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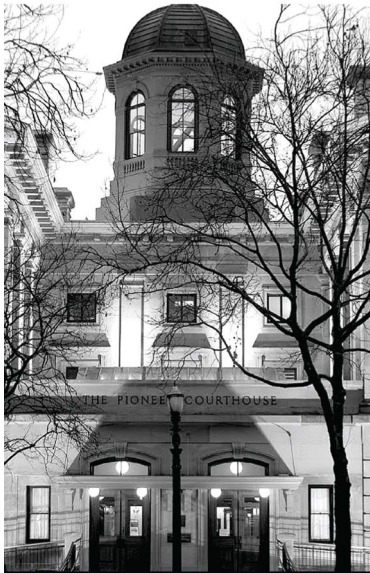
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FINAL

STATE OF HAWAII

LAND USE COMMISSION

Meeting held on June 7, 2023

Commencing at 9:15 a.m.

Held at

Maui Arts & Cultural Center

Haynes Room

1 Cameron Way

Kahului, Hawai'i 96732

I. CALL TO ORDER

II. ADOPTION OF MINUTES

April 26, 2023

III. TENTATIVE MEETING SCHEDULE

IV. A07-773 EMMANUEL LUTHERAN CHURCH OF MAUI (a) AND WAIKAPU DEVELOPMENT VENTURE, LLC (b) (Maui)

Approximately 25.263 Acres of Land Situated at Wailuku, Island of Maui, State of Hawaii. Tax Map Key: (2)3-5-002:011. Status and progress report and action (if necessary) in response to the recently submitted 2018-2023 annual report for A07-773(a) and (b) submitted by Waikapu Development Venture, LLC.

V. EXECUTIVE SESSION

Pursuant to HRS Section 92-5(a)(2) to consult with the Commissioners' Attorney regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

VI. ADJOURNMENT

BEFORE:

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PARTICIPANTS

COMMISSIONERS:

- Dan Giovanni, Chair
- Lee Ohigashi
- Gary Okuda
- George Atta
- Kuike Kamakea-Ohelo
- Melvin Kahele
- Michael Yamane

COMMISSIONERS EXCUSED:

- Nancy Cabral
- Bryan Lee

LUC STAFF:

- Daniel Orodener, Executive Officer
- Scott Derrickson, Chief Planner
- Riley Hakoda, Staff Planner
- Martina Segura, Staff Planner
- Ariana Kwan, Chief Clerk
- Daniel Morris, Esq., Deputy Attorney General

COUNTY OF MAUI:

- Mimi Desjardins, Esq. Deputy Corporation Counsel
- Kathleen Aoki, Director, Planning Department

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PARTICIPANTS (CONTINUED)

OPSD:

Allison Kato, Esq., Deputy Attorney General

PETITIONERS:

Jeff Ueoka, Esq., Counsel for Waikapu Development
Venture, LLC

Leif Sjostrand, Representative for Emmanuel
Lutheran Church

1 **CHAIRMAN GIOVANNI:** Okay. Welcome. This
2 is the June 7th, 2023 LUC meeting. Aloha mai kakou.
3 Good morning, everyone. This is an in-person
4 meeting which is being held at the Maui Arts and
5 Cultural Center, Haynes Meeting Room, 1 Cameron Way,
6 Kahului, Maui 96732. It's open to the general
7 public.

8 Court reporting transcriptions are being
9 done from the Zoom recording of this meeting. That
10 means we don't have a court reporter here.

11 Accordingly, all meeting participants, I'd like to
12 stress the importance of speaking slowly, clearly,
13 and directly into the microphone. And before you
14 speak and each time you speak, I ask that you state
15 your name and identity for the record.

16 Even though this is an in-person meeting,
17 please be aware that all meeting participants are
18 being recorded on the digital record of this Zoom
19 meeting. As I said, this is for court reporting
20 purposes.

21 Your continued participation is your
22 implied consent to be part of the public record of
23 this event. If you do not wish to be part of the
24 public record, you should exit the meeting now.

25 I will also share with all participants

1 that we will take breaks from time to time.
2 Typically, five or ten minutes every hour or so.
3 We'll also take a break for lunch.

4 My name is Dan Giovanni, and I have the
5 pleasure to serve as the LUC Chair. We currently
6 have nine seated commissioners. Along with me today
7 are Commissioner Lee Ohigashi from Maui;
8 Commissioner Gary Okuda, Mel Kahele, Kuike Kamakea-
9 Ohelo, and George Atta from Oahu; and Commissioner
10 Michael Yamane from Kauai. Commissioners Bryan Lee
11 and Commissioner Nancy Cabral are excused from
12 today's meeting, so we have seven of the nine here
13 today.

14 Also in attendance are LUC Executive
15 Officer, Daniel Orodener, LUC Chief Planner, Scott
16 Derrickson, LUC Staff Planner Riley Hakoda, LUC
17 Staff Planner Martina Segura, LUC Chief Clerk,
18 Ariana Kwan, and in attendance today also LUC
19 Attorney General Dan Morris.

20 Again, court reporting transcriptions are
21 being done from the Zoom recording.

22 Our first order of business is the
23 adoption of the minutes from the meeting of April
24 26th, 2023.

25 Ms. Kwan, has there been any written

1 testimony submitted on the April 26th, 2023 minutes?

2 **MS. KWAN:** No, Mr. Chair.

3 **CHAIRMAN GIOVANNI:** Thank you, Ariana.

4 Are there any members of the public who have signed
5 up to testify in the adoption of them minutes?

6 **MS. KWAN:** No, Mr. Chair.

7 **CHAIRMAN GIOVANNI:** Thank you.

8 Commissioners, are there any corrections
9 or comments on the minutes? If not, is there a
10 motion to adopt the minutes for April 26th, 2023?

11 **COMMISSIONER OHIGASHI:** Mr. Chair.

12 **CHAIRMAN GIOVANNI:** So moved by
13 Commissioner Ohigashi. Do I have a second?

14 **COMMISSIONER KAHELE:** Second.

15 **CHAIRMAN GIOVANNI:** So moved -- seconded
16 by Commissioner -- who was that?

17 **COMMISSIONER KAHELE:** Kahele.

18 **CHAIRMAN GIOVANNI:** -- Kahele. Okay.

19 Thank you.

20 All in favor of adoption of the minutes,
21 please say, "aye."

22 **(All said, "aye.")**

23 **CHAIRMAN GIOVANNI:** Are there any opposed?

24 Hearing none, the -- none opposed, the minutes are
25 adopted. Thank you very much.

1 The next agenda item is the tentative
2 meeting schedule. Mr. Orodenger, would you please
3 share that with us.

4 **MR. ORODENKER:** Thank you, Mr. Chair. On
5 June 21st, we will be in Hilo for the Kamehameha
6 School status report, and that's A19-807. On the
7 22nd of June, we will also be in Hilo for Bencorp
8 status report, A02-737.

9 In July, we currently do not have any
10 meetings scheduled. In August, we also do not have
11 any meetings scheduled; however, we are expecting
12 some items to be brought to the forefront so I would
13 request the commissioners leave those dates open.

14 **CHAIRMAN GIOVANNI:** The specific dates in
15 August to leave open?

16 **MR. ORODENKER:** Dates that we have
17 scheduled in August are -- I don't know why my
18 fingers are so fat today -- August 9th and 10th and
19 August 23rd and 24th.

20 In September, we will be at HCPO
21 Conference at the Sheraton Waikiki, on September
22 6th, 7th, and 8th. On September 20th and 21st, we
23 are anticipating Halekua Development to come before
24 us on September 20th. And on September 21st,
25 Waimanalo Gulch. And that takes us through the

1 active calendar for now, Mr. Chair.

2 **CHAIRMAN GIOVANNI:** Okay. Let me -- so
3 let me just confirm with Ms. Kwan. Have you
4 surveyed all the commissioners for their
5 availability for these dates?

6 **MS. KWAN:** I sent an email and I'm still
7 pending some responses --

8 **CHAIRMAN GIOVANNI:** Okay.

9 **MS. KWAN:** -- Monday.

10 **CHAIRMAN GIOVANNI:** Okay. Let me
11 encourage all commissioners to respond with your
12 availability for those dates to Ms. Kwan.

13 **MS. KWAN:** Thank you.

14 **CHAIRMAN GIOVANNI:** Commissioners, do you
15 have any additional questions on the calendar, or
16 dates? Okay. Thank you.

17 Our fourth order of business is the status
18 and progress report on A07-773(b), the Waikapu
19 Development Venture for the island of Maui. A
20 status and progress report and action, if necessary,
21 by the commission, in response to the recently
22 submitted 2018 through 2023 annual report.

23 The status report is being presented by
24 Waikapu Development Ventures' portion of the
25 property, but Emmanuel Lutheran Church is present as

1 a party to answer any questions that the commission
2 may have as well.

3 Let me summarize the procedure for today.
4 First, I will update the record. Next, I will ask
5 the parties to identify themselves. Then I will
6 recognize the written public testimony that has been
7 submitted in this matter, identifying the person or
8 persons or organization who has submitted the
9 testimony.

10 Next, I will call on members of the public
11 that wish to testify on the Waikapu Development
12 Venture status and progress report. Members of the
13 public will each have two minutes to provide their
14 testimony and shall stand by after their testimony
15 and respond to any questions the parties or the
16 commissioners may have.

17 When all questions have been completed,
18 the Chair will excuse the witness and call the next
19 witness to enter the witness box. After completion
20 of the public testimony portion of the proceedings,
21 the Chair would like the petitioner to provide its
22 status report.

23 The Chair will then call on the County's
24 Planning Department, the Office of Planning and
25 Sustainable Development for comments regarding

1 status report. The petitioner will then be allowed
2 to respond to comments made by the County and OPSD.

3 The commissioners will ask questions of
4 the parties at the conclusion of each of their
5 presentations. At the conclusion of the parties'
6 testimony, commissioners' questions, the public will
7 be, again, granted a second opportunity to provide
8 public testimony in the same manner that was set
9 forth previously.

10 Once public testimony concludes, the
11 commission will enter the deliberations regarding
12 the status report to decide if any action is
13 necessary. The Chair would also note for the
14 parties and the public that from time to time, I
15 will be taking short breaks.

16 Are there any questions on the procedure
17 for today from anyone?

18 Petitioner, any -- any questions?

19 **MR. UEOKA:** No, Chair. Thank you.

20 **CHAIRMAN GIOVANNI:** County of Maui, any
21 questions on the procedure?

22 **MS. DESJARDINS:** No, Chair. Thank you
23 very much.

24 **CHAIRMAN GIOVANNI:** OPSD, any questions on
25 the procedure?

1 **MS. KATO:** No questions. Thank you.

2 **CHAIRMAN GIOVANNI:** Let me ask you, I
3 actually prefer to do it opposite, and I didn't do
4 it today, will you please introduce yourself for the
5 record? So starting with the petitioner.

6 **MR. UEOKA:** Thank you, Chair. My name is
7 Jeff Ueoka. I represent Waikapu Development
8 Venture, LLC.

9 **CHAIRMAN GIOVANNI:** Thank you.
10 County of Maui?

