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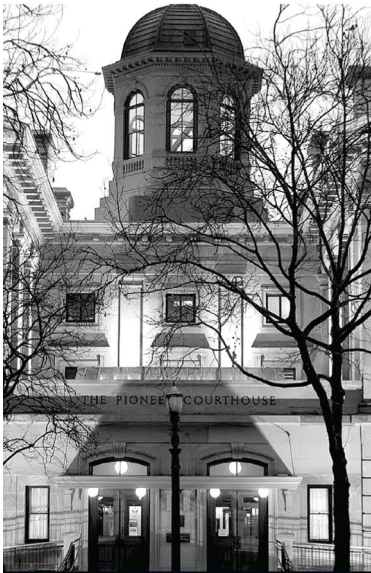
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STATE OF HAWAII
LAND USE COMMISSION
 Meeting held on October 5, 2022
 Commencing at 9:00 a.m.
 Held at
 Maui Arts & Cultural Center
 Haynes Meeting Room
 1 Cameron Way
 Kahului, Hawaii 96732

I. CALL TO ORDER

II. ADOPTION OF MINUTES

September 21, 2022

III. TENTATIVE MEETING SCHEDULE

IV. A15-798 WAIKAPU PROPERTIES (MAUI)

Consider Petitioner's motion to amend conditions 1, 4 and 8(b) of decision and order filed on February 16, 2018

V. ADJOURNMENT

BEFORE :

1 **APPEARANCES**

2

3 **COMMISSIONERS PRESENT:**

4 Nancy Cabral, First Vice Chair

5 Dawn Chang

6 Gary Okuda

7 George Atta

8 Kuikeokalani Kamakea-Ohelo

9 Lee Ohigashi

10 Melvin Kahele

11 Michael Yamane

12

13 **STAFF PRESENT:**

14 Daniel Orodener, Executive Officer

15 Scott Derrickson, Chief Planner

16 Riley Hakoda, Staff Planner

17 Martina Segura, Staff Planner

18 Ariana Kwan, Chief Clerk

19 Julie China, Esq., Deputy Attorney General (via Zoom)

20 Dan Morris, Esq., Deputy Attorney General (via Zoom)

21

22 **PETITIONER:**

23 Jeff Ueoka

24 Mike Atherton

25 Dwane Tang

1 **APPEARANCES (CONTINUED)**

2

3 **OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:**

4 Bryan Yee, Esq., Deputy Attorney General

5 Lorene Maki, Planner

6

7 **COUNTY OF MAUI**

8 Michele McLean

9 Michael Hopper

10 Danny Diaz

11

12 **PUBLIC TESTIMONY:**

13 Johana Kamauna

14 Carol Lee Kamekona

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1 **VICE CHAIR CABRAL:** Aloha mai kakou and
2 good morning. This is the October 5th, 2022, Land
3 Use Commission meeting. This is an in-person meeting
4 which is being held at the Maui Arts & Cultural
5 Center, Haynes Meeting Room, 1 Cameron Way, Kahului,
6 Maui, Hawai'i 96732. And it is open to the public.

7 Court reporting transcriptions are being
8 done via a Zoom platform, which is being recorded.
9 For all meeting participants, I would like to stress
10 the importance of speaking slowly, clearly, and
11 directly into your microphone. Before speaking,
12 please state your name and identify yourself for the
13 record.

14 Even though this is an in-person meeting,
15 please be aware that all the meeting participants
16 are being recorded on a digital record of this Zoom
17 meeting for the court reporting purposes. Your
18 continued participation is your implied consent to
19 be a part of the public record of this event. If you
20 do not wish to be a part of the public record, you
21 should exit the meeting at this time.

22 I will also share with all participants
23 that we will take breaks from time to time as
24 needed.

25 My name is Nancy Cabral, and I currently

1 serve on the Land Use Commission as the Vice Chair.
 2 We currently have nine seated commissioners.
 3 Commissioners are Lee Ohigashi from Maui, Dawn
 4 Chang, Gary Okuda and Ku'ike Kamakea-'Ohelo, Michael
 5 Yamane, Mel Kahele, George Atta, and also is our
 6 chair Dan Giovanni, who is excused from this
 7 meeting.

8 In attendance is our Land Use Chief
 9 Planner Scott Derrickson, Land Use Planner Riley
 10 Hakoda, our Planner Martina Segura, our Chief Clerk
 11 Ariana Kwan, and our Executive Director, who will be
 12 joining us shortly, Daniel Orodener.

13 Also with us on Zoom from the Attorney
 14 General's Office is Julie China, who is with us via
 15 Zoom.

16 The first order of business will be the
 17 adoption of the September 21, 2022, minutes. May I
 18 ask if we've had any written testimony submitted
 19 about the September 21st minutes?

20 **MS. KWAN:** No.

21 **VICE CHAIR CABRAL:** Okay. No. We have had
 22 no written testimony. Is anyone from the public here
 23 that would like to speak in regards to the minutes,
 24 who may have signed up or otherwise sitting here at
 25 this time?

1 **MS. KWAN:** No, Madam Chair.

2 **VICE CHAIR CABRAL:** Thank you very much.

3 Commissioners, would you like to make any
4 corrections or comments on the minutes?

5 If not, is there a motion to adopt the
6 minutes from the September 21, 2022, meeting of the
7 Land Use Commission?

8 **COMMISSIONER OHIGASHI:** Madam Chair?

9 **VICE CHAIR CABRAL:** Yes.

10 **COMMISSIONER OHIGASHI:** I move to adopt
11 the minutes.

12 **VICE CHAIR CABRAL:** Okay. Commissioner
13 Ohigashi made a motion to adopt. Is there anyone
14 that would like to second that?

15 **COMMISSIONER ATTA:** I'll second that.

16 **VICE CHAIR CABRAL:** Okay. Commissioner
17 Atta, thank you very much.

18 It's been moved and seconded to adopt the
19 minutes of the September 21st, 2022, minutes. Can I
20 hear an aye from all those in favor? Aye.

21 **COMMISSIONER OHIGASHI:** Aye.

22 **VICE CHAIR CABRAL:** Okay. Anyone opposed?
23 No one's opposed. Therefore, the minutes of the
24 September 21st, 2022, meeting are adopted. Thank you
25 for your support.

1 At this point we'd like to move ahead and
2 get a tentative meeting schedule for the coming
3 months. I'd like to ask if our -- Mr. Scott
4 Derrickson could go ahead and provide us with a list
5 of our upcoming meetings.

6 **MR. DERRICKSON:** Aloha, commissioners. I'm
7 going to go over the tentative schedule coming up.
8 Tomorrow, Thursday, October 6th, we're going to be
9 doing a site visit to Waiehu 201H Project. We're
10 going to be meeting at the DOT Airport offices first
11 thing in the morning.

12 **VICE CHAIR CABRAL:** Directly into your
13 microphone, young man.

14 **MR. DERRICKSON:** Thank you, chair.

15 On October -- Wednesday, October 19, we
16 are going to be here for the Adoption of Order for
17 the Waikapu Motion to Amend. On Thursday, October
18 20, there's no formal hearing. The LUC staff has
19 ethics training back on O'ahu.

20 Wednesday, November 2nd, we'll be in Kona
21 for a status report for A02-737 University of the
22 Nations Bencorp. On November 16, Wednesday, we're
23 going to be on Maui again. We're going to be hearing
24 the A19-809 Pulama Lana'i Miki Basin District
25 Boundary Amendment. We're going to be beginning that

1 petition process.

2 In December we have tentative meeting
 3 dates. This is not guaranteed yet, but we want you
 4 to try to save these dates. December 7 and 8, we are
 5 probably going to have a Motion to Amend for an
 6 O'ahu project on the 7th, and then a Kona Project
 7 Motion to Amend on the 8th. On December 21st and
 8 22nd, we are holding those dates. We have been
 9 informed that the Department of Education would like
 10 to come in with a motion to amend for Kihei High
 11 School.

12 Are there any questions, commissioners?

13 **VICE CHAIR CABRAL:** Okay. No questions at
 14 this time. We appreciate you giving us our future. I
 15 take it we have Christmas off? Okay. Thank you very
 16 much. Okay.

17 Now for our order of business for today,
 18 A15-798 Waikapu Properties on Maui. This agenda item
 19 is considered the Petitioner's Motion to Amend
 20 Conditions 1, 4 and 8B of the Decision and Order
 21 that was filed on February 26th, 2018.

22 I will begin with a brief explanation of
 23 the procedure. First, I will ask if there's any
 24 disclosures from our commissioners regarding this
 25 matter, and then I will update the records and ask

1 the parties to identify themselves.

2 Next, I will give an opportunity for the
3 petitioner to comment on the commission's policy
4 governing reimbursement of hearing expenses.

5 I will then recognize the written public
6 testimony that has been submitted in this matter,
7 identifying the person or organizations who have
8 submitted such testimony. Then I will call on those
9 individuals in the audience desiring to provide
10 public testimony for this matter.

11 After completion of the public testimony,
12 the commission will then consider the exhibits that
13 the various parties wish to offer into evidence,
14 starting with the petitioner, followed by the County
15 Planning Department, and then the State Office of
16 Planning and Sustainable Development.

17 Then the petitioner will make their
18 presentation and receive any comments or questions
19 from the commissioners.

20 Next, the County's Planning Department
21 will make its presentation and receive questions and
22 comments from the commissioners. That will be
23 followed by the Office of Planning and Sustainable
24 Development that will be making their presentation
25 and receive questions and comments from the

1 commissioners.

2 Petitioner will then be given an
3 opportunity to provide any rebuttal to that
4 information.

5 The public will then be granted another
6 opportunity to provide public testimony in the same
7 manner as set forth previously.

8 Finally, after all the parties have
9 presented their arguments, the commission will
10 conduct a formal deliberation and issue a decision
11 on the motion.

12 I would also like to note to the parties
13 and the public from time to time that we will be
14 calling for short breaks, approximately 10 minutes
15 every hour or so, and we will take a longer lunch
16 break at lunchtime.

17 If there's any questions about our
18 procedures today, any questions from petitioner?

19 Okay.

20 County of Maui, State Office of Planning?

21 **MR. YEE:** No questions.

22 **VICE CHAIR CABRAL:** Okay. Thank you very
23 much.

24 Okay. Disclosures. Do any of my fellow
25 commissioners have any disclosures regarding this

1 matter that is before us today?

2 Okay. Silence is golden. Okay. Thank you.
3 Make my job easier. I apologize already for going
4 deaf my whole life, and now with age, deaf, deaf, so
5 I will mutilate everyone's names and words as we go.

6 Okay. Let the record of this matter -- let
7 me update you. On July 19th, 2022, the petitioner
8 filed a Motion to Amend Conditions 1, 4 and 8B of
9 the Decision and Order filed on February 26, 2018.
10 On July 29th, 2022, the Office of Planning and
11 Sustainable Development filed its Request for Time
12 Extension.

13 On August 1st, 2022, the State Land Use
14 Commission responded to the Office of Planning and
15 Sustainable Development's Request for Time
16 Extension. On August 12th, 2022, the Land Use
17 Commission received and posted the County's
18 Memorandum, Position Statement, and Certificate of
19 Service. On August 17th, 2022, the Land Use
20 Commission received the hardcopies of the County's
21 Memorandum, Position Statements, and Certificates of
22 Service.

23 On September 20 of 2022, the Land Use
24 Commission received the Office of Planning and
25 Sustainable Development's Response to the 2022

1 Motion to Amend Conditions, Exhibit 1, and the
2 Certificate of Service.

3 On September 26, 2022, the Land Use
4 Commission mailed the October 5 and 6, 2022, Meeting
5 Agenda Notice to all parties and to the statewide
6 email and Maui mailing and email list.

7 Party identifications. Will the parties
8 now identify themselves for the record?

9 Petitioner? Is your light on red?

10 **MR. UEOKA:** Yeah.

11 **VICE CHAIR CABRAL:** Okay. Go ahead.

12 **MR. UEOKA:** Oh, okay. Good morning. Jeff
13 Ueoka. I'm representing Waikapu Properties.

14 **VICE CHAIR CABRAL:** Okay. Thank you, Mr.
15 Ueoka. Okay. Have you reviewed HAR 15-15-45
16 regarding the reimbursement of hearing expenses?

17 **MR. UEOKA:** I am familiar with it. Thank
18 you, chair.

19 **VICE CHAIR CABRAL:** Okay. Thank you. And
20 would you like to state your client's position with
21 respect to this policy?

22 **MR. UEOKA:** We're accepting of it.

23 **VICE CHAIR CABRAL:** You're accepting.
24 Thank you very much.

25 Okay. Now at this point, I'd like to go

1 ahead, and do we have any public testimony? We
 2 recognize any written public testimony submitted in
 3 this matter, identifying the person or organization
 4 submitting the testimony. Okay. Thank you.

5 It didn't say that, so I just went on with
 6 it. Okay. Thank you. Thank you for the correction.
 7 I'd just like to go back to identification. All
 8 right. Good.

9 Petitioner, Mr. Ueoka, you have others
 10 present now with you?

11 **MR. UEOKA:** Thank you, chair. We have Mike
 12 Atherton, one of the partners in the project, and
 13 Dwane Tang, the project manager assistant. Thank
 14 you.

15 **VICE CHAIR CABRAL:** Okay. I'm sorry. I
 16 heard Mike Atherton, and what was your other person?

17 **MR. UEOKA:** Dwane Tang.

18 **VICE CHAIR CABRAL:** Dwane. Okay. Okay.
 19 Thank you very much.

20 And then, can Maui County Department of
 21 Planning identify those people present with you
 22 today?

23 **MR. HOPPER:** Certainly. Good morning,
 24 chair and members of the commission. It's good to
 25 see you in person. Michael Hopper, Deputy

1 Corporation Counsel, representing the Maui County
2 Department of Planning. With me are Planning
3 Director Michele McLean and Planner Danny Diaz.

4 **VICE CHAIR CABRAL:** Okay. Okay. Thank you
5 very much.

6 And with our Office of Planning and
7 Sustainable Development?

8 **MR. YEE:** Good morning. Deputy Attorney
9 General Brian Yee on behalf of the Office of
10 Planning and Sustainable Development. With me is
11 Lorene Maki from OPSD.

12 **VICE CHAIR CABRAL:** All right. Thank you
13 very much.

14 Moving on, we have no public testimony
15 still. Okay.

16 **MS. KWAN:** No written, but we have oral.

17 **VICE CHAIR CABRAL:** We have written. I'm
18 sorry. Thank you very much. No written. Okay. Okay.

19 So we have oral testimony folks that have
20 appeared and have signed up now to present. Okay.
21 They're signing up now. Okay. Well, let me give you
22 a minute to get that signed up, and then we will ask
23 those present that want to testify, we're going to
24 ask them to come up here to the seat on my far
25 right, right near the door with the bright light

1 coming in. And I'll swear them in, and then they can
2 provide their testimony.

3 **MS. KWAN:** I have one oral testimony today
4 for Johanna Kamaunu. And so --

5 **VICE CHAIR CABRAL:** Yes, please, if you
6 can, could you come up forward here? And we don't
7 have a microphone for that, though. Steal a mic.

8 **MS. KWAN:** I can move this mic. Oh, we'll
9 try. It's going to be a little bit awkward, but
10 (inaudible).

11 **VICE CHAIR CABRAL:** Okay. Thank you for
12 coming today. Can you please state your name and
13 your address for the record?

14 **MS. KAMAUNU:** My name is Johanna Kamaunu.
15 I live at 222 Waihee Valley Road, Wailuku.

16 **VICE CHAIR CABRAL:** Okay. Thank you. And
17 may I swear you in?

18 **MS. KAMAUNU:** Sorry?

19 **VICE CHAIR CABRAL:** May I swear you in?
20 Okay. Do you swear and affirm that the testimony
21 that you are about to give is the truth? Okay. Thank
22 you very much. Go ahead and proceed to make your
23 statement.

24 **MS. KAMAUNU:** As to the four items that
25 are being requested for the extension, you know,

1 there's a couple of things that's going on in the
2 background. I'm surprised these projects are getting
3 through this far. And one is that we still don't
4 have a water plan with this.

5 Secondly, I understand the dilemma the
6 developer is going to have to provide the school.
7 But to put that onto the community by adding more
8 properties, more units to the project, is really
9 asking us to pay for it. That's how I look at it.

10 To me it just kind of comes down to not enough
11 foresight in this type of plan, and that's what
12 people throw out about: planning. Why wasn't it
13 brought to his attention early to put the schools
14 into the program?

15 (Inaudible), and then on top of that, the
16 traffic problem. We already have traffic issues in
17 Wailuku Town when school gets out. And it's even
18 going -- when you're going to add more to the
19 project, hopefully, the school there will take the
20 brunt of it, but we still have a narrow passage,
21 just one road in and out, past that area. And that's
22 what I wanted to say.

23 **VICE CHAIR CABRAL:** Okay. Thank you very
24 much. Can you just wait one minute? And I'd like to
25 ask does the petitioner have any questions of the

1 witness?

2 **MR. UEOKA:** Thank you, chair.

3 Ms. Kamaunu, I don't know if this is more
 4 a question or a statement, but were you aware that
 5 we're not -- we're expanding the present school
 6 site. We're not increasing the density of the
 7 project. And more is an increase in the amount of
 8 affordable housing that will be in the project, but
 9 there will only be 1,433 single-family units in the
 10 -- a mix of single-family, multi-family units in the
 11 project.

12 **MS. KAMAUNU:** In size it's not increasing,
 13 just the number of units.

14 **MR. UEOKA:** No. The number of units is
 15 staying the same. We're just going to get a little
 16 denser in other areas because we're expanding the
 17 school site. We already had a school site. It was 12
 18 acres. Now we're proposing to go to about 24 or 25
 19 acres for school, because there was supposed to be
 20 the intermediate school down at the A&B Waiale
 21 Project, but the County, recognizing the cultural
 22 significance of it, purchased that property.

23 So there was supposed to be a school in
 24 there, so the state legislators asked us for
 25 additional land in Waikapu Country Town to make a

1 bigger school site so they could have an
2 intermediate and an elementary school in Waikapu
3 Country Town.

