on a maximum of 1,433 net residential units, less any units that prohibit school age children;

NOW THEREFORE, WCT and DOE agree as follows:

WCT's Cash Contribution. WCT shall contribute a total of Two Million Six Hundred Ten Thousand Three Hundred Twenty Nine Dollars (\$2,610,329) to DOE.

- a. The Cash Contribution shall be paid out of Escrow and made payable to the "State of Hawai'i, Department of Education" in accordance with the following schedule:
 - (1) Two Thousand One Hundred Fifty Three Dollars (\$2,153.00) payable upon the closing and recordation of each single family unit within the project.
 - (2) Nine Hundred Thirteen Dollars (\$913.00) payable upon the closing and recordation of each multi-family unit within the project.
- b. The amount of the cash contribution shall be adjusted from the effective date of this Agreement to the date it is paid, so that it is always equal to the Central Maui District Impact Fee that is in effect at the time of payment.

2. WCT's Land Contribution. WCT shall dedicate twelve (12) net usable acres on parcel 3-6-002:003 ("school site") to the State of Hawai'i. Usable is generally defined as land free of conditions determined to be restrictive by DOE. Characteristics of a usable site include, but are not limited to, slope of five percent or less, no ravines or stream beds, a distance from potential hazards such as chemical emissions, and setbacks of 100 to 350 feet from high voltage power lines (distance depending on voltage). DOE will make the final determination as to whether land is usable based on an evaluation of the specific property taken in the context of the development as a whole.

The presence of all public schools within WAIKAPU COUNTRY TOWN will be acknowledged and included in all plans and studies for the development, including environmental impact studies and zoning applications.

The location of the school site shall be as shown on the map attached hereto and incorporated herein as Exhibit "A". Additional school site characteristics shall include:

- a. Use of the school site shall be limited to public school and ancillary school uses.
- b. WCT shall grant all utility easements over lands owned by WCT that are required to provide utility service to the school site without charge to the State of Hawai'i.
- c. The school site shall have a minimum of two vehicular access points, along two different boundaries of the parcel, in locations approved in writing by DOE.
- d. WCT may be required to clear encumbrances or liens from title as required by DOE or the Department of Land and Natural Resources ("DLNR"), prior to conveyance and at no cost to the State of Hawai'i. In the event WCT cannot provide acceptable title to the State of Hawai'i, or

it is not economically feasible to do so, WCT shall propose a mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- e. WCT shall provide a topographic map of the school site at 2-foot elevation prior to the signing of this agreement.
- f. WCT shall be responsible for rezoning the school site to a residential land use designation prior to conveyance to the State of Hawai'i.
- g. WCT shall conduct property appraisals at no cost to the State of Hawai'i and at times specified by DOE.
- h. WCT shall grant a right-of-entry to the State of Hawai'i and its consultants for preliminary data gathering (archaeological, soil testing, topographic surveys, etc.) and construction on the school site prior to conveyance to the State of Hawai'i and within 60 days of a written request by the DOE.
- i. WCT shall provide a soils report within ninety (90) days of the signing of this agreement and within ninety (90) days following the addition of any subsequent fill.

In the event the soils report and documentation indicate conditions unacceptable to DOE; WCT shall propose mutually agreeable alternative site(s) or remove the objectionable material and replace it with soil acceptable for construction, as determined by DOE. The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

In addition, a copy of any grading report that includes the school site shall be provided to DOE.

- j. WCT shall conduct a Phase I Environmental Site Assessment ("Phase I ESA") for the school site, at no cost to the State of Hawai'i. The State of Hawai'i shall be listed as an intended user of the Phase I ESA. The study shall satisfy the requirements of the State Department of Health ("DOH") and DLNR. Two copies of the report shall be provided to DOE within 60 days of a DOE request.

If necessary, the Phase I ESA or sections thereof may require updating, if some sections of the report are more than six (6) months old, prior to closing.

If the Phase I ESA identifies the potential for hazardous material release, the presence of naturally occurring hazardous materials, or if required by DOH or DLNR, WCT shall also conduct a Phase II Environmental Site Assessment and any and all abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal

Environmental Protection Agency and/or the DOH, all at no cost to the State of Hawai'i.

In the event WCT cannot conduct any and all abatement and disposal to the standards described above, or it is not economically feasible to do so, WCT shall propose a mutually agreeable alternative site(s). The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- k. The school site shall not contain any known historical or archaeological sites. WCT shall be responsible for verifying such state with DLNR's State Historic Preservation Division (hereinafter referred to as "SHPD") and/or provide appropriate mitigation measures that are acceptable to SHPD and DOE. If requested by DOE, the WCT shall update the archaeological survey for the school site if there are unintentional/inadvertent discoveries of human remains within WAIKAPU COUNTRY TOWN.

In the event WCT cannot provide sufficient mitigation, or it is not economically feasible to do so, WCT shall propose a mutually agreeable alternative site. The parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

- l. WCT shall be responsible for the subdivision of the school site at no cost to the State of Hawai'i, including Land Court recordation, if applicable.
- m. Upon formal subdivision approval of the school site, WCT shall provide a survey of the site stamped by a duly licensed surveyor. Said survey shall include metes and bounds description and map of the school site in accordance with the subdivision process. All survey maps and descriptions for the subject property must be in accordance with the State's Department of Accounting and General Services standards and at WCT's own cost.

If available, WCT shall also provide the latest ALTA survey prior to subdivision of the school.

- n. WCT shall commit to the completion of the following subdivision infrastructure systems, at no cost to DOE and up to the property line of the school site, twelve (12) months prior to the start of construction of the school:
 - (1) Potable water distribution systems for irrigation, domestic, and fire flow needs;
 - (2) Non-potable water distribution system, if required, for irrigation;
 - (3) Sewage collector, treatment and disposal systems;
 - (4) Drainage collector and disposal systems;

- (5) Access roadway systems sufficient for bus and vehicular traffic (minimum 60-foot right-of-way);
 - (6) Electrical, telephone, CATV and any other telecommunication distribution systems.
- o. WCT shall provide at no cost to the State of Hawai'i, adequate allocations for the above services prior to the start of construction of the school, such as:
 - (1) Subdivision water system allocations based on up to 60 gallons per 850 person per day for domestic use plus 4,000 gallons per day per acre for irrigation purposes at no cost to the State of Hawai'i.
 - (2) Subdivision water system capacity of 2,000 gallons per minute for a 2-hour duration (with residual critical pressure of 20 psi at the fire hydrants), as required for fire flow requirements, with related reservoir storage capacity.
 - (3) Average sewage flow allocations based on 25 gallons per person, per day, at approximately 850 people, plus 1,250 gallons per acre per day for wet weather infiltration/inflow or plus 2,750 gallons per acre per day for wet weather if the sewer line is laid below the normal ground water table.
 - (4) Actual allocations and size of utility lines at street for potable and non-potable water, sewer, drainage, power, telephone, CATV and any other telecommunication systems shall be reported with the conveyance documents.
- p. The school site shall be exempt from WAIKAPU COUNTRY TOWN community Declaration of Covenants, Conditions and Restrictions ("CC&R"), WAIKAPU COUNTRY TOWN association rules, WAIKAPU COUNTRY TOWN design committee rules, and subdivision design guidelines.
- q. The school site shall be conveyed to the State of Hawai'i at least ninety (90) days prior to the start of on-site construction.
- r. WCT shall conduct an initial title search of the school site at no cost to the State of Hawai'i at the time of the execution of this agreement. Updates to the title report (with hyperlinks) may be required by DOE during its due diligence process and following substantial changes to the property title.
- s. WCT shall be responsible for payment of all property taxes up to the effective date of the Warranty Deed.

- t. WCT shall provide title insurance for the school site when DOE's due diligence process is completed and conveyance is eminent.
- u. Conveyance of the school site shall be via Warranty Deed in a form approved by the Department of the Attorney General, Land/Transportation Division and DLNR. The standard boilerplate Warranty Deed form, as may be amended from time to time, has been provided to WCT
- v. WCT recognizes that the State of Hawaii's acquisition and disposition of private property is subject to approval by the Board of Land and Natural Resources.

3. This Agreement shall be binding upon WCT, or its successor in interest.

4. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

5. This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this instrument and the several counterparts shall constitute one instrument to the same effect as though the signature of all the parties were upon the same instrument. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one instrument.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

-----THE REMAINDER OF THIS PAGE IS INTENTIONALLY BEING LEFT BLANK-----

OWNER OF TMK'S 3-6-002:001 AND 3-6-002:003

WAIALE 905 PARTNERS, LLC

Larry W. Anderson, as Co-Trustee of the
Larry W. Anderson and Georgeann M. Anderson
Revocable Family Trust
Dated August 9, 2004

Georgeann M. Anderson, as Co-Trustee of the
Larry W. Anderson and Georgeann M. Anderson
Revocable Family Trust
Dated August 9, 2004

Lodi Development, Inc.

By: _____
Its: _____

Boyce Holdings, Inc.

By: Albert G. Boyce V 
Its: President

Boyce Resource Development Company

By: Albert G. Boyce Jr.
Its: President

Albert G. Boyce, Jr., as Trustee of Trust B
Created under the Last Will and Testament of
Albert G. Boyce Sr., dated November 2, 1978

William S. Filios as Trustee of The
William S. Filios Separate Property Trust
dated April 3, 2000

OWNER OF TMK'S 3-6-002:001 AND 3-6-002:003

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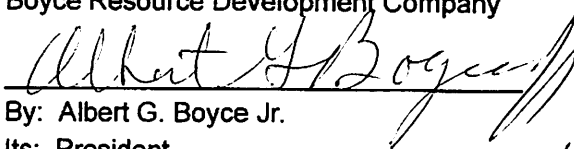
Lodi Development, Inc.

By: _____
Its: _____

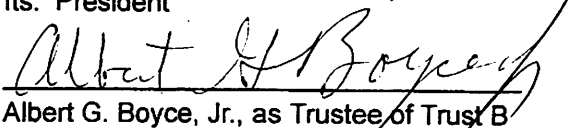
Boyce Holdings, Inc.

By: Albert G. Boyce V
Its: President

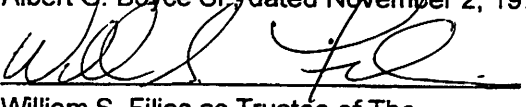
Boyce Resource Development Company



By: Albert G. Boyce Jr.
Its: President



Albert G. Boyce, Jr., as Trustee of Trust B
Created under the Last Will and Testament of
Albert G. Boyce Sr., dated November 2, 1978



William S. Filios as Trustee of The
William S. Filios Separate Property Trust
dated April 3, 2000

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WAIALE 905 PARTNERS, LLC



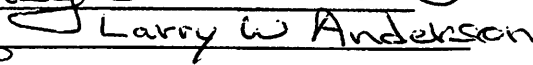
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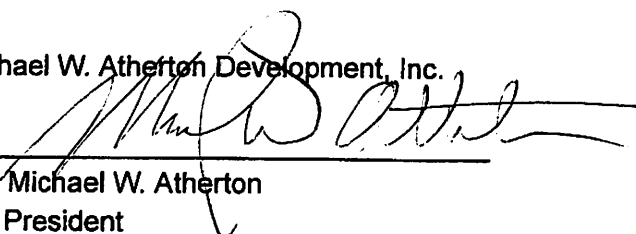
OWNER OF TMK'S 3-6-004:003, 3-6-004:006 AND 3-6-006:036

WAIKAPU PROPERTIES, LLC

Lodi Development, Inc.

By: Larry W. Anderson
Its: President

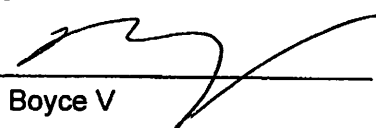
Michael W. Atherton Development, Inc.



By: Michael W. Atherton
Its: President

William S. Filios as Trustee of The
William S. Filios Separate Property Trust
dated April 3, 2000

Boyce Holdings, Inc.