11 **MS. DESJARDINS:** Thank you. Good morning,
12 Commissioners. I'm Mimi Desjardins. I'm a Deputy
13 Corporation Counsel. And with me today is Kathleen
14 Aoki, the Planning Department Director.

15 **CHAIRMAN GIOVANNI:** Thank you very much.

16 **MS. DESJARDINS:** Thank you.

17 **CHAIRMAN GIOVANNI:** OPSD?

18 **MS. KATO:** Good morning. Alison Kato,
19 Deputy Attorney General for the Office of Planning
20 and Sustainable Development. Thank you.

21 **CHAIRMAN GIOVANNI:** Thank you, Ms. Kato.
22 Reference for the record. Please be
23 informed that the relevant records and documents
24 pertaining to this matter can be accessed for review
25 on the LUC website at luc.hawaii.gov/completed-

1 dockets/boundary- amendments/Maui/A07-773/. Did you
2 get that, everybody? Okay. Do I need to repeat that
3 for anyone? Thankfully not. Okay.

4 It's specifically under the pending
5 dockets tab. Interested parties are welcome to
6 review the documents at your convenience.

7 Is there anyone here from Emmanuel
8 Lutheran? Would you please identify yourself for the
9 record?

10 **MR. SJOSTRAND:** My name is Leif Sjostrand.

11 **CHAIRMAN GIOVANNI:** Say that again,
12 please.

13 **MR. SJOSTRAND:** Leif Sjostrand.

14 **CHAIRMAN GIOVANNI:** Leif Sjostrand. Thank
15 you very much.

16 **MR. SJOSTRAND:** Yeah.

17 **CHAIRMAN GIOVANNI:** Okay. Commissioner,
18 do any commissioners have any disclosures to make at
19 this point in time? Hearing none, we'll proceed to
20 public testimony.

21 For members of the public, again, please
22 be reminded that the commission will not be
23 considering the merits of the petition; rather, the
24 commission is interested in learning about the
25 current state of the activities related to the

1 docket, including compliance with the conditions,
2 and will consider whether action is necessary.

3 I'll now recognize written public
4 testimony in this matter. Ms. Kwan, has there been
5 any written testimony submitted on this matter?

6 **MS. KWAN:** No, Mr. Chair.

7 **CHAIRMAN GIOVANNI:** How come you don't
8 have a microphone? We hear you clearly. It's
9 amazing.

10 Ms. Kwan, has anyone signed up to testify
11 in person?

12 **MS. KWAN:** No, Mr. Chair.

13 **CHAIRMAN GIOVANNI:** All right. So we'll
14 consider public testimony completed at this point in
15 time, but I just want you to know that we will be
16 giving the public a second opportunity if anyone is
17 inclined to do that.

18 So Now Mr. Ueoka, I'll go to you as
19 petitioner.

20 **MR. UEOKA:** Okay. Thank you, Chair. If
21 you don't mind, I'd like to share a screen?

22 **CHAIRMAN GIOVANNI:** Yeah. Before you
23 start, can you give us a general idea about how long
24 you will be taking for your presentation?

25 **MR. UEOKA:** I think I can do it in less

1 than five minutes.

2 **CHAIRMAN GIOVANNI:** A man after my own
3 heart. Thank you very much. Why don't you proceed.

4 **MR. UEOKA:** Maybe I don't know how to do
5 this but -- sorry.

6 So Waikapu Development Venture project in
7 Waikapu -- okay. So that's the location. You can
8 see where Waiale Road is. Honoapiilani Highway is
9 above. The Waiale Road is on the right side of the
10 screen. Longs Drugs and Foodland are those little
11 dots at the top. I guess my mouse does work, so
12 it's around here.

13 Down here is the Waialeale Project and
14 existing residents who are for Waialeale project.
15 And over here is Spencer Homes -- I'm sorry, Waikapu
16 Gardens. And this is the upcoming Wailuku
17 Apartments Project.

18 So the approved project description under
19 the 201H, it's 100 percent residential workforce
20 housing projects. 80 units on 74 lots was approved.
21 68 single families and 6 duplexes, so 12 units
22 there. The income group distribution is between 70
23 percent AMI and 140 Percent AMI.

24 So background. Resolution 18-150 was a
25 201H approval in 2020. Resolution 20-107 extended

1 the completion deadlines for the project. That's
2 the 201H project -- process through the county.

3 So the current status: The project
4 commenced construction through the installation of
5 12-inch waterline main and seven or eight fire
6 hydrants on Waiale Road. Those were on August 2022.
7 I believe we tied it in to the county system this
8 past week, so the waterline should be powered pretty
9 soon but still got to get them approved based off of
10 the county.

11 The two-lot subdivision is in process, as
12 you're aware. The whole thing was owned by Emmanuel
13 Lutheran, and there was an approval granted to allow
14 the subdivision and sale of a portion to Waikapu
15 Development Venture for this project. So that's all
16 in the works. There's going to have to be the lot
17 subdivision and building permits and everything for
18 the houses. That's kind of the next step.

19 The project's been on hold for a while.
20 We're working with the county on a subsidy and
21 redesign of the project, and I'll get into that
22 later.

23 So the next steps: Here we are today to
24 update the State LUC. We're hoping for an extension
25 of the completion of construction deadline. I know

1 I have on there July, 2027, but I think we're going
2 to actually ask for September to line up with our
3 requested 201H deadlines. And we want to update you
4 on the 201H plans and specs. And we still need to
5 go back to the council for that approval and our
6 funding, the subsidy grant from the county is
7 dependent on the 201H approval or modification,
8 however you want to say it.

9 So the proposed improvements to the
10 layout. So market studies have shown on Maui a lot
11 that Maui people want single family homes. They
12 don't really like the duplexes. So we want to
13 switch the six duplexes and try to make that twelve
14 single-family dwelling lots. That requires extra
15 land, so the idea was there was this interior dead-
16 end roadway that we're going to get rid of and
17 restructure the project.

18 We're going to reduce the sidewalks and
19 eliminate -- there's a small pocket park in there.
20 We're going to ask for eliminate that. And
21 technically, because this project is 100 percent
22 residential workforce housing, the park assessment
23 requirements of the subdivision code do not apply to
24 this project anyway. And that all allows us to take
25 the six duplexes and turn them into twelve single-

1 family lots, which we believe people want.

2 So other 201H modifications we'll be
3 requesting, so we only want to do sidewalks on one
4 side of the street, save some space to reduce some
5 costs. Street trees, that's just more technical
6 from a county subdivision standard, but right now
7 they have to be in the county right-of-way. We kind
8 of just want to make them in the front yard. Right-
9 of-ways are difficult oftentimes because there's
10 utilities in that area, and trees, utilities, they
11 don't always go well together, so we're hoping to
12 have some flexibility to move around.

13 Our plan was to have the county maintain
14 the retention basin and the greenways in the hopes
15 of eliminating an HOA. The county wasn't -- the
16 need for an HOA, I should say. The council wasn't
17 too keen on that when we proposed that to them, so
18 we're not sure where we stand there. And we need to
19 modify our zoning language in the 201H in regards to
20 the duplexes.

21 So it's kind of small, but I think you can
22 kind of see generally this is the old plan, and
23 there's this road here and the park there. So
24 instead, we've kind of just made the road straight
25 across. And then the duplexes that were over here

1 before, now they're just 12 single- family lots
2 instead. So it's similar but a little different,
3 and we are going to go into the county and ask for a
4 change.

5 So we asked the county for a \$10.65
6 million subsidy. It works out to around \$133,000
7 per unit. County recently passed Bill 107, which
8 lowered the residential workforce housing prices,
9 the sales prices, so that, along with the increased
10 interest rates -- the interest rates were kind of
11 twofold the problem. It cost more money for the
12 developers to borrow, and with the increased
13 interest rates, the affordable -- residential
14 workforce housing sales prices are -- they go down
15 also, so, therefore, the developer gets less, and
16 they pay more for a lot of things.

17 And materials costs went up tremendously,
18 as I'm sure you're all aware. And we're looking --
19 exploring restricted resale price periods and all
20 kinds of stuff with the county, but that all will be
21 in our 201H approval.

22 I can say that the project will keep the
23 prices 70 percent AMI to 140 percent AMI. The
24 breakdown is not changing. The developers want to
25 stick with the original sales price -- sales prices.

1 So this is kind of what we're looking at.
2 Things have changed recently. The county came out
3 with an AMI median income for Maui County. It's
4 \$105,800, I believe, so these prices vary a little.
5 But they're looking at doing 12 units in the 70 to
6 80 percent, 12 units in the 81 to 100, 40 in the 101
7 to 120, and 16 in the 121 to 140. So that stays the
8 same.

9 Deed restrictions. Again, we're going to
10 work on this with the county. We're still trying to
11 figure it out. Chapter 201H has a pretty strong
12 first ten-year deed restriction. It really limits
13 resale prices, encourages people to stay in the
14 homes.

15 So we're still trying to figure out
16 maximum resale prices with the county. I won't
17 waste too much of your time on this, but I just
18 wanted you to know we are working with the county on
19 this.

20 **CHAIRMAN GIOVANNI:** Let me -- I appreciate
21 that you don't want to waste our time on it, but
22 it's actually a point of interest of this
23 commission.

24 **MR. UEOKA:** Oh, absolutely.

25 **CHAIRMAN GIOVANNI:** So if you could expand

1 on it, I would appreciate it.

2 **MR. UEOKA:** Absolutely. More than willing
3 to. Most people don't want to hear me talk, so thank
4 you.

5 So maximum resale prices in years 1 to 10,
6 under Chapter 201H, they're limited to the original
7 cost of purchase. You can add on any cost of any
8 improvements you made, and simple interest on the
9 original cost at 1 percent per year.

10 So for ten years, if a residential
11 workforce housing buyer buys one of these 201H units
12 from us, when they go to resell it, they basically
13 are limited on the resale price. They're limited on
14 who they can sell it to. They have to first offer it
15 to the county, then to a qualified land trust, and
16 then they can go to another qualified buyer. So
17 that's for the first ten years.

18 With the county, we're trying to determine
19 what they want to see. Since they're giving our
20 granting \$10 million towards this project, we want
21 to see what they want to do. We've heard varying
22 things from the council. We're heard -- I'm sorry,
23 one councilmember proposed a 50-year owner occupancy
24 restriction, meaning you can sell it after 10 years
25 for whatever price you want, but it has to be to

1 someone who's going to be an owner/occupant.

2 We're not a hundred percent sure on how
3 that's enforced or how it looks, but that was the
4 wish. And they wanted to see 30 years on a resell
5 price restriction where it would probably follow
6 2.96, which allows 25 percent of the difference
7 between the cost of -- or I'm sorry -- the appraisal
8 at the time of the sale, which would establish
9 market value at the time of the sale. And the
10 appraisal -- on the original sale, and the appraisal
11 at the time when you're offering it for sale to set
12 the resale price. You have 25 percent of that; you
13 add it to what you paid for the house. That would
14 be the limitation on the resale price.

15 We're not sure how much the market
16 actually tolerates something like that. We've heard
17 anecdotally that other projects don't fare so well.
18 People, they're afraid of resale price restriction
19 and deed restriction for 30 years at that price.