4 **MS. KAMAUNU:** It will all feed into
5 Baldwin.

6 **MR. UEOKA:** I'd assume so. Yeah.

7 **MS. KAMAUNU:** And what's the capacity for
8 that school?

9 **MR. UEOKA:** I don't know. We just were
10 asked for land. We're not -- the DOE going to figure
11 all that out. We just were asked to give land, so we
12 were trying to accommodate them.

13 **MS. KAMAUNU:** The land site is sufficient
14 for intermediate and elementary?

15 **MR. UEOKA:** Again, I'm not an expert on
16 school sizes, but I was told it should be good
17 enough. I don't know.

18 **MS. KAMAUNU:** I worked at the school for
19 almost 20 years, and we went from a very comfortable
20 setting to a very tight setting. (Inaudible)
21 teachers, and we had counselors in classes. That was
22 it.

23 So, yeah, I'm really quite -- so the
24 schools and what you can prepare for student
25 learning and for the staffers. That would be my

1 concern. And the traffic. That would be my concern.

2 **VICE CHAIR CABRAL:** Thank you. I ask that
3 you direct your questions or information so that
4 we're -- to us. It's a delicate situation; okay?
5 Thank you very much.

6 Petitioner, any other questions of this
7 witness?

8 **MR. UEOKA:** No, thank you, chair. We just
9 -- we will work with traffic engineers and the DOE
10 and, hopefully, a good solution can come out. Thank
11 you.

12 **VICE CHAIR CABRAL:** All right. Thank you
13 very much.

14 Now I might ask the Maui Department of
15 Planning if they have any questions of the witness.

16 **MR. HOPPER:** No questions, chair. Thank
17 you.

18 **VICE CHAIR CABRAL:** Okay. Thank you.

19 And Office of Planning and Sustainable
20 Development, do you have any questions of the
21 witness?

22 **MR. YEE:** No questions. Thank you.

23 **VICE CHAIR CABRAL:** Okay. Thank you, Mr.
24 Yee.

25 Okay. Thank you for coming forward and

1 expressing your concerns. We absolutely do
2 appreciate that. Thank you.

3 Oh, I'm sorry. Commissioners have
4 questions. I'm sorry. I have a script. I'm a
5 substitute teacher today.

6 **COMMISSIONER CHANG:** Thank you. I'm sorry.

7 **VICE CHAIR CABRAL:** Commissioner Chang,
8 please, with your questions.

9 **COMMISSIONER CHANG:** Good morning, Ms.
10 Kamaunu.

11 **MS. KAMAUNU:** Yes.

12 **COMMISSIONER CHANG:** Good morning, Ms.
13 Kamaunu. Thank you so much for being here today. I
14 was wondering -- oh, sorry, sorry, no, that's --
15 it's just that we're all hard of hearing. Me, too.
16 Me, too. I'm sorry. My -- my apologies.

17 Let me ask you. I think my recollection is
18 when we approved this project, there was a lot of
19 community engagement. There was a commitment to
20 engaging the community, which I think for me made a
21 big difference.

22 I'd like to ask you since that approval,
23 which is, I think, about in 2017, has the developer
24 come to the community to tell you about these
25 changes?

1 **MS. KAMAUNU:** Has he come to the
2 community?

3 **COMMISSIONER CHANG:** Yes.

4 **MS. KAMAUNU:** If he has, I wasn't aware of
5 it.

6 **COMMISSIONER CHANG:** Are you aware of any
7 public meetings?

8 **MS. KAMAUNU:** Twice, it's like -- wait.

9 **COMMISSIONER CHANG:** No. I was wondering
10 has there been any public or community meetings
11 since the approval of the project?

12 **MS. KAMAUNU:** I don't know whether that's
13 a good question of our community, but I'm -- there
14 are concerns about the project. The fact that it's
15 in the Waieha and the use of that land is something
16 contrary to its -- as it should have been or it
17 should be.

18 **COMMISSIONER CHANG:** Okay. Did you -- in
19 2017, when we had this -- in 2017, when we had the
20 original petition, were you contacted and
21 participated in the proceedings before Land Use
22 Commission?

23 **MS. KAMAUNU:** 2017 was a long time ago. I
24 don't think so.

25 **COMMISSIONER CHANG:** Okay. Okay. You've

1 expressed that you've had some concerns. Have you
2 had the opportunity to raise those concerns with the
3 development team?

4 **MS. KAMAUNU:** (Inaudible.)

5 **COMMISSIONER CHANG:** And how did you
6 become aware of this meeting today?

7 **MS. KAMAUNU:** (Inaudible.)

8 **COMMISSIONER CHANG:** Oh. All right. Okay.
9 Thank you so much for being here. I have no further
10 questions.

11 **VICE CHAIR CABRAL:** Any other
12 commissioners have any questions of our witness
13 today? Oops. Any other questions from our
14 commissioners today?

15 Okay. Thank you very much.

16 Anyone else from the public who would like
17 to make a statement or have a presentation at this
18 time? Okay. Okay. Ariana Kwan, can you -- we have
19 another party in the back that would like to make a
20 statement. Yes. We do try and recognize and give
21 everybody their time to give us information. Thank
22 you.

23 **MS. KWAN:** Someone would like to testify.
24 Carol Lee Kamekona.

25 **VICE CHAIR CABRAL:** I want to appreciate

1 our staff being -- trying to be both here in person
2 and on Zoom, and technology combining doubles their
3 workload and the challenges we all face these days.
4 But I think it's a better product in the end, so
5 appreciate the efforts.

6 Okay. Thank you. Can you go ahead and
7 provide us with your name and your address at this
8 time?

9 **MS. KAMEKONA:** Aloha kakahiaka kakou. Ko
10 inoa o Carol Lee Kamekona ma kahui, 862 Makalii
11 Street 96732.

12 **VICE CHAIR CABRAL:** All right. Thank you
13 very much. May I swear you in at this time? Okay.
14 Where did that go to? Get the right words here. Do
15 you swear or affirm that the testimony that you are
16 about to give is the truth?

17 **MS. KAMEKONA:** Affirm.

18 **VICE CHAIR CABRAL:** Okay. Thank you. Go
19 ahead and proceed.

20 **MS. KAMEKONA:** I would just like to say
21 that I know Coach Mike's -- hele mai -- Coach Mike's
22 project has gone through a lot of rigorous
23 dissection from a lot of different entities. I am in
24 support of the project.

25 My biggest concern, however, is traffic

1 mitigation. My understanding is this project is
 2 mauka of Honoapiilani Highway, and Honoapiilani
 3 Highway is the only road that traverses the area. So
 4 I'm seriously concerned about how 1400 units times
 5 two -- and I'm going to estimate at least two cars
 6 per unit -- are going to be able to go in and out of
 7 that project area without adding more impact to the
 8 already congested traffic in and out of Wailuku to
 9 Lahaina and Maalaea.

10 **VICE CHAIR CABRAL:** Okay. Thank you for
 11 your statement or question.

12 At this point I'll go ahead and ask does
 13 the petitioner want to have any questions of the
 14 witness that's here with us at this time?

15 **MR. UEOKA:** We're fine. Thank you, chair.

16 **VICE CHAIR CABRAL:** County, Maui County,
 17 any questions of the witness?

18 **MR. HOPPER:** No questions, chair.

19 **VICE CHAIR CABRAL:** Okay. Thank you.

20 State Office of Planning and Sustainable
 21 Development, any questions of the witness?

22 **MR. YEE:** No questions. Thank you.

23 **VICE CHAIR CABRAL:** Okay. Commissioners,
 24 any questions of the witness?

25 Okay. Thank you very much for coming and

1 making your statement.

2 Okay, oops, moving right along, I'd like
3 at this time to proceed with the admission of our
4 exhibits.

5 Petitioner Mr. Ueoka, do you have any
6 exhibits that you would like to have admitted into
7 the record?

8 **MR. UEOKA:** No, thank you, chair.

9 **VICE CHAIR CABRAL:** Okay.

10 Maui County Planning Department, any
11 exhibits to admit into the record?

12 **MR. HOPPER:** No, chair.

13 **VICE CHAIR CABRAL:** No? Okay. State Office
14 of Planning and Sustainable Development, any
15 exhibits for the record?

16 **MR. YEE:** The only exhibit we submitted
17 was submitted with our statement in support of the
18 motion. Were you looking to introduce those, or are
19 those already considered to be part of the record?

20 **VICE CHAIR CABRAL:** Those are already
21 considered part of the record.

22 **MR. YEE:** We have no additional exhibits.
23 Thank you.

24 **VICE CHAIR CABRAL:** Okay. Thank you very
25 much. We should "additional" to this script. Thank

1 you. Okay.

2 Hearing none, petitioner, we will clarify
3 that the exhibits already presented are already
4 officially part of the record and are available upon
5 request.

6 Okay. So we have -- I'll ask now from the
7 exhibits that have already been submitted, are there
8 any questions or objections from any of the other
9 parties regarding those exhibits that have been
10 already shared among the various parties?

11 Okay. Petitioner, no?

12 **MR. UEOKA:** No questions.

13 **VICE CHAIR CABRAL:** Okay. Maui County? No?

14 **MR. HOPPER:** No objections, chair.

15 **VICE CHAIR CABRAL:** Okay. State?

16 **MR. YEE:** No objections.

17 **VICE CHAIR CABRAL:** Okay. Thank you very
18 much. Okay. Back with taking care of that business,
19 presentation now.

20 Petitioner, Mr. Ueoka, would you like to
21 go ahead and provide us with your presentation at
22 this time?

23 **MR. UEOKA:** Thank you, chair. I'll try to
24 brief. So what we're requesting is recently we
25 worked with the County of Maui on a public-private

1 partnership agreement where in lieu of providing
2 direct funding or construction of certain
3 infrastructure improvements, we'd be providing
4 additional residential workforce housing units in
5 Waikapu Country Town.

6 So in addition to that, we were also asked
7 to expand the school site in Waikapu Country Town.
8 So we looked at our conditions from the District
9 Boundary Amendment, and the first one was the
10 Education Contribution Agreement. We want to make
11 clear that we will probably be amending that, and
12 we'll be complying with it as amended. And we'll
13 need to work with the DOE on the amendment,
14 naturally.

15 The next one was for wastewater. The
16 requirement is to participate in the funding at our
17 construction of adequate private-public wastewater
18 facilities, essentially. And we wanted to make sure
19 that the condition was clear that, alternatively,
20 pursuant to separate agreement with the county,
21 which would likely be our PPP agreement, we'd be
22 able to provide additional residential workforce
23 housing units in the project in lieu of
24 participating in the funding and/or construction of
25 adequate private or public wastewater facilities to

1 accommodate the proposed uses of each portion of the
2 petition area.

3 And the next one was in regards to traffic
4 impacts. So one of the requirements of our
5 conditions of zoning was to participate a pro rata
6 share in the funding of the Waiale Road extension.
7 The county was supposed to be -- or not to supposed
8 to be -- the county is going to be building that. I
9 believe they recently got a RAISE, a federal RAISE
10 grant, to also help fund it.

11 And again, the language amendment would be
12 to allow the petitioner, subject to the agreement
13 with the State Department of Transportation and the
14 County of Maui, provide additional residential
15 workforce housing units in the project in lieu of
16 providing funding or constructing traffic
17 improvements to mitigate the traffic related to the
18 impacts of the project.

19 So in discussions with State DOT and the
20 County of Maui, we still -- their understanding of
21 the concept -- we'll still need to go back with them
22 and have memorandum of agreements produced and
23 signed by each of them in regards to the conditions
24 of the DBA and zoning regarding traffic impact
25 mitigation.

1 I saw in the staff recommendation there
2 was a question regarding the Waiale Project we were
3 referencing in our moving papers, and that was
4 essentially to A&B had a Waiale North and South
5 Project, more towards Kuihelani Highway. However,
6 that property was purchased by the county, and my
7 understanding it is not going to be moving forward.
8 So it was a lot of housing, and part of the impetus
9 of the PPP agreement was we could pick up some of
10 the affordable housing that was supposed to be there
11 in Waikapu Country Town, not all of it, but some of
12 it we could have helped.

13 And then also the intermediate school
14 site. We were requested to help to address that in
15 Waikapu Country Town.

16 And we feel that regarding compliance or
17 find compliance, we'll still be working with the
18 Department of Planning and the various entities that
19 still need to execute other agreements with us to
20 effectuate the terms of the PPP and the actual
21 agreements regarding traffic and -- I guess
22 wastewater's taken care of for the most part, but
23 primarily traffic and education requirements.

24 I am looking at some of the other
25 questions they had, and regarding the opportunity

1 cost figures that were in the PPP, those are just
 2 calculated by -- there's a lot of ways you can
 3 calculate the cost of housing. Why we chose -- well,
 4 opportunity cost was more subjective, in my opinion.

5 We took an evaluation of 180 percent AMI,
 6 the cost of a three-bedroom unit at that price, and
 7 compared it with the cost of the various units at
 8 different AMIs required by Chapter 2.96 Maui County
 9 Code, the county's residential workforce housing
 10 policy, and took those differences for the 213
 11 additional units. And that was the calculation for
 12 the opportunity cost value.

13 At this point I'll stop, and if you guys
 14 have any questions, please let me know. Thank you.

15 **VICE CHAIR CABRAL:** Thank you, petitioner.
 16 I'll see if there's any questions.

17 Commissioners, do you have any questions
 18 at this time of the petitioner?

19 Okay. Commissioner Chang?

20 **COMMISSIONER CHANG:** Good morning, Mr.
 21 Ueoka. I'm Commissioner Chang. Thank you very much
 22 for your clarification. You earlier clarification
 23 for Ms. Kamaunu helped me understand you're not
 24 increasing the total number of units, just the
 25 density of the affordable housing units, for the

1 workforce housing units. That's correct. Okay.

2 The question that I have. I'm not as -- I
3 like to compare apples and apples, and I was having
4 -- I was having a difficult time with all the
5 different numbers. So I am trying to determine
6 whether what you're giving up -- in other words, the
7 cost for wastewater, the cost for traffic -- have
8 you quantified what are those costs that you would
9 have otherwise been required to contribute towards?
10 What was the total cost?

11 **MR. UEOKA:** I can't give you precise
12 figures, of course, because, you know, we don't know
13 when we'd be building or we're doing them, but our
14 understanding is, based on our traffic analysis, we
15 would have been responsible for, I believe, 41
16 percent or so of the total cost of the Waiale Road
17 extension.

18 We don't have a solid figure from the
19 county on what the Waiale Road extension will cost,
20 but we were estimating it, I want to say -- don't
21 quote me, because I know that's horrible in this
22 kind of hearing, so don't quote me on it, but I want
23 to say it was in the -- the portion of Waiale Road
24 extension that our pro rata share would have been
25 required to contribute was, I want to say, 20 to 25

1 million.

2 **COMMISSIONER CHANG:** Okay.

3 **MR. UEOKA:** But, you know, that's a moving
 4 number. I think the total cost will be more, but my
 5 understanding was they would have assessed us for
 6 the entire cost, and recently they got a \$25 million
 7 federal RAISE grant to pay for the Waiale Road
 8 extension.

9 In regards to sewer treatment, we
 10 estimated the cost of us building a private facility
 11 would have been around 20 million. You know, who
 12 knows what if -- you know, cost escalated movement.
 13 That was our estimate at the time of the PPP
 14 agreement.

15 **COMMISSIONER CHANG:** Okay. And can you
 16 quantify for me the difference between -- and bear
 17 with my math -- you're adding 63 workforce housing
 18 units; is that correct?

19 **MR. UEOKA:** So, thank you. So it's going
 20 to -- it should be, if everything goes according to
 21 the PPP, a total of 213 additional residential
 22 workforce housing units. Our requirement for Chapter
 23 2.96 was 287.

24 **COMMISSIONER CHANG:** Yes.

25 **MR. UEOKA:** And if everything goes

1 accordingly to the PPP, there'll be a total of 500
2 in Waikapu Country Town.

3 **COMMISSIONER CHANG:** Okay.

4 **MR. UEOKA:** We're still maxed out 1433,
5 though.

6 **COMMISSIONER CHANG:** Can you quantify what
7 is the difference between -- because you're still
8 able to build workforce -- you're still able to
9 build residential housing, but it's not market. So
10 how much less market housing are you building or
11 you're not building?

12 **MR. UEOKA:** Two hundred thirteen.

13 **COMMISSIONER CHANG:** Okay.

14 **MR. UEOKA:** Being converted from market to
15 residential workforce housing.

16 **COMMISSIONER CHANG:** Okay. And again, I'm
17 trying to do apples and apples. Are you able to
18 quantify the difference between what the developer
19 is going to make -- or less -- in the number, given
20 that it's workforce housing versus he's giving up
21 market? Are you able to quantify that?

22 **MR. UEOKA:** I guess you used the word
23 "make", and I'm assuming that means profit.

24 **COMMISSIONER CHANG:** Yes.

25 **MR. UEOKA:** I can't tell you what the

1 profit margins will be in the future, of course. The
2 only thing I could quantify to -- in my attempt, and
3 you can say, you know, everyone has their opinion on
4 my attempt, of course, but it was to compare the
5 prices in the Maui County's affordable housing
6 guidelines at the income -- the area median income
7 groups required, and it's a 30-50-20 split. Thirty
8 percent are required in below moderate, 50 percent
9 in moderate, and 20 percent of the affordable
10 housing units are above moderate.

11 So I took the average value of that and
12 got a residential workforce housing unit sales
13 price, and those were at 80 to 100, or 101 to 120,
14 and 121 to 140. So for this calculation, for the
15 exercise of the PPP, we kicked out the table for the
16 affordable housing sales price guidelines, because
17 it's linear, you know. We kicked it up to 180
18 percent, and we treated that as the "market value".
19 And that was a price of 951,500 per unit.