By: Albert G. Boyce V
Its: President

Boyce Resource Development Company

By: Albert G. Boyce Jr.
Its: President

OWNER OF TMK'S 3-6-004:003, 3-6-004:006 AND 3-6-006:036

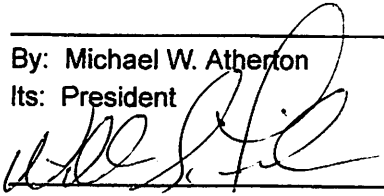
WAIKAPU PROPERTIES, LLC

Lodi Development, Inc.

By: Larry W. Anderson
Its: President

Michael W. Atherton Development, Inc.

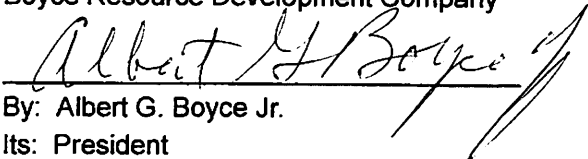
By: Michael W. Atherton
Its: President


William S. Filios as Trustee of The
William S. Filios Separate Property Trust
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Boyce Holdings, Inc.

By: Albert G. Boyce V
Its: President

Boyce Resource Development Company


By: Albert G. Boyce Jr.
Its: President

OWNER OF TMK'S 3-6-004:003, 3-6-004:006 AND 3-6-006:036

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By: Larry W. Anderson
Its: President

Michael W. Atherton Development, Inc.

By: Michael W. Atherton
Its: President

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By: Albert G. Boyce V
Its: President

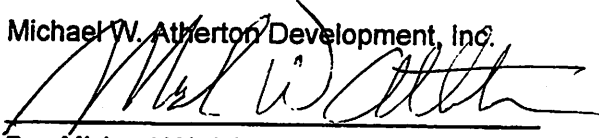
Boyce Resource Development Company

By: Albert G. Boyce Jr.
Its: President

OWNERS OF TMK 3-6-005:007

MTP LAND PARTNERS, LLC

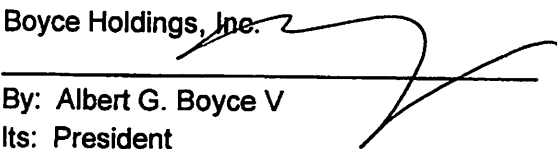
Michael W. Atherton Development, Inc.



By: Michael W. Atherton

Its: President

Boyce Holdings, Inc.



By: Albert G. Boyce V

Its: President

WILLIAM S. FILIOS

William S. Filios as Trustee of The
William S. Filios Separate Property Trust
dated April 3, 2000

OWNERS OF TMK 3-6-005:007

MTP LAND PARTNERS, LLC

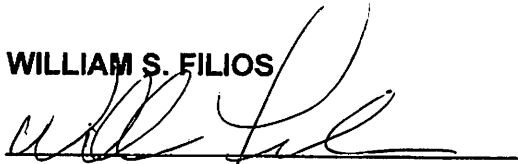
Michael W. Atherton Development, Inc.

By: Michael W. Atherton
Its: President

Boyce Holdings, Inc.

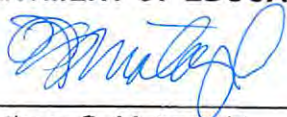
By: Albert G. Boyce V
Its: President

WILLIAM S. FILIOS

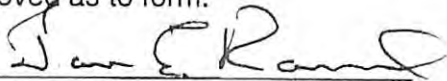
A handwritten signature in black ink, appearing to read 'William S. Filios', is written over a horizontal line.

William S. Filios as Trustee of The
William S. Filios Separate Property Trust
dated April 3, 2000

DEPARTMENT OF EDUCATION

By  JAN 31 2017
Kathryn S. Matayoshi
Superintendent

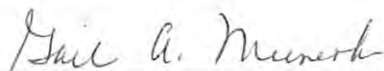
Approved as to form:

By 
Attorney General
State of Hawai'i

Date: 1-11-17

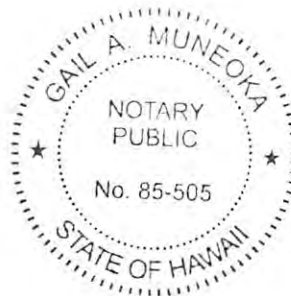
STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) ss.

The attached document: Educational Contribution Agreement for Waikapu Country Town, dated undated at time of notarization, which consist of 2.2 page(s), was subscribed and sworn to me by Kathryn S. Matayoshi on this 31st day of January, 2016, in the First Circuit of the State of Hawai'i by Gail A. Muneoka.


[Notary Signature]

Printed Name: Gail A. Muneoka

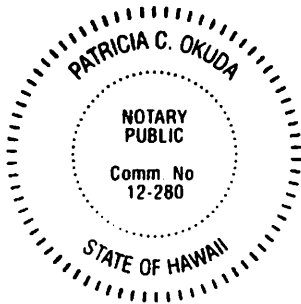
My commission expires: May 10, 2019



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 13 day of JANUARY, 2017, before me personally appeared Michael W. Atherton, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal.



Patricia C. Okuda

Notary Signature

Printed Name: Patricia C. Okuda

My Commission Expires: 8/26/20

Doc. Date: _____ # Pages: 10

Notary Name: Patricia C. Okuda Second Circuit

Doc. Description EDUCATIONAL CONTRIBUTION

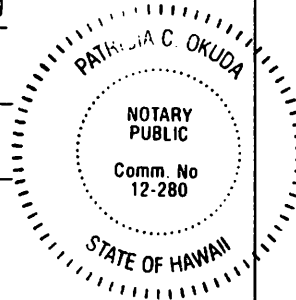
Agreement Waikapu Country Town

Patricia C. Okuda 1/13/17

Signature

Date

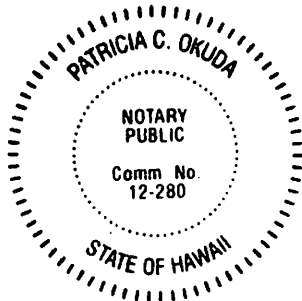
NOTARY CERTIFICATION



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 13 day of JANUARY, 2017, before me personally appeared Albert G. Boyce, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

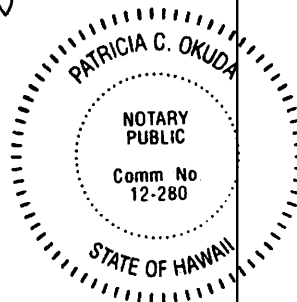
Witness my hand and seal.



Patricia C. Okuda
Notary Signature
Printed Name: Patricia C. Okuda

My Commission Expires: 8/26/20

Doc. Date: _____ # Pages: <u>10</u>	
Notary Name: <u>Patricia C. Okuda</u> Second Circuit	
Doc. Description <u>EDUCATIONAL CONTRIBUTION</u>	
<u>Agreement - Waikapu Country Town</u>	
<u>Patricia C. Okuda</u>	<u>1/13/17</u>
Signature	Date
NOTARY CERTIFICATION	



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

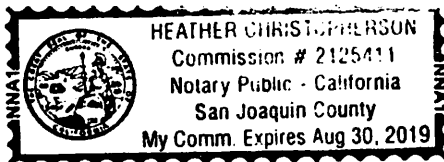
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of San Joaquin)
 On January 13 2017 before me, Heather Christopherson,
 Date Here Insert Name and Title of the Officer
 personally appeared Albert G. Boyce, Jr. President
 Name(s) of Signer(s)
of Boyce Resource Development Company

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Educational Contribution Agreement Document Date: _____
 Number of Pages: 10 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — Limited General
☐ Individual Attorney in Fact
☐ Trustee Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — Limited General
☐ Individual Attorney in Fact
☐ Trustee Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Joaquin)

On January 13, 2017 before me, Heather Christopherson
Date Here Insert Name and Title of the Officer

personally appeared Albert G. Bayce, Jr. Trustee of
Name(s) of Signer(s)

Trust B created under last will and testament of Albert G Bayce Sr

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Educational Contribution Agreement Document Date: _____
Number of Pages: 10 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — Limited General
☐ Individual Attorney in Fact
☐ Trustee Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — Limited General
☐ Individual Attorney in Fact
☐ Trustee Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

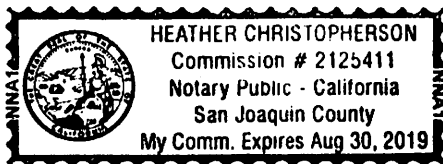
State of California)

County of San Joaquin)On January 19, 2017 before me, Heather Christopherson,
Date Here Insert Name and Title of the Officerpersonally appeared William S. Filios, Trustee of the
Name(s) of Signer(s)William S. Filios Separate Property Trust

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

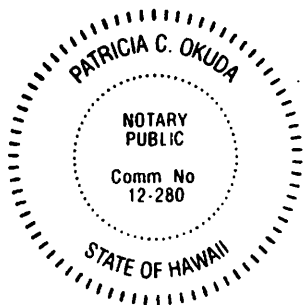
Other: _____

Signer Is Representing: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 16 day of JANUARY, 2017, before me personally appeared Larry W. Anderson, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal.



Patricia C. Okuda

Notary Signature

Printed Name: Patricia C. Okuda

My Commission Expires: 8/26/20

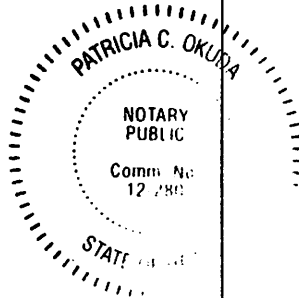
Doc. Date: # Pages: 10

Notary Name: Patricia C. Okuda Second Circuit

Doc. Description Educational Cont.
Agreement - Waikapu Country Town.

Patricia C. Okuda 1/16/17
Signature Date

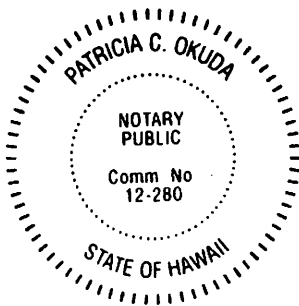
NOTARY CERTIFICATION



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 16 day of JANUARY, 2017, before me personally appeared Georgeann M. Anderson to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal.



Patricia C. Okuda

Notary Signature

Printed Name: Patricia C. Okuda

My Commission Expires: 8/26/20

Doc. Date: _____ # Pages: 10

Notary Name: Patricia C. Okuda Second Circuit

Doc. Description EDUCATIONAL CONTRIB.
Agreement Waikapu Country Town

Patricia C. Okuda 1/16/17
Signature Date

NOTARY CERTIFICATION

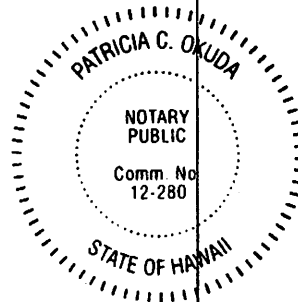


Exhibit 6

**E-mail Transmittal to State
Department of Transportation,
County Department of Public Works,
and County Department of Planning**

From: [Netai Basu](#)
To: [David Goode](#); [Clayton Yoshida](#); jenny.s.lee@hawaii.gov
Cc: [Kurt Wollenhaupt](#) (Kurt.Wollenhaupt@co.maui.hi.us); joseph.k.krueger@hawaii.gov; robin.k.shishido@hawaii.gov; russell.iwasa@hawaii.gov; msummers@planningconsultantshawaii.com; [Sohrab Rashid](mailto:Sohrab.Rashid@fehrandpeers.com) (S.Rashid@fehrandpeers.com)
Bcc: [Southern California Front Desk](#)
Subject: RE: Supplemental Traffic Analysis and Pro-Rata Share Calculations for the Waikapu Country Town Project (ref. SD13-0085.02)
Date: Tuesday, July 10, 2018 12:15:00 PM
Attachments: [WCT_NoWaialeBypass_Memo_2022_final.pdf](#)
[image002.png](#)
[image003.png](#)

All –

It's come to my attention that the memo with the supplemental traffic analysis that was recently circulated had two typos where "2026" was shown, instead of "2022." The attached version corrects that. Please rely on this version in the future. Thank you.