20 Our understanding is things change.
21 Families change. Families grow. People need to
22 move, and it's really restrictive on that ability.
23 So we're working with the county. We're looking to
24 see what the mayor would like to see, the Department
25 of Housing and the concerns of other councilmembers,

1 so that we're hoping will be vetted in our 201H
2 approval because we are going in for a modification
3 to extend the time for construction for us.

4 So this is what I was talking about, the
5 owner occupancy. So for ten years, it's already
6 required under 201H, and we're looking to see for
7 the 30 years how that will work, and we're, again,
8 checking with the department and the county. We
9 really want to know what they want as we feel
10 they're the best representatives of what the people
11 of Maui need and want, and they can tell us what's
12 best for them. And we're willing to work to make
13 sure something good happens out of this, as we
14 recognize that there's a huge county grant here.

15 So the other thing that Bill 107 did was
16 when it got into the pricing of the homes, it took
17 into this concept of total housing costs. So
18 currently, the way you calculate prices --
19 affordable housing sales price guidelines. They
20 calculate at 30 percent of gross income, and you
21 project it out to figure out what the price should
22 be based on 30 percent of your gross income going
23 towards your mortgage every month. The council
24 modified it with Bill 107 last year.

25 So it also added your mortgage cost plus

1 all of your total housing costs, which get into HOA
2 fees, PMI, private mortgage insurance, homeowner's
3 insurance, a variety of other costs. That plus your
4 mortgage cannot exceed 31 percent of your gross
5 income. That served to -- with the PMI, that served
6 to greatly reduce the affordable housing sales price
7 guidelines for residential workforce housing units
8 on Maui. So that was another factor.

9 We were looking into options on how to
10 reduce those total housing costs such as the
11 elimination of an HOA, working with various lenders
12 on the elimination of PMI. As discussed, you will
13 technically have a lot of equity in the home on the
14 day you close, in theory, because you're getting a
15 lower sales price, but the market price is still
16 really high. So hopefully, the 20 percent will be
17 there, and the homeowners won't need to have private
18 mortgage insurance. That's our hope. We need to
19 work with the community and the lenders to get that
20 concept vetted and better understood.

21 So finally our projected timeline here.
22 We still need to go through with the 201H amendment.
23 We're probably going to need to come back to you
24 guys to get an extension of the timelines in the
25 DBA. We need to complete our two- lot subdivision.

1 And we have to go through subdivision infrastructure
2 plans and permitting for the 80 lots. That's
3 challenging. And then we have to work on the house
4 plans. We're hoping to get all that done this year.
5 It's very aggressive. We're hoping it can be done.
6 Housing is a crisis right now, so we want to move
7 forward quickly.

8 In 2024, we'll probably start doing the
9 actual subdivision infrastructure improvements,
10 start processing the building permits for the 80
11 homes, and hopefully, by the end of 2024, we'll
12 start home construction on the 80 homes, you know,
13 one at a time or for groups at a time. And at that
14 same time, we're going to start marketing buyer
15 applications lottery and the sales contract to
16 comply with the 201H 2.96 or Chapter 2.96 Maui
17 County code requirements. 2025 to 2026, homes should
18 be done. People can move in. That's -- that's the
19 dream. But all of this, I got to put the caveat in,
20 we're going to -- it's going to be contingent on all
21 of our reviewing agency timelines. We're hoping we
22 can get done in a reasonable time. So thank you
23 very much. Appreciate it.

24 **CHAIRMAN GIOVANNI:** One moment. So
25 there's a microphone. Thank you, Mr. Ueoka.

1 So Commissioners, any questions for the
2 petitioner on their presentation? No? I just
3 clarified directly to commissioners. No?

4 Commissioner Ohigashi.

5 **COMMISSIONER OHIGASHI:** Mr. Ueoka, the --
6 sounds like it -- that a large part of your plans
7 are contingent upon funding from the county council.
8 What is the timeline for determination of whether or
9 not that funding will take place? And if -- and are
10 you going to continue to work on this project during
11 that time when they are considering granting you
12 that money? Because there's no -- there's no
13 guarantee that you're going to get it.

14 **MR. UEOKA:** Jeff Ueoka. Thank you,
15 Commissioner Ohigashi. So yesterday the FY24 budget
16 for the county passed second and final reading.
17 There is an appropriation in the affordable housing
18 fund for this project. The funds are contingent
19 upon receipt of the -- our approval of the 201H
20 modification time extension to reflect what we
21 discussed today.

22 The ownership has stated that they are
23 willing to move forward based on the appropriation
24 in the county budget. Again, we are meeting with
25 the administration and the mayor, and so far

1 everyone seems supportive of this project. They
2 realize the challenges that -- you know, the
3 increase, the astronomical increase in interest
4 rates has put upon this project and a lot of other
5 similar projects, along with the cost of materials
6 went up tremendously. So they are willing to move
7 forward with the planning and, I guess, putting in
8 more capital without a guarantee on the county
9 funds.

10 **COMMISSIONER OHIGASHI:** I notice in your
11 submittal of, I think it was, May 12th, 2023, that
12 it comes under Wailuka Development Venture, LLC.
13 What is it -- stationery, right? But it also has
14 signatures of the Emmanuel Lutheran Church.

15 My question to you is that does this
16 document also serve at the annual report for
17 Emmanuel Lutheran Church of Maui?

18 **MR. UEOKA:** Jeff Ueoka. Yeah, that was
19 our understanding. We realized it was bifurcated in
20 2019, and it's been complicated because the longer
21 line is the last -- I don't know if it's the last,
22 but it's one of the requirements of the two-lot
23 subdivision, so we're still on the lot together.
24 The lot has not been subdivided yet.

25 And Emmanuel Lutheran has been a great

1 partner throughout all of this, and we thought we
2 could respond it once in -- that was the confusion
3 where there's an amended and -- there's an amended
4 annual report. We have to do a little bit more
5 updates to make sure all of the Emmanuel Lutheran
6 stuff was covered in the second submittal. Thank
7 you.

8 **COMMISSIONER OHIGASHI:** So this is under -
9 - I guess my question is since it's under one who
10 requests for a DBA and I'm not -- I'm not sure how
11 bifurcated it is or what state it's in. Is there an
12 actual report on what Emmanuel Lutheran's plans are
13 to complete their portion of this -- of their
14 original 25 acres? And I see you have a
15 representative from Emmanuel Lutheran here, so
16 perhaps -- because this is a request for a status,
17 we can allow them to tell us what their status is,
18 because it doesn't seem to be reported within your
19 documents.

20 **MR. UEOKA:** Jeff Ueoka. Yes, Commissioner
21 Ohigashi. I'd much prefer if -- they're more
22 familiar with their project. I'm more familiar with
23 the Waikapu Development Venture side. Thank you.

24 **COMMISSIONER OHIGASHI:** Is that all right,
25 Mr. Chair, to invite --

1 **CHAIRMAN GIOVANNI:** Yeah. And so we have
2 a representative from Emmanuel Lutheran here. Are
3 you an attorney for -- representing them? Then I'll
4 swear you in -- so then I'll have to swear you in.

5 So please state your name and affiliation
6 again for the record?

7 **MR. SJOSTRAND:** My name is Leif Sjostrand.
8 My affiliation with Emmanuel, I've been a member
9 since 1998. I've been the Chair of the Board of
10 Education there. My wife's a first-grade teacher.
11 My kids all went to school there.

12 I'm currently the President of the
13 congregation just recently, maybe a month ago. So -
14 -

15 **CHAIRMAN GIOVANNI:** Very good.

16 **MR. SJOSTRAND:** And I've been on our
17 little land use committee for 20-something years.

18 **CHAIRMAN GIOVANNI:** So could -- will you
19 swear to tell the truth?

20 **MR. SJOSTRAND:** Yes.

21 **CHAIRMAN GIOVANNI:** So please proceed to
22 address Commissioner Ohigashi's question.

23 Commissioner Ohigashi, can you rephrase
24 your question directly?

25 **COMMISSIONER OHIGASHI:** Yes.

1 My understanding was the status report
2 indicated was filed on behalf of your church, and my
3 question to you is: If you didn't contain anything
4 regarding the church itself or that portion of the
5 property dealing with the church, would you be able
6 to provide us a status report as to whether or not
7 construction is taking place, what things have been
8 done on the property?

9 **MR. SJOSTRAND:** I can tell you what I
10 know. We did, back in the 2000s, get a super nice
11 set of plans designed ready to submit for permit
12 that kind of covered up the whole 25 acres. We
13 couldn't afford to build that. It was definitely
14 overdesigned.

15 We kind of backed off of that. You know,
16 the 2008's economic slowdown and all of that. Our
17 school lost a lot of enrollment during that time.
18 And we were just trying to hang on. So we -- in --
19 now, with things -- you know, we're kind of growing,
20 ready to look at building again, and of course, the
21 pandemic, all that kind of stuff.

22 So -- but what I want to say, like, what
23 we didn't see is the pandemic actually brought a lot
24 of kids in. We stayed open, kind of, so our
25 enrollment's been kind of through the roof. And

1 now, all of a sudden, there's kind of a need to get
2 moved.

3 We've kind of sold part of the property
4 that we're going to build on, so we have to go kind
5 of completely re-through the planning process of
6 getting a new set of plans, getting permits. We're
7 motivated to do that. This -- there's a Lutheran
8 Church extension fund that can loan us money for
9 that purpose. They're coming to town this weekend.
10 We're meeting with them. So we're kind of in the
11 beginning stages, but we do want to move quickly, so
12 --

13 **COMMISSIONER OHIGASHI:** How soon would you
14 be able to file a status report on your own to --
15 you formed a commission as to what your plans are
16 for that particular parcel and whether or not you
17 are able to meet the deadlines because some of the
18 deadlines may apply to both projects.

19 **MR. SJOSTRAND:** That's a great question.
20 I don't know if I'm knowledgeable enough about what
21 goes into a status report to do all that. We can
22 certainly --

23 **COMMISSIONER OHIGASHI:** Would you be able
24 to take it back to your board and your congregation
25 and be able to communicate to the commission within

1 two months to tell us what -- what the -- what do
2 you want -- well, what proposal, what timeline --

3 **MR. SJOSTRAND:** Sure.

4 **COMMISSIONER OHIGASHI:** -- the Commission
5 may want to --

6 **MR. SJOSTRAND:** Absolutely, we could do
7 that.

8 **COMMISSIONER OHIGASHI:** There won't be an
9 order from this hearing, so this is just a request
10 from one lonely commissioner on Maui just asking
11 you. So I'm asking that if you can do that, it
12 would greatly assist us as to how we deal with this
13 whole situation.

14 **MR. SJOSTRAND:** Yes.

15 **COMMISSIONER OHIGASHI:** Technically, if
16 you bifurcate, the law says is that the jurisdiction
17 for any modifications or -- may come under the
18 county because of the 12.5 -- below the 15-acre
19 parcel. So we're not sure whether or not those will
20 come in.

21 In addition to that, one of the questions
22 -- one of the statements made in the report
23 indicated that -- that condition 5 on highways and
24 roads, regarding participating in improvements to
25 the highways and roads that WD -- the WDV, which is

1 Waikapu Development Venture, correct, does not -- is
2 not required to -- doesn't apply to them. It -- so
3 then that means that Emmanuel Lutheran is required
4 to do condition number 5.