20 And I thought that was a fair number,
21 being that the median income sales price on our
22 median sales price on Maui was well over a million
23 at the time. But you subtract that 951,500 from
24 that, you subtract out the average sales price in
25 those income groups and multiply it by the number of

1 units in each income group, you come up with that
2 number of 22,368,100 that's shown on Exhibit A of
3 the PPP.

4 **COMMISSIONER CHANG:** Okay.

5 **MR. UEOKA:** So I think that's apples to
6 apples, but I don't know.

7 **COMMISSIONER CHANG:** Okay. Well, that's
8 helpful, because it appears as if your share of the
9 infrastructure cost would have been around 45
10 million.

11 **MR. UEOKA:** Sorry. My apologies. We're
12 talking about the 63. The balance on 150 would have
13 been another 53 million.

14 **COMMISSIONER CHANG:** Okay.

15 **MR. UEOKA:** So we're estimating at about
16 75 million.

17 **COMMISSIONER CHANG:** Okay.

18 **MR. UEOKA:** Yeah.

19 **COMMISSIONER CHANG:** All right. And the
20 reason I'm asking this is because my recollection --
21 and I went back and looked at the original docket --
22 there were testimony, particularly by Maui Tomorrow,
23 raising concerns about the wastewater treatment, the
24 traffic, the things that are being requested to be
25 modified.

1 And so, you know, I'm wanting to make sure
2 that there is -- there's still some larger community
3 benefit that those issues that were raised in the
4 original docket, which set forth the conditions, are
5 being satisfied.

6 So -- and it's just not clear to me. So
7 your representation is that these modifications, one
8 there at the request of the government to assist
9 them, but how do we assure that the public is going
10 to get in a timely fashion the benefits of that with
11 the problems with the wastewater and the traffic?

12 **MR. UEOKA:** Thank you. I completely
13 understand them. So I guess there's all kinds of
14 problems on Maui, and everywhere, of course. And one
15 of them was affordable housing. So the county really
16 viewed the tradeoff to get additional affordable
17 housing, and the tradeoff was, of course, that, you
18 know, they'd take care of some of our traffic
19 requirements.

20 So the requirement was always for them to
21 build the Waiale Road extension, and that is
22 supposed to -- according to the state and the
23 county, it's supposed to truly address a lot of the
24 traffic issues. It won't fix everything, of course,
25 but it will address some of them.

1 In regards to the wastewater treatment
2 facility, the county needs to build one in the
3 Central Maui area. They're trying their best to get
4 out at Kahului. We want to work with them.

5 In discussions with the Department of
6 Environmental Management and the mayor, I think
7 everyone felt it would be a little strange if
8 Waikapu Country Town had their private wastewater
9 facility for around 650,000 gallons, maybe to a
10 million gallons, and then there's a big county one
11 down the street for two million gallons. So the idea
12 was to combine them.

13 As far as to making sure that it all
14 happens in a timely manner, that I will not make any
15 promises on just because we don't control the road
16 building, we don't control the wastewater treatment
17 facility.

18 We can control the -- oh, I'm sorry. To a
19 certain extent, we control the building of the homes
20 in Waikapu Country Town, so in the first 300 units,
21 which is the subject or, you know, part of this PPP
22 agreement, 150 of them will be market and 150 will
23 be residential workforce housing units. So in the
24 first we're going a 1:1 ratio, which is above and
25 beyond in the idea of getting that residential

1 workforce housing out there sooner.

2 **COMMISSIONER CHANG:** And Mr. Ueoka, I
3 greatly appreciate your candor. I understand you
4 have -- you are constrained just within, you know,
5 what you as a developer can do. But, I mean, I know
6 I was personally very impressed with Mr. Atherton
7 and his commitment to this community and the
8 outreach that was done for this project.

9 So let me ask you was there -- what's been
10 the follow-up with the community since the Land Use
11 Commission approved in 2018 the DBA? And again, I
12 think for me in particular, these modifications that
13 you're proposing to make, given that these were
14 concerns that the community raised at that time.

15 **MR. UEOKA:** Well, 2018 we got approved
16 and, you know, not -- I will admit, you know,
17 internally, just getting stuff moving around. Then
18 in early 2020, there was a little bit of a worldwide
19 thing going on, so -- the pandemic. We didn't do
20 much community outreach in that period.

21 And then during the pandemic and the --
22 this all really came about with the county
23 purchasing A&B's Waiale Project, so Coach, I
24 believe, he did meet with the Waikapu Community
25 Association once. He went to their meeting. But

1 generally speaking, we went to the county council
2 hearing for the PPP, where the council supported it.
3 That was a public hearing.

4 And I guess this isn't a good excuse, but
5 it's a reason. These opportunities were brought to
6 us by government, so we weren't sure if we should go
7 out there and talk about it too much, being that it
8 wasn't necessarily our proposal. We are supportive
9 and we want to do it.

10 And the other thing, too, is -- and this
11 is my fault a little bit, but didn't want to talk
12 about all of this too much until we had approvals in
13 place, more or less. And the county made it clear to
14 us that the PPP, nothing's in place until we get the
15 LUC's blessing and we have the County Council's
16 change in zoning -- or blessing for the change in
17 zoning. So those are the reasons, more or less.
18 Thank you.

19 **COMMISSIONER CHANG:** And, you know, again,
20 Mr. Ueoka, I appreciate the candor. I mean, you
21 know, I think you are -- you can only do so much. So
22 thank you so much.

23 I would urge that there -- especially Maui
24 Tomorrow, since they were the ones who raised it,
25 and that was a major issue, that there be outreach

1 to the community. I understand workforce housing is
 2 a critical need, but at the same time, the people
 3 that live in that community, their concerns were
 4 traffic, wastewater, and now they're getting -- who
 5 knows when they're going to get those things
 6 resolved?

7 But they're going to get, perhaps, you
 8 know, a denser -- it may not be increase in the
 9 number of units, but there will be a large project,
 10 and then the increased school.

11 So I would urge you to continue to engage
 12 this community, because that was, again, for me as a
 13 commissioner, an important consideration in this
 14 approval. Thank you very much.

15 **VICE CHAIR CABRAL:** Okay. Thank you very
 16 much, Commissioner Chang.

17 Any other commissioners? Questions?

18 Okay. Commissioner Ohigashi, please.

19 **COMMISSIONER OHIGASHI:** Thank you.

20 These are new workforce housing
 21 requirements the developer is willing to undertake,
 22 assuming that it gets its offset; right?

23 **MR. UEOKA:** Yes, Commissioner Ohigashi.

24 **COMMISSIONER OHIGASHI:** There was a recent
 25 ordinance passed regarding the income levels of --

1 modifying the income levels of different -- of
2 potential buyers of this and limiting it to a
3 certain amount of -- well, I'm not totally familiar
4 with the ordinance, but limiting.

5 Is this addition workforce housing
6 development part required to follow that ordinance,
7 assuming that it doesn't get vetoed, and it passes?

8 **MR. UEOKA:** Thank you, Commissioner
9 Ohigashi. So Bill 107 recently passed the County
10 Council, and amongst other things, it --
11 traditionally, the county had calculated the
12 affordable housing sales price guidelines using 30
13 percent of annual -- or gross annual income or
14 whatever going towards principal and interest of a
15 mortgage, assuming 5 percent down and whatever the
16 prevailing interest.

17 The County Council bill changed that from
18 30 percent to 28 percent, which in essence lowers
19 the prices that affordable housing can be sold at.
20 So this project would be subject to those changes.

21 **COMMISSIONER OHIGASHI:** Assuming that it's
22 --

23 **MR. UEOKA:** Yeah. Assuming. Yes.

24 **COMMISSIONER OHIGASHI:** Okay. I'm going to
25 ask you this public-private partnership agreement

1 attached as Exhibit 1, has it been recorded?

2 **MR. UEOKA:** It is not a recorded document.

3 **COMMISSIONER OHIGASHI:** Okay. Is it going
4 to be recorded?

5 **MR. UEOKA:** I don't think so.

6 **COMMISSIONER OHIGASHI:** Okay. Now, I
7 notice that this is an administrative agreement
8 signed here by the mayor and various stuff. What
9 happens if the administration changes? Does this
10 agreement still remain in effect, given the fact
11 it's not recorded?

12 **MR. UEOKA:** We believe so. It's a signed
13 document. It's an agreement between the county and
14 Waikapu Country Town. That's our hope.

15 **COMMISSIONER OHIGASHI:** Is your -- is your
16 answer maybe I should ask Mr. Hopper?

17 **MR. UEOKA:** I believe he could tell me
18 better.

19 **COMMISSIONER OHIGASHI:** Okay. I'll ask him
20 when his turn comes up.

21 Getting back to my first question, does
22 that change any of the calculations that you made in
23 this -- in your exhibit? I forget what is it.
24 Exhibit A, I guess, opportunity and cost of
25 additional.

1 **MR. UEOKA:** Thank you, commissioner. Yeah,
2 in theory it makes the opportunity cost greater for
3 the -- for the Waikapu Properties.

4 **COMMISSIONER OHIGASHI:** And would that
5 mean additional amounts of funding that the county
6 and the state and the DOE would have to take into
7 account in order for your numbers to work out?

8 **MR. UEOKA:** We'd love that, but as the way
9 it is right now, we're okay moving forward. The deal
10 is the deal we had at the time, and we're willing to
11 move forward even with the change, but we'd like to
12 try and work with the county for some type of
13 accommodation on that.

14 **COMMISSIONER OHIGASHI:** Would that
15 decrease the total amount of units that were being
16 modified? Your estimate of the total amount of units
17 that would be modified to -- for workforce housing
18 development.

19 **MR. JONES:** Thank you, chair. We haven't
20 discussed it completely with the partners, but the
21 latest discussion we had is they're going to stand
22 firm at 200, you know, giving the 213.

23 **COMMISSIONER OHIGASHI:** Okay. And the
24 problem is is that if you make that commitment, the
25 D&O usually indicates that you will live up to all

1 commitments that you make in front of the Land Use
2 Commission. And that's -- I'm giving you the
3 opportunity to say that we're not sure whether or
4 not we can reach commitment, given the new law that
5 was passed, and given the change of administration
6 that may occur or may not occur.

7 So I'm giving you the opportunity, because
8 once -- if we do adopt this, there's a lot of --
9 there's a lot of language in the D&O saying that,
10 hey, you got to live up to every single
11 representation that you make in front of us.

12 **MR. UEOKA:** No, thank you, commissioner. I
13 think we'll -- we're okay with living up to the
14 terms of the PPP. If the world goes sideways, we'll
15 come back in front of you and the County Council
16 again.

17 **COMMISSIONER OHIGASHI:** Okay.

18 **MR. UEOKA:** Thank you.

19 **COMMISSIONER OHIGASHI:** Madam Chair, can I
20 go -- do I have -- are we going to take a break, or
21 should I go on?

22 **VICE CHAIR CABRAL:** No. Let's -- let's go
23 ahead and finish this part.

24 **COMMISSIONER OHIGASHI:** Okay. I have a
25 question about the DOE. The land that you propose to

1 give them is part of the D&O. In other words it's
2 urban land; is that right? The additional land.

3 **MR. UEOKA:** That is correct.

4 **COMMISSIONER OHIGASHI:** So you're not
5 going to require any -- they're not going to be
6 required to come back to this commission for any
7 kind of things other than modifying any kind of
8 conditions that is not to their liking in the
9 original D&O.

10 **MR. UEOKA:** That is my understanding, but,
11 you know, I won't make any commitments as to what
12 happens in the future on that aspect with the --

13 **COMMISSIONER OHIGASHI:** I'm not sure, but
14 I was trying to look for a letter from the
15 Department of Education or a comment or statement
16 from them indicating that they are amenable to this
17 agreement. Have you obtained any type of commitment
18 from them?

19 **MR. UEOKA:** I have not received a
20 commitment from the DOE. I did speak with -- I'm not
21 sure if he was a deputy super -- someone in the DOE
22 regarding planning. And they were aware of it, and
23 they are willing to work with us moving forward. But
24 this was -- we were asked to give, and we're giving
25 to DOE, you know, I'm sorry.

1 **COMMISSIONER OHIGASHI:** Did that come from
2 the DOE itself or from the legislature?

3 **MR. UEOKA:** A couple of state legislators
4 asked us to help.

5 **COMMISSIONER OHIGASHI:** Okay.

6 **MR. UEOKA:** Yeah.

7 **COMMISSIONER OHIGASHI:** And so internally,
8 the DOE would not know what to do with additional
9 land; is that right?

10 **MR. UEOKA:** I don't want to say what the
11 DOE is interpreting --

12 **COMMISSIONER OHIGASHI:** I'd just advise
13 you that our dealings with the DOE has indicated
14 that they are not necessarily people that you can
15 rely upon for their -- for what they represent to
16 you. So I'm just suggesting to you that it may
17 behoove you to get some kind of letter of support
18 from them and some kind of understanding that they
19 would -- they may be subject to the terms and
20 conditions of the entire D&O.

21 **MR. UEOKA:** Thank you, commissioner. And
22 again, our amendment today is just to allow for an
23 amended education contribution agreement. So we
24 still need to work that out with the DOE and that
25 type of thing. So thank you

1 **COMMISSIONER OHIGASHI:** Now, was it -- I
 2 forget. The 12 acres were recommended by the DOE;
 3 right?

4 **MR. UEOKA:** I believe the additional 12
 5 acres, that's what they asked for for an elementary
 6 school. Thank you.

7 **COMMISSIONER OHIGASHI:** All right. And how
 8 does this all work? Because I'm just curious. I
 9 don't know. You have the county and state going to
 10 make decisions on when they're going to put in their
 11 improvements; right? So if they put in the -- if
 12 they don't put in the improvements, does that mean
 13 you still would have to build your own transmission
 14 lines, still participate in the development of the
 15 traffic improvements in that area?

16 In other words, if they don't get the
 17 complete funding for it, do we go back and say, hey,
 18 we're back to square one on this matter?

19 **MR. UEOKA:** Thank you, commissioner. So
 20 the way the PPP is structured is we'll do the
 21 additional 63 as soon as we can. And with that, we
 22 can enter -- we can use the Kahului wastewater
 23 treatment facility for the first 300 units in the
 24 project. We can go there. So that's -- our
 25 understanding is there is capacity. It's looking

1 great right now.

2 As far as the Waiale Road extension, the
3 idea was we're going to still have to work with
4 state DOT and county regarding our traffic
5 mitigation. We're supposed to do separate MOAs per
6 the conditions of the DBA.

7 Hopefully, that all goes through, the
8 Waiale Road extension goes smoothly. I believe now
9 that they have the RAISE grant, it's a lot better
10 than it ever looked before, that it's going to
11 happen. Regarding timing of all of it, I wish I'd
12 had more control and things would happen faster, but
13 I don't control that, so we're -- that's one of the
14 base issues of the partners.

15 **COMMISSIONER OHIGASHI:** You guys would get
16 an idea of when we start breaking ground and
17 actually people living in the houses. So I'm just --
18 I'm just curious.

19 **MR. UEOKA:** Well, those are two different
20 things, are breaking ground and living in houses, of
21 course. But our hope is that we just recently turned
22 in a large lot subdivision application, so with that
23 we probably can get some comments and start working
24 on the backbone infrastructure. We're hoping early
25 next year sometime.

1 And depending on how long the backbone
 2 infrastructure takes, soon thereafter, there should
 3 be homes, and soon thereafter, people moving in, but
 4 those I'm not as -- it's -- it's -- the timing's
 5 everything; right? It's difficult to predict.

6 **COMMISSIONER OHIGASHI:** You know, when I
 7 first was placed on the commission, this was one of
 8 the first projects that I -- and I sat here, and I
 9 listened to everything, and I didn't know what I was
 10 doing half the time, but I -- but I listened, and it
 11 sounded like a good project.

12 My only comment is that I was looking, you
 13 know, under your wastewater proposed language, and
 14 the previous language, and it talks about if private
 15 wastewater source storage and municipal facilities
 16 are located outside the petition are, and when the
 17 state and county agricultural addition, petitioner
 18 shall apply for the state special permit in
 19 accordance with the provisions of HRS 205.

20 We're going to say this is a -- I'm not
 21 sure even -- I'm not sure at this point in time if a
 22 Special Use Permit is the applicable standard to be
 23 used if we're going to build a large sewage
 24 treatment plant on agricultural property.

25 And I think that your change of language

1 would include that it would be the county who would
 2 have to seek that. And I'm concerned that a
 3 permanent facility such as large as a sewage
 4 treatment plant in the agricultural area would not
 5 necessarily get a Special Use Permit.

6 **MR. UEOKA:** If I may.

7 **COMMISSIONER OHIGASHI:** Yeah.

8 **MR. UEOKA:** Thank you, commissioner. I
 9 believe that condition was the idea when we were
 10 building our little small one --

11 **COMMISSIONER OHIGASHI:** Yes.

12 **MR. UEOKA:** Yeah. But now we're going
 13 public; yeah? That's going to be a public facility.

14 **COMMISSIONER OHIGASHI:** Yeah, but it says
 15 right here. But it doesn't get rid of that; does it?

16 **MR. UEOKA:** Oh, I think the -- I hope it
 17 doesn't happen, but in the event that the county
 18 does not move forward with its large treatment
 19 plant, we still need the ability to move forward
 20 with our small one so the project still could.

21 **COMMISSIONER OHIGASHI:** So in other words
 22 --

23 **MR. UEOKA:** If -- if the county doesn't
 24 build, we still need to be able to build our small
 25 one, which, I think, is an appropriate use for a

1 Special Use Permit, because it's a small --

2 **COMMISSIONER OHIGASHI:** A Special Use
3 Permit would not -- is not -- may not be -- may not
4 be a good idea for a county large wastewater
5 treatment facility.

6 **MR. UEOKA:** I'll leave that to the county
7 and you guys to figure out their land use
8 entitlements. I --

9 **COMMISSIONER OHIGASHI:** Okay. I don't have
10 any other questions.

11 **VICE CHAIR CABRAL:** Thank you,
12 Commissioner Ohigashi.