-Netai Basu, AICP CTP

FEHR & PEERS

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asap.fehrandpeers.com
n.basu@fehrandpeers.com

From: Netai Basu
Sent: Saturday, July 7, 2018 4:46 PM
To: 'David Goode' <David.Goode@co.maui.hi.us>; Clayton Yoshida <Clayton.Yoshida@co.maui.hi.us>; jenny.s.lee@hawaii.gov
Cc: Kurt Wollenhaupt (Kurt.Wollenhaupt@co.maui.hi.us) <Kurt.Wollenhaupt@co.maui.hi.us>; joseph.k.krueger@hawaii.gov; robin.k.shishido@hawaii.gov; russell.iwasa@hawaii.gov; msummers@planningconsultantshawaii.com; Sohrab Rashid (S.Rashid@fehrandpeers.com) <S.Rashid@fehrandpeers.com>
Subject: Supplemental Traffic Analysis and Pro-Rata Share Calculations for the Waikapu Country Town Project (ref. SD13-0085.02)

Good afternoon Ms. Lee, Mr. Goode and Mr. Yoshida –

This message follows up on our previous correspondence regarding the Waikapu Country Town project.

Attached are two technical memoranda completed in fulfillment of certain conditions of the State Land Use Commission. One presents the methodology and results of the supplemental traffic analysis of the project. The other is the calculation of the project's pro-rata share for traffic

mitigation measures, which is an initial step in developing Memoranda of Agreement with both the County of Maui and the State DOT. Please review, and contact us or Mike Summers with comments or questions.

Continuing this coordination, we suggest that the next step should be to find a time to meet to discuss these and previous studies. Would you all be open to a joint meeting?

-Netai Basu, AICP CTP

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n.basu@fehrandpeers.com

From: David Goode <David.Goode@co.maui.hi.us>

Sent: Sunday, July 1, 2018 5:37 PM

To: Clayton Yoshida <Clayton.Yoshida@co.maui.hi.us>; Netai Basu <N.Basu@fehrandpeers.com>; jenny.s.lee@hawaii.gov

Cc: Sohrab Rashid <S.Rashid@fehrandpeers.com>; joseph.k.krueger@hawaii.gov; robin.k.shishido@hawaii.gov; russell.iwasa@hawaii.gov; msummers@planningconsultantshawaii.com

Subject: Re: Follow Up on - FOR YOUR REVIEW/COMMENT - Approach to Supplemental Traffic Analysis and Pro-Rata Share Calculations for the Waikapu Country Town Project (ref. SD13-0085.02)

Hi Netai, no comments from me. thx, DG

>>> Netai Basu <N.Basu@fehrandpeers.com> 5/11/2018 12:15 PM >>>
Good afternoon Ms. Lee, Mr. Goode and Mr. Yoshida –

Thank you for contacting me earlier this week, Ms. Lee.

This message follows up on my prior communication, below, regarding the supplemental analysis of the Waikapu Country Town project. As a reminder, next week we're planning to proceed with that analysis as I'd indicated. If you have any comments or suggestions to offer, we welcome them now. Once this analysis is complete we'll submit the results to you and your agencies for review before we meet to discuss the results and the next steps toward developing Memoranda of Understanding.

-Netai

From: Netai Basu

Sent: Wednesday, May 02, 2018 4:32 PM

To: robin.k.shishido@hawaii.gov; 'David Goode' <David.Goode@co.maui.hi.us>; Clayton Yoshida

<Clayton.Yoshida@co.maui.hi.us>

Cc: 'Krueger, Joseph K' <joseph.k.krueger@hawaii.gov>;

'msummers@planningconsultantshawaii.com' <msummers@planningconsultantshawaii.com>;

Sohrab Rashid (S.Rashid@fehrandpeers.com) <S.Rashid@fehrandpeers.com>

Subject: FOR YOUR REVIEW/COMMENT - Approach to Supplemental Traffic Analysis and Pro-Rata Share Calculations for the Waikapu Country Town Project (ref. SD13-0085.02)

Mr. Shishido, Mr. Goode, Mr. Yoshida –

Attached for your review and comment is a brief memorandum that presents the approach Fehr & Peers will use in preparing supplemental traffic impact analysis and pro-rata share calculations for the Waikapu Country Town project. This is undertaken to fulfill certain conditions of the State Land Use Commission. As with previous studies for this project we're coming to you input early in the process. If you have any questions or comments please provide them by May 15, when we plan to proceed with these tasks in the manner described. Once they are completed the project team will contact you to meet and discuss the next steps. Thank you.

Netai Basu, AICP CTP

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Exhibit 7

No Waiale Bypass Memorandum



MEMORANDUM

Date: June 29, 2018
To: Mike Summers, Planning Consultants Hawaii, LLC
From: Netai Basu & Ryan Liu, Fehr & Peers
Subject: **Waikapu Country Town Project – Analysis of 2022 Conditions without the Waiale Bypass**

SD13-0085.02

In December 2016 the Hawaii Land Use Commission conducted a hearing on the Waikapu Country Town (WCT) project. Following certification of the EIS at the hearing, a series of conditions were set forth as part of the “Findings of Fact, Conclusions of Law, and Decision and Order and Certificate of Service,” dated February 27, 2018. Condition 8a requires the “preparation of “a supplemental analysis to evaluate the “No Waiale Bypass” with Petitioner’s Project in 2022 (Phase 1), due to the current memorandum/addendum limited to only build-out year (2026)”. This memorandum is intended to fulfill this condition.

Considerable coordination between the County of Maui (County), Hawaii Department of Transportation (HDOT) and the project team early in the preparation of the Transportation Impact Analysis Report (TIAR) for the Waikapu Country Town Project (WCT, project) led to the decision to assume the completion of the planned Waiale Bypass in the study’s future analysis scenarios. The Waiale Bypass is a planned extension of Waiale Road approximately one mile between its existing terminus at Waiale Road & Waiko Road to a new intersection with Honoapiilani Highway, and is the subject of a completed Environmental Assessment.¹ The roadway extension would provide supplemental access to the makai area of the WCT project site via a proposed roundabout with Main Street and a three-legged intersection with the major North-South Residential Street. The

¹ *Final Environmental Assessment for the Proposed Waiale Road Extension and East Waiko Road Improvements* (prepared for County of Maui by Munekiyo & Hiraga, Inc., 2014)



bypass received \$18,000,000 in funding in the County's FY2019 CIP² for years from 2020 to 2024, but the precise schedule for construction of this roadway is uncertain.

Fehr & Peers has developed and analyzed forecast traffic volumes in 2022 without the Waiale Bypass in place, both before and after the addition of project traffic. These traffic volumes were then used to conduct a full quantitative (LOS) analysis of these two future no-bypass scenarios. The results of the analysis are summarized in this memorandum.

FUTURE TRAFFIC PROJECTIONS

Estimates of the future traffic conditions made as part of the draft and final EIS that employed the Maui Travel Demand Forecasting Model. Traffic volumes forecasts for 2026 throughout the study and across key screen lines, without and with the Waiale Bypass in place, were compared to identify the magnitude and location of traffic shifts without the planned roadway in place. That information was used to inform manual adjustments that modified the year 2022 forecasts to reflect the exclusion of the Waiale Bypass. The resulting cumulative base traffic volumes and the anticipated lane configurations, representing future conditions without the project and the bypass for year 2022 is presented in **Figure 1**.

2022 NO PROJECT VOLUME COMPARISON

A comparison of the 2022 No Project peak hour volumes with and without the Waiale Bypass showed that the traffic that was projected to use the roadway extension would shift to use Honoapiilani Highway and Kuihelani Highway between Waiko Road and the intersection of Honoapiilani Highway and Kuihelani Highway. Details of the shift in traffic volumes under the 2022 No Project, No Bypass Condition are summarized below:

- During the AM peak hour, approximately 200 additional northbound trips and approximately 65 additional southbound trips would traverse along Honoapiilani Highway.

² Adopted May 29, 2018, this project is listed on see page 15 of Appendix B of the *Fiscal Year 2019 Capital Program*. <https://mauicounty.legistar.com/View.ashx?M=F&ID=6265935&GUID=D27EADA0-E1D5-4531-9B7B-83237CA166C5> , accessed June 20, 2018.



- Along Kuihelani Highway it is projected that there would be approximately 100 additional northbound trips and approximately 120 additional southbound trips traversing through this portion of the study area under in the AM peak hour.
- During the PM peak hour, approximately 60 additional northbound trips and approximately 200 additional southbound trips would traverse along Honoapiilani Highway.
- Along Kuihelani Highway it is projected that there would be approximately 120 additional northbound trips and approximately 80 additional southbound trips traversing through this portion of the study area under in the PM peak hour.

PROJECT TRAFFIC PROJECTIONS

Using the same trip generation and trip distribution pattern presented in the TIAR, the project trips were assigned to the 2022 roadway network without the Waiale Bypass. The trip assignment differs from the TIAR as trips to/from land uses on the makai side that were originally expected to travel on Waiale Road were shifted to travel over the site's internal roadways (i.e. Main Street, E-W Residential Road, and N-S Residential Road) to reach Honoapiilani Highway. **Figure 2** illustrates the net new 2022 project generated traffic volumes under full buildout for the AM and PM peak hours at each study intersection.

The project generated traffic volumes (Figure 2) were then added to the 2022 base traffic projection (Figure 1) to develop 2022 plus Project traffic forecasts for the no-bypass scenario shown in **Figure 3**.

KEY STREET SYSTEM CHANGES

In addition to using the revised traffic projections in the 2022 intersection operations analysis, there have been changes to the baseline street system assumptions since the completion of the draft EIS, as well as changes to the project street system assumptions due to the removal of the Waiale Bypass that have been applied to the analysis presented in this memorandum. Described below are the key changes in study intersection configuration used in this analysis:



- Intersection 1: Honoapiilani Highway & Kuikahi Drive: Based on field observations, the eastbound and westbound approaches have been re-stripped from one shared through/left-turn lane and one right-turn lane to one left-turn lane, one through lane, and one right-turn lane. Additionally, the eastbound and westbound left-turn phasing have been modified to protected/permitted. These modifications were used in the revised 2022 intersection operations analysis with and without the project in place.
- Intersection 3: S. Kamehameha Avenue & Maui Lani Parkway: A roundabout is planned to replace the all-way stop control intersection. This intersection control modification was used in the revised 2022 intersection operations analysis with and without the project.
- Intersection 6: Waiko Road & Waiale Road: Signalization and construction of the fourth (south) leg of this intersection are part of the Waiale Bypass improvement. Since this analysis evaluates no-bypass scenarios, the existing control and configuration were assumed to remain in place in the 2022 operations analysis.
- Intersection 9: Honoapiilani Highway & Main Street: This future intersection will be constructed as part of the project. Due to the increase in volumes at this location without the Waiale Bypass in place, the intersection configuration has been revised from what was assumed in the TIAR in order to yield desirable operating conditions (i.e. minimum LOS D or better). Thus, this analysis assumes that the intersection is configured with one left-turn lane, one through lane, and one right-turn lane across all approaches. Signal phasing is assumed to be protected/permitted across all approaches and there would be an overlap phase for the westbound right-turn.
- Intersection 10: Waiale Road & Main Street – This intersection will not exist if the Waiale Bypass is not constructed.
- Intersection 11: Honoapiilani Highway & East-West Residential Street – This intersection would not be constructed in Phase 1 of the WCT project.
- Intersection 12: North-South Residential Street & Waiale Road – This intersection would not be constructed in Phase 1 of the WCT project.
- Intersection 13: Honoapiilani Highway & Waiale Road – This intersection will not exist if the Waiale Bypass is not constructed.

INTERSECTION ANALYSIS

The intersection operations analysis compares the projected levels of service at each study intersection under cumulative conditions for 2022 with and without the proposed project and the Waiale Bypass. Results of this analysis are presented in **Table 1**.