5 And if that is a part of the subdivision,
6 then the cost will be placed upon Emmanuel Lutheran.
7 The -- the actual D&O doesn't say who's responsible
8 because -- and the bifurcation I don't think said
9 anything -- who's responsible. But based upon what
10 it was -- the scale between the two of you that they
11 place, it is -- the only way I get to read this is
12 that you got between yourselves decide it, that
13 Emmanuel Lutheran is going to pay for all those
14 improvements on the (inaudible).

15 So if that is the case, we'd like to know
16 financially if this requirement will be borne by you
17 and if you guys can do it, and if not, how would
18 this requirement condition be met, given the fact
19 that we're initiating or WDC -- DV wants to create
20 this large subdivision or this new subdivision of
21 this area.

22 So those are the questions that I have
23 when I read this particular part. And perhaps, we
24 can get a response from both WDV and Emmanuel
25 Lutheran Church in regard to that. And knowing your

1 position right now, I can sense that you wouldn't be
2 able to answer that question at this point.

3 **MR. SJOSTRAND:** Right.

4 **CHAIRMAN GIOVANNI:** So let the Chair go on
5 record. Committee Chair Commissioner Ohigashi's
6 concerns, he's not expressing a lone expression of
7 his own. So let me ask Emmanuel Lutheran if you can
8 respond to our staff, our LUC staff on or before
9 August 15th, 2023 to schedule -- to submit and
10 schedule a status report for your portion of the
11 property, and in your forthcoming status report -- I
12 mean agendized, it will be a hearing such as this in
13 which you make your presentation on the status of
14 your portion of the project, and we would expect
15 questions such as the one that Commissioner Ohigashi
16 just raised about the improvements could be
17 addressed. Fair enough?

18 **MR. SJOSTRAND:** Yes.

19 **CHAIRMAN GIOVANNI:** So the point of
20 contact from the LUC staff will be our Executive
21 Director Daniel Orodener.

22 **MR. SJOSTRAND:** Okay.

23 **CHAIRMAN GIOVANNI:** Okay. Back to you,
24 Commissioner Ohigashi. Is there anything
25 additional? Okay.

1 Commissioners, anything additional?

2 Commissioner Okuda.

3 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

4 This is Gary Okuda.

5 Thank you, Mr. Ueoka, for coming here
6 today to give a presentation. Let me first frame my
7 question with a statement of the -- of what I think
8 is the law, just so that you can see why I'm asking
9 the question.

10 I'm going to read a portion from the case
11 DW Aina Lea Development, LLC versus Bridge Aina Lea,
12 LLC. That's found at 134 Haw. 187, at pages 211 to
13 212. The Pacific 3d citation is 339 P.3d 685, at
14 pages 709 to 710, a 2014 Hawaii Supreme Court case.
15 And let me read the admonition or warning that the
16 Hawaii Supreme Court stated in that case.

17 And I quote, "Vacant land with the
18 appropriate state and county land use designation is
19 often subjected to undesirable private land
20 speculation and uncertain development schedules,"
21 close quote, and that, quote, "such speculation and
22 untimely development inflates the value of land,
23 increases development costs, and frustrates federal,
24 state, county, and private coordination of planning
25 efforts, adequate funding, public services, and

1 facilities," close quote.

2 Is that, what I read, an accurate
3 statement of the law as stated in the Bridge Aina
4 Lea case?

5 **MR. UEOKA:** Jeff Ueoka. You read it. I'm
6 not overly familiar with the Aina Lea -- Bridge Aina
7 Lea case, but I'll defer to you on that one.

8 **COMMISSIONER OKUDA:** Okay. Well, taking
9 the admonition that if a government agency like the
10 Land Use Commission gives certain entitlements or
11 rights to develop, especially if there's promises to
12 build affordable housing or workforce housing under
13 HRS 201H, we have an obligation as a government
14 agency, as the Land Use Commission, to make sure
15 that these things are carried out and property is
16 not just left vacant. Okay?

17 What evidence in your status report has
18 shown the financial ability of your client to
19 develop any type of housing on the property?
20 Whether it's 201H or any type of housing, what
21 evidence in your status report shows financial
22 ability?

23 **MR. UEOKA:** Jeff Ueoka. The status report
24 actually doesn't get into the financial ability. I
25 can say that recently, you know, the group has --

1 the membership group has evolved, and there is the
2 ability to get construction financing for this
3 project moving forward.

4 It was on hold due to the changes in
5 pricing and everything that we went over, and now,
6 with the county subsidy, it's a good possibility --
7 a strong possibility -- I won't say a guarantee.
8 Nothing's ever guaranteed, but it's a strong
9 possibility that this project can be financed.

10 **COMMISSIONER OKUDA:** Okay. Well, you do
11 understand that one of the things that at least I
12 look at -- I'm not trying to speak for anyone else,
13 just myself, looking at a status report is to
14 determine whether or not, given -- given the
15 standard that the Supreme Court has laid out in
16 Bridge Aina Lea, whether or not the appropriate
17 action, perhaps the mandated action that the Land
18 Use Commission must take is to revert this property
19 back to the original land use designation from
20 urban, for example, back to agriculture because
21 there is -- the promised work has not been done or
22 the promised development has not been done.

23 There hasn't been substantial commencement
24 of the use of the property in accordance with the
25 representations or the approvals, and we look to a

1 status report to determine whether we should do that
2 or not do that.

3 Do you think it's important, then, that
4 the status report contain admissible evidence that
5 the agency can consider, that we can consider to
6 determine whether or not your client in fact has the
7 financial ability to carry out these promises that
8 were, frankly, made to the citizens of the county of
9 Maui?

10 **MR. UEOKA:** Jeff Ueoka. Thank you,
11 Commissioner Okuda. I'm not sure how we can try and
12 do something -- I can say for this project it was
13 bifurcated in 2019. Work was started for the two-
14 lot subdivision. In 2020, the world hit a pandemic.
15 A lot of stuff slowed down. We came out of the
16 pandemic with interest rates we haven't seen in 20
17 or 30 years. Also materials are at the, I don't
18 know, all-time high. So it's hard to say anyone is
19 financially able to do this project.

20 I will say, for security for this
21 commission, before the bifurcation was done, the
22 201H approval was completed through the county.
23 It's an exemption from the zoning and stuff, so this
24 project cannot move forward in any other fashion if
25 it -- it won't get the exemptions, the 201H

1 exemptions, so speculation, not such a great threat
2 here as far as selling these lots at market or
3 something, due to the 201H approval.

4 I beg you not to revert this property back
5 to ag. It's not a huge project, but it's 80
6 residential workforce housing units for Maui that
7 will go to local families. And I don't know how bad
8 it is on the other islands, but I know it's pretty
9 tough on Maui to get residential workforce housing
10 units built.

11 So I really ask that you trust the
12 ownership here. They have put a million dollars
13 into an off-site water line already at their cost
14 and are serving other projects on Maui. They've put
15 in, I want to say, another 3 million in various
16 costs getting to this point. So they are committed
17 to it. It's just recently, it didn't look good when
18 the sales prices went down 20 to 30 percent, the
19 materials cost went up 20 to 30 percent, and their
20 cost of borrowing doubled or tripled.

21 So financial, tough right now. It's very
22 difficult. But I am asking that you stick with them
23 and trust them to move this forward --

24 **COMMISSIONER OKUDA:** Yeah. Well, Mr.
25 Ueoka, you know, reversion is not on the table right

1 now. This is a status report. And please don't
2 read anything into the questions I ask, okay? I'm
3 just asking these questions in an attempt, just for
4 myself only, to satisfy what I think, and I could be
5 wrong about this, the mandates that the law requires
6 of it. And I could be reading this all wrong, so,
7 you know, there -- there's no request right now to
8 revert the property, but I'm trying to give you the
9 background of why I'm asking you this question.

10 But let me tell you this, the reason why I
11 personally ask for admissible evidence placed on the
12 record from which we can take action in the future
13 is you do agree that agencies must act only based on
14 the evidence, not based on argument, right? I mean,
15 we have to have evidence in front of us whether we
16 take an action or affirmatively decide not to take
17 an action.

18 You do agree, right? We're quasi-
19 judicial. We've got to do things based on evidence,
20 correct?

21 **MR. UEOKA:** Jeff Ueoka. I won't disagree
22 with you, Commissioner Okuda.

23 **COMMISSIONER OKUDA:** Yeah. And you do
24 agree that it's -- it's almost like a mantra or a
25 comment, statement of the law that arguments by us

1 lawyers, it's not evidence. I mean, what lawyers say
2 is not evidence unless the lawyer is going to
3 testify as a witness, correct?

4 **MR. UEOKA:** Jeff Ueoka. Absolutely,
5 Commissioner.

6 **COMMISSIONER OKUDA:** Yeah. So do you
7 think it's unreasonable just to ask that, you know,
8 if you have these factual statements that you
9 believe should be reported to us, that it be put in
10 a form which is not simply arguments by counsel, but
11 it's actually presented to us so it becomes part of
12 the record that everybody, including people in the
13 community, can take a look at?

14 **MR. UEOKA:** Jeff Ueoka. Absolutely,
15 Commissioner. I just ask for some extra time,
16 maybe, for next year's status report. We can give
17 you more information. As I was asked earlier by
18 Commissioner Ohigashi, the county funds aren't
19 guaranteed, you know. We're in appropriation. We
20 still have a lot of steps. So nothing's for certain
21 right now --

22 **COMMISSIONER OKUDA:** Yeah. Well, Mr.
23 Ueoka, and, again, what I'm asking is just me
24 personally. I'm not speaking for anybody else. But
25 me, personally, unfortunately, we've had other

1 cases, status reports, where sometimes decades later
2 nothing -- the promise of affordable housing is not
3 there, and you know, people have told us, well,
4 look, we really do need affordable housing, so don't
5 revert things. Essentially, trust us.

6 Now, maybe when the presentation is first
7 made for boundary amendment, you know, a lot more
8 discretion or leeway is given, but when, for
9 example, a condition is not met, it's a little bit -
10 - not a little bit different, but the burden to
11 present or show good cause shifts more to the
12 applicant. You agree that's a reasonable way of
13 viewing things, correct?

14 **MR. UEOKA:** Jeff Ueoka. And I agree. I
15 just would ask in this case before you shift it too
16 far towards us, please remember Covid. That was
17 years and had big effects and that was a chunk of
18 our time.

19 **COMMISSIONER OKUDA:** Yeah. Yeah.

20 **MR. UEOKA:** We had four years. I'd say
21 Covid burned two and a half, three of it.

22 **COMMISSIONER OKUDA:** Yeah, but Mr. Ueoka,
23 I don't want to engage in an argument here, but
24 under Covid, the construction activities were
25 specifically exempted from shutdowns under the

1 governor's repeated emergency orders, correct?
2 Construction activities, it -- construction
3 activities were treated as essential industries, so
4 in fact, there was no prohibition on -- because of
5 the governor's emergency orders to shut down or stop
6 development or development projects, building
7 housing, or anything like that. Isn't that correct?

8 **MR. UEOKA:** Jeff Ueoka. And Commissioner
9 Okuda, I mean this with all due respect, I'm not
10 trying to debate or argue it, so shut me off if you
11 need to. But yes, if you were at the construction
12 stage, you could move forward.