13 At this point in time, before we move
14 forward, I'd like to recognize that when
15 Commissioner Chang was speaking and having her
16 questions, from the State Attorney General's Office,
17 Daniel Morris entered our Zoom meeting, and I think
18 somewhere in that timeframe, Attorney General --
19 from the Attorney General's Office, Julie China left
20 the meeting.

21 And then also, just a few minutes ago, our
22 Executive Director Daniel Orodener has joined us
23 here in person at the meeting. So just to keep the
24 record clear.

25 Now I'd like to go ahead and proceed with

1 more questions from the commission of petitioner at
2 this time, and then we will take a break, if we can
3 finish those up in a fairly rapid manner. Thank you.

4 Okay. Yes, Commissioner Yamane?

5 **COMMISSIONER YAMANE:** Okay. Good morning.
6 Thank you.

7 Just had a question, and maybe help me
8 understand. I'm a new commissioner here, so
9 obviously, I wasn't here when these conditions were
10 imposed. I'm new here, but on Condition 8B, I'm
11 looking for your understanding on how it changes the
12 condition with the proposed insertion of the
13 language alternatively.

14 So the way I read this, the intention of
15 Condition 8B back then was petitioner shall mitigate
16 all project-generated traffic impacts as recommended
17 and/or required by the State DOT and the County of
18 Maui. So that was, to me, the general whole idea of
19 that condition.

20 Now the language alternatively, petitioner
21 -- and I won't read everything, but when I read
22 that, and you can correct me if I'm wrong, does that
23 mean if you provide additional workforce housing,
24 that you don't need to mitigate traffic generated by
25 the project? Do you read it that way, too?

1 **MR. UEOKA:** Thank you, Commissioner
2 Yamane. Can I expand? I ought to say yes, but may I
3 expand?

4 **COMMISSIONER YAMANE:** Sure.

5 **MR. UEOKA:** Okay. Thank you. Typically, in
6 discussions and, you know, I still need to -- I
7 shouldn't say I -- we still need to enter into
8 separate agreements with the state and the county.
9 But generally speaking, my understanding is a lot of
10 times for these smaller type of requirements, they
11 don't actually have you build it. They have you
12 either contribute money or do something else.

13 So in discussions with state and county,
14 they were saying, you know, instead of contributing,
15 like, little bit here, little bit there, you're just
16 putting a bigger chunk into the Waialae Road
17 extension, which they feel is one of the biggest
18 traffic needs in this area right now.

19 So that's the idea. That would be our
20 mitigation, would be our larger contribution towards
21 the Waiale Road extension.

22 **COMMISSIONER YAMANE:** Okay. And I kind of
23 see that, because when I look at the other condition
24 regarding wastewater, the condition was that you
25 will participate in funding and construction, so in

1 lieu of that.

2 But on this Condition 8 -- and I'm not
3 going to speak on behalf of commissioners that were
4 here imposing this Condition 8, where it
5 specifically says that the petitioner shall
6 mitigate, it doesn't say on or participate on the
7 traffic imposed by this project. It specifically
8 says shall mitigate project's generated traffic
9 impacts as recommended.

10 But the "in lieu" is kind of referring to
11 what you're saying, funding of and participation of
12 traffic. So I'm kind of, you know, wanting to make
13 sure that the conditions imposed by the former LUC
14 is the order's intention, and if it's not being --
15 if it's kind of being circumvented, because now it
16 seems like the agreement that will be specifically
17 with the petitioner and the DOT and the county
18 instead of what the LUC-imposed conditions was prior
19 to that, so.

20 **MR. UEOKA:** I'm sorry. And I understand
21 where you're coming from. It's just the idea also
22 was that we're going to initiate, coordinate, and
23 meet with State DOT Highways and the county to agree
24 upon the regional pro rata share and to develop.

25 So I believe there was a -- there was at

1 least the idea in there of cost sharing. I, too,
2 wasn't here in 2018, but that's my understanding, is
3 that second portion about pro rata share made this
4 more understandable or relatable.

5 **COMMISSIONER YAMANE:** Okay.

6 **MR. UEOKA:** Thank you.

7 **COMMISSIONER YAMANE:** Thank you for --
8 No more questions, Madam Chair.

9 **VICE CHAIR CABRAL:** Okay. Thank you,
10 Commissioner Yamane.

11 Anyone else of our commission who would
12 like to make a comment at this time? Okay.

13 **COMMISSIONER OKUDA:** Madam Chair?

14 **VICE CHAIR CABRAL:** Okay, Commissioner
15 Okuda.

16 **COMMISSIONER OKUDA:** Thank you, Ms. Chair.

17 Can I ask a question? It's more a law
18 question, since we are quasi-judicial. And it deals
19 with how much deference we have to give to an
20 agreement that has the signature of the county, of
21 you or your client, and, you know, countersigned by
22 the various departments of the county.

23 Is there anything in the law that
24 addresses what deference, if any, we have to give to
25 this PPP or public-private partnership agreement?

1 **MR. UEOKA:** You know, I'd actually prefer
2 not to answer that question and provide legal advice
3 to the board itself. Now, my --

4 **COMMISSIONER OKUDA:** Well, let me rephrase
5 the question. What is your position, or your
6 client's position, as far as what amount of
7 deference, if any, we have to give to the fact that
8 this was a locally agreed-to agreement?

9 And by the way, I'm not asking the
10 question because I once said we got to remember
11 we're not the state of O'ahu. I'm asking the
12 question because since we have to be, you know, a
13 quasi-judicial body applying the law, I just want to
14 know if you can tell us what your position, or your
15 client's position, is as far as what difference --
16 what deference, if any, we have to give to the
17 county with respect to this agreement.

18 And I'll ask the same question of the
19 county and the Office of Planning.

20 **MR. UEOKA:** Thank you for the
21 clarification, Commissioner Okuda. I'd love to say
22 you have to give it full deference, but in reality,
23 I believe in the PPP it says it doesn't come into
24 effect until the amendments are reflected in this,
25 the conditions of the District Boundary Amendment.

1 So it's still, you know, a discretionary
2 determination on the part of this board.

3 **COMMISSIONER OKUDA:** So in other words, we
4 don't have to give it any deference. Is that what
5 you're saying?

6 **MR. UEOKA:** I believe the PPP speaks for
7 itself in that matter. It says it's subject to this
8 board making a decision.

9 **COMMISSIONER OKUDA:** Okay. Thank you very
10 much for your answer.

11 **VICE CHAIR CABRAL:** Okay. Now I see
12 Commissioner Atta has a question. Thank you. Then
13 our break.

14 **COMMISSIONER ATTA:** Okay. I was just
15 wondering. You know, you said that you folks would
16 have to build a small plant if the big plant doesn't
17 happen in time. But does that mean that you still
18 have to be -- pay for the big portion of the big
19 plant when it does come in play? What happens if? It
20 seems like you have to pay double or things like
21 that.

22 **MR. UEOKA:** I hope that doesn't happen,
23 but if it does, we wouldn't have to contribute, and
24 we'd have to seriously re-evaluate the conditions of
25 the PPP, because they do -- they are based on the

1 concept that the county would build its central
2 regional treatment plant. Thank you.

3 **VICE CHAIR CABRAL:** Okay. Any additional
4 questions from our commissioners? You get to a
5 hundred percent pretty soon here.

6 Okay. In light of the fact that it is
7 currently 12 minutes after 10, we will take a 10-
8 minute break and come back at 10:22. Okay? Thank you
9 very much.

10 **(Recess taken from 10:12 - 10:24 a.m.)**

11 **VICE CHAIR CABRAL:** Are we good with that
12 commissioners? Are there any additional questions
13 anyone would like?

14 Okay. Go ahead, Commissioner Kamakea-
15 'Ohelo.

16 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo,
17 Madam Chair. I don't necessarily have a question for
18 the petitioner, but more so a comment in reflection
19 of the proposed -- the expansion of the school. And
20 the consequence of that is more densely-built homes.

21 I guess my comment at this point in time,
22 Madam Chair, would be for the petitioner to be
23 sensitive to the cultural impact of building dense
24 communities in this culturally sensitive area. And
25 please be mindful that the potential inadvertent

1 finds of iwi kupuna; yeah?

2 And I really just wanted to comment upon
3 that and make sure that it's on the record, that
4 even though this land was previously zoned Ag, and
5 the DBA was approved in 2018, we understand from the
6 past several years the Wailuku area would be highly
7 sensitive with iwi kupuna findings.

8 That is all, Madam Chair. Mahalo.

9 **VICE CHAIR CABRAL:** Thank you.

10 Petitioner, would you want to comment on
11 that, then?

12 **MR. UEOKA:** Understood. Just a quick
13 statement. So we're adding on additional 12 or 13
14 acres to a school site. It was a residential area,
15 so we have 222 acres of residential. It shouldn't be
16 overly dense. That's our hope. It's, you know, 12
17 out of 222 isn't like 12 out of 30 or something. So
18 that's just my point. Thank you.

19 **VICE CHAIR CABRAL:** Okay. Thank you.

20 And now Commissioner Okuda would like to
21 speak again.

22 **COMMISSIONER OKUDA:** Yes. As a follow-up
23 question to the petitioners, what specific actions
24 can you represent to the commission which addresses
25 Commissioner Kamakea-'Ohelo's concerns that he just

1 stated since, based on the constitution of the
 2 state, all state agencies have a duty to protect and
 3 preserve these types of cultural resources? Can you
 4 answer that question?

5 **MR. UEOKA:** Thank you. I believe there was
 6 a Ka Pa'akai analysis done for this project during
 7 the initial proceedings. And every permit will be
 8 reviewed by the Department of Public Works, and per
 9 642 HRS, if they deem it necessary, it will go to
 10 the State Historic Preservation District, the permit
 11 for review. And naturally, we'll all comply, and the
 12 other developers working there will comply with the
 13 findings. Thank you.

14 **VICE CHAIR CABRAL:** Okay. Commissioner
 15 Kamakea-'Ohelo?

16 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo for
 17 the answer. At this point, I appreciate the answer,
 18 and I would just like to urge the petitioner to
 19 please engage the community. Yeah. And just be
 20 prepared, because I've seen Maui kanaka show up and
 21 shut down construction sites and job sites to
 22 protect iwi kupuna. So part of the mitigation plan,
 23 I guess, or the preparation work, I believe you need
 24 to engage the community.

25 So mahalo nui, Chair, for the time.

1 **VICE CHAIR CABRAL:** Thank you,
2 commissioner.

3 I will ask again are there any more
4 commissioners who would like to ask questions or
5 make statements in regards to petitioner's
6 presentation?

7 We will now conclude this portion of our
8 hearing. I'd like to move ahead now and ask for the
9 County of Maui to please make their presentation.
10 Mr. Hopper?

11 **MR. HOPPER:** Thank you, Madam Chair, and
12 members of the commission. I'll try to brief.

13 The county has filed a position statement
14 in this matter. The county supports the amendments
15 to the traffic condition as well as the wastewater
16 condition. We have no objection to the condition
17 dealing with the school site change. We believe
18 that's a matter for the State Department of
19 Education and the developer.

20 As far as the changes to the county -- to
21 the traffic and wastewater conditions, we would note
22 that the current conditions require, basically, the
23 project to mitigate all project -- all project
24 traffic -- all project- related traffic impacts,
25 sorry about that, and to provide the mitigation for

1 the wastewater -- for the wastewater generated from
 2 the project, both pursuant to agreements with county
 3 agencies.

4 So for the case of the -- the traffic
 5 improvements, there's to be an agreement, which they
 6 call a Memorandum of Agreement with the County of
 7 Maui and the Department of Transportation, to
 8 determine what traffic improvements are required of
 9 the project and how the developer will be mitigating
 10 the impacts of the project and what their pro rata
 11 share of those projects would be.

12 There's not a specific list, for example,
 13 in any condition that goes over here are the traffic
 14 improvements required by the project. So the LUC
 15 condition was always -- and this was discussed at
 16 the hearing; I was present at the hearing with the
 17 approval -- that the specific traffic improvements
 18 would be done pursuant to an agreement with the --
 19 with the County of Maui.

20 That's not going to change as far as with
 21 the determination of which improvements are
 22 required. However, rather than providing money,
 23 essentially, affordable units would be used to
 24 satisfy the monetary requirements.

25 And my understanding is that the traffic

1 improvements thus far that are contemplated, that
2 the developer would be contributing a pro rata share
3 to those improvements. So the improvements would be
4 done by the county, who would be the owner of the
5 roadways where the traffic's being mitigated, and
6 they would essentially seek reimbursement from the
7 developer in a case where no affordable units are
8 allowed.

9 In this case, if the LUC amends the
10 condition, it would allow -- rather than the
11 monetary contribution for reimbursement, it would
12 allow for affordable units to count as that --
13 towards that contribution.

14 Again, though, there would still have to
15 be an MOU with the County of Maui outlining what the
16 improvements would be, and the change of the
17 condition would allow the use of affordable units to
18 satisfy those requirements.

19 So that's the only difference in the
20 conditions. The conditions now say they will
21 mitigate -- they will mitigate the impacts, the
22 traffic impacts of the project by an agreement with
23 the county, where they will pay their pro rata share
24 for those -- for those improvements. In this case,
25 this would give the option of the county to accept

1 workforce housing units in lieu of those
2 contributions.

3 It is ultimately up to the Land Use
4 Commission if it's comfortable with that
5 arrangement, but the County of Maui does support
6 that arrangement because it provides additional
7 residential workforce housing units and because
8 projects have to be built in any case by -- it's not
9 that the project is going to be solely responsible
10 for those improvements. It will be paying a pro rata
11 share.

12 The county supports that arrangement
13 because it provides additional workforce housing
14 units and still retains the original intent of the
15 condition, which is to have that agreement with the
16 county to outline those improvements, but allows for
17 workforce units to be used in the contribution
18 rather than, essentially, money.

19 As far as the wastewater condition, it's
20 essentially the same wording. It would allow
21 additional workforce housing units to be used rather
22 than contributing toward the cost of, in this case,
23 a central Maui wastewater treatment plant. The
24 option still exists for a private wastewater plant
25 to be built.

1 That would be, you know, separate for -- a
 2 separate thing that the developer would do, as
 3 required by state law, but would allow for the
 4 public-private partnership agreement -- the terms of
 5 that agreement would allow for, again, those
 6 workforce housing units to be used in lieu of that
 7 financial contribution.

8 The county would also note a couple of
 9 things. I think we already mentioned the idea for --
 10 the traffic mitigation was that there would be an
 11 agreement with the county and the state for state
 12 highways, outlining a specific list of improvements,
 13 that there wasn't an independent list of
 14 improvements that, for example, the Land Use
 15 Commission set out in a condition.

16 From time to time the Land Use Commission
 17 and other agencies may set out specific traffic
 18 improvements that have to be done. In this case it
 19 was -- and I believe Public Works Director David
 20 Goode testified to this at the time. The idea was to
 21 come up with sort of a master roadway agreement that
 22 would agree upon the timing and the pro rata share
 23 for the various improvements that would be required
 24 for the traffic mitigation.

25 The only other thing I would want to

1 address is the binding nature of the public-private
2 partnership agreement. There was a question about it
3 being recorded. While it's not recorded, there is
4 language that states "binding effect". This is on
5 page 7 of the agreement. "All the terms and
6 conditions of this agreement shall inure to the
7 benefit of and the binding upon the parties hereto
8 and their respective heirs, personal
9 representatives, successors in interest, and assigns
10 and shall run with the land. This agreement shall be
11 for the benefit of the parties herein."

12 So I think that that shows that if, you
13 know, the project is sold and these -- the
14 conditions are still unfulfilled, it would go on to
15 the next -- you know, if there's another developer
16 who's developing the land, they would still have to
17 abide by the same requirements of the agreement.

18 Otherwise, they would, you know, be
19 subject to -- they wouldn't be -- they would still
20 have to mitigate their impacts by using monetary
21 contributions rather than, you know, residential
22 workforce housing units, if it doesn't comply with
23 the terms of the agreement.

24 So I hope that clarifies that aspect of
25 the agreement. And we're available for questions, if

1 you have additional questions.

2 **VICE CHAIR CABRAL:** Thank you, Mr. Hopper.

3 Okay. Commissioners, questions?

4 Mr. Ohigashi from Maui.

5 **COMMISSIONER OHIGASHI:** This public-
6 private partnership agreement. Would the county want
7 that agreement to be included as part of any -- part
8 of the D&O?

9 **MR. HOPPER:** I don't think so. I think the
10 condition would allow -- the conditions were general
11 in the first place, saying that you have to come to
12 an agreement with the county on your mitigation.
13 This allows, as part of that agreement, to consider
14 the number of workforce units, but still leave it to
15 the county and the developer to come up with that
16 arrangement.

17 So, you know, I think the agreement is a
18 matter of record before the commission. I'm not sure
19 what else, you know, would be done as far as the
20 condition being amended. But I don't know of a need
21 to do anything further with respect to the language
22 of the condition.

23 **COMMISSIONER OHIGASHI:** Would it assist in
24 making sure that the agreement stays in place? And
25 I'm talking about the county, because we all have --

1 in politics you all have limited terms, or sometimes
 2 impose on us a change of terms. But this agreement,
 3 in order for it to be effective, needs to go on for
 4 several years, I imagine. Wouldn't the county want
 5 to include it as part of the D&O, as a statement
 6 within the D&O to adopt the terms of the public-
 7 private partnership agreement?

8 **MR. HOPPER:** My only concern is that if
 9 anything at all changes, I don't know if the parties
 10 would have to come back before the LUC if there's
 11 any changes at all to the public-private partnership
 12 agreement. I don't think that's something the LUC is
 13 being asked to adopt. I think the LUC's being asked
 14 to look at the conditions and ask if it's
 15 comfortable to use residential workforce housing
 16 units in lieu of financial contributions. So that --

17 **COMMISSIONER OHIGASHI:** I'm not talking
 18 about that part. I know what we're being asked to
 19 do. I'm just asking about this particular agreement.

20 And the reason why I'm asking about this
 21 is that I know that the county will hold hostage any
 22 future developer -- or hold to the terms of this
 23 agreement any future developer because of a change
 24 in ownership and any subsequent.