2022 NO PROJECT TRAFFIC CONDITIONS

The results of the LOS calculations indicate that all of the future study intersections operate at an overall desirable LOS (LOS D or better) under 2022 No Project Conditions, with the exception of the following locations:

- Intersection 1: Honoapi'ilani Highway & Kuikahi Drive (LOS F – AM peak hour and LOS E – PM peak hour)
- Intersection 3: S. Kamehameha Avenue & Maui Lani Parkway (LOS F – AM and PM peak hours)
- Intersection 4: Kuihelani Highway & Maui Lani Parkway (LOS F – AM peak hour and LOS E – PM peak hour)
- Intersection 6: Waiale Road & Waiko Road (LOS F – AM peak hour)
- Intersection 7: S. Kamehameha Avenue & Waiko Road (LOS F – AM peak hour)
- Intersection 8: Kuihelani Highway & Waiko Road (LOS E – AM peak hour)

When compared to the 2022 No Project results presented in the TIAR, Intersection 2: Wialae Road & Kuikahi Drive would operate at LOS D in the AM peak hour, rather than at LOS E. Intersection 6: Waiale Road & Waiko Road and Intersection 8: Kuihelani Highway & Waiko Road are new locations that would operate at undesirable LOS if the Waiale Bypass is not in place.

2022 WITH PROJECT TRAFFIC CONDITIONS

The proposed project would contribute to cumulative impacts (where LOS E or LOS F is forecast under pre-project conditions) during one or both of the peak hours at the six study intersection listed in the previous section. In addition, project-specific impacts have been identified at two intersections where the addition of project-generated traffic would cause their overall intersection operations to fall below LOS D in one or both peak hours:

- Intersection 2: Waiale Road & Kuikahi Drive
- Intersection 5: Honoapi'ilani Highway & Waiko Road

The results of this no-bypass analysis show that the impacts at Intersections 5, 6 and 8 would be new impacts in 2022, as they were not identified as impacted in the TIAR under 2022 with Project conditions.



POTENTIAL TRAFFIC IMPROVEMENTS

This section describes physical roadway improvements (mitigations) that would be necessary to achieve LOS D or better following completion of Phase 1 of the WCT project in 2022 if the Waiale Bypass were not yet constructed. Mitigation measures described in the draft and final EIS were first applied to the impacted locations and others were investigated as necessary. The emphasis was to identify physical and/or operational improvements that could be implemented within the existing or planned roadway rights-of-way when possible. **Table 1** summarizes the projected LOS in 2022 at the impacted locations with these proposed measures in place.

The full range of improvements that address both project-related and/or cumulative traffic impacts are discussed in detail below.

Intersection 1: Honoapiʻilani Highway & Kuikahi Drive – The addition of a second southbound left-turn lane would fully mitigate the impact under 2022 under the no-bypass scenario. The southbound approach would be widened from the a left-turn lane, a through lane, and a right-turn lane to two left-turn lanes, a through lane, and a right-turn lane. To complement the addition of a second southbound left-turn lane, the east legs of the intersection would need to be widened to provide a second departure lane. Signal modifications at this intersection would include protected phasing on the southbound approach and right-turn overlap phasing on the westbound and northbound approaches. Additional right-of-way may be needed on Honoapiilani Highway and on Kuikahi Drive to fully implement this improvement.

Intersection 2: Waiale Road & Kuikahi Drive – The impact at this intersection could be mitigated under the no-bypass scenario by widening the eastbound and westbound approaches to provide a left-turn lane, two through lanes, and a right-turn lane. To complement the widening of the eastbound and westbound approaches, both the eastbound and westbound departures would also need to be widened to each provide a second receiving lane.

Intersection 3: S. Kamehameha Avenue & Maui Lani Parkway – The impact at this intersection could be improved to pre-project LOS under the no-bypass scenario by installing a traffic signal and widening the eastbound and westbound approaches on Maui Lani Parkway from a single lane to provide one left-turn lane and one shared through/right-turn lane. To fully mitigate to LOS D or better, it would also be necessary to widen the southbound approach on Kamehameha Avenue



from one left-turn lane and one shared through/right-turn lane to provide one left-turn lane, one through lane and one right-turn lane.

Intersection 4: Kuihelani Highway & Maui Lani Parkway – The impact at this intersection could be mitigated (LOS D or better) under the no-bypass scenario by widening the eastbound approach to provide a left-turn lane and a shared left-turn/through/right-turn lane.

Intersection 5: Honoapiʻilani Highway & Waiko Road – This intersection is a new impact not previously identified in the Draft and Final EIS. The impact at this intersection could be fully mitigated under the no-bypass scenario by widening the northbound approach from a left-turn lane and a shared through/right-turn lane to provide a left-turn lane, a through lane, and a shared through/right-turn lane, and widening the eastbound and westbound approaches to provide a left-turn lane and a shared through/right-turn lane. The northbound departure of the highway would require widening for a minimum of approximately 250 feet to provide a second receiving lane, which would transition back into the existing single northbound lane. Additional right-of-way may be needed on both Honoapiilani Drive and Waiko Road to fully implement this improvement, which would result in LOS D or better operations at an overall intersection level.

Intersection 6: Waiale Road & Waiko Road – The impact at this intersection is a new impact not previously identified in the Draft and Final EIS. Under the no-bypass scenario, it could be fully mitigated with the installation of a traffic signal, which was assumed to be in place in the Cumulative, pre-project condition in the TIAR due to its key location on the planned Waiale Bypass.

Intersection 7: S. Kamehameha Avenue & Waiko Road – The impact at this intersection could be fully mitigated by using the improvement presented in the TIAR, which is installing a traffic signal with permitted phasing at all approaches.

Intersection 8: Kuihelani Highway & Waiko Road – The impact at this intersection could be mitigated using the improvement presented in the Draft and Final EIS, which is widening and restriping the eastbound approach to provide a left-turn lane and a right-turn lane.



CONCLUSION

This memorandum documents analysis conducted to assess project-related and cumulative impacts following completion of Phase 1 the proposed Waikapu Country Town project if the planned Waiale Bypass were not constructed by 2022. While three more study intersections would be significantly impacted under this scenario than in the “with Bypass” scenario analyzed in the TIAR as part of the Draft EIS, the desired intersection level of service standard (LOS D) can be achieved at the all analyzed locations with an expanded program of roadway improvements to which the project would contribute its fair share as mitigation.



1. Honoapiʻilani Hwy/Kuikahi Dr	2. Waiale Rd/Kuikahi Dr	3. S. Kamehameha Ave/Maui Lani Pkwy	4. Kuihelani Hwy/Maui Lani Pkwy	5. Honoapiʻilani Hwy/Waiko Rd
6. Waiale Rd/Waiko Rd	7. S. Kamehameha Ave/Waiko Rd	8. Kuihelani Hwy/Waiko Rd	9. Honoapiʻilani Hwy/Main St	10. Waiale Rd/Main St Intersection does not exist without the Waiale Bypass
11. Honoapiʻilani Hwy/E-W Residential St	12. North-South Residential St/Waiale Rd Intersection does not exist without the Waiale Bypass	13. Honoapiʻilani Hwy/Waiale Rd	14. Honoapiʻilani Hwy/Kuihelani Hwy	

Figure 1
Peak Hour Traffic Volumes and Lane Configurations
2022 Baseline With No Bypass Conditions





1. Honoapiʻilani Hwy/Kuikahi Dr	2. Waiale Rd/Kuikahi Dr	3. S. Kamehameha Ave/Maui Lani Pkwy	4. Kuihelani Hwy/Maui Lani Pkwy	5. Honoapiʻilani Hwy/Waiko Rd
6. Waiale Rd/Waiko Rd	7. S. Kamehameha Ave/Waiko Rd	8. Kuihelani Hwy/Waiko Rd	9. Honoapiʻilani Hwy/Main St	10. Waiale Rd/Main St Intersection does not exist without the Waiale Bypass
11. Honoapiʻilani Hwy/E-W Residential St	12. North-South Residential St/Waiale Rd Intersection does not exist without the Waiale Bypass	13. Honoapiʻilani Hwy/Waiale Rd	14. Honoapiʻilani Hwy/Kuihelani Hwy	

Figure 2
Peak Hour Traffic Volumes and Lane Configurations
Year 2022 With Project and No Bypass Conditions





1. Honoapiʻilani Hwy/Kuikahi Dr	2. Waiale Rd/Kuikahi Dr	3. S. Kamehameha Ave/Maui Lani Pkwy	4. Kūihelani Hwy/Maui Lani Pkwy	5. Honoapiʻilani Hwy/Waiko Rd
6. Waiale Rd/Waiko Rd	7. S. Kamehameha Ave/Waiko Rd	8. Kūihelani Hwy/Waiko Rd	9. Honoapiʻilani Hwy/Main St	10. Waiale Rd/Main St
11. Honoapiʻilani Hwy/E-W Residential St	12. North-South Residential St/Waiale Rd	13. Honoapiʻilani Hwy/Waiale Rd	14. Honoapiʻilani Hwy/Kūihelani Hwy	

Figure 3
Peak Hour Traffic Volumes and Lane Configurations
Net New Project Only, Phase 1 (2022)



Intersection	Traffic Control	Peak Hour	Year 2022 No Project		Year 2022 with		Delay Change	Mitigation Required?	Impacted in the DEIS?	Mitigated to:			
			Conditions w/o Waiale Bypass		Project w/o Bypass					Pre-Project or Better Conditions (≤ LOS D)		LOS D or Better Conditions	
			Del/Veh ¹	LOS ^{2,3}	Del/Veh ¹	LOS ^{2,3}				Del/Veh ¹	LOS ^{2,3}	Del/Veh ¹	LOS ^{2,3}
1. Honoapi'ilani Highway / Kuikahi Drive	Signal	AM PM	87 30.8	F C	108.8 55.2	F E	21.8 24.4	YES YES	YES YES	52.1 38.6	D D	Same as Pre-Project Mitigation	
2. Waiale Road / Kuikahi Drive	Signal	AM PM	51.6 43.4	D D	67.3 63.2	F E	15.7 19.8	YES YES	YES YES	42.6 38.6	D D	Same as Pre-Project Mitigation	
3. S. Kamehameha Avenue / Maui Lani Parkway	Roundabout	AM PM	> 180 148.8	F F	> 180 > 180	F F	** **	YES YES	YES YES	54.7 18.7	D B	75.9 43.3 E D	
4. Kuihelani Highway / Maui Lani Parkway	Signal	AM PM	84.2 68.1	F E	98.3 77.3	F E	14.1 9.2	YES YES	YES YES	26.9 28.8	C C	Same as Pre-Project Mitigation	
5. Honoapi'ilani Highway / Waiko Road	Signal	AM PM	36.7 21.1	D C	116.3 74.2	F E	79.6 53.1	YES YES	NO NO	21.6 24.7	C C	Same as Pre-Project Mitigation	
6. Waiale Road / Waiko Road	SSSC	AM PM	137.1 28.2	F D	>180 98.6	F F	** 70.4	YES YES	NO NO	13.7 9.9	B A	Same as Pre-Project Mitigation	
7. S. Kamehameha Avenue / Waiko Road	SSSC	AM PM	136.2 31.7	F D	>180 146.6	F F	** 114.9	YES YES	YES YES	16.2 8.8	B A	Same as Pre-Project Mitigation	
8. Kuihelani Highway / Waiko Road	Signal	AM PM	64.7 20.9	E C	84.7 24.4	F C	20.0 3.5	YES NO	YES NO	26 18.1	C B	Same as Pre-Project Mitigation	
9. Honoapi'ilani Highway / Main Street	Signal	AM AM	Only built with project		26.3 30.0	C C	26.3 30.0	NO NO	NO NO	No Mitigation Required			
10. Waiale Road / Main Street	N/A	AM PM	Does not exist without Waiale Bypass										
11. Honoapi'ilani Highway / East-West Residential Street	Signal	AM PM	Only built with Phase 2 of project										
North-South Residential Street / Waiale Road	SSSC	AM PM	Only built with Phase 2 of project										
12. 13. Honoapi'ilani Highway / Waiale Road	N/A	AM PM	Does not exist without Waiale Bypass										
14. Honoapi'ilani Highway / Kuihelani Highway	Signal	AM PM	20.9 20.5	C C	22.0 22.8	C C	1.1 2.3	NO NO	NO NO	No Mitigation Required			

Source: Fehr & Peers, 2018

Notes:

** Indicated oversaturated conditions. Delay cannot be calculated. SSSC = Side-street stop-controlled intersection.

¹ Whole intersection weighted average stopped delay expressed in seconds per vehicle for signalized and all-way stop control intersections. The vehicular delay for the worst movement is reported for side street stop-controlled intersections.