13 We got our approvals in -- or we got
14 through LUC in 2019. And you don't get a
15 subdivision approval. You don't get your
16 construction plans approved when (audio disruption)
17 sick a year. We weren't at the -- we weren't even
18 close to getting to the point of construction. And
19 while construction was allowed to continue, a lot of
20 the county-approving agencies were shut down to a
21 certain extent, if not stopped. And the county also
22 adopted its MAPPS system right after Covid was kind
23 of released, and that caused some delays for County
24 of Maui for things.

25 So I understand what you're saying. I

1 don't disagree. But for this specific project, I
2 don't think it would have been possible to move
3 forward due to Covid.

4 **COMMISSIONER OKUDA:** Okay. Well, whatever
5 the reason is, you do agree that you probably are
6 not -- your client is not going to be able to meet
7 paragraph number 2, which is found at page 15 of the
8 findings of fact and the order entered July 11,
9 2019, which requires -- and I quote -- "complete the
10 construction of the workforce housing project no
11 later than four (4) years from the date of this
12 order." You're basically saying you're not going to
13 be able to meet that condition, correct?

14 **MR. UEOKA:** Jeff Ueoka. Yeah, that's --
15 we're not going to finish the 80 homes in six
16 weeks.

17 **COMMISSIONER OKUDA:** Okay. And in your
18 status report, which is dated May 10, 2023 -- by the
19 way, this presentation that you just gave, that
20 presentation that you just gave on the PowerPoint,
21 that was really not included in the status report
22 that was filed May 10, 2023, correct?

23 **MR. UEOKA:** Jeff Ueoka. Yes, that is
24 correct, Commissioner.

25 **COMMISSIONER OKUDA:** Okay. Why wasn't it

1 included if all of this is relevant to determining
2 the status of what's going on?

3 **MR. UEOKA:** Jeff Ueoka. Commissioner
4 Okuda, we really ramped up -- we did the status
5 report. We had an idea moving forward, but we -- we
6 weren't sure where the project was going until we
7 had very lengthy and strong discussion with the
8 county council. That's when --

9 **COMMISSIONER OKUDA:** Okay. Well --

10 **MR. UEOKA:** -- a lot of this information
11 came out.

12 **COMMISSIONER OKUDA:** Okay. Let me read a
13 sentence from the status report, and I'm going to
14 ask you whether or not this sentence in your status
15 report is accurate or not. It's found at page 4,
16 and it gives an explanation about, you know -- it's
17 the paragraph that starts with, "Due to the Covid-19
18 pandemic and current economic conditions," and it
19 goes on, okay? But there's a sentence that follows.
20 It says, and I quote, "several agencies have not
21 initiated their review of the plans or have not
22 responded to resubmittal of plans," close quote.

23 Did I accurately read that statement in
24 that paragraph?

25 **MR. UEOKA:** Jeff Ueoka. Yes, Commissioner

1 Okuda.

2 **COMMISSIONER OKUDA:** Okay. What plans
3 were submitted to what agencies where you didn't get
4 a response to the submittal of those plans?

5 **MR. UEOKA:** I believe these are
6 referencing when we send in the subdivision plans
7 for the two-lot subdivision and also, you know, any
8 other grading plans we needed and other associated
9 county approvals for the permitting process.

10 **COMMISSIONER OKUDA:** Okay. Can you list
11 the specific plans that were submitted which you
12 haven't gotten a response from the agency? And then
13 I'm going to ask you which agency hasn't responded
14 to you.

15 Because maybe we can act like the
16 concierge and try to get your plans, you know,
17 approved, or find out what's going on with the
18 delay. So what plans have been submitted, to which
19 agency, where you haven't gotten a response to the
20 resubmittal or submittal of the plans?

21 **MR. UEOKA:** Jeff Ueoka. I need to get
22 back to you on that, Commissioner. I'm not sure on
23 the specific agencies.

24 **COMMISSIONER OKUDA:** Well, are you trying
25 to -- is your client trying to represent to us that

1 it's the county's fault, specifically, the County of
2 Maui's fault or a department of the County of Maui
3 that's holding up approval of your plans, which is
4 holding up this development?

5 **MR. UEOKA:** Jeff Ueoka. I don't think
6 we're trying to blame anybody for anything. I don't
7 think that's my client's idea. We're just trying to
8 state there were certain delays. We're trying to
9 get agency reviews. We can get you a more specific
10 list.

11 **COMMISSIONER OKUDA:** Okay. So right now
12 you can't tell me whether or not that statement that
13 several agencies have not initiated their review of
14 the plans or have not responded to resubmittal of
15 the plans, you can't tell us whether or not that
16 statement is accurate or not accurate, correct?

17 **MR. UEOKA:** Jeff Ueoka. It's accurate. I
18 just can't tell you specifically which ones they
19 are.

20 **COMMISSIONER OKUDA:** Okay.

21 **MR. UEOKA:** And things may have changed
22 since May 10th. We'd have to double check.

23 **COMMISSIONER OKUDA:** Okay. Have you or
24 anyone else reviewed the cultural impact analysis
25 study which was attached to your submittal? I

1 believe that might have been attachment 1. I could
2 be mistaken. That's the -- let me give you a
3 specific reference.

4 That's the --

5 Yes?

6 **CHAIRMAN GIOVANNI:** So I'm search of a
7 break. Are you going to -- are you within five or
8 ten minutes of completion, or would you -- do you
9 envision going further in, or could we take a break?

10 **COMMISSIONER OKUDA:** Yeah, maybe we can
11 take a break now. But I will try to wrap it up
12 within five, ten minutes after the break.

13 **CHAIRMAN GIOVANNI:** Okay. Fine. So it's
14 10:15. So we'll take a ten-minute break. Come back
15 at 10:25.

16 **COMMISSIONER OKUDA:** Thank you.

17 **(Recess taken from 10:15 - 10:26 a.m.)**

18 **CHAIRMAN GIOVANNI:** Okay. 10:26. We're
19 back on the record.

20 Mr. Ueoka, let me just -- one thing before
21 I resume with Commissioner Ohigashi. I do not --
22 oh, pardon me.

23 **COMMISSIONER OHIGASHI:** We probably look
24 alike.

25 **CHAIRMAN GIOVANNI:** Yeah, you all look

1 alike. All Japanese, huh?

2 **COMMISSIONER OHIGASHI:** Lawyers.

3 **CHAIRMAN GIOVANNI:** Japanese lawyers all
4 look alike, somebody said.

5 Mr. Ueoka, I'm not including you in that.
6 But I would like to ask you for your PowerPoint that
7 you shared with us today, to make that available to
8 our staff if you haven't already done so, so we can
9 make it part of our record.

10 So let's resume with Commissioner Okuda.

11 **COMMISSIONER OKUDA:** Thank you very much,
12 Mr. Chair. This is Gary Okuda.

13 Mr. Ueoka, these few questions I have go
14 to what was submitted to the Land Use Commission by
15 your office on May 12, 2023 as attachment 2 to, I
16 believe, your status report. And it's a document
17 prepared by a Honua Consulting, titled Ethnographic
18 Survey for the Waikapu East Subdivision Number 3.
19 And the document has the date March 2022.

20 Let me first read what I believe is a
21 statement of the law with respect to certain duties
22 that the Land Use Commission has so that it frames
23 the questions that I'm going to ask. And these
24 questions go to whether or not there may need to be
25 a supplementation of the status report so that we

1 comply with the duties imposed on us by this case
2 called Ka Paakai versus Land Use Commission, which
3 is found at 94 Haw. 31. The Pacific 3d citation is
4 7 P.3d 1068, a 2000 Hawaii Supreme Court case.

5 And in that case, the Hawaii Supreme Court
6 held that state agencies have an affirmative
7 obligation to preserve and protect customary and
8 traditional rights of Native Hawaiians, and that in
9 that specific case, the Land Use Commission
10 improperly delegated to a private developer its
11 constitutional obligation to preserve and protect
12 customary and traditional rights of Native
13 Hawaiians.

14 And just so that we place this case in the
15 context, let me read from page -- the P. 3d page
16 1082, what the Supreme Court said as far as
17 explaining why agencies like the Land Use Commission
18 have this affirmative duty to inquire and, you know,
19 check into these matters. And I quote: "In
20 addition to specific statutory obligations, the LUC
21 is required under the Hawaii Constitution to
22 preserve and protect customary and traditional
23 practices of Native Hawaiians. Under Article 12,
24 Section 7 of the Hawaii Constitution, and the
25 Supreme Court quotes this provision: "The state

1 affirms and shall protect all rights customary and
2 traditionally exercised for subsistence, cultural,
3 and religious purposes, and possessed by ahupuaa
4 tenants who are descendants of Native Hawaiians who
5 inhabited the Hawaiian Islands prior to 1778,
6 subject to the rights of the state to regulate such
7 rights," close quote.

8 This provision places an affirmative duty
9 on the state and its agencies to preserve and
10 protect traditional and customary Native Hawaiian
11 rights and confers upon the state and its agencies,
12 quote, "the power to protect these rights and to
13 prevent any interference with the exercise of these
14 rights," close quote. And that's again from the Ka
15 Paakai case at 7 P.3d at 1082.

16 Was that an accurate statement of the law
17 as I read it, Mr. Ueoka?

18 **MR. UEOKA:** Jeff Ueoka. I defer to you on
19 that, Commissioner. I'm not -- I'm familiar with Ka
20 Paakai, but it sounds like you read it accurately.

21 **COMMISSIONER OKUDA:** Okay. Thank you.

22 And so what was submitted as attachment 2
23 to the status report, the report prepared by Honua
24 Consulting, that was intended to satisfy or present
25 evidence so that the Land Use Commission could

1 satisfy and do its duty as required by Article 12 of
2 the Hawaii State Constitution and as emphasized by
3 the Hawaii Supreme Court in Ka Paakai, correct?

4 **MR. UEOKA:** Jeff Ueoka. And I believe
5 condition 24 was added at the bifurcation which
6 required a cultural impact assessment. Yeah.

7 **COMMISSIONER OKUDA:** Right, consistent
8 with Ka Paakai and the constitution.

9 Now, in reviewing the study or the report
10 which is Attachment 2, which I have referenced,
11 persons were interviewed to determine whether or not
12 there would be impacts with respect to the matters
13 which the Hawaii State Constitution says that
14 government agencies have a duty to protect, correct?

15 **MR. UEOKA:** Jeff Ueoka. That is my
16 understanding, Commissioner.

17 **COMMISSIONER OKUDA:** Yeah, and it looked
18 like two people were interviewed in the study. What
19 is the evidence in the record that was submitted to
20 us anywhere in the record that these two people that
21 were interviewed have knowledge and experience in
22 customary and traditional rights of Native Hawaiians
23 relevant to the -- relevant to giving us the ability
24 to make the decisions and carry out our duties as
25 required by Article 12 in the Ka Paakai case?

1 I mean, what makes these two people
2 reliable or persuasive, or however you want to take
3 it, as relevant witnesses?

4 **MR. UEOKA:** Jeff Ueoka. Thank you,
5 Commissioner. I think, like anything that's -- it's
6 subjective. I believe Honua Consulting selected
7 these individuals. I -- since Maui is small, I do
8 know both of them. They're local guys, born and
9 raised, but I'm not sure what you would want to see.
10 Further, I'd -- we relied on Honua Consulting's
11 knowledge and, you know, just general background and
12 expertise in this, why they chose those two
13 individuals.