25 My question is more how do we make the

1 developer hold the county to the terms of agreement,
 2 assuming that -- and I use the same example.
 3 Assuming that there is a change of administration
 4 and they say I don't like this agreement, I don't
 5 think we should do it, I'm going to rescind it
 6 because there's nothing in here saying that I cannot
 7 rescind it.

8 And so I'm just saying that if the county
 9 is serious about this agreement, wouldn't it be
 10 asking that we place it within the terms and
 11 conditions of the D&O to require any future county
 12 government to come in to the Land Use Commission and
 13 say, oh, we want to rescind this now, and explain to
 14 us why? That's my question to you.

15 **MR. HOPPER:** I would say that conditions,
 16 again, they're proposed, and I think we prefer the
 17 language in the proposed condition amendment. It
 18 gives the county the ability -- it's not the
 19 requirement, but the ability to accept residential
 20 workforce housing units.

21 I would point out the successors and
 22 assigns would apply to the county as well. That
 23 language is --

24 **COMMISSIONER OHIGASHI:** I'm not talking
 25 about our successors and assigns. I'm talking about

1 you guys. What if the developer says I want this
 2 thing to continue, but you guys are no longer there,
 3 and they're saying -- and the guy's saying, well, we
 4 didn't sign this.

5 **MR. HOPPER:** Well, the --

6 **COMMISSIONER OHIGASHI:** It's totally new
 7 to us.

8 **MR. HOPPER:** I think a new mayor or the
 9 other directors, it does say successors and assigns
 10 both ways. So it's not just --

11 **COMMISSIONER OHIGASHI:** So are you saying,
 12 then, that this agreement can bind any new
 13 administration to the terms of it?

14 **MR. HOPPER:** I think that the terms of the
 15 agreement still allow and require other agreements
 16 to be entered into to determine the actual --

17 **COMMISSIONER OHIGASHI:** Wait, wait, wait.
 18 That's not my question. My question is this
 19 agreement binds future administrations.

20 **MR. HOPPER:** Yeah. I --

21 **COMMISSIONER OHIGASHI:** Is that your
 22 position?

23 **MR. HOPPER:** I believe so.

24 **COMMISSIONER OHIGASHI:** Okay.

25 **MR. HOPPER:** Because it says successors

1 and assigns in it. Now, the agreement itself allows
 2 for -- still requires other agreements, such as a
 3 traffic mitigation agreement and a wastewater
 4 agreement.

5 **COMMISSIONER OHIGASHI:** I understand that
 6 part. I'm just talking about this particular
 7 agreement. I understand the part that there's need
 8 to execute on the terms of any agreement. You have
 9 to have additional things that must be done under
 10 any agreement, in any agreement that you enter, in
 11 any contract you enter. It's called performance;
 12 right?

13 So I'm just -- I'm just questioning. My
 14 question is is that does this agreement bind the
 15 County of Maui to that?

16 **MR. HOPPER:** Yeah. If the administration
 17 changes, I don't see that you'd need a new
 18 agreement. I think the same agreement would be in
 19 place. I would agree.

20 **COMMISSIONER OHIGASHI:** I take to that
 21 answer to say, yes, it binds the county.

22 **MR. HOPPER:** Yes. To the terms of the
 23 agreement.

24 **COMMISSIONER OHIGASHI:** Right.

25 **MR. HOPPER:** And again, the terms of the

1 --

2 **COMMISSIONER OHIGASHI:** I just want to
 3 take that. I just want to get that answer, is that
 4 that's the county's position. It binds the county.

5 The second question, then, is that there
 6 has to be certain agreements or certain signoffs
 7 that the DOT takes place. Are there any traffic
 8 improvements that were contemplated that were
 9 required on state highways that are being part of
 10 this public-private partnership agreement? I'm just
 11 asking.

12 **MR. HOPPER:** The state did not sign this
 13 agreement, and while the condition would allow the
 14 state to accept residential workforce housing units,
 15 again, that doesn't require that. So I don't know of
 16 any agreement with the state of Hawai'i and, you
 17 know, perhaps Office of Planning would have.

18 **COMMISSIONER OHIGASHI:** That's not my
 19 question. My question is are there any highways that
 20 are -- that would have requirements on it, the state
 21 requirements on it, you know, on state highways,
 22 that this agreement would affect? In other words are
 23 there any requirements that you're aware of on the
 24 state highways, or is this all the highways? That's
 25 what you're talking about.

1 **MR. HOPPER:** Well, again, the final list
2 of required improvements is going to be entered into
3 with --

4 **COMMISSIONER OHIGASHI:** Yeah. I understand
5 that.

6 **MR. HOPPER:** We don't have the final --

7 **COMMISSIONER OHIGASHI:** I understand. I
8 want to know whether or not there are state highways
9 that are involved here.

10 **MR. HOPPER:** My understanding is that
11 there may be a couple of intersections that connect
12 with Honoapiilani Highway, which is a state highway
13 for the Waiale Road bypass, that may be involved in
14 the improvements required under the county
15 agreement. In other words they sort of intersect.

16 **COMMISSIONER OHIGASHI:** Okay.

17 **MR. HOPPER:** But again, the state highways
18 may have mitigative measures. Those are not dealt
19 with. They would not be dealt with in an agreement
20 signed by the county MOU.

21 **COMMISSIONER OHIGASHI:** And I understand
22 all of that. I'm just -- I'm just trying to get to
23 my question. My question is, first of all, yes,
24 there are intersections.

25 Secondly, if the state requires certain

1 work on those intersections, does this agreement
2 contemplate the County of Maui funding those
3 improvements in lieu of the developer doing so?

4 **MR. HOPPER:** It's, again, if they are a
5 part of that MOU, and I don't have a specific list
6 of all the MOU improvements, I would say at this
7 point I don't know, and again, that intersection --
8 there's intersection issues. We have the Director of
9 Public Works on call, if we need some more specific
10 information.

11 **COMMISSIONER OHIGASHI:** No. I'm asking
12 about this agreement. And I'm just asking legally.
13 The way I read it is is that, yeah, we have -- the
14 developer has a chance to negotiate and give these
15 homes that are desperately needed by the people. And
16 I'm all for that, you know.

17 But what I'm trying to get at is that
18 who's going to -- who's going to actually make the
19 payments? Let's say the DOT has intersection that is
20 affected. They make certain -- \$1 million worth of
21 requirement, and 50 percent of that was supposed to
22 be the developer. I'm just throwing out numbers.

23 Does this agreement require -- allow the
24 county to pay for that by the developer giving up
25 workforce housing?

1 **MR. HOPPER:** That's -- I think that's the
 2 idea, is that the -- rather than do their pro rata
 3 share, the public, basically, would have to cover
 4 the pro rata share.

5 **COMMISSIONER OHIGASHI:** All right. Now, so
 6 the public will pay -- the county government will
 7 pay for these improvements in lieu of getting some
 8 additional workforce housing. And I know it won't be
 9 a dollar-for-dollar method. The way it sounds, it
 10 would be they're contributing far more in dollars
 11 than the actual improvements are anticipated.

12 My next question is that assuming that the
 13 county doesn't pay, does the agreement provide that
 14 we get rid of these additional workforce housing?
 15 Because what I'm saying is you need some kind of
 16 appropriation from the County Council to -- to fund.
 17 And I'm just trying to get into the nitty gritty so
 18 I understand this agreement, and so the world
 19 understands this agreement.

20 Is that what this thing does? It depends
 21 on whether or not the county can come up with the
 22 money in order to pay for the workforce development?

23 **MR. HOPPER:** Well, if the units are
 24 provided, basically, if there's a workforce housing
 25 agreement and they're encumbered, I think that would

1 be the developer's obligation at that point.

2 The county, as it would without the
3 agreement, would be -- my understanding is it's
4 going to be doing the improvements anyway. They just
5 won't get reimbursement from the developer to do the
6 improvements. That's my understanding, is that
7 currently the developer has a pro rata share in the
8 improvements. But I'm not aware of improvements that
9 they're a hundred percent required to fund at this
10 point, where they would be the ones actually doing
11 the work.

12 Again, that's my understanding from my
13 discussions with the public works director. But
14 until an actual MOU is done, we don't know finally
15 what all the improvements are going to be and their
16 full schedule.

17 **COMMISSIONER OHIGASHI:** And you just got
18 to forgive me, because I'm not a -- I'm not a county
19 lawyer or person or public works director, but what
20 I'm trying to get at is according to this agreement,
21 they were supposed to pay for money for that state
22 intersection. The state says we're not playing ball;
23 we're just going to require you to make
24 improvements.

25 This agreement, assuming that you have an

1 agreement with the county, permits you -- permits
 2 the county to make payment. However, for you to make
 3 payment, you would have to actually get the money to
 4 pay for it. Is that my understanding?

5 **MR. HOPPER:** I mean, the County -- the
 6 County Council would have to file an improvement.

7 **COMMISSIONER OHIGASHI:** That's right;
 8 right?

9 **MR. HOPPER:** Right. I mean, that's --

10 **COMMISSIONER OHIGASHI:** Okay.

11 **MR. HOPPER:** -- that's true of the
 12 arguments in general --

13 **COMMISSIONER OHIGASHI:** Yeah.

14 **MR. HOPPER:** -- even without the
 15 agreement, of course, because if their pro rata
 16 share improvements to county, if they're on county
 17 highways, the county would be doing the improvement
 18 and getting reimbursed.

19 **COMMISSIONER OHIGASHI:** I'm not talking
 20 about that. I'm talking about intersections that you
 21 were talking about that were part of the State
 22 Highway Division. And I'm just trying to get a clear
 23 understanding of how this agreement will work and
 24 what obligations that the county has to put it in.

25 And if my understanding is correct, the

1 agreement is that if they're required to pay
2 something by the state, you guys, under an agreement
3 that they provide this additional housing, you guys
4 will cover that amount. And when you cover that
5 amount, you got to go to the Council to get it;
6 right?

7 **MR. HOPPER:** Well, if you're talking about
8 paying money to the state, the only cases where
9 there are state improvements involved, as I know of
10 -- this is page 4 of the agreement, and it talks
11 about intersections of Honoapiilani Highway and the
12 Waiale Road extension in those two cases.

13 I'm aware of those intersections and that
14 those would be -- those would be items, because the
15 county is already doing the Waiale Road extension,
16 that it would be involved in funding that could
17 potentially involve the connection with the state
18 highway. But generally, the county would not be
19 under circumstances funding the development's state
20 highway improvements. If the answer --

21 **COMMISSIONER OHIGASHI:** That's exactly
22 right. They wouldn't normally; right? But this
23 agreement takes their obligation and gives it to
24 you; right?

25 **MR. HOPPER:** Not in -- not in the cases of

1 state required improvements. There's two
 2 intersections out of three and a four on page 4 that
 3 again deal with the Waiale Road extension connecting
 4 to the highway. And because the Waialae Road
 5 extension's going to be a county improvement, that
 6 was -- those were part of the agreement. I don't
 7 know of any other cases where the county would ever
 8 be funding state improvements in that case.

9 **COMMISSIONER OHIGASHI:** So they're on
 10 their own for the state improvements.

11 **MR. HOPPER:** Right.

12 **COMMISSIONER OHIGASHI:** Is that right?
 13 Okay.

14 **MR. HOPPER:** And they -- they have to have
 15 a certain --

16 **COMMISSIONER OHIGASHI:** But if you say --
 17 if you said that from the beginning, then I would
 18 understand. But you said, no, you know. I'm just
 19 trying to figure this out.

20 The next question that I have -- the
 21 question that I have is the state of Hawai'i is not
 22 a part of this agreement, but you recognize the fact
 23 that the DOT may enter into an agreement --

24 **MR. HOPPER:** That's what the --

25 **COMMISSIONER OHIGASHI:** -- concerning your

1 workforce housing development.

2 **MR. HOPPER:** If the condition's amended as
3 requested, then that would be -- they would be
4 included as an agency that could do that. But again,
5 we would leave it to the DOT if they decide that.

6 **COMMISSIONER OHIGASHI:** Why was that put
7 in?

8 **MR. HOPPER:** I did not draft the amendment
9 wording, so that's -- you could ask the developer
10 that. And as far as the DOT, I don't know if they
11 have any interest in asking for workforce housing
12 units in lieu of state improvements. I can't speak
13 for them on that. And then --

14 **COMMISSIONER OHIGASHI:** Who's our -- who's
15 our deputy counsel that approved this?

16 **MR. HOPPER:** That was myself.

17 **COMMISSIONER OHIGASHI:** The form and
18 legality.

19 **MR. HOPPER:** That was myself.

20 **COMMISSIONER OHIGASHI:** That was yourself.

21 **MR. HOPPER:** Yes.

22 **COMMISSIONER OHIGASHI:** So but you don't
23 know why it was done that way.

24 **MR. HOPPER:** If you're asking about the
25 amendment to the condition --

1 **COMMISSIONER OHIGASHI:** No. I'm asking you
 2 is why was it done that way, to allow them to
 3 negotiate with the state for additional -- in
 4 exchange for additional housing?

5 **MR. HOPPER:** Oh, that wording is the
 6 condition, in the proposed amendment to the
 7 condition. That's not something that we worked on as
 8 far as the condition amendment.

9 The condition -- we wanted to make sure
 10 that prior to this agreement being finally
 11 effective, that the Land Use Commission and the
 12 County Council were both aware that rather than
 13 funding for improvements, they were going to get
 14 affordable units instead, because that arrangement
 15 was not originally discussed at the District
 16 Boundary Amendment level.

17 So we did discuss you've got to go to Land
 18 Use Commission and the Council to get their
 19 approvals before this agreement becomes effective.

20 As far as state improvements, that's again
 21 between the developer and the state, and the county
 22 is not -- cannot bind and nor does it intend to bind
 23 the state in accepting units in lieu of them taking
 24 their -- in lieu of them requiring funding for the
 25 improvements.

1 **COMMISSIONER OHIGASHI:** Why was this
2 confusing to me when I read that you could -- that
3 the state would be able to waive its requirements in
4 the condition?

5 **MR. HOPPER:** Yeah, again, I don't think
6 the MOU -- or the PPP has anything that would be
7 binding on the state there. That's -- and again, you
8 could ask the developer if they've had any
9 discussions with the DOT on that point. I don't
10 know, and the county doesn't know. This deals with
11 county improvements.

12 **COMMISSIONER OHIGASHI:** And just a
13 comment. You do understand that my concern about
14 special use permits being used for large industrial
15 type of developments.

16 **MR. HOPPER:** We've been over with the
17 Central Maui Landfill. We've definitely discussed
18 that at length.

19 **COMMISSIONER OHIGASHI:** All right.

20 **MR. HOPPER:** I will say that the wording
21 in the condition deals only with a private
22 wastewater system special permit. It doesn't
23 discuss, you know, public. And as far as the Central
24 Maui facility, I'm not sure what their plans are as
25 far as, you know, entitling that facility, but I

1 think we can know your concerns to that, certainly.

2 But the condition, when it talks about a
3 special permit, I think that referred only to the
4 then potentially contemplated private wastewater
5 system would already have been done by the
6 developer.

7 **COMMISSIONER OHIGASHI:** So then it's your
8 understanding that it only applies to that.

9 **MR. HOPPER:** The condition --

10 **COMMISSIONER OHIGASHI:** Only applies to a
11 private developer, not the County of Maui.

12 **MR. HOPPER:** Yes. I can look at it again,
13 but when I -- when I reviewed it, here's what it
14 says. "If the private wastewater source storage and
15 transmission facilities are located outside the
16 petition area and within the state and county
17 agricultural districts, petitioner shall apply for a
18 state special permit in accordance with the
19 provisions of HRS 205."

20 So that says "if the private wastewater
21 source storage and transmission facilities". So
22 that's the language, and I think that is intended to
23 apply only to the private -- the private system that
24 the developer would be developing.

25 **COMMISSIONER OHIGASHI:** Would you be --

1 would you be adverse to having the language put into
 2 that portion that says that, that this procedure is
 3 limited to private development?

4 **MR. HOPPER:** Honestly, I don't believe
 5 that language is necessary. We want to review any of
 6 that language, but if it applies only to a private
 7 system, I think that's what it already says. So I
 8 don't think there'd be a problem with that. You
 9 would, I mean --

10 **COMMISSIONER OHIGASHI:** My problem is,
 11 like, seeing statements about underpasses,
 12 overpasses, the sort of like reinterpreted kind of
 13 by different individuals and entities. And I just
 14 want to be sure. It wouldn't affect you guys; would
 15 it?

16 **MR. HOPPER:** No. I mean, it says that the
 17 private system --

18 **COMMISSIONER OHIGASHI:** All right.

19 **MR. HOPPER:** They shall apply for a
 20 special permit. So if you want to be really sure
 21 they apply for a special permit for that facility, I
 22 guess you could clarify that.

23 **COMMISSIONER OHIGASHI:** Limit that
 24 portion. That portion, it would be limited to
 25 private facility; right?

1 **MR. HOPPER:** I think it says -- yeah, I
2 think --

3 **COMMISSIONER OHIGASHI:** You don't have any
4 problem with that; do you?

5 **MR. HOPPER:** I suppose not. No.

6 **COMMISSIONER OHIGASHI:** Okay. No further
7 questions.

8 **VICE CHAIR CABRAL:** Okay. Thank you,
9 commissioner.

10 Commissioner Okuda, you have questions
11 now?

12 **COMMISSIONER OKUDA:** Yes. Thank you, Ms.
13 Chair.

14 To follow up Commissioner Ohigashi's
15 questions about -- let's say if the commission were
16 to grant the relief that was being asked, Mr.
17 Hopper, you do agree that whatever representations
18 are made in the course of getting the commission to
19 make a decision, parties are essentially bound to
20 follow their representations?

21 In other words people -- and we're talking
22 not only about the county, but the private
23 petitioners, intervenors, or what have you, if
24 certain representations are made in front of the
25 commission and the commission relies on those

1 representations to make a decision, the party is not
 2 generally allowed later on to disclaim the
 3 representations made.