² LOS calculations performed using the 2000 Highway Capacity Manual (HCM) method.

³ Unacceptable LOS highlighted in **bold**.

Exhibit 8

Notice of Imposition of Conditions

REGULAR SYSTEM

(por.), (2) 3-6-004:006, (2) 3-6-005:007 and (2) 3-6-002:003 (por.) ("Petition Area"), and does hereby state and declare that the Commission, by its Decision and Order dated February 26, 2108, reclassified the approximately 145.286 acres of the Petition Area under Docket No. A15-798 from the State Land Use Agricultural District to the State Land Use Rural District and reclassified approximately 351.582 acres of the Petition Area under Docket A15-798 from the State Land Use Agricultural District to the State Land Use Urban District (hereinafter "Property"), subject to a number of conditions imposed on the reclassified Property. Said conditions shall run with the land and shall be set forth in the Declaration of Conditions to be subsequently recorded at the Bureau of Conveyances of the State of Hawaii pursuant to Commission Rule Section 15-15-92.

This Notice of Imposition of Conditions by the Commission shall be superseded upon the recordation at the Bureau of Conveyances of the said Declaration of Conditions setting forth the conditions imposed by the Commission in Docket No. A15-798.

[Remainder of page intentionally left blank]

Dated: Tuesday, December 10, 2019.

WAIKAPU PROPERTIES, LLC

By: Boyce Holdings, Inc.
Its Manager

By 
Albert G. Boyce V
Its President

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN JOAQUIN

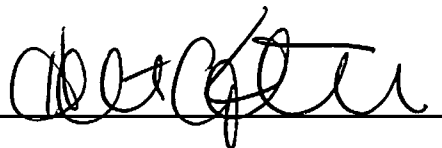
On December 10, 2019 before me, HEATHER CHRISTOPHERSON
(insert name and title of the officer)

personally appeared Albert G. Boyce, V, President,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

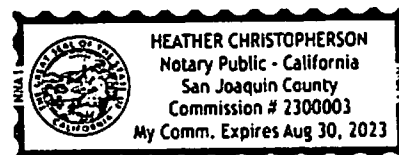
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



MTP LAND PARTNERS, LLC

By: Boyce Holdings, Inc.
Its Manager

By 
Albert G. Boyce V
Its President

ACKNOWLEDGMENT

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State of California
County of SAN JOAQUIN

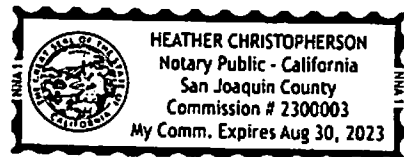
On December 10, 2019 before me, HEATHER CHRISTOPHERSON
(insert name and title of the officer)

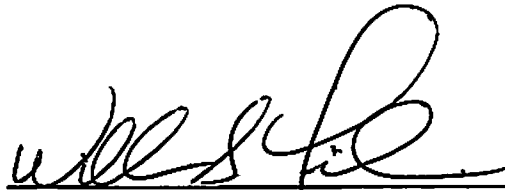
personally appeared Albert G. Boyce, V, President
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



A handwritten signature in black ink, appearing to read 'William S. Filios', written over a horizontal line.

WILLIAM S. FILIOS, Trustee of the
William S. Filios Separate Property Trust
dated April 3, 2000

Exhibit 9

Declaration of Conditions

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

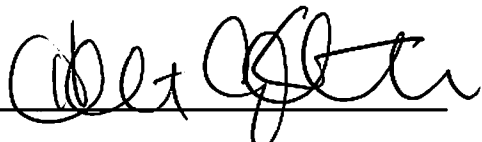
State of California
County of SAN JOAQUIN

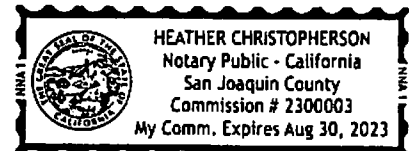
On December 10, 2019 before me, HEATHER CHRISTOPHERSON
(insert name and title of the officer)

personally appeared William S. Filios, Trustee
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

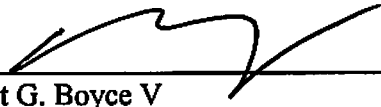
WITNESS my hand and official seal.

Signature  (Seal)



WAIALE 905 PARTNERS, LLC

By: Boyce Holdings, Inc.

By: 
Albert G. Boyce V
Its: President

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN JOAQUIN

On December 14, 2019 before me, HEATHER CHRISTOPHERSON
(insert name and title of the officer)

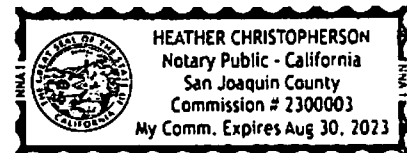
personally appeared Albert G. Boyce V President,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



REGULAR SYSTEM

Return by Mail (X) Pickup () To:

Waikapu Properties, LLC
P. O. Box 1870
Manteca, CA 95336

TITLE OF DOCUMENT: **DECLARATION OF CONDITIONS**

Tax Map Key No. (II) 3-6-004:003 (por.)

Total Number of

Pages:

(II) 3-6-004:006

(II) 3-6-005:007

(II) 3-6-002:003 (por.)

DECLARATION OF CONDITIONS

WAIKAPU PROPERTIES, LLC, a Hawaii limited liability company, MTP

LAND PARTNERS, LLC, a Hawaii limited liability company, WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated April 3, 2000, and WAIALE 905

PARTNERS, LLC, a Hawaii limited liability company, the address of all of which is P. O. Box 1870, Manteca, California 95336 (collectively “Declarant”), as Petitioner of that certain Petition for District Boundary Amendment in Docket No. A15-798 of the Land Use Commission of the State of Hawaii, affecting those certain lands, approximately 496.868 acres, situate in Waikapu,

Island and County of Maui, State of Hawaii, Tax Map Key Nos. (II) 3-6-004:003(por.), 3-6-004:006, 3-6-005:007 and 3-6-002:003, as shown on the map marked Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Property" or as the "Petition Area"), does hereby certify pursuant to Section 15-15-92, Hawaii Administrative Rules, as follows:

THAT by Findings of Fact, Conclusions of Law, Decision and Order, entered February 26, 2018, in Docket No. A15-798, the Land Use Commission reclassified approximately 145.286 acres of land in the State Land Use Agricultural District at Waikapu, Island and County of Maui, Hawaii, identified as Tax Map Key No. (II) 3-6-004:003(por.) to the State Land Use Rural District and reclassified approximately 351.582 acres of land in the State Land Use Agricultural District at Waikapu, Island and County of Maui, Hawaii, identified as Tax Map Key No. (II) 3-6-004:006, (II) 3-6-005:007 and (II) 3-6-002:003 (por.), to the State Land Use Urban District;

AND THAT by Findings of Fact, Conclusions of Law, Decision and Order, entered February 26, 2018, it was further ordered that the reclassification from Agricultural District to the Urban District and to the Rural District shall be subject to the following conditions:

1. **Education Contribution Agreement.** Declarant shall contribute to the development, funding, and/or construction of school facilities in compliance with the *Educational Contribution Agreement for WAIKAPU COUNTRY TOWN*, undated but executed as of January 31, 2017, entered into by Declarant and the DOE. Declarant shall ensure that prospective buyers, purchasers, and subsequent owner builders of lots are given notice of the requirement to pay the Central Maui School Impact Fee in accordance with the *Educational*

Contribution Agreement. Such notice shall be recorded and shall run with the land.

2. **Storm Water Management and Drainage.** Declarant shall maintain existing drainage patterns and shall implement applicable Best Management Practices a) to minimize infiltration and runoff from construction and vehicle operations, b) to reduce or eliminate the potential for soil erosion and ground water pollution, and c) to formulate dust control measures to be implemented during and after the construction process in accordance with Department of Health guidelines and County of Maui ordinances and rules. The Best Management Practices shall include a program for the maintenance of drainage swales within the Project Area.

3. **Residential Workforce Housing.** Declarant shall design and construct the Project, and provide residential workforce housing opportunities in accordance with the County of Maui's residential workforce housing requirements.

4. **Wastewater.** Declarant shall participate in the funding and/or construction of adequate private or public wastewater source, storage, and transmission facilities to accommodate the proposed uses for each portion of the Petition Area. The private wastewater source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui. If applicable, the public wastewater source, storage, and transmission facilities are located outside the Petition Area and within the state and County agricultural districts, Declarant shall apply for a State Special Permit in accordance with the provisions of HRS Chapter 205. If Declarant participates in a regional wastewater system which is controlled or operated by the County of Maui, Declarant may request to be released from this condition applicable to private wastewater source, storage and transmission facilities.

5. **Air Quality.** Declarant shall participate in an air quality monitoring program if so required by the Department of Health.

6. **Energy Conservation Measures.** Declarant shall implement, to the extent feasible and practicable, measures to promote energy conservation, sustainable design and environmental stewardship, such as the use of solar water heating and photovoltaic systems, into the design and construction of the Project and development of the Petition Area. Declarant shall provide information to home purchasers regarding energy conservation measures that may be undertaken by individual homeowners within the Project.

7. **Notification of Proximity to Kahului Airport.** Declarant, and all subsequent owners, shall notify and disclose to all prospective developers, purchasers, and/or lessees within any portion of the Project, as part of any conveyance document (deed, lease, or agreement of sale, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from the Kahului Airport, such as noise, right of flight, emissions, vibrations and other incidences of aircraft operations.

8. **Transportation – Highways.**

a. Declarant shall submit to the State Department of Transportation and the County of Maui for review and approval a supplemental analysis to evaluate the “No Waiale Bypass” with Declarant’s Project in 2022 (Phase I), due to the current memorandum/addendum limited only to build-out year 2026 (Phase II). Declarant shall also submit copies to the State of Hawaii Office of Planning, the County of Maui Planning Department and the State of Hawaii Land Use Commission.

b. Declarant shall mitigate all Project-generated traffic impacts as recommended and/or required by the State Department of Transportation and the County of

Maui. Declarant shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata share and to develop a Memorandum of Agreement with the State Department of Transportation, Highways Division, and another Memorandum of Agreement with the County of Maui. The Memorandum of Agreement shall be executed prior to submittal of a subdivision application to the County of Maui.

9. **Transportation – Regional Planning.** Declarant shall continue to work with the County of Maui to develop a timetable for the construction of the Waiale Bypass and shall work with appropriate County of Maui and State of Hawaii agencies, including the Metropolitan Planning Organization of the County of Maui, to develop a comprehensive traffic review of the Central Maui region.

10. **Transportation – Airports.** Declarant shall work with the State Department of Transportation to minimize hazards to aircraft operations from Kahului Airport, including but not limited to impacts from wildlife attractants, photovoltaic glint and glare, electromagnetic radiation, aviation easements, notices of proposed construction or alteration, and prospective purchaser/owner liability and covenants. As deemed necessary by the State Department of Transportation to minimize the hazards to aircraft operations from Kahului Airport, Declarant shall fund and implement a program to control any birds nesting or occupancy and any insect, pest or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, wastewater treatment facilities or associated settling ponds) serving the Project. Declarant shall enter into a Memorandum of Agreement with State Department of Transportation before final subdivision approval of the initial phase of on-site development by Declarant outlining measures to be taken by Declarant to address impacts.