14 **COMMISSIONER OKUDA:** Well, is there
15 anything in the report prepared by Honua Consulting
16 which indicates what the qualifications or the --
17 yeah, what the qualifications or the standards were
18 used to determine who to interview to gather
19 evidence about whether there is or there is not
20 impacts which are relevant to a Ka Paakai or Article
21 12 analysis.

22 **MR. UEOKA:** Jeff Ueoka. Thank you,
23 Commissioner Okuda. I'm not sure what they used for
24 it, but it does state that Mr. Blackburn is
25 associated with the project area through his life-

1 long residence in Wailuku, Maui, and Na Wai Eha.

2 It talks about Mr. Fujiwara. He's a
3 lifetime resident of Maui and active community
4 member. He brings a helpful perspective expertise
5 on the cultural resources, traditions, and customs
6 that exist in the project area. He does not believe
7 that the project will negatively impact cultural
8 resources, traditions, or customs.

9 **COMMISSIONER OKUDA:** What's the evidence
10 that these people are actually -- or have the
11 qualifications, either age, education, experience,
12 training as either cultural practitioners or
13 somebody who would have relevant knowledge to give
14 the type of analysis which the Hawaii Supreme Court
15 said we, on the Land Use Commission, you know,
16 better take a look and seek out, otherwise we'll get
17 reversed again.

18 Because, for example, you could say I'm a
19 lifetime -- I was a lifetime resident of Kailua
20 Oahu, where I grew up. I'm familiar where the beach
21 is. I went swimming at the beach once in a while,
22 but I would never claim that I was a cultural
23 practitioner or anyone with real knowledge of what
24 the cultural practices were or are in Kailua or the
25 general area.

1 I mean, I can point out where the Heiau
2 is, but, you know, just growing up in the area, I'm
3 not sure if that would qualify me to give the type
4 of expertise. So I'm just making a point that
5 perhaps you might consider some type of
6 supplementation going forward because if the Ka
7 Paakai -- if the analysis and the work that the Land
8 Use Commission is required to affirmatively take is
9 not present, you know, that can stop even giving
10 approvals on extensions if we don't have some
11 evidence that complies with the requirements of Ka
12 Paakai and Article 12.

13 My other question is this: I'm not saying
14 the best evidence rule applies here, but are these
15 the best people with the best knowledge to give the
16 type of background information so that we can carry
17 out our duties required by Article 12 of the
18 Constitution. I mean, why were these people
19 selected and not other people selected? Are these
20 the people who have the best knowledge in the
21 community about the area, or are there other people?

22 My own personal view is I'm not sure
23 whether the record is sufficient at this point where
24 further action can be taken. So that's just a
25 commentary. I mean, there's nothing pending in

1 front of us right now, but that's just my -- my
2 point.

3 Do you have any response to what I'm
4 saying?

5 **MR. UEOKA:** Jeff Ueoka. We'll follow up
6 with Honua Consulting again. They are the experts
7 on this, and we defer to them that they consult with
8 the proper people. They determine who to interview,
9 and we trusted them. But I will follow up to see if
10 we can find out more information.

11 **COMMISSIONER OKUDA:** Yeah. Again, because
12 the Supreme Court has said government agencies have
13 an affirmative obligation, it cannot be delegated.
14 The obligation cannot be delegated to anyone else.
15 So okay. Thank you very much, Mr. Ueoka.

16 Thank you, Mr. Chair. No further
17 questions.

18 **CHAIRMAN GIOVANNI:** Thank you,
19 Commissioner Okuda.

20 Commissioners, any further questions over
21 here?

22 Commissioner Yamane?

23 **COMMISSIONER YAMANE:** Thank you. A couple
24 questions just on the subdivision process. I guess
25 where are you in the process, and is the sale -- has

1 the sale already occurred or does the subdivision
2 have to happen first? And is that a critical path
3 for you to pursue the development?

4 **MR. UEOKA:** Thank you, Commissioner. The
5 sales there, you got to wait until the subdivision's
6 completed, of course, per county rules, so -- but
7 it's -- we're close on the subdivision. The
8 waterline, my understanding is that's the last big
9 thing, and the two-lot subdivision should be
10 complete soon.

11 **COMMISSIONER YAMANE:** And so has the sale
12 already been closed? I mean, financially, has --

13 **MR. UEOKA:** I'm not a hundred percent sure
14 if the sale is closed, but typically, for this one
15 my understanding is it closed in the sense that they
16 both are on title to the whole property.

17 **COMMISSIONER YAMANE:** Okay. So do you
18 know financially if any dollars changed hands? Was
19 it purchased?

20 **MR. UEOKA:** Yes.

21 **COMMISSIONER YAMANE:** Would you happen to
22 know what the cost was of the purchase?

23 **MR. UEOKA:** Thank you. A million fifty
24 thousand for the land.

25 **COMMISSIONER YAMANE:** Okay. And can you

1 proceed without the subdivision, or can I assume
2 that subdivision is a critical path. Without that,
3 you cannot pursue the development, or can you? That
4 was a question.

5 **MR. UEOKA:** Jeff Ueoka. My understanding
6 is you can submit. While the two-lot subdivision is
7 pending, we could submit the, you know, 80-plus lot
8 subdivision to get everything rolling. They can be
9 reviewed concurrently within the County of Maui.

10 **COMMISSIONER YAMANE:** Okay. Thank you.

11 **MR. UEOKA:** Yeah.

12 **COMMISSIONER YAMANE:** No further
13 questions, Mr. Chair. Thanks.

14 **CHAIRMAN GIOVANNI:** Thank you.

15 Commissioners, anything?

16 Commissioner Ohigashi?

17 **COMMISSIONER OHIGASHI:** At the risk of
18 laying my hand out -- my cards on the table is that
19 I think that -- I think that the -- I think that we
20 should have this matter come back before us as soon
21 as you are able to file a motion for the purposes of
22 extending time.

23 And one of the reasons why I'm looking at
24 that is that the bifurcation order modified only two
25 conditions, condition number 20 and condition number

1 2. And condition number 5 seems to say that when
2 you -- when the development of the church is
3 completed, that the TIAR process would begin.
4 However, condition number 5 was intended for the
5 purposes of calling it the project and was in there
6 before the bifurcation occurred.

7 So the question to -- in my mind is: Does
8 condition number 5 require this new development to
9 consider what impact does it have on the neighboring
10 state highways by doing that TIAR? And should it be
11 required? And perhaps in your motion to extend
12 time, that issue can be briefed and addressed.

13 Second thing is that we're not sure --
14 we're not -- we don't have copies, I guess, of what
15 the agreement is with the county. So the county, if
16 they pass some kind of permit or they pass some kind
17 of subdivisions can include that condition as a
18 condition for the purposes of the subdivision itself
19 because for all of us who don't know, that street is
20 pretty crowded during certain times of the day, and
21 the impact of an additional subdivision in that area
22 may -- or may require additional improvements.

23 So that's what I'm thinking. I'm just --
24 I'm just thinking -- and if -- and if -- and the
25 question is -- then the question is going to turn:

1 Does that increase the cost of the subdivision? Is
2 that -- those kinds of issues stipulate out before
3 going ahead because you're going to wind up with
4 whole exacerbation of the traffic in that particular
5 area. I walk over there. And I see it, and I drive
6 it, and I know it. So that's my concerns.

7 That's -- and just my suggestion that
8 somebody addresses that. And somebody means whoever
9 is first up to bat, whether it's the church or the
10 subdivision. Okay. That's -- that's all my
11 comments.

12 **MR. UEOKA:** Do you mind if I respond?

13 **CHAIRMAN GIOVANNI:** I welcome it.

14 **MR. UEOKA:** Okay. Thank you.

15 Thank you, Chair.

16 Jeff Ueoka. Commissioner Ohigashi,
17 understood. That was why we responded the way it
18 was. It was triggered upon the completion of school
19 and the opening of the school for condition 5, the
20 TIAR.

21 We can reach out to the state DOT and, you
22 know, talk with them. The difficulty is we're one
23 of the last ones in on this -- on Waiale Road, and
24 it's an 80-unit 100- percent residential workforce
25 housing unit project. I'm not sure what the

1 improvements will look like. That's my only fear
2 with putting a condition like that on an 80-unit
3 project. It could bury it if the requirement comes
4 out too great, but again, like you said, we need to
5 include that in the briefing, and I did submit a
6 motion yesterday.

7 **CHAIRMAN GIOVANNI:** Yeah. Let me clarify
8 for the record. So the petitioner yesterday
9 submitted a motion to our staff for -- do you want
10 to summarize -- it has not yet been posted to our
11 website. It's not fully understood by the
12 commissioners themselves. But I'll give you a
13 minute or two, if you want to summarize your motion,
14 but we're not hearing that motion today.

15 **MR. UEOKA:** Thank you, Chair. Jeff Ueoka.
16 Yeah, we submitted a motion for extension
17 of time. And in the bifurcation order, it kind of
18 stated the 201H specs and plans, plans and specs
19 application that were submitted with that were our
20 representation moving forward. So we just wanted to,
21 I guess, notify the commission that that would be
22 changing also, to put everyone on notice, and it's
23 an unknown still because we have not received the
24 county approval on the 201H modification, so just
25 for clarification.

1 **COMMISSIONER OHIGASHI:** And so that then
2 refers to my question is that: Does Emmanuel
3 Lutheran realize that if they build a church there
4 or more school or what, if they have their plans be
5 done there that they be responsible for all the
6 improvements that you may have caused in this
7 matter?

8 I'm just -- and -- and I don't believe
9 that -- I'm not -- I don't believe that it was the
10 intent of the parties to slough this requirement off
11 because everybody seemed to have been proceeding
12 together in a joint fashion at that time. And so I
13 think that everybody expected that these things
14 would be done. And I'm -- your -- the impact of
15 this development does have that potential, so it's
16 better to know than not to know.

17 **CHAIRMAN GIOVANNI:** Let me -- the concern
18 is that implement -- you know, satisfying this
19 condition may do one or both projects, and it cannot
20 be unclear who is responsible for fulfilling that
21 condition. That's understood by both the petitioner
22 and Emmanuel --

23 **MR. UEOKA:** Jeff Ueoka. We'll reach out
24 to Emmanuel Lutheran, State DOT, and, you know,
25 traffic engineer to see what the actual impact or,

1 you know, see what the study would say for our -- an
2 80-unit residential workforce housing subdivision
3 and a school.

4 It's difficult on the school at this point
5 because they don't have their plans drawn up right
6 now, so you can't really project traffic without a
7 set base, but we can make assumptions. Thank you.

8 **CHAIRMAN GIOVANNI:** Are you good? Okay.

9 **COMMISSIONER OHIGASHI:** It's up to them.

10 **CHAIRMAN GIOVANNI:** Commissioners,
11 anything further?

12 **CHAIRMAN GIOVANNI:** I have a couple of
13 questions. Could I ask you to put up your PowerPoint
14 again and your timeline? Is there any way to make
15 that bigger? There you go.