4 In other words people aren't allowed to
 5 say, okay, I represent this, you get the approval,
 6 and then later on say, ah, it's not real clear, so
 7 we're not going to follow those representations. You
 8 do agree that representations have to be followed;
 9 correct?

10 **MR. HOPPER:** That's correct. However, I
 11 would say I think it's -- in my experience it's also
 12 very important to have clear wording in your
 13 conditions and things like that, because we've
 14 certainly seen in the past that it can be difficult
 15 to rely on a transcript or a record in order to
 16 determine the specific obligations. I think
 17 generally, yes, you're correct.

18 **COMMISSIONER OKUDA:** Yeah.

19 **MR. HOPPER:** But I don't think it's a
 20 substitute for well-worded and clear conditions.

21 **COMMISSIONER OKUDA:** Okay. And to keep the
 22 final order or whatever order arises out of a
 23 hearing so that it's very clear, would the county
 24 object to having attached as an exhibit to whatever
 25 order comes out of this hearing if the Land Use

1 Commission were to agree to the petitioner's
 2 request, which the county has joined, would the
 3 county object to having, for example, the public-
 4 private partnership agreement attached as an exhibit
 5 so that it's clear that that was the document that
 6 the commission was looking at and relying on in
 7 making its decision?

8 **MR. HOPPER:** I think you could attach it,
 9 but I would say the wording of the condition allows
 10 for the county to accept units in a -- as that -- as
 11 in lieu of a contribution and still has to allow for
 12 that sort of master roadways agreement to be entered
 13 into to outline all the impacts.

14 In other words I don't want to limit the
 15 ability of the county to enter into those agreements
 16 that finalize the obligations of the parties, and I
 17 don't know if doing that would then require if
 18 there's any changes or amendments to that public-
 19 private partnership agreement, do we then have to
 20 come back to the Land Use Commission in order to
 21 have that D&O amended again. That would be my only
 22 concern.

23 **COMMISSIONER OKUDA:** Yeah. And your
 24 concern is noted, and I understand your concern, and
 25 your concern makes a lot of sense. But just to try

1 to keep the record and the final order clear, which
2 seems to be everyone's intention and goal here,
3 would the county, you know, assuming we have the
4 clear conditions placed in the order, would the
5 county object to including the public-private
6 partnership agreement as an exhibit?

7 It can be part of the whereas clauses or
8 what have you, a part of the recitals saying that
9 this was the document that was presented to the Land
10 Use Commission as part of the petitioner or the
11 petition that we're hearing today, just so that
12 again, as you point out, in the future people don't
13 have to search the record, the transcript. They can
14 just look at one document, meaning the order that
15 comes out of this hearing, and know exactly what
16 took place.

17 **MR. HOPPER:** I think it's in evidence. I
18 think you could reference it in the whereas clauses
19 of the D&O, but I just want the issues I raised to
20 be noted because, again, I don't want to have to,
21 you know, come before you again if there's --

22 **COMMISSIONER OKUDA:** Sure. Well, but
23 taking all that into account, you wouldn't -- you
24 wouldn't find it appealable error if we were to just
25 attach the agreement to the form and order; correct?

1 **MR. HOPPER:** I suppose not. I mean, it's
2 up to the commission.

3 **COMMISSIONER OKUDA:** Okay.

4 **MR. HOPPER:** But again, I just want those
5 -- those concerns --

6 **COMMISSIONER OKUDA:** Yeah. We -- I
7 understand the concerns. Let me move back to my
8 other question that I asked the petitioner, and that
9 deals with deference to the county and the agreement
10 that was reached and the standard of review, if we
11 can call it that.

12 What does the law say, if you know, as far
13 as what deference the Land Use Commission should
14 give to this agreement that was signed off by the
15 mayor and approved at least, you know, based on the
16 signatures of the different departments and the
17 petitioner? What does the law say about what
18 deference we should give? And if you don't know what
19 the law says, then you can just tell me you're not
20 sure at this point in time.

21 **MR. HOPPER:** I don't know of anything in
22 the law that would require you to give -- to have --
23 find a binding effect of the agreement in
24 particular, because the agreement says, "The
25 covenants herein shall not become effective until

1 the conditions of the CIZ and DBA are amended to
 2 reflect the terms of the agreement, including the
 3 use of residential workforce housing units to
 4 satisfy infrastructure requirements."

5 **COMMISSIONER OKUDA:** Yeah. Well, let me
 6 clarify my question. And this will be my last
 7 question. Maybe to clarify it, when I talk about
 8 deference, as an example, does the law require us to
 9 give deference to the agreement even if, you know,
 10 we might feel like, well, gee, if I was negotiating
 11 this, I wouldn't have done that, but we should give
 12 deference because, you know, we're not on the ground
 13 here on Maui. Does the law say we have to give that
 14 type of deference, or you don't know one way or the
 15 other?

16 **MR. HOPPER:** I'm trying to understand the
 17 question as best I can. I think that if the LUC
 18 condition requires the county to determine the
 19 specific improvements, specific, you know, traffic
 20 improvements, and wastewater contribution share, and
 21 authorizes that to be done in the condition, then
 22 the condition gives that deference.

23 If the condition says you have to do XYZ
 24 traffic improvements, then the county has a lot less
 25 deference in that case, because you're outlining

1 exactly what the improvements --

2 **COMMISSIONER OKUDA:** That's not what I'm
3 talking about. I'm talking about just for us to
4 agree to the relief that the petitioner is asking
5 for in the petition. It's basically supported by
6 this agreement.

7 Let me ask it this way, and then this will
8 be my last question. Does the law require us to
9 somewhat look the other way even if we might have
10 doubts about the wisdom of this public-private
11 partnership agreement? Because this is kind of like
12 an issue of -- I don't say it's a home rule issue,
13 but it's something that's hashed out at the local
14 county level, so we should defer to the judgments
15 of, like, your planning director.

16 Or is this something that it's like a de
17 novo? We can just take a look brand-new, and we can
18 take into account what your planning director thinks
19 and then what the county has evaluated but, you
20 know, we can just take a brand-new look and say, no,
21 we don't like this.

22 **MR. HOPPER:** I think as far as considering
23 the amendments, you do have the ability to decide if
24 you want to allow residential workforce housing
25 units to be used to satisfy those contributions.

1 As far as the specific terms of the
2 agreement, I do think once the condition -- if you
3 do decide to in the condition allow the use of
4 residential workforce housing units to satisfy
5 infrastructure requirements and then say it's up to
6 the county to come to an agreement as to how that's
7 done, then you are giving that deference.

8 But I do think you have the option to not
9 -- to not grant the amendment, and then they would
10 have to go through and provide their pro rata share
11 as they would have to under the original agreement.

12 **COMMISSIONER OKUDA:** Okay. I'm sorry,
13 Madam Chair, I have one, actually. This will be the
14 last question. And maybe Ms. McLean can answer this
15 question in summary form.

16 Why is this agreement in the best interest
17 of the people of the County of Maui?

18 And, Mr. Hopper, you can -- you can answer
19 on behalf of the county, and then we don't have to
20 swear the witness in.

21 **MR. HOPPER:** Again, this was done by mayor
22 and directors who are the policy experts in this
23 matter, but I believe because of the desperate need
24 of affordable housing and because of the nature of
25 the improvements, I think that those departments

1 felt that getting the affordable units was worth it
2 in this case because of, again, the desperate need
3 for those units and the location in an area that was
4 already planned to be an urbanized, to take that
5 opportunity.

6 To have those reduced, you know, those
7 reduced units to be in those areas was seen as a
8 prime opportunity by the mayor and the directors. I
9 think that they felt that that was a paramount
10 concern for the county, and that's why they --
11 that's why they wanted to move forward with that
12 arrangement.

13 **COMMISSIONER OKUDA:** And as this project
14 moves forward, will the county be cognizant and
15 consider and keep in mind the comments of our
16 cultural commissioner, Commissioner Kamakea-'Ohelo?

17 **MR. HOPPER:** Yes. I think that's -- that's
18 something the county is always required to do,
19 certainly.

20 **COMMISSIONER OKUDA:** Because it's
21 something that the constitution and the statutes
22 require; correct?

23 **MR. HOPPER:** Correct.

24 **COMMISSIONER OKUDA:** Thank you. No further
25 questions.

1 **VICE CHAIR CABRAL:** Thank you,
2 Commissioner Okuda.

3 And now Commissioner Ohigashi would like
4 to have the mic again. Okay.

5 **COMMISSIONER OHIGASHI:** I'm just curious.
6 We got to get this straight. What you're telling me
7 -- what you're telling us is that this is an
8 agreement between the both of you, and that this
9 agreement says that you got to go to the Land Use
10 Commission and get these amendments done
11 And as part of this petition or this motion, the
12 petitioner says, okay, I'm going to show this
13 agreement and put it into evidence as part of -- as
14 far as to say, hey, this is our agreement, and we
15 want to get these changes done and abilities to do
16 this so that we can go to -- so we can do that.

17 And that's why you're saying, well, it's
18 not necessary to be part of the commission's kuleana
19 to put it into as part of the record that requires
20 you to make them -- requires to come to us every
21 time you want to make a change in that particular
22 agreement.

23 And I'm not talking about making
24 agreements that are contemplated under that
25 agreement. I'm just saying anything to that specific

1 body. Is that what you're saying?

2 **MR. HOPPER:** I'm not sure I understand the
3 question, commissioner. I'm sorry.

4 **COMMISSIONER OHIGASHI:** Okay.

5 **MR. HOPPER:** If you could rephrase the
6 question. My apologies.

7 **COMMISSIONER OHIGASHI:** Perhaps -- perhaps
8 it was just me trying to figure it out in my head of
9 what's going on.

10 The next question that I have is that you
11 have -- I'm going to scratch that question. You have
12 two things that are required under this agreement.
13 One is to get LUC approval. And what kind of council
14 approval do you need? What is it -- a solution or -
15 -?

16 **MR. HOPPER:** Well, they did pass a
17 resolution in support of the idea, but they will --
18 they will need to amend their conditions of zoning.
19 They have actually have some conditions of zoning
20 that are more specific than the LUC conditions on
21 traffic improvements and things, and so those
22 conditions will have to be amended similarly, that
23 allow for residential workforce housing units to be
24 used to satisfy traffic and wastewater requirements.

25 **COMMISSIONER OHIGASHI:** And does the

1 county have a timetable of when this will be done?

2 **MR. HOPPER:** I'm not aware of a timeframe
3 for that. I believe there's discussion of that being
4 a county-initiated change. In other words the
5 Planning Department planning director is able to
6 initiate that type of change.

7 But as far as specific timeframe, because
8 that's something that's done by the County Council,
9 that's -- once that's submitted --

10 **COMMISSIONER OHIGASHI:** What about this
11 question? The question is when are you -- are you
12 guys going to submit a change or not?

13 **MR. HOPPER:** I can have Director McLean,
14 because the Planning Department is an authorized
15 agency to submit a proposed change -- if you'd
16 indulge, we could have Director McLean sworn in, and
17 she could, I think, assist with that question.

18 **COMMISSIONER OHIGASHI:** Okay.

19 **VICE CHAIR CABRAL:** Okay, Director McLean,
20 can I go ahead and swear you in? Go ahead and state
21 your name and your position again for the record,
22 please.

23 **MS. MCLEAN:** I'm Michele McLean, the
24 planning director for the County of Maui.

25 **VICE CHAIR CABRAL:** Okay. And do you swear

1 that all of -- that you are going to say is --
2 affirm that it's the truth?

3 **MS. MCLEAN:** Yes.

4 **VICE CHAIR CABRAL:** Okay. Thank you.
5 Go ahead and proceed.

6 **MS. MCLEAN:** We have draft language for
7 revised conditions of zoning, and once the
8 commission -- once the Land Use Commission acts on
9 the request in front of it today, then we will take
10 that to the Maui Planning Commission first, and then
11 they will make their recommendation to County
12 Council. So we're ready to go with that as soon as
13 the Land Use Commission concludes this proceeding.

14 **COMMISSIONER OHIGASHI:** Okay.

15 **VICE CHAIR CABRAL:** Okay. Commissioner
16 Ohigashi, are you done?

17 **COMMISSIONER OHIGASHI:** Yeah. Just that,
18 ah, congratulations, Michele. (Inaudible.)

19 **VICE CHAIR CABRAL:** Okay. Thank you.
20 Commissioners, any other comments?

21 **COMMISSIONER CHANG:** Do you want to take a
22 break or do you --

23 **VICE CHAIR CABRAL:** No. No, because then
24 we -- we didn't reconvene until 10:24, so I'll go to
25 that timeframe.

1 **COMMISSIONER CHANG:** Okay.

2 Thank you. I don't want to beat a dead
 3 horse, but what I do want to ask is if it is -- and
 4 I guess I'm speaking in concern with respect to the
 5 community. I understand this is a policy decision,
 6 that those who have agreed to this in the county are
 7 balancing various interests and have determined that
 8 workforce housing is a priority.

9 But my recollection is that when we heard
 10 this matter, wastewater and traffic were by the
 11 community, the surrounding community, was their
 12 priority.

13 And what I have not heard is how the
 14 county has gone back to the community to inform them
 15 of this change, because in my mind the benefit of
 16 having the developer be responsible for this
 17 infrastructure is that they're going to do it in a
 18 timely fashion, because they cannot build their
 19 houses without this infrastructure -- unlike the
 20 county. You need an appropriation. You need public
 21 meetings.

22 And so to me that is -- that is valuable
 23 from a community standpoint, to have this
 24 infrastructure timely built. So what kinds of
 25 guarantees is the county going to provide that, one,

1 the community is going to be informed of these
 2 changes and that the wastewater and traffic may not
 3 be -- may not be timely constructed as they thought?

4 But what assurances does the community
 5 have that the county is going to timely build this
 6 wastewater treatment facility and complete those
 7 traffic improvements?

8 **MR. HOPPER:** Well, I mean, the traffic
 9 improvements, again, would be seeking reimbursement
 10 from the developer even if this agreement was not in
 11 place. So the county would have to do that Waiale
 12 bypass.

13 There was also a no-Waiale bypass scenario
 14 evaluated by the developer at the request of -- I
 15 think that was a Land Use Commission requirement. So
 16 the project has the potential to proceed without
 17 that particular improvement.

18 But the improvements required by the
 19 project would have to be -- my understanding is
 20 would have to be done by the county with
 21 reimbursement from the developer, even if the
 22 current conditions were as they were.

23 In other words I don't know of any fast-
 24 track infrastructure that the developer would be
 25 building in advance. It's all pro rata share,

1 because the improvements are of the nature that they
2 wouldn't be contributing a hundred percent. They'd
3 be reimbursing. So I don't know if the timetable is
4 necessarily changed by this agreement.

5 As far as the Central Maui wastewater
6 treatment plant, that's a major improvement that the
7 county's going to need to build not just for this
8 project, but for others. This agreement does a lot
9 for a temporary connection for several hundred
10 units, but beyond that there's -- other than
11 building the private facility, there's not really a
12 county option for connection other than having that
13 facility built.

14 That's my understanding of the background.
15 Again, we do have county personnel on call that we
16 could ask for specific answers to those. But I think
17 there's -- with the infrastructure there's timing
18 issues whether or not the public-private partnership
19 agreement is in place because of the nature of the
20 improvements other than the private wastewater
21 treatment facility.

22 That could potentially be more a fast-
23 track issue, but I don't know if there could be
24 complications of building that. We may need
25 additional entitlements and things. And so the

1 Central Maui facility, I think, would be the long-
2 term solution to that.

3 But again, that's -- there's not a lot of
4 other options other than the temporary connection
5 for some of the units, as I understand it, to
6 provide wastewater capacity for the project other
7 than a private system.

8 **COMMISSIONER CHANG:** So my understanding
9 is that the developer can proceed forward with 300
10 units as soon as they get their subdivision
11 approval, because they're going to be permitted to
12 connect up to the county wastewater treatment.
13 Anything beyond the 300 would be dependent upon the
14 county constructing the larger wastewater treatment
15 facility.

16 And therefore, at that point in time, the
17 developer would -- my understanding is that with
18 this exchange of workforce housing, you would not --
19 the developer would not be contributing their pro
20 rata share for the wastewater improvement, but they
21 would be -- but if they wanted to escalate the
22 development of the wastewater for their development
23 beyond the 300, then they could do their own private
24 facility; is that correct?

25 **MR. HOPPER:** I think maybe developer could

1 answer some of that, but I think that's generally
2 the understanding that I have of the different
3 wastewater options. But I think the developer could
4 confirm that if I'm mistaken.

5 Mr. Ueoka --

6 Madam Chair, could Mr. Ueoka confirm that?

7 **VICE CHAIR CABRAL:** I believe they're
8 conferring on that now.

9 Mr. Ueoka, can you comment on that
10 question about the wastewater options?

11 **MR. UEOKA:** Sorry. Just could you --

12 **COMMISSIONER CHANG:** Okay. So my
13 understanding is based upon this proposed
14 modification, you will be able -- the developer will
15 be able to timely proceed on building 300 units,
16 once you get the subdivision approval, because
17 you'll be able to connect up to the county's
18 existing wastewater facility.

19 Anything in addition to the 300, to meet
20 your 1400, would be dependent upon the county's
21 building a larger facility; correct?

22 **MR. UEOKA:** Yes. That's correct. And can I
23 clarify one thing? I believe we have the
24 understanding with the county that if we're done
25 with the 300, we can apply, like anyone else, to get

1 -- if there is additional capacity in Kahului. If
 2 we're ahead of the game, we can apply like everyone
 3 else.

4 Our goal, of course, is ultimately to get
 5 into the Central. We want the Central built as -- we
 6 probably want the Central built more than anyone
 7 else right now. Thank you.

8 **COMMISSIONER CHANG:** Okay. But the other
 9 option is if you wanted to expedite your ability to
 10 build that additional 1100 units, you would then
 11 build a private facility, and under this agreement
 12 you would then come back to the LUC and the Planning
 13 Commission for an SUP for that private facility.