11. **Water Conservation Measures.** Declarant shall implement water conservation measures and best management practices such as the use of indigenous plants to the extent practicable and as required by the County of Maui

12. **Water System.** Declarant shall participate in the funding and/or construction of adequate private or public water source, storage and transmission facilities to accommodate the proposed uses for each phase of the Project. The private water source, storage and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui, with plans submitted for approval by the appropriate agency. In the event that Declarant participates in a regional water system which is controlled or operated by the County of Maui, Declarant may request the release of this condition applicable to a private water system.

Additionally, Declarant shall work with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapu aquifer.

Further, Declarant shall submit such information as may be requested by the County of Maui to reflect changes in water demand forecasts and to supply the proposed uses for the County of Maui's Water Use and Development Plan.

13. **Street Lights.** Declarant shall use fully-shielded street lights within the Petition Area to avoid impacts to avifauna and other populations and to prevent light diffusion upward into the night sky.

14. **Sirens.** Declarant shall fund and install three (3) civil defense warning sirens as specified by and in the locations identified by the State Department of Defense.

15. **Parks.** Declarant shall comply with the park dedication requirements of the County of Maui.

16. **Established Gathering and Access Rights Protected.** Pursuant to Article XII, Section 7 of the Hawaii State Constitution, Declarant shall preserve and protect any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, gathering, and religious practices or for access to other areas for such purposes.

17. **Agriculture Easement.** Declarant shall submit an executed copy of the conservation easement or relevant instrument for at least 800 acres of adjacent agricultural lands to the Land Use Commission. No dwelling or structure shall or may be used for a residence or residential use, including farm dwellings or farm worker housing, on the adjacent agricultural lands which are subject to the agricultural easement or conservation easement, and such easement shall include this restriction.

If any development is proposed in the area made subject to the conservation easement or relevant instrument, the State Historic Preservation Division of the Department of Land and Natural Resources shall be notified and shall make a determination on whether an archaeological inventory survey is to be provided by Developer for such area. The Land Use Commission shall also be notified of any proposed development within the conservation easement lands and any determination made by the State Historic Preservation Division.

18. **Notification of Agricultural Use.** Declarant, and all subsequent owners, shall notify and disclose to developers, purchasers, and/or lessees of the provisions of HRS Chapter 165, the Hawaii Right to Farm Act. The notice and disclosure shall be a part of any conveyance document such as a deed, lease or agreement of sale.

The notice and disclosure shall contain at least the following information: a) that the developers, purchasers and/or lessees shall not take any action that would interfere with or

restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District; and b) that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands.

To the purpose of this condition, the term “farming operations” shall have the same meaning as provided in HRS Section 165-2.

19. **Previously Unidentified Burials and Archaeological / Historic Sites.** In the event that historic or archaeological resources, including human skeletal remains, are found and/or identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division shall be contacted immediately as required by HRS Chapter 6E and its applicable rules. Without limitation to any condition found herein, if any burials or archaeological or historic sites or artifacts not previously identified in studies referred to in the Findings of Fact, Conclusions of Law and Decision and Order dated February 26, 2018 in Docket Number A15-798 are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the State Historic Preservation Division that mitigation measures have been implemented to its satisfaction.

20. **Archaeological / Historic Sites.** Declarant shall provide the following prior to any ground disturbance, as agreed upon with the State Historic Preservation Division’s acceptance of Declarant’s Archaeological Inventory Survey:

a. Archaeological monitoring, which shall include data recovery of archaeological and historic sites;

- b. If site 50-50-04-5197 is impacted by the Project, it will be further documented in consultation with the State Historic Preservation Division;
- c. Archaeological monitoring shall be conducted for all ground disturbing activities, including the Na Wai Eha sand dune system area. An archaeological monitoring plan shall be developed and submitted for the State Historic Preservation Division's review and acceptance prior to commencing Project work;
- d. If any development is proposed for the area to be dedicated to agriculture, the State Historic Preservation Division shall be notified and the State Historic Preservation Division will make a determination on whether an archaeological inventory survey is to be provided by Declarant;
- e. Declarant shall submit a preservation plan to the State Historic Preservation Division for two (2) sites: the irrigation features (Site 50-50-04-7884) and the WWII bunker (Site 50-50-04-7883). The preservation plan shall be submitted to the State Historic Preservation Division for review and acceptance prior to the initiation of the Project. Declarant shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the State Historic Preservation Division. Declarant shall confirm in writing to the Land Use Commission that the State Historic Preservation Division has found Declarant's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented. The State Historic Preservation Division shall be notified at the initiation of the Project.

21. **Archaeological / Archaeological Monitoring.** Declarant shall employ archaeological monitors to ensure that all ground disturbances associated with mass grading of the Petition Area, and the trenching and excavation related to the installation of utilities, do not

impact any subsurface cultural remains within the Petition Area. Declarant shall submit an archaeological monitoring plan for ground disturbing activities within the Petition Area to the State Historic Preservation Division for its review and acceptance or approval. Acceptance or approval of the archaeological monitoring plan shall be a condition to performing any ground disturbing activities. Data obtained from the archaeological monitoring plan shall be provided to the State Historic Preservation Division upon the completion of the monitoring of the Project.

In the event that Site 50-50-04-5197 is impacted by any ground disturbances, Declarant shall document the site in accordance with the directions of the State Historic Preservation Division.

22. **Cultural.** Declarant shall consult with those persons known as Waikapu Stream south kuleana loi kalo farmers and Hui o Na Wai Eha to minimize the impacts on their traditional customary rights and practices from any development in the Petition Area.

Additionally, Declarant shall grant access easements over the appropriate portions of the Petition Area in favor of the owners of the Mahi-Puleloa parcels, identified as Land Commission Award 2944:3 to Ehunui (TMK No. (2) 3-6-005:010) and as Grant 1513 to Ehunui (TMK No. (2) 3-6-005:009) and in favor of the owners of the Kauihou parcels, identified as Land Commission Award 3340:1(por.) to Nahau (TMK No. (2) 3-6-005:067), as Land Commission Award 3103 to Kalawaia (TMK No. (2) 3-6-005:014) and as Land Commission Award 3110:3.2 to Kuolaia (TMK No. (2) 3-6-005:066). Such easements will run with the land.

23. **Endangered Species.** Declarant shall implement the following procedures to avoid potential impacts to endangered species. Declarant shall not clear dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area during the period from June 1 to September 15 of each year which is the time that the Hawaiian

hoary bat may be carrying young and thus could be at risk from the clearing activities. Declarant shall consult with the United States Fish & Wildlife Service to determine measures needed with regard to the endangered Blackburn's Sphinx Moth and shall implement such measures in connection with the development of the Petition Area.

Additionally, for any nighttime work required during any construction within the Petition Area and Project Area, and for long term operation of any private wastewater treatment facility servicing the Project, exterior lighting shall be shielded so as to reduce the potential for interactions of the nocturnally flying Hawaiian Petrels and Newell's Shearwaters with external lights and man-made structures.

24. **Development in Compliance with Maui Island Plan.** Declarant shall develop the Project in substantial compliance with the Planned Growth Area Rationale and goals, objectives, policies and implementing actions described in the Maui Island Plan for the Project identified as the "Waikapu Tropical Plantation Town."

25. **Infrastructure Deadline.** Declarant shall complete construction of the proposed backbone infrastructure, which consists of primary roadways and access points, internal roadways, on- and off-site water, sewer, and electrical system improvements, and storm water/drainage and other utility system improvements, within ten years from the date of the Findings of Fact, Conclusions of Law and Decision and Order dated February 26, 2018 in Docket Number A15-798.

26. **Order to Show Cause.** If Declarant fails to complete the construction of the proposed backbone infrastructure within ten (10) years from the date of the Findings of Fact, Conclusions of Law and Decision and Order dated February 26, 2018 in Docket Number A15-798, the Land Use Commission may issue and serve upon the Declarant an Order to Show Cause

and Declarant shall appear before the Land Use Commission to explain why the Petition Area should not revert to its previous State Land Use District Classification or be changed to a more appropriate classification.

27. **Compliance With Representations to the Land Use Commission.**

Declarant shall develop the Petition Area in substantial compliance with the representations made to the Land Use Commission as reflected in the Findings of Fact, Conclusions of Law and Decision and Order dated February 26, 2018 in Docket Number A15-798. Failure to so develop the Petition Area in accordance with such representations may result in reversion of the Petition Area to its former classification or a change to a more appropriate classification.

28. **Annual Reports.** Declarant shall timely provide, without any prior notice, annual reports to the Land Use Commission, the State Office of Planning, and the County of Maui Planning Department, and their respective successors, in connection with the status of the development of the Petition Area and Declarant's progress in complying with the conditions imposed by the Land Use Commission. The annual report shall consist of one original, one paper copy and one electronic copy and shall be due prior to or on the anniversary date of the issuance of the Findings of Fact, Conclusions of Law and Decision and Order dated February 26, 2018 in Docket Number A15-798.

29. **Release of Conditions.** The Land Use Commission may fully or partially release conditions as to all or any part of the Petition Area upon timely motion and upon the provision of adequate assurances of satisfaction of the conditions by the Declarant or their permitted successors and/or assigns.

30. **Notice of Change of Ownership.** Declarant shall provide notice to the Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily

Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interests in the Petition Area.

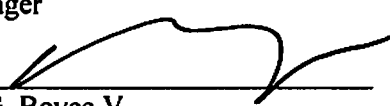
31. **Notice of Imposition of Conditions.** Declarant shall (a) within seven (7) days of issuance of the Findings of Fact, Conclusions of Law and Decision and Order dated February 26, 2018 in Docket Number A15-798 reclassifying the Petition Area, record with the Bureau of Conveyances of the State of Hawaii and/or the Office of the Assistant Registrar of the Land Court, a statement that the Petition Area is subject to the conditions imposed in the Findings of Fact, Conclusions of Law and Decision and Order dated February 26, 2018 in Docket Number A15-798 and (b) promptly thereafter file a copy of such recorded statement with the Land Use Commission.

32. **Recordation of Conditions.** Declarant shall record the conditions imposed herein by the Commission with the Bureau of Conveyances of the State of Hawaii, and/or the Office of the Assistant Registrar of the Land Court, pursuant to HAR Section 15-15-92.

Dated: Tuesday, December 10, 2019.

WAIKAPU PROPERTIES, LLC

By: Boyce Holdings, Inc.
Its Manager

By 
Albert G. Boyce V
Its President

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN JOAQUIN

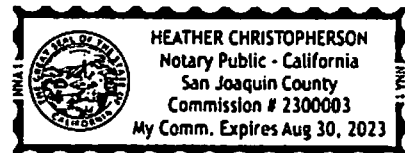
On December 10, 2019 before me, HEATHER CHRISTOPHERSON
(insert name and title of the officer)

personally appeared Albert G. Boyce V, President
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



MTP LAND PARTNERS, LLC

By: Boyce Holdings, Inc.
Its Manager

By 
Albert G. Boyce V
Its President

ACKNOWLEDGMENT

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State of California
County of SAN JOAQUIN

On December 10, 2019 before me, HEATHER CHRISTOPHERSON
(insert name and title of the officer)

personally appeared Albert G. Boyce, V, President,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

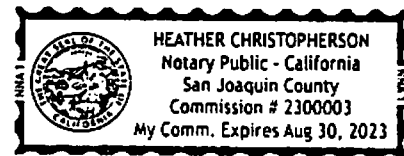
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

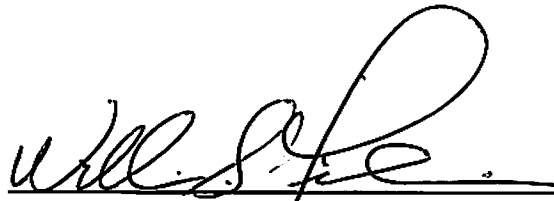
WITNESS my hand and official seal.