16 So of these points, particularly the ones
17 in 2023, I'm interested in your go/no go decisions
18 for this project. For example, if you do not get
19 the \$10 million subsidy from the county, does that
20 mean this project is a no go? If you -- so I'm
21 interested in your -- I'm not specifying what's go/
22 no go. I want you to specify what's go/no go.

23 I'd like you to go through these
24 milestones, if you will, and identify any of which,
25 go/no, and also when you expect to reach that

1 decision.

2 **MR. UEOKA:** Jeff Ueoka. Thank you, Chair.

3 So the 10 million or some large amount of
4 county subsidy, if we don't get any county subsidy,
5 my understanding is the project is a no go in that
6 it was in the process of being scrapped before the -
7 - one of the ownership representatives worked at the
8 county council, and this began again.

9 The 201H amendment --

10 **CHAIRMAN GIOVANNI:** Wait, wait. And when
11 on that?

12 **MR. UEOKA:** Oh, so we started that end of
13 -- I'm sorry -- beginning of May, mid-May, and the
14 county council just approved on second and final
15 reading their budget yesterday. So it is in the
16 county budget. We still need to work with the mayor
17 and the administration to --

18 **CHAIRMAN GIOVANNI:** So it's weeks to
19 months away, you think?

20 **MR. UEOKA:** Correct. Yeah. Sorry.

21 So the 201H amendment, we'd like to get
22 our package together to the council within the next
23 couple of weeks. We have some work to do trying to
24 figure out the best process to the B restrictions,
25 the -- ten years is already set by 201H, but the

1 additional resale price and owner occupancy, we need
2 to see what works for the council and the
3 administration. So we're hoping to get that process
4 started in the next couple of weeks.

5 The approval for that, it's a resolution,
6 so it would need to go to committee and then to the
7 council, so that will be at least six to eight
8 weeks, I'd say. We submitted that motion. We have
9 a little bit of homework to do, additional
10 information to get, so we'd hope we could get
11 through this process with the LUC, I don't know,
12 maybe by the end of summer, I hope. I'm not sure if
13 that's overly optimistic.

14 Either of those not getting through would
15 be a no go. If we didn't get an extension of time
16 from you guys, in theory, that would probably mean
17 you'd want to revert it or something, you're not
18 supportive of the project moving forward. Without
19 the 201H amendment, we wouldn't get the county
20 funding, and we wouldn't be able to redesign the
21 project as we feel is better and, I guess, cost
22 efficient where it could be built.

23 The complete -- the two-lot subdivision
24 process, naturally, if that fails it's a no go, but
25 we're pretty certain -- it's a ministerial process,

1 and we're closing up the last requirement, so that
2 should be okay.

3 Subdivision infrastructure --

4 **CHAIRMAN GIOVANNI:** Wait. Then that's
5 weeks to months also? Months to years? What?

6 **MR. UEOKA:** With the county I'd like to
7 say weeks to months. Yeah, it's with the county
8 right now, so weeks to months.

9 Subdivision infrastructure plans and
10 permitting, again, ministerial, so it should be
11 approved. I'd say months, multiple months for
12 approval. Naturally, if that is not approved, it's
13 a no go. We're not moving forward with the project.

14 House plan development, it's going to be
15 based off of the proposed subdivision plans. I'd
16 say probably weeks to months to get that, you know,
17 buttoned down. It's -- you know, it really depends
18 on the specific lot sites.

19 In 2024, naturally, subdivision
20 infrastructure improvements will go in. We're not
21 anticipating it being overly painful. County water,
22 county sewer. Naturally, if we don't get that, no
23 go.

24 Building permits, we're hoping -- well,
25 I'm sorry. Subdivision improvements, that will

1 probably take at least 12 months, maybe more.

2 **CHAIRMAN GIOVANNI:** Which one?

3 **MR. UEOKA:** Subdivision infrastructure

4 improvements. Yeah.

5 Building permit processing, we're assuming

6 that's months. And ministerial should be okay.

7 Home construction, we can commence when we get

8 building permits.

9 **CHAIRMAN GIOVANNI:** So the one I don't see
10 up there is your construction loan.

11 **MR. UEOKA:** Okay.

12 **CHAIRMAN GIOVANNI:** So when will you --
13 have you applied for the construction loan?

14 **MR. UEOKA:** I don't believe -- we've been
15 in touch with lenders. Our builder has a good
16 relationship with lenders. And it's being
17 discussed. We have not sat down and set anything
18 firm yet as we're still kind of in limbo a lot, but
19 that would be a no go, again, if -- I'd give that
20 weeks to months. Yeah. We would need the
21 construction plans done, so months.

22 **CHAIRMAN GIOVANNI:** Months?

23 **MR. UEOKA:** Months.

24 **CHAIRMAN GIOVANNI:** So you've identified
25 four or five -- I think five go/no go decisions that

1 you'll be facing within the next few months, is that
2 correct?

3 **MR. UEOKA:** Jeff Ueoka. Yes, that is
4 correct.

5 **CHAIRMAN GIOVANNI:** Okay. This commission
6 is obligated by its own rules and by the interest of
7 the State of Hawaii on any project developments'
8 impact on our climate change. You're not a huge
9 project in respect to some that would have a major
10 impact, but I've noted that just in the changes that
11 you are proposing, you're eliminating park area,
12 green space. You don't want to do any landscaping
13 in the rights-of-way now because you want to move
14 trees to the center of the lawns or something of
15 that sort.

16 So I'd like you to assure this commission
17 of what -- or inform this commission of what steps
18 you are taking as the developer to be respective of
19 the impact that you might have on climate change,
20 because you're taking agricultural land and you're
21 covering it with a lot of concrete here.

22 **MR. UEOKA:** Jeff Ueoka. Just for
23 clarification, it's just we don't want to plant the
24 trees in the county right-of-way. It will still
25 probably be grassed or something, yeah.

1 **CHAIRMAN GIOVANNI:** That's good. That's
2 helpful.

3 **MR. UEOKA:** Yeah. It won't be -- yeah.
4 So the tree just will be in the front yard, so the
5 roots don't interfere with utilities. We'll discuss
6 that a little further.

7 The park -- you know, the park was recent
8 -- there was a big drainage basin that will probably
9 be grassed in the property, and there's a greenway
10 requirement, I believe, along Honoapiilani Highway.
11 But you are correct, the park is now -- the pocket
12 park is not there anymore. It's going to be houses.

13 We can try and check to see what the net
14 loss of area is in the sense that these houses will
15 have yards and stuff, too, so there will be area
16 there. So we can definitely look into that further,
17 Chair.

18 **CHAIRMAN GIOVANNI:** Do you know offhand if
19 the design of the housing has proceeded to the point
20 that you've made decisions about the supply of
21 energy for the project?

22 **MR. UEOKA:** That we -- Jeff Ueoka. We're
23 not that far yet, Chair.

24 **CHAIRMAN GIOVANNI:** So you don't know if
25 you're going to use solar power for the residences,

1 or you're just going to buy from the utility,
2 electric power?

3 **MR. UEOKA:** Jeff Ueoka. The -- it will be
4 connected to Maui Electric.

5 **CHAIRMAN GIOVANNI:** And no rooftop solar
6 being installed on these units?

7 **MR. UEOKA:** We're not that far along yet.

8 **CHAIRMAN GIOVANNI:** Okay. I'm good on my
9 questions for now.

10 Anything -- Commissioner Okuda?

11 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

12 A very short follow-up question to the
13 Chair's question. It would be helpful if your
14 client, in whatever further submittals are
15 submitted, if you can present at least some type of
16 even very tentative, very, very tentative
17 conditional loan commitment just so that we can see,
18 you know, to what extent this project is financially
19 feasible or not or whether the financing is feasible
20 or not.

21 I know, you know, you are correct that you
22 cannot get a final loan commitment with a lot of
23 these documentation and plans and approvals, but if
24 you can give us at least an indication of -- that
25 there really are or is a live lender there willing

1 to lend on this, subject to, you know, conditions,
2 but if you can show that.

3 Because otherwise, we start -- at least
4 for me, I start running into the admonition of the
5 Supreme Court in Bridge Aina Lea, which is -- it
6 starts looking like land speculation and not a
7 project. Because we do want to see workforce
8 housing. And if there's anything we can do to
9 expedite workforce housing, we will try to do that
10 within the bounds of the law.

11 But at the same time, we're very cautious
12 about what might be land speculation. And so if you
13 can present evidence to show this is a project that
14 really has the ability to succeed or be -- you know,
15 come to fruition, that will be very helpful in us
16 making the decision based on the evidence presented
17 to us.

18 Thank you, Mr. Chair.

19 **CHAIRMAN GIOVANNI:** Thank you,
20 Commissioner Okuda.

21 Commissioner Atta?

22 **COMMISSIONER ATTA:** I'm glad to hear Dan
23 talk a little bit about this global warming, climate
24 change, and stuff like that, and the fact that they
25 -- you folks are being made to have greater density

1 and stuff like that and losing park space. That
2 bothers me, actually, because it's going counter to
3 global warming and climate change.

4 I was just wondering if you folks had
5 maybe a little more thought as to what -- how you're
6 handling global warming and climate change because I
7 didn't see anything in the paperwork. I don't know
8 if you're going to have greater dense -- less --
9 more of -- more climate- friendly project, then what
10 is -- how are you addressing those big issues?

11 **MR. UEOKA:** Jeff Ueoka. Thank you. My
12 apologies, Commissioner Atta. I was just checking.
13 I think the park was less than an acre in space.
14 You know, to be fair, this area is getting built
15 out. I will say Mauka, in the Maui Island plan,
16 there's 250-foot buffer between -- that's supposed
17 to be between Waikapu and Wailuku. That will all be
18 greenspace.

19 **COMMISSIONER ATTA:** That's not you --

20 **MR. UEOKA:** That's not our project but
21 just in general, in the general vicinity, there is a
22 lot of greenspace. Our hope here is -- again, our
23 hope was the duplexes going to single family homes,
24 it's really trying to just satisfy the wants of the
25 people.

1 And I understand global warming, climate
2 change, it's very important, but that was the reason
3 for these alterations, but we will definitely look
4 into that and get back to you.

5 **COMMISSIONER ATTA:** The thing about the --
6 you saying that the people want to -- want more
7 single-family homes. Is that based on a market
8 study of -- who are you talking about? This is a
9 workforce, right? Then there's -- there's all kinds
10 of people, and with the climate change and
11 everything, I don't know if people want the single-
12 family house, so.

13 **MR. UEOKA:** I will -- it's anecdotal --
14 Jeff Ueoka.

15 It's anecdotal, primarily, Commissioner.
16 There -- it's different. It's not rental This
17 project is for sale. But a block down the street
18 there's going to be 324 apartments available in that
19 area. We've heard anecdotally the projects -- I
20 believe there's a project in North Kihei. Granted,
21 this is central. That was North Kihei.

22 It didn't -- it was an affordable housing
23 -- a residential workforce housing component of a
24 project that it didn't sell too well as duplex.
25 It's just traditionally, we found Maui -- and I

1 don't have a set market study, but traditionally, we
2 found that a single- family product is very
3 desirable here on Maui. Thank you.

4 **COMMISSIONER ATTA:** Yeah.

5 **CHAIRMAN GIOVANNI:** Okay?