14 **MR. UEOKA:** Yes. At the point of the 300,
 15 depending on the timing, and we'll work with the
 16 county. We really want to connect to the Central. We
 17 want the Central and want to connect there. Please
 18 understand that's our priority.

19 But at the end of 300, when we're built
 20 out, yeah, we will have to look at our game plan
 21 moving forward, and we do have the option, and there
 22 will be entitlements needed for us to build a
 23 private -- additional entitlements needed for us to
 24 build a private wastewater treatment facility.

25 **COMMISSIONER CHANG:** Okay. Thank you for

1 your response, Mr. Ueoka.

2 So, I guess, back to the county, but, you
 3 know, and I share the sentiments my fellow
 4 commissioners Ohigashi and Okuda. I know I'm not
 5 here to question the county as a policymaker. You
 6 are evaluating your needs, and you have determined
 7 that the workforce housing is a priority.

8 But at the same time, you have an impacted
 9 community that surrounds this current area, who
 10 raised these concerns to us five, six years ago, the
 11 same issues. And I also hear them raising it again
 12 today.

13 So I think it's incumbent upon the county
 14 that if you're going to make this determination
 15 where the burden will be borne to a large extent by
 16 the existing community, that you are re-engaging
 17 with them as well and informing them of the
 18 modifications.

19 And am I correct to say -- to assume that
 20 you will be doing that through the Planning
 21 Commission meeting?

22 **MR. HOPPER:** I was actually just going to
 23 note that. I think that's where you were going. If
 24 this would -- if the commission does approve this
 25 and there's a proposed change in zoning initiated by

1 the county, there would be a public hearing held at
 2 the Planning Commission as well as at least two
 3 readings at the Maui County Council to amend the
 4 zoning conditions.

5 So there would be those additional
 6 proceedings as well, if the commission decides to
 7 approve the amendment. So again, those conditions
 8 would still have to be amended, and those
 9 proceedings would have to happen before the Planning
 10 Commission as well as the County Council. So that's
 11 correct.

12 **COMMISSIONER CHANG:** And then do you have
 13 a notification requirement for the Planning
 14 Commission meetings? Is it just a public
 15 notification, or do you notify people specifically
 16 on a list?

17 **MR. HOPPER:** I think all agendas go to
 18 people that have -- I think there's a list of
 19 everyone who gets the agendas. Because it's
 20 department initiated, and rather than applicant
 21 initiated, I don't know -- I don't think that there
 22 has to be notice to owners within 500 feet of the
 23 property.

24 But there would have to be, I think,
 25 notice in the newspaper published 30 days in advance

1 of the meeting as well as, you know, on the regular
 2 commission's agenda, so anyone monitoring the
 3 commission's regular agenda would see that.

4 There was already a council meeting on
 5 this where they considered to approve a resolution
 6 about it, and there was testimony from community
 7 members at both the committee meeting and the full
 8 council meeting on those items. So I do note that.

9 I'm not necessarily -- as legal counsel
 10 for the Department, I'm not necessarily the expert
 11 in public outreach issues, although they're
 12 certainly important, but that's my understanding of
 13 what's happened in the background for this.

14 But I think that we can certainly note and
 15 can bring back to those that are involved in this
 16 agreement, you know, to get the word out that this
 17 is something that, you know, community members want
 18 to be informed of.

19 **COMMISSIONER CHANG:** And I guess this is
 20 more of a comment to Mr. Ueoka and Mr. Atherton, who
 21 did an extraordinary job in coming to us the first
 22 time. I would urge you to go back, whether it's
 23 Waikapu Community Association, but to those,
 24 especially those who took the time out to be here
 25 today, to also keep them informed of when that

1 meeting is.

2 And my only final comment. You know,
3 mahalo to our cultural commissioner. Beyond SHPD
4 regarding iwi kupuna, I would urge you there are
5 families who have a connection to that. Those are
6 the ones that you really should be contacting.

7 And I think when you did your previous
8 assessment, you had Hokuao, who is extremely, I
9 thought, very -- I think he is a person of that
10 area, and I would want him -- I would urge you to
11 make sure you touch bases again with Hokuao. And he
12 reconnects with those families who are from that
13 area. All right. So mahalo.

14 **VICE CHAIR CABRAL:** Thank you,
15 Commissioner Chang.

16 And thank you, Mr. Hopper and Ms. McLean,
17 for your input.

18 Commissioners, any more questions of our
19 County of Maui presentation?

20 **COMMISSIONER KAMAKEA-'OHELO:** Madam Chair?

21 **VICE CHAIR CABRAL:** Okay. Commissioner
22 Kamakea-'Ohelo?

23 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo,
24 Madam Chair, for the time.

25 Mahalo, Mr. Hopper. And I think more so

1 have a comment than a question, but if you have an
2 answer for my comment, then I would love to hear it.

3 You know, between Kahakuloa and Maalaea
4 there's approximately 8,000 homes; yeah? And with
5 the addition of this 1400, I believe it'll put -- or
6 it'll apply more pressure on the singular one
7 firehouse in Wailuku. So I guess my comment is more
8 so public safety and the community impacts.

9 So I believe that it's the kuleana of the
10 Planning Department to look far enough ahead, yeah,
11 in the interest of public safety to also include
12 within you guys' agreements or plans, yeah, to maybe
13 build an additional firehouse, understanding the
14 history that Maui has with fires.

15 So I guess that's my only comment at this
16 point in time. Mahalo. Mahalo, Madam Chair.

17 **VICE CHAIR CABRAL:** Okay. Thank you for
18 your input, commissioner.

19 At this time we would probably be looking
20 to do a break, but let me check in with our staff.
21 Would you like us to take a break now and break for
22 lunch later, or would you -- is lunch here, it
23 appears? So would you like to go ahead and we can do
24 a lunch break now?

25 Ariana, I'm sorry. Okay. Well, I mean,

1 you've got to make sure the lunch is here and the
 2 beverages, so what do you --? Whatever you want to
 3 do. Oh, wow, such power. Let me think. I know. I
 4 seen them. They're here. I just -- okay.

5 Okay. It's been suggested that perhaps we
 6 could listen to Mr. Yee from the Office of Planning
 7 and Sustainability with his wonderful and usually
 8 perfectly concise and brief presentation.

9 Would you like to proceed? And then we'll
 10 see how many questions we have afterwards. Thank
 11 you.

12 **MR. YEE:** All right. I will proceed with
 13 the knowledge that I'm the only thing standing
 14 between you and the food.

15 The Office of Planning and Sustainable
 16 Development supports this motion. With some
 17 trepidation, because I may only be inviting
 18 questions, I have a few comments.

19 The first is we support this motion
 20 because we support affordable housing, and there's
 21 just no getting away from that issue on why it's
 22 important that we proceed.

23 We understand that to a certain extent
 24 there is now a transfer of responsibility from the
 25 petitioner to the county, and we have to trust the

1 county. We've gotten certain statements that give us
 2 some faith that they will do it, but ultimately we
 3 will have to rely upon the county to put in the
 4 traffic improvements or the wastewater treatment
 5 facility that were going to be contributed to by the
 6 petitioner.

7 We also think it's a good admonition to
 8 remind both the petitioner and the county on the
 9 importance of community outreach.

10 But having said all that, we do think the
 11 county can be trusted to do this, and we think it's
 12 appropriate to do this because of the importance of
 13 affordable housing. Let's make this option available
 14 to the petitioner and to the county to move forward
 15 with this possibility of having more affordable
 16 housing on Maui and allowing them the opportunity to
 17 change up a little bit the way in which we fund some
 18 of these projects in order to get affordable
 19 housing.

20 If the county can get federal money
 21 instead of using petitioner money and as a result we
 22 get more affordable housing, that's great. And, yes,
 23 the details are going to have to be worked out and,
 24 yes, there's going to need to be community output
 25 moving forward. But we think the opportunities are

1 there.

2 We think actually structurally it's
 3 required for county approvals. And we think that the
 4 petitioner has had a fairly good track record of
 5 community outreach. And so we think we are assured,
 6 we have a certain amount of comfort that this can be
 7 done, and be done correctly in this case.

8 With respect to cultural resources, this
 9 is always an important issue. We're happy it was
 10 brought up again.

11 We just want to note that there is nothing
 12 about this motion that should negatively impact
 13 cultural resources. Nothing about this motion
 14 affects their obligations under the law and the
 15 constitution. And in fact, I think the transfer of
 16 -- or the construction of a school rather than
 17 houses on that property really does not have any
 18 significant change to the impacts of cultural
 19 resources.

20 Both will be developments. To the extent
 21 that either of them impacts disturbance of the land,
 22 the iwi kupuna protections are set under law and
 23 will have to be performed regardless of the
 24 particular use of the land.

25 We want to acknowledge that we have heard

1 the comments regarding the Department of Education
2 and its commitments to fulfill its representations
3 as well as the comments regarding special permits.
4 So I have nothing more to say other than to say that
5 I've heard and understand.

6 But to answer the particular question,
7 just because he will probably ask me, the PPP is not
8 binding upon the Land Use Commission. The deference
9 that is provided is not given because it's required
10 by law. It is given because the LUC thinks it's a
11 good thing to do, that the Land Use Commission will
12 look at the fact that it has a role in the land use
13 process.

14 It gave its approval. The subsequent
15 approvals go to the county, and at a certain point
16 in the development of property, if the Land Use
17 Commission so desires, it may say, you know, I'm
18 going to leave some of these decisions to the county
19 to make decisions as to what is the level of how
20 many affordable houses should be provided, how much
21 less money should be paid for mitigation, and we're
22 going to allow the county to make that call and to
23 rely upon them to make a good and sound decision
24 based upon the PPP that you have before you.

25 I think it gives you some comfort that

1 they will make a good decision, based upon some of
 2 the information you got today as well, but that
 3 ultimately, as is true in most Land Use Commission
 4 cases, approvals -- you know, it just flows from the
 5 Land Use Commission to the county to make further
 6 decisions at zoning and subdivision, and once the
 7 reclassification decision has been made.

8 So the deference is not required by law.
 9 It is really given because the Land Use Commission
 10 -- I think it is a good idea that the Land Use
 11 Commission allow the county that flexibility, that
 12 you not have to say I would not have made the same
 13 decision. It is simply I think the county is
 14 applying the proper analysis, and we will allow the
 15 county to make that decision.

16 And then finally, just in case you do ask,
 17 I think it's fine to include the PPP as an exhibit.
 18 It's probably better to include it as an attachment
 19 or as a reference to the findings of fact rather
 20 than to a condition. But other than that, we would
 21 have no objection.

22 And those are all the comments that I
 23 have. Thank you.

24 **VICE CHAIR CABRAL:** Thank you, Mr. Yee.

25 Okay, commissioners, do we have any

1 questions at this time? We can see how many of those
 2 we have if we want to try and conclude or go to
 3 break.

4 Commissioner Ohigashi?

5 Oh, excuse me. At this time -- I keep
 6 forgetting -- sometime in the last -- when Mr.
 7 Hopper was making his presentation and answering
 8 questions, we had Attorney General Morris leave the
 9 room, but Attorney General China came in. And now
 10 since then, Mr. Morris has returned. I'm just trying
 11 to keep track of who's in the room. So anyway, I
 12 don't know what time all of that took place, but I
 13 hope the technology keeps track of that. Okay. Thank
 14 you.

15 Mr. Ohigashi, go ahead.

16 **COMMISSIONER OHIGASHI:** As a general
 17 thing, is it -- just following up on you, isn't it
 18 correct that the county has the enforcement powers
 19 under the original D&O?

20 **MR. YEE:** The county certainly has the
 21 enforcement powers. Certainly, once substantial
 22 commencement has occurred on a project, the Land Use
 23 Commission's, you know, jurisdiction is very
 24 limited.

25 **COMMISSIONER OHIGASHI:** Okay. And would

1 those be -- would they have indicated that the
 2 applicant's fair share will be negotiated and not
 3 require them to come to the Land Use Commission with
 4 these modifications?

5 In other words they can say that, yeah,
 6 they're going to pay for their fair share this way
 7 rather than the other way, because as I read the
 8 D&O, it doesn't indicate anything.

9 **MR. YEE:** My recollection is the D&O
 10 anticipated that there was a TIAR.

11 **COMMISSIONER OHIGASHI:** Mm-hmm.

12 **MR. YEE:** And pursuant to the findings of
 13 the TIAR, which is a technical document --

14 **COMMISSIONER OHIGASHI:** Right.

15 **MR. YEE:** -- contributions would be made.
 16 In this particular case, the TIAR is going to
 17 indicate a certain level of contribution should be
 18 given, but for the regional fair share will not have
 19 to be given pursuant to this alternative.

20 **COMMISSIONER OHIGASHI:** Right. And isn't
 21 that administrative? Or wouldn't that be part of the
 22 county's determination as to whether or not they
 23 would accept this?

24 **MR. YEE:** It would be factually untrue,
 25 because a TIAR is going to indicate a certain level

1 of contribution.

2 **COMMISSIONER OHIGASHI:** Right.

3 **MR. YEE:** So it's not going to be
4 consistent with TIAR. The county simply says I deem
5 your fair share to have been satisfied, because it
6 would not -- because then the county would not be
7 complying with the TIAR as required by the existing
8 condition.

9 **COMMISSIONER OHIGASHI:** And so this had to
10 come to the Land Use Commission. Is that your
11 position?

12 **MR. YEE:** Yes.

13 **COMMISSIONER OHIGASHI:** Okay. All right.
14 If we modify it and we accept the
15 amendments, does that render the TIAR analysis kind
16 of moot?

17 **MR. YEE:** No.

18 **COMMISSIONER OHIGASHI:** And why is that?

19 **MR. YEE:** Okay. So if I go too far into
20 the weeds, stop me.

21 **COMMISSIONER OHIGASHI:** Okay.

22 **MR. YEE:** Generally speaking, there are
23 direct impacts and indirect impacts that are listed
24 in the TIAR. And I'm sorry, I didn't look at this
25 one. But the direct impacts are generally the ones

1 that are required solely because of the project. So
2 it's the intersection into the project. It would be
3 you need to put in a stop light, just because the
4 traffic is going to be so big. You need a holding
5 lane, et cetera, just for this project.

6 In addition, there are the indirect
7 impacts. It would be the impact to the H-1. It would
8 be the impact to Honoapiilani Highway. It is --
9 you're not going to be responsible for the entire
10 improvement, because you're just part of the reason
11 why improvements are made. But you are contributing,
12 and so you are going to need to provide a certain
13 basically monetary contribution.

14 And what they do is they add all of those
15 impacts up for all, for everything, and they come
16 out with a dollar amount. And then most generally,
17 what they do is they say, okay, so if your dollar
18 amount is \$25 million for everything, this is my
19 next project, pay me for this project. And you pay
20 for that, and you satisfy everything.

21 That's what's -- the TIAR analysis for
22 that becomes moot, because then they're going to
23 have to pay it. But for the TIAR analysis for the
24 direct impacts are still relevant, and so it doesn't
25 become moot, because it will still have to be done.

1 **COMMISSIONER OHIGASHI:** So the answer is
2 yes and no.

3 **MR. YEE:** Yes. Correct.

4 **COMMISSIONER OHIGASHI:** Okay. And the TIAR
5 analysis that you mentioned that they would be
6 rendered moot would be those impacts that the county
7 has jurisdiction over. Because as I understand the
8 agreement, explain to me the county's -- it only
9 applies to the county. But the state improvements
10 are going to be required to be --

11 **MR. YEE:** Well, subject to State DOT
12 approval. So nothing in this -- it simply allows the
13 State DOT to say you don't have to pay. But the
14 State DOT doesn't have to say yes.

15 **COMMISSIONER OHIGASHI:** Okay. So.

16 **MR. YEE:** So in that case, I suppose it's
17 also relevant for that analysis. And, you know, I
18 may have -- I will also say to the extent you're
19 talking about direct impacts to county lands, the
20 county could say you don't have to pay for any of
21 this; right?

22 So, I mean I talked (inaudible), and
23 generally, it is allowed by this condition for the
24 county to say, no, that's okay, you don't have to
25 pay for any of it, I'll pay for all of it.

1 **COMMISSIONER OHIGASHI:** And who's going to
2 say -- who's going to get to say all that stuff?

3 **MR. YEE:** Well, that's the agreement
4 between the petitioner and the county.

5 **COMMISSIONER OHIGASHI:** Who's going to
6 determine and say, hey, you don't have to pay for
7 that?

8 **MR. YEE:** The county. Well, the county and
9 -- petitioner would never say know; right? But it
10 technically could require their approval. So
11 essentially, it's the county. Because otherwise, the
12 county would have to pay for it; right? So if it's
13 improvement to a county road, the county would pay
14 for any improvement.

15 **COMMISSIONER OHIGASHI:** Okay. No further
16 questions.

17 **VICE CHAIR CABRAL:** Thank you,
18 Commissioner Ohigashi.

19 Commissioners, any more questions of Mr.
20 Yee? Okay. I'll come back to the commission now. It
21 is now 11:39, and would you like to take a break now
22 for approximately 45 minutes for lunch or see if
23 you'd like to go to, first, the petitioners having
24 the right to do a rebuttal, and I don't know much
25 time that would take, as well as then we could have

1 public testimony.

2 Do we know if there's any additional
3 public testimony that would like to be made -- heard
4 at this time?

5 **MS. KWAN:** Appears so.

6 **VICE CHAIR CABRAL:** Okay. Just for our
7 timing. And then we would be able to deliberate. So
8 what is the pleasure of our commission at this time?

9 **COMMISSIONER OHIGASHI:** Keep going.

10 **VICE CHAIR CABRAL:** To keep going? Okay.
11 Everyone in favor of keep going? We can eat lunch on
12 the lawn. Okay.

13 So at this point in time, if everyone else
14 has the stamina to keep going, that means without a
15 break even for 15 minutes or for 10 minutes at this
16 time, so if we're okay with that, we'll go ahead and
17 keep going.

18 And so if there's no more questions of Mr.
19 Yee and the Office of Planning and Sustainable
20 Development with the state, then I'll go to the
21 petitioner with your ability to make a rebuttal at
22 this time.