Signature



(Seal)



A handwritten signature in black ink, appearing to read 'W.S. Filios', written over a horizontal line.

WILLIAM S. FILIOS, Trustee of the
William S. Filios Separate Property Trust
dated April 3, 2000

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN JOAQUIN

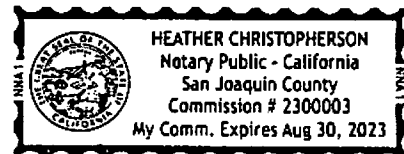
On December 10, 2019 before me, HEATHER CHRISTOPHERSON
(insert name and title of the officer)

personally appeared William S. Filios, Trustee
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

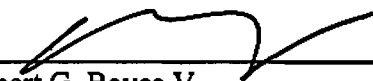
WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



WAIALE 905 PARTNERS, LLC

By: Boyce Holdings, Inc.

By: 
Albert G. Boyce V
Its: President

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN JOAQUIN

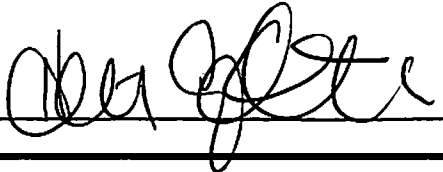
On December 10, 2019 before me, HEATHER CHRISTOPHERSON
(insert name and title of the officer)

personally appeared Albert G. Boyce, V President
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

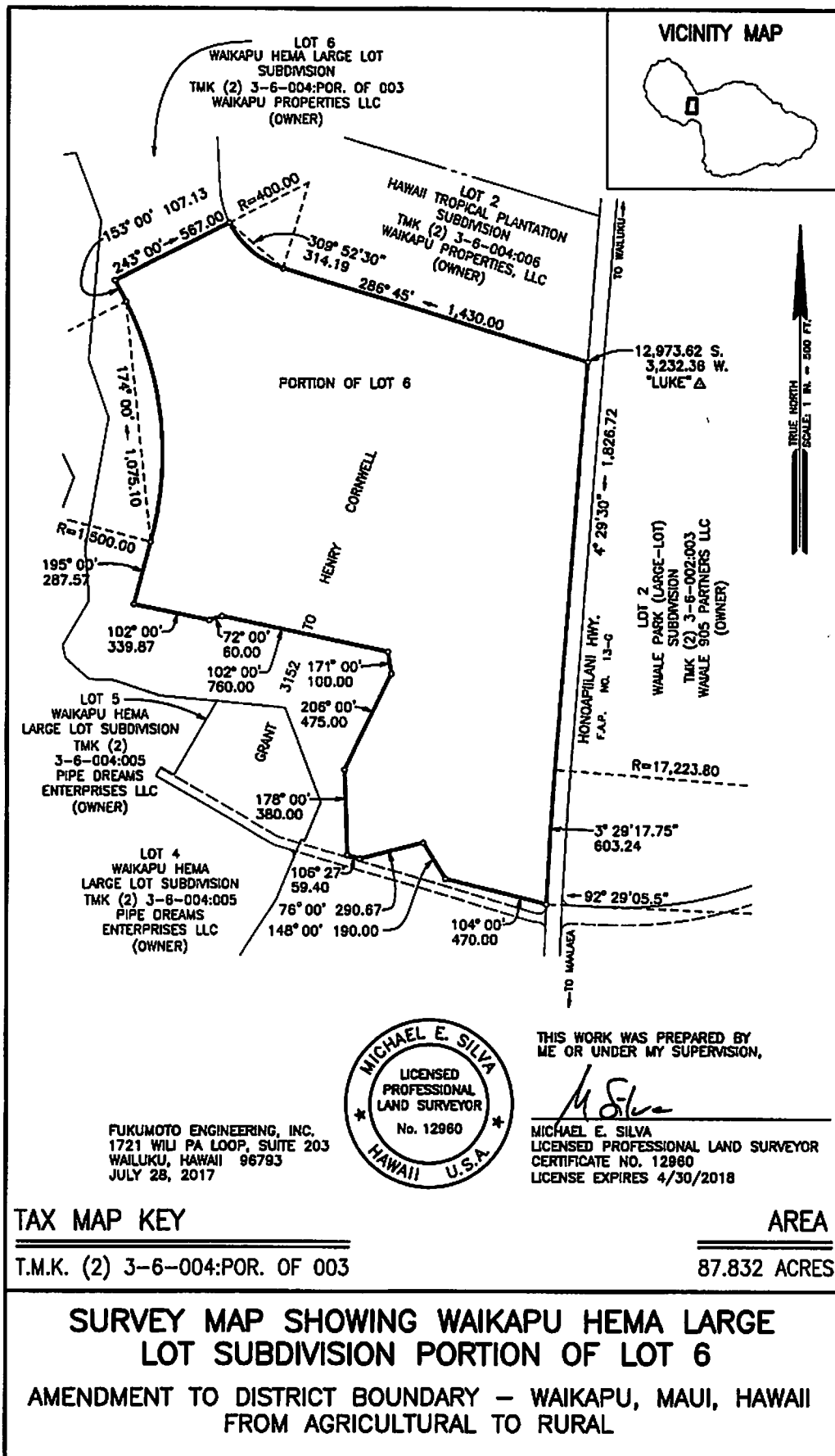


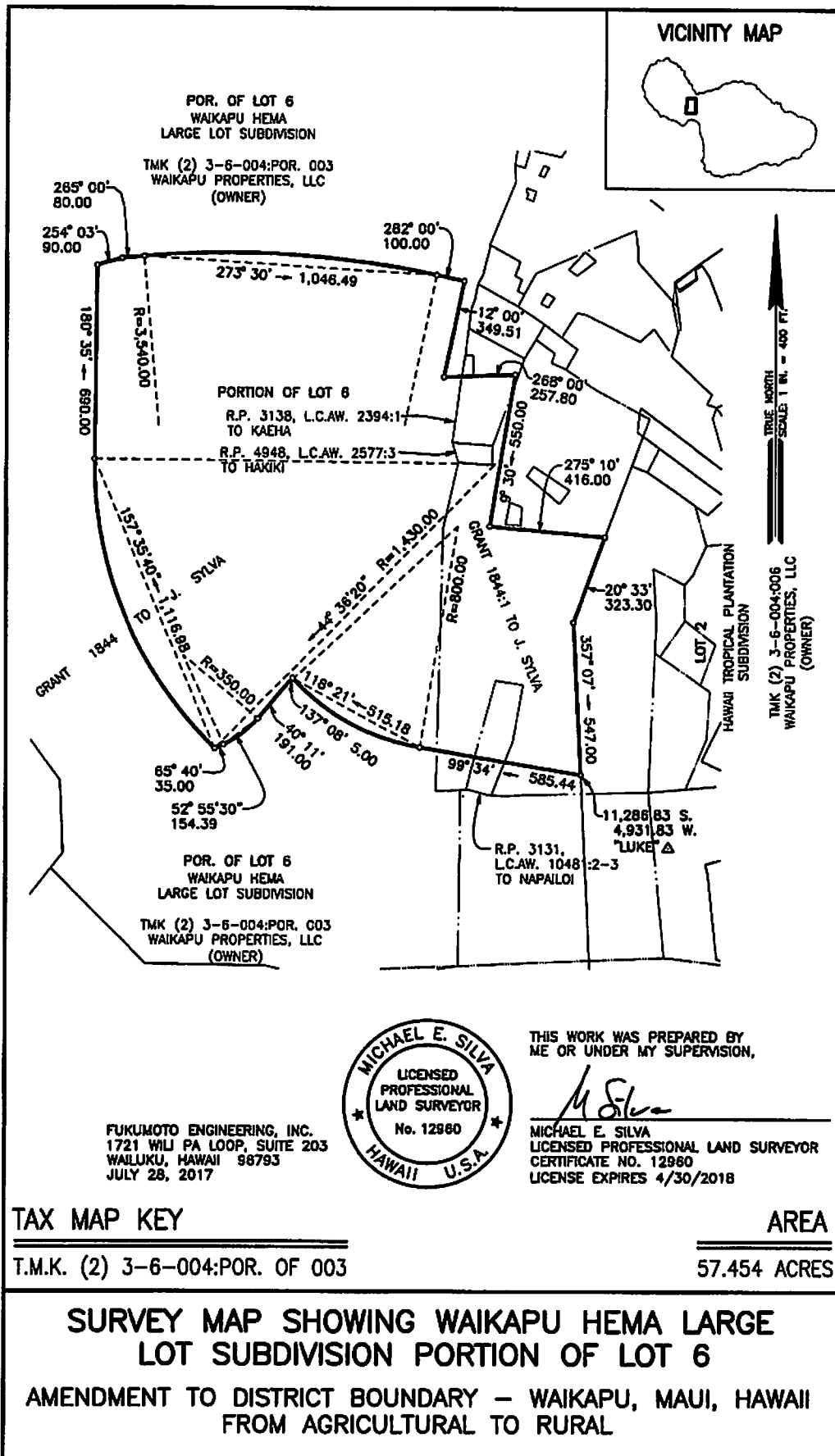
(Seal)



EXHIBIT "A"

Map of Petition Area





**SURVEY MAP SHOWING HAWAII TROPICAL
PLANTATION - LOT 2
AMENDMENT TO DISTRICT BOUNDARY - WAIKAPU, MAUI, HAWAII
FROM AGRICULTURAL TO URBAN**

53.630 ACRES

T.M.K.: (2) 3-6-004:006

TAX MAP KEY

FUKUMOTO ENGINEERING, INC.
1721 WIL PA LOOP, SUITE 203
WAILUKU, HAWAII 96793
AUGUST 8, 2017

LICENSED PROFESSIONAL LAND
CERTIFICATE NO. 12960
LICENSE EXPIRES 4/30/2018

THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION,



AREA

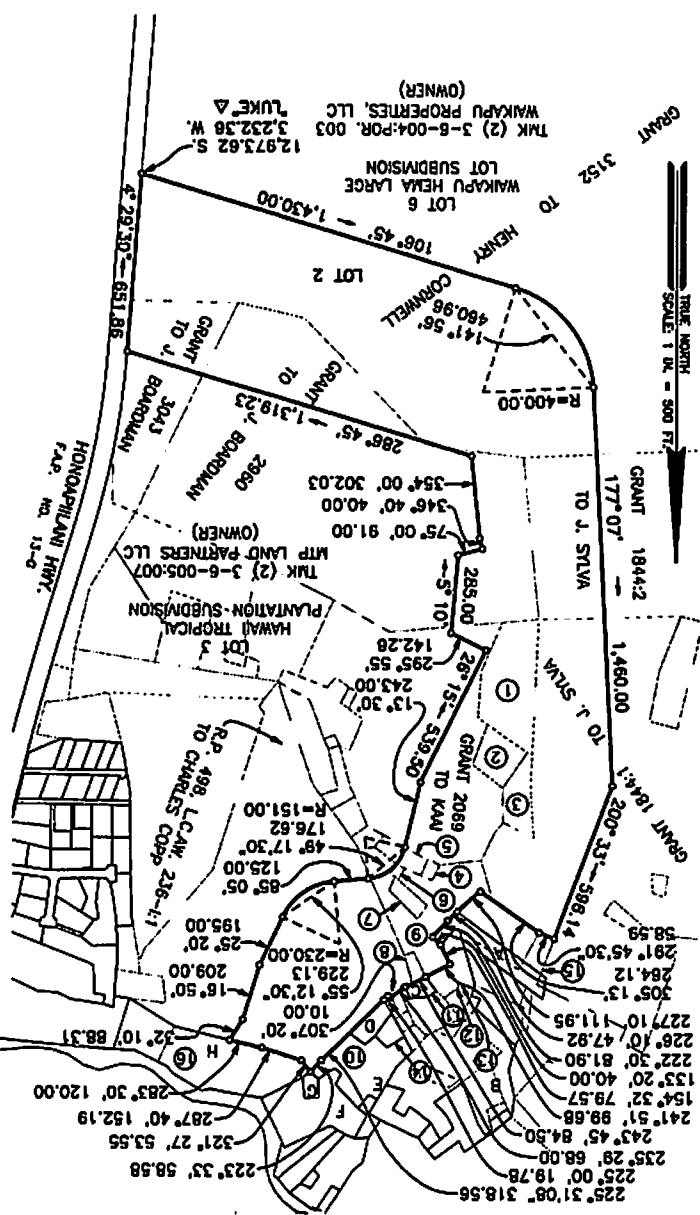
- ① R.P. 3148, L.C.A.W. 110160:1 TO MAHDE
- ② R.P. 3142, L.C.A.W. 11022:6 TO WAHINICALI
- ③ R.P. 3131, L.C.A.W. 10481:1 M-1 TO NAPALOI
- ④ POLUWA
- ⑤ R.P. 3130, L.C.A.W. 8874:1 TO KANEAE
- ⑥ R.P. 6374, L.C.A.W. 9324:2 TO KEANINI
- ⑦ R.P. 3156, L.C.A.W. 3527:2 TO KAWAHOHI
- ⑧ R.P. 4115, L.C.A.W. 3224:3 TO OPUNUI
- ⑨ R.P. 4014, L.C.A.W. 5774:2 TO KAM
- ⑩ R.P. 4122, L.C.A.W. 3397:1-2 TO PUHI
- ⑪ R.P. 6223, L.C.A.W. 3526:1 TO KEOAHEHEWALE
- ⑫ GRANT 2089, APANA 2 TO KAM
- ⑬ R.P. 4115, L.C.A.W. 3224:5 TO OPUNUI
- ⑭ GRANT 1713 TO JOHN ROSS
- ⑮ L.C.A.W. 2609:1 AND 5 TO POEFOE
- ⑯ R.P. 4014, L.C.A.W. 5774:1 TO KAM

LIST OF GRANTS & AWARDS:

- LIST OF ADJOINING OWNERS:
- A TRK (2) 3-6-006:036
WALKAPU PROPERTIES LLC
- B TRK (2) 3-6-006:013
CLAYTON SHIGETO SUZUKI TRUST
- C TRK (2) 3-6-006:009
CLAYTON SHIGETO SUZUKI TRUST
- D TRK (2) 3-6-006:003
HIGA, GEORGE S.
- E TRK (2) 3-6-006:004
HIGA, GEORGE S. & YONEKO F.
- F TRK (2) 3-6-006:001
BARBARA J.K. PAVAN TRUST
- G TRK (2) 3-6-006:002
TAKETO CISCO EMOTO TRUST
- H TRK (2) 3-6-006:088
LOT 4 HAWAII TROPICAL
PLANTATION SUBDIVISION
HAWAII TROPICAL PLANTATION-
CONDO MASTER



VICINITY MAP



AMENDMENT TO DISTRICT BOUNDARY - WAIKAPU, MAUI, HAWAII PLANTATION PORTION OF LOT 3 SURVEY MAP SHOWING HAWAII TROPICAL

44.971 ACRES

LICENSE EXPIRES 4/30/2018

CERTIFICATE NO. 12960

MICHAEL E. SILVA
LICENSED PROFESSIONAL LAND SURVEYOR

AREA

THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION.



T.M.K.: (2) 3-6-004:007

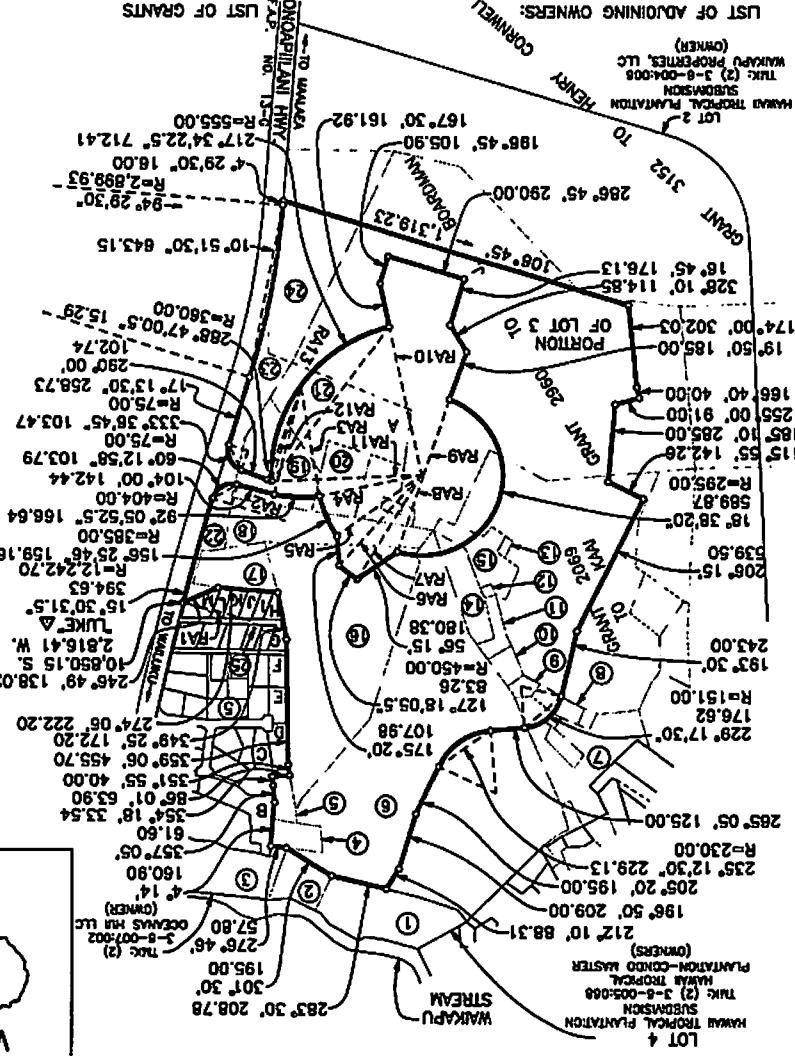
TAX MAP KEY

FUKUKOTO ENGINEERING, INC.
1721 WILPA LOOP, SUITE 203
WAILUKU, HAWAII 96793
AUGUST 9, 2017

- LIST OF ADJOINING OWNERS:
- A. TUC (2) 3-6-003
 - B. TUC (2) 3-6-007:010
 - C. TUC (2) 3-6-007:013
 - D. TUC (2) 3-6-007:015
 - E. TUC (2) 3-6-007:016
 - F. TUC (2) 3-6-007:020

- LIST OF GRANTS
- 1. R.P. 4014, L.C.M. 5974:1
 - 2. R.P. 3152 TO HENRY
 - 3. R.P. 102, L.C.M. 432 TO
 - 4. R.P. 102, L.C.M. 432 TO
 - 5. R.P. 102, L.C.M. 432 TO
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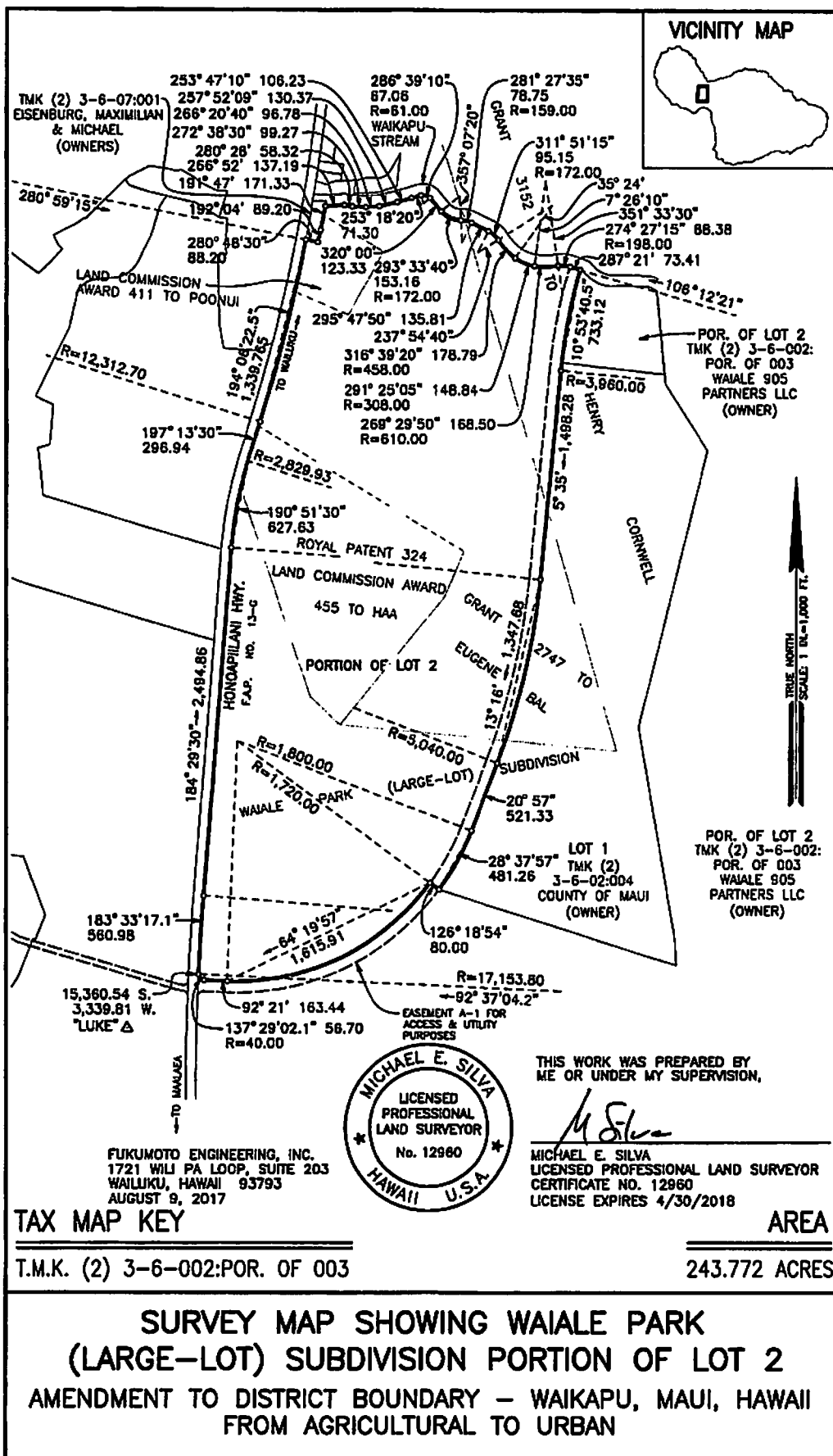


Exhibit 10

**Recording of Imposition of
Conditions**

[Print](#) | [Close Window](#)

Subject: Fwd: Recording Clearance 12/20

From: Albert Boyce <albertboyce@gmail.com>

Date: Fri, Dec 20, 2019 3:23 pm

To: Mike Atherton <athertonisland@gmail.com>, Mike Summers <msummers@planningconsultantshawaii.com>

Attach: image001.png
image002.png
image003.png
image004.png
image005.png

recorded.....

----- Forwarded message -----

From: Wilcox, Michael <MWilcox@tghawaii.com>

Date: Fri, Dec 20, 2019 at 2:22 PM

Subject: Recording Clearance 12/20

To: albertboyce@gmail.com <albertboyce@gmail.com>

This message was sent securely using Zix®

Good morning Albert,

The Imposition and Declaration for Waikapu Properties, LLC recorded this morning, 12/20. The recorded document numbers are A-72930472 and A-72930473. Copies of the recorded documents will be emailed as soon as they are available.

Thank you,

Michael E. Wilcox

Recording Specialist, RTS Recording

Office (808) 539-7788 | Fax (808) 521-0288

235 Queen Street, Honolulu, HI 96813



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