23 **MR. UEOKA:** Just for clarification of the
24 record, it's -- I don't believe it's we're not going
25 to pay anything. It's we're contributing residential

1 workforce housing in lieu of direct contribution
 2 cash or funding. So it's not we're not paying
 3 anything. It's in lieu contribution. I just want
 4 that clear for the record.

5 The other clarification I wanted to give
 6 was we do understand the concerns the community have
 7 with wastewater. Even if we were to move forward,
 8 our treatment plant was a private treatment plant
 9 only for Waikapu Country Town. The permitting, our
 10 EIS and everything only permitted us to take the
 11 flows from our project, because the initial
 12 conversation with the county was, hey, why don't you
 13 guys build a giant one, and we'll help you.

14 But when we looked into it further, all of
 15 our approvals were only for a Waikapu Country Town
 16 project. So whether or not we build ours, it doesn't
 17 really help the broader community per se. But we
 18 will be moving into that bigger facility, which we
 19 hope to take recycled water from and everything, the
 20 same we're going to take from our facility.

21 In regards to traffic mitigation, I think
 22 Mr. Yee gave a brilliant explanation of how it
 23 works. So thank you.

24 But one clarification -- and I think Mr.
 25 Hopper said it, too -- Waikapu Country Town was --

1 the main traffic thing that was going to happen out
 2 of Waikapu Country Town was the contribution to the
 3 Waiale Road extension. We were never going to build
 4 it. The condition of zoning was that we just paid
 5 our pro rata share.

6 So this just says instead of giving cash
 7 for our pro rata share, we're instead giving
 8 residential workforce housing. So the traffic impact
 9 should be similar in that sense, that we were never
 10 required to build it. So I don't think we ever were
 11 going to build it either, because the right-of-way
 12 is in favor of the county.

13 So the timing of it shouldn't be affected
 14 by the motion in front of -- the petition in front
 15 of you today. So I have to clarify that for the
 16 commission. Thank you.

17 **VICE CHAIR CABRAL:** Thank you.

18 Commissioners, any more questions at this
 19 time? Okay. Any other comments from anyone, and no
 20 public testimony? I think the public has given up on
 21 us so, okay.

22 If there's no more public testimony and no
 23 more questions of the petitioner or any other
 24 parties at this point in time, then I would look to
 25 the commission to go ahead and if they're prepared

1 to go into deliberations and discuss the matter and
2 come up to a motion regarding how the commission
3 should proceed in regards to this matter.

4 Commissioners, what is your pleasure?

5 **COMMISSIONER OHIGASHI:** Madam Chair?

6 **VICE CHAIR CABRAL:** Okay. Yes,
7 Commissioner Ohigashi?

8 **COMMISSIONER OHIGASHI:** Madam Chair, I'm
9 going to move to accept the amendments that were
10 provided to us by the petitioner to amend the D&O
11 accordingly.

12 However, I do believe -- and I don't have
13 it right in front of me -- that I would like my
14 motion to include a specific statement regarding the
15 Special Use Permit contemplated under Condition No.
16 4 shall be limited to the development of a private
17 waste source storage and transmission facilities by
18 the petitioner.

19 In addition, I believe that the attachment
20 PPPA to the Decision & Order, that the PPPA should
21 be attached as Exhibit 1 to the Decision & Order.

22 **VICE CHAIR CABRAL:** Attached as an
23 amendment?

24 **COMMISSIONER OHIGASHI:** No. Just attached.

25 **VICE CHAIR CABRAL:** Just attached. Okay.

1 Okay. He's still writing. Are we ready?
2 Okay. Can we go ahead? We do not have a second. Is
3 someone ready to second that for discussion
4 purposes, or would you like to hear the motion read?

5 Commissioner Okuda?

6 **COMMISSIONER OKUDA:** Ms. Chair, I would
7 like to second the motion with a slight
8 modification, which I think is what would be
9 considered friendly, but maybe not.

10 I would like the motion to also make clear
11 that the reference to a special permit with respect
12 to the wastewater treatment plan in no way is the
13 Land Use Commission adjudicating or making a
14 decision on whether in fact special permits are
15 appropriate to be issued to place facilities such as
16 a wastewater treatment plan on agricultural land.

17 **COMMISSIONER OHIGASHI:** I accept it.

18 **VICE CHAIR CABRAL:** Okay. There's been a
19 motion made and then a friendly amendment that's
20 been accepted by the motioner. And so, Mr. Ohigashi
21 -- Commissioner Ohigashi made the motion, seconded
22 with the amendment by Commissioner Okuda.

23 **COMMISSIONER OKUDA:** Yes.

24 **VICE CHAIR CABRAL:** Okay. So discussion?
25 Or would you like to hear this motion again as our

1 illustrious executive director is practicing his
2 shorthand?

3 Okay. You want to read it for us again? I
4 just think we may be pulling this together.

5 **MS. KWAN:** Microphone.

6 **VICE CHAIR CABRAL:** Mic. Training,
7 training.

8 **MR. ORODENKER:** To accept the amendment to
9 the D&O as supplied to the commission by petitioner
10 with a specific statement with regard to Condition
11 No. 4 that an SP be limited to the private
12 wastewater facility and the PPP should be attached
13 to the D&O as an exhibit.

14 The friendly amendment is that reference
15 to a special permit with regard to the wastewater
16 treatment plant is not an adjudication by the
17 commission as to whether or not the wastewater
18 treatment plant is an appropriate use under a
19 special permit.

20 **VICE CHAIR CABRAL:** In agricultural lands.

21 **MR. ORODENKER:** On agricultural lands.

22 **VICE CHAIR CABRAL:** Okay. Commissioners,
23 have you heard that, the motion and the friendly
24 amendment, and are you ready to discuss this matter?
25 Okay.

1 **COMMISSIONER OHIGASHI:** Oh, you're calling
2 on me, Madam Chair?

3 **VICE CHAIR CABRAL:** I'm just looking.
4 You've been right on with the scene.

5 **COMMISSIONER OHIGASHI:** I made this motion
6 because I believe that additional workforce housing
7 is necessary, and it is needed. I'm heartened by the
8 fact that the Department of Planning is ready to
9 proceed as soon as this D&O is issued or as soon as
10 maybe the -- we've agreed to it to seek the approval
11 and amendments necessary for the purposes of getting
12 this agreement in place.

13 I don't know if the agreement will pan out
14 in the future, but I'm hopeful it does. And my
15 comments today have been directed at making --
16 trying to make sure that all parties will live up to
17 their terms and understand that they're going to
18 have to live up to their terms to make this
19 agreement work.

20 If we're going to -- if we're going to
21 have to provide additional workforce housing for our
22 community, somebody has to pay for the
23 infrastructure. Somebody has to make sure that the
24 roads are not as congested. Somebody has to make
25 sure the schools are provided for.

1 In the past it's been a lot of
2 requirements on the developer. Make no mistake that
3 this is a lot of requirements on developer also, but
4 it is also incumbent upon the County of Maui to make
5 sure that they live up to their terms and provide
6 the infrastructure, make sure the roadways, the
7 wastewater treatment is provided for so that we can
8 build this property out and provide the necessary
9 homes.

10 I wish you guys luck. I'm going to support
11 this motion.

12 **VICE CHAIR CABRAL:** Okay. Somebody have a
13 second motion -- oops, sorry, the second to the
14 motion, go ahead and make your comments.

15 **COMMISSIONER OKUDA:** Thank you, Ms. Chair.

16 I'm not saying that Mr. Yee has put words
17 in my mouth, so that's not it, but I would -- I'm
18 supporting this motion. And so that I don't repeat
19 everything he says, I adopt what explanation he
20 recited, because I think he did give the correct
21 analysis.

22 I believe in making our decision we can
23 rely on the entire record of this case, including
24 the prior hearings. I see no evidence which changes
25 the findings of the prior hearings except for the

1 points raised in this amendment, but specifically,
2 the fact that Mr. Atherton and his team have done
3 things to engage the community, to try to prepare a
4 development which is sensitive to the needs of the
5 community and try to balance these things out.

6 I believe that the statements by
7 Commissioner Kamakea-'Ohelo are -- even though we
8 might say from a technical standpoint it doesn't
9 need to be said, it really should be said, because
10 many times as we go through this process, we forget
11 about the duties under the constitution and statutes
12 to protect certain resources and important resources
13 in the community.

14 I also find that there's no evidence that
15 changes my earlier belief, which comes forward to
16 current, that the Maui County Planning Department is
17 very responsible in protecting the public interest.

18 And I don't mean to make my next comments
19 say that it's personal, because I believe it's a --
20 you know, it seems to be the culture of the County
21 Planning Office. I'm sorry that Ms. McLean has
22 decided to leave government service, because she
23 truly is a good public servant, but I take some
24 comfort that we see no indication that Mr. Hopper
25 plans to go anywhere, unless they plan to set up

1 their own private planning consulting firm. And then
2 I'd have some problems about them jumping through
3 the revolving door.

4 But I believe the evidence in the record
5 going back to the original hearing has shown that
6 the County of Maui has not disappointed anyone in
7 trying to recommend and do the things which involve
8 really important balancing of choices that we have
9 to make.

10 You know, we don't feel like we're just a
11 bunch of bureaucrats, you know, just trying to put
12 up roadblocks. We're entrusted by the state
13 constitution to have certain protections and, you
14 know, we go through this process without the
15 intention of creating roadblocks, but just to make
16 sure that the things that we are charged with in
17 following the rule of law, we actually do that.

18 But in any event, I see nothing in the
19 record which changes my original belief when this
20 docket first came up that Mr. Atherton, his team, do
21 have a commitment to the community. And so for that
22 reason, I ask that everybody support the motion with
23 the amendments. Thank you.

24 **VICE CHAIR CABRAL:** Okay. Thank you,
25 Commissioner Okuda.

1 Commissioner Atta?

2 **COMMISSIONER ATTA:** Yeah. I just want to
3 say that, you know, I'm supportive of the motion,
4 too.

5 And I'd like to thank Mr. Yee for saying
6 that the county was capable and following through on
7 all these things, because in the past the state had
8 sort of a more jaundiced effect about whether state
9 could or could not do something. And I think that
10 today's exchange says that, yes, you can. And I
11 agree, actually.

12 So I'd say thanks for that. And I will
13 vote in support.

14 **VICE CHAIR CABRAL:** Thank you,
15 Commissioner Atta.

16 Other commissioners, comment?

17 Commissioner Chang?

18 **COMMISSIONER CHANG:** Okay. I, too, am
19 inclined to vote in favor of the motion. I
20 appreciate creative mitigation. We obviously don't
21 have the resources to do everything, and right now
22 there is the counties and the state have access to
23 financial resources that we don't otherwise have.

24 And I recall, Mr. Atherton, your
25 presentation and that you did take a pause at your

1 development project to re-engage the community. For
 2 me it's also about informed decision making, and I
 3 would -- you know, I don't question you. I think you
 4 have good intentions. You have demonstrated that.
 5 And your counsel has been extremely candid with us.

6 But I think informed decision making is
 7 when there are major modifications like this, it may
 8 not be required by law, but it is the right thing to
 9 do, and it is consistent with how you have conducted
 10 yourself in this community, to go back to them and
 11 to inform them of the changes and why, because I
 12 think that they're more apt to be very supportive of
 13 your doing. So communities are suspicious when they
 14 don't know or they're the last to hear about it;
 15 right? So you've got a good track record.

16 So I, too, am supportive of this, of what
 17 you are proposing to do. I think we need more
 18 creative mitigation to address our ever-increasing
 19 needs. So thank you very much for all of your
 20 cooperation in getting us to this point.

21 Thank you, Madam Chair.

22 **VICE CHAIR CABRAL:** Thank you,
 23 Commissioner Chang.

24 Other commissioners for comments at this
 25 time?

1 Okay. Commissioner Kamakea-'Ohelo, please.

2 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo,
3 Madam Chair.

4 I, too, will be in support of the motion.
5 As a farmer by trade, I often scrutinize every time
6 agricultural lands are turned over to be urbanized.
7 However, I am a firm believer in workforce housing.
8 And to understand and hear that part of the first
9 phase you will be building on 1:1 ratio, including
10 workforce housing, I am in total support of that. As
11 a farmer, we need hands and we need labor.

12 And I find that petitioner shows good
13 cause. Yeah, so I mahalo you folks today.

14 And that is all, Madam Chair.

15 **VICE CHAIR CABRAL:** Thank you,
16 Commissioner Kamakea-'Ohelo.

17 Other commissioners want to make comment
18 at this time? Okay. I will -- oops, sometimes now as
19 chair, you get the last word.

20 I, too, am in support of this. And I was
21 here in the hearing in 2017, because I think we had
22 our hearings in '17 and our motion in early 2018,
23 and I remember this hearing because it was the only
24 hearing I've been to in my entire seven years on
25 this commission where everybody that came and

1 testified was positive and in support of.

2 And I felt like, oh, my God, the butcher,
3 the baker, and the candlestick maker all came in
4 favor. It wasn't just like it was, you know,
5 everybody from the office showed up because they
6 were forced to. It was all these different people
7 from different professions.

8 And I remember that hearing -- I remember
9 the Olowalu hearing a few years earlier, which was a
10 completely different feeling, and we've had another
11 hearing more with the state government that was a
12 different feeling. So Maui's had my most extreme
13 experiences here.

14 And I think that, as Commissioner Chang
15 said, Mr. Atherton looks like -- I've known him to
16 be involved with this for 15 years. I've only had
17 seven years of it. But there's clearly an intention
18 to do a good job.

19 And now that the county has said will you
20 make these modifications and do this and do this,
21 and he's willing to and happy to go through more
22 time delays and most costs for his attorney -- I'm
23 assuming he pays his attorney for these little
24 presentations -- so, you know, it's just adding to
25 the bill, and developers get stuck with this.

1 My simple math, if you're taking out and
2 you're adding 213 workforce houses and getting rid
3 of 213 marketplace houses, and you take that, so
4 he's trading off potentially about 50 million
5 between wastewater and traffic, which were the
6 guesstimations presented.

7 So if you look at that, he's losing out,
8 in a sense -- I'm a capitalist -- about \$235,000 in
9 housing income he could have made in that exchange
10 for workforce versus. And that 235,000 per house
11 totals about 35 million. So he's losing out on a lot
12 of money by making this exchange, and then yet
13 hoping to save a little bit of money on the
14 infrastructure and that.

15 And the whole thing has been dependent on
16 the County of Maui to do their thing. And I think
17 that -- you don't know me, but in Hilo I am sort of
18 the queen of housing, because I've been doing
19 housing real estate management of many, many, many
20 properties for over 40 years.

21 And I have repeatedly realized that our
22 problem is not because the Land Use doesn't approve
23 the housing. It's because infrastructure is so
24 massively expensive. And government has instead
25 decided that they're a social welfare agency to pay

1 for everybody's problems, and we don't put in
 2 infrastructure to take care of the housing, and
 3 therefore, we have a housing shortage.

4 I am the queen of housing. I know it all.
 5 Seriously, I live this every day. I manage thousands
 6 of properties. So I applaud the efforts of the
 7 developer, Mr. Atherton, and, of course, I think he
 8 should give all developers a good name instead of
 9 somehow the bad name they've earned.

10 And I really -- it's going to be shame on
 11 the County of Maui if you guys cannot come forward
 12 and make this happen between funding and county
 13 councils and planning and zoning, because there's
 14 been enough years, and had all of this been built,
 15 however many number of houses built, 15 years ago,
 16 we would not have as much of a shortage of housing,
 17 because even if it had been built then, it might be
 18 a little bit semi-affordable because it would be old
 19 housing by now instead of brand-new housing not
 20 worth \$5 million per house, but maybe only 750,000 a
 21 house.

22 So I think we need to expedite pushing
 23 this forward. Us in private business, time is money,
 24 and I would support this in the hopes that you guys
 25 get it together and get it done. That's my attitude.

1 Thank you.

2 Okay. Oh, I still have the mic. Okay. Any

3 other commissioners want to make a comment? Okay.

4 Then I'd like to ask our Executive Director Mr.

5 Orodenker to go ahead and take the vote.

6 **MR. ORODENKER:** Thank you, Madam Chair. Or

7 is it ARO Candidate Chair?

8 Okay. The motion is as stated previously.

9 Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** Aye.

11 **MR. ORODENKER:** Commissioner Okuda?

12 **COMMISSIONER OKUDA:** Yes.

13 **MR. ORODENKER:** Commissioner Yamane?

14 **MR. YAMANE:** Aye.

15 **MR. ORODENKER:** Commissioner Giovanni is

16 excused.

17 Commissioner Atta?

18 **COMMISSIONER ATTA:** Aye.

19 **MR. ORODENKER:** Commissioner Chang?

20 **COMMISSIONER CHANG:** Aye.

21 **MR. ORODENKER:** Commissioner Kahele?

22 **COMMISSIONER KAHELE:** Aye.

23 **MR. ORODENKER:** Commissioner Kamakea-

24 'Ohelo?

25 **COMMISSIONER YAMANE:** Aye.

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MR. ORODENKER: Madam Chair?

VICE CHAIR CABRAL: Aye.

MR. ORODENKER: Thank you. Madam Chair,
the motion carries with eight affirmative votes.

VICE CHAIR CABRAL: All right. I think at
this point I thank everybody for coming and for
participating and for putting up with some of our
tough questions. And we want to hold you personally
liable for all those answers now. Thank you very
much. Okay. Thank you. Aloha.

(Meeting adjourned at 12:03 p.m.)

1 CERTIFICATE

2

3 I, Davilyn Payne, do hereby certify that the

4 proceeding named herein was professionally transcribed on

5 the date set forth in the certificate herein; that I

6 transcribed all testimony adduced and other oral

7 proceedings had in the foregoing matter; and that the

8 foregoing transcript pages constitute a full, true, and

9 correct record of such testimony adduced and oral

10 proceeding had and of the whole thereof.

11

12 IN WITNESS HEREOF, I have hereunto set my hand this

13 27th day of October, 2022.

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19 Davilyn Payne

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