6 Anything further? Going once, twice.

7 Thank you very much. We're going to proceed.

8 County of Maui, any presentation or
9 remarks you'd like to put on the record?

10 **MS. DESJARDINS:** Mimi Desjardins. At this
11 time the county has no comments to provide. Thank
12 you.

13 **CHAIRMAN GIOVANNI:** Okay.

14 Commissioners, questions for the county?

15 I have one.

16 So we've heard from the petitioner about
17 numerous things that are ongoing with the county.

18 Can you comment on -- from the county's perspective,
19 what is the status and what's going on with your
20 discussion with this petitioner about this project?

21 **MS. DESJARDINS:** Mimi Desjardins. From
22 corporation -- counsel's point of view, we had no
23 discussions. I have sat in on various meetings and
24 have seen the progress of what's happening and have
25 looked at the modifications that have been requested

1 in terms of timelines in the past, and I do
2 understand that the petitioner will be asking the
3 council for further time extensions.

4 I do know that during the budget process,
5 there was discussion about providing significant
6 funding from the affordable housing fund to this
7 project; however, it was conditioned specifically on
8 time extensions being granted by council. And the
9 council seemed actively interested in possibly
10 creating more conditions as part of the extension
11 here. And some of those were raised in this
12 discussion you've had this morning with the
13 petitioner. But other than that, we don't have
14 anything further to provide. Thank you.

15 **CHAIRMAN GIOVANNI:** So you heard the
16 petitioner enumerate approximately a half a dozen
17 go/no go decisions they will be facing in the next
18 few months, all of which involve the County of Maui.
19 So you have a very important role to play in whether
20 this project goes forward or not. So I would
21 encourage the county to get actively involved. And
22 if this matter comes back before the commission, we
23 would be looking to the county to be as explicit as
24 they can in updating us on the activities from your
25 perspective.

1 **MS. DESJARDINS:** Mimi Desjardins. And I
2 totally agree, and I can't speak for specific
3 departments because there may be ongoing discussions
4 that I'm not aware of; however, I think that a lot
5 of that no go discussion will occur when the council
6 is asked whether to extend the time on this and what
7 they're willing to provide to petitioners or not,
8 and that will really be up to the members of the
9 council.

10 **CHAIRMAN GIOVANNI:** Including the \$10
11 million they've asked for.

12 **MS. DESJARDINS:** Exactly. And which has
13 been appropriated, my understanding. I don't know.
14 As it 10 million? It's been approved in the budget
15 contingent upon the time extension and then we'll
16 see what that discussion looks like because, of
17 course, as you know, that could include other
18 conditions to give the time extension.

19 **CHAIRMAN GIOVANNI:** Yeah. Fair enough.

20 **MS. DESJARDINS:** Yeah. Thank you.

21 **CHAIRMAN GIOVANNI:** Okay. Commissioners,
22 anything further? Thank you very much.

23 **COMMISSIONER OKUDA:** Real fast, Chair.

24 **CHAIRMAN GIOVANNI:** Okay. Commissioner
25 Okuda.

1 **COMMISSIONER OKUDA:** Yeah. Just a comment
2 to everyone. And if there's potential Chapter 343
3 environmental assessments which might apply, just me
4 personally, I would urge that be taken care of more
5 sooner than later. Because if you have a worthy
6 201H project or any type of project that is going to
7 benefit the community, we really hate to see it, you
8 know, die on the vine where a 343 issue pops up
9 which could have been taken care of a lot earlier.

10 So if there's an environmental assessment
11 that has to be done, please err on the side of
12 caution and make sure something like that doesn't
13 derail a good project at the very end. Thank you.

14 **CHAIRMAN GIOVANNI:** Okay. OPSD? Ms.
15 Kato.

16 **MS. KATO:** Thank you. Alison Kato for
17 OPSD. We don't have any particular comments, but
18 you know, we recognize that progress on this project
19 has been very slow. But given the current potential
20 for the subsidy from the county, we think it
21 wouldn't be unreasonable to give additional time for
22 them to work things out and see how that works out.

23 Regarding Commissioner Okuda's mention of
24 possible 343 triggering, we think that there is an
25 exemption that might apply for the affordable

1 housing under the new rules, so I just wanted to
2 mention that.

3 I'm not -- this isn't -- I guess this is
4 more of a question. I'm not sure if petitioner has
5 considered HHFDC funding financing?

6 **CHAIRMAN GIOVANNI:** Petitioner, are you
7 prepared to respond to that?

8 **MR. UEOKA:** Jeff Ueoka. Thank you, Chair.
9 Thank you, Ms. Kato.

10 No, we haven't considered HHFDC. We're
11 just got going with the county one, and it's hoping
12 that will be good and we can move forward with the
13 county funding. Thank you.

14 **MS. KATO:** Okay. I just wanted to raise
15 that as another potential source of funding.

16 I don't have any other comments. Thank
17 you.

18 **CHAIRMAN GIOVANNI:** Thank you.
19 Commissioners, any questions for OPSD?
20 Commissioner Ohigashi?

21 **COMMISSIONER OHIGASHI:** I'm not sure --
22 I'm not asking OPSD, but I'm asking the petitioner.
23 What's the budget for the development of this
24 project? What's the cost?

25 **MR. UEOKA:** Jeff Ueoka. I believe the

1 last numbers we came up with was a little under 50
2 million.

3 **COMMISSIONER OHIGASHI:** 50?

4 **MR. UEOKA:** Yeah.

5 **COMMISSIONER OHIGASHI:** 5-0?

6 **MR. UEOKA:** 5-0.

7 **COMMISSIONER OHIGASHI:** And so the \$10
8 million infusion by the county would be 20 percent
9 of your total?

10 **MR. UEOKA:** I believe -- Jeff Ueoka.

11 I believe so. It gets a little
12 complicated because there are a lot of other costs
13 up front that I don't -- don't go into that 50
14 percent, so yeah. 20 percent.

15 **CHAIRMAN GIOVANNI:** Anything further?

16 Okay. Thank you, Ms. Kato.

17 I have no questions. The Chair has no
18 questions.

19 This is our final poll for public
20 testimony on this matter. Once again, are there any
21 members of the public who wish to testify on the
22 status and progress of A07-773 (b) Waikapu
23 Development Ventures? Seeing none, we will proceed
24 to further discussion.

25 So Commissioners, this is a status report.

1 We are not required to take any action at this time.
2 If no action is taken, the requirement of continual
3 annual status reports will remain in effect. And I
4 believe -- let me just confirm with staff.

5 It was May 10th, I believe. Is that when
6 the last one is dated?

7 **MS. KWAN:** May 12th.

8 **CHAIRMAN GIOVANNI:** May 12th.

9 Commissioners, if we do not take any
10 actions today, we will not see -- the next thing
11 we'll see is in terms of an annual status report
12 will be next May.

13 Now, let's recognize that the petitioner
14 has very recently made a formal motion to extend,
15 and we will probably take that matter up before the
16 scheduled annual status report would occur.

17 **COMMISSIONER OHIGASHI:** Chair?

18 **CHAIRMAN GIOVANNI:** Let me just finish the
19 opening remarks here.

20 So however, if the commission feels that
21 its concerns have not been addressed on the comments
22 and responses that have been provided today, the
23 Chair will entertain a motion that either the
24 petitioner's status report does not sufficiently
25 address the commission's concerns and that further

1 meetings or status updates are necessary to provide
2 the opportunity to do so at a future date determined
3 by the LUC staff, or that there is reason to believe
4 that the petitioner will not adhere to the
5 conditions set forth in the D&O and request that
6 staff move forward with a formal order for the
7 petitioner for a show cause proceeding. Okay?

8 So that's where we stand going into
9 discussions.

10 So Commissioner Ohigashi?

11 **COMMISSIONER OHIGASHI:** Yeah. I -- maybe
12 a question for our Executive Director. Do you -- my
13 understanding of the status of the ownership of the
14 property that ELC and WDV both own it as a joint --
15 jointly at this point in time.

16 Would it be correct to say that their
17 motion to extend time would have to be a joint
18 motion or for both parties? I'm just -- or have the
19 permission of --

20 **CHAIRMAN GIOVANNI:** Mr. Orodenger.

21 **MR. ORODENKER:** Commissioner Ohigashi, we
22 have two separate docket numbers on this. I think
23 that from a legal standpoint, both parties would
24 have to agree to the motion since they're both co-
25 owners of the property at this point; however, since

1 they're two separate dockets and can be brought by
2 one of the two petitioners.

3 In other words, we have a requirement that
4 the landowner approve or agree to whatever's being
5 filed in front of us; however, in this case, since
6 we have two different docket numbers, the party
7 under which that docket number applies could
8 actually make the motion. But it has to have the
9 approval of the other landowner.

10 **COMMISSIONER OHIGASHI:** My -- my concern
11 is I want to make sure that ELC has full knowledge
12 of their requirements under the term of this order
13 as we proceed in this matter, and that they are able
14 to fully understand what their obligations would be
15 under any future order. So I just wanted to make
16 sure that their participation can happen.

17 I'm not sure, even if you make a separate
18 docket, technically, they may be even parties to
19 that docket. Given -- given the procedural history
20 that we have here where the -- where WDV intervened
21 into the original docket and got the bifurcation.
22 So it -- I am hesitant and feel a little protective
23 of ELC and their participation in this matter.

24 But again, I don't represent them, and
25 neither does the commission, so I just want to note

1 that for the record.

2 **CHAIRMAN GIOVANNI:** Commissioner Okuda?

3 **COMMISSIONER OKUDA:** Yeah, if you don't
4 mind, I'd like to second what Commissioner Ohigashi
5 has stated. I -- I believe this is like the cousin
6 to the indispensable party rule. We don't want
7 inconsistent results. It's also a due process
8 issue. And if there's a necessary party that is not
9 participating and showing full knowledge and consent
10 of what's taking place, then even if the petition
11 looks good, we might not have the power to approve
12 it because somebody's rights who's not presently a
13 party is being affected.

14 So I think out of an abundance of caution,
15 what Commissioner Ohigashi suggests is something to
16 think about just so that we don't run into this due
17 process indispensable party issue, yeah.

18 Thank you, Mr. Chair.

19 **CHAIRMAN GIOVANNI:** So Commissioners, I
20 would like to speak my mind a little bit to you and
21 give you an idea that we may consider on a going-
22 forward basis. So this is open discussion at this
23 point. It's not a formal motion.

24 But it appears to me that we have a need
25 for a status of the Emmanuel Lutheran property. And

1 we've got a commitment from the representative to
2 inform our staff by August 15th or sooner of when we
3 can agendaize -- so that's like eight weeks away --
4 when we can agendaize before this commission a
5 hearing to receive that.

6 In parallel with that, and in that same
7 timeframe, the immediate petitioner has told us that
8 over that same period, he's got a half a dozen go/no
9 go decisions that will inform the petitioner whether
10 they're going to go forward on this project and will
11 have a very significant bearing, in my opinion, on
12 your motion for extension. You may even withdraw
13 it.

14 So I'm wondering it -- whether we could in
15 some way request that the two parties come back at
16 the same time, one, to give a status report on their
17 project; that would be Emmanuel Lutheran, and the
18 second would be for formal presentation on the
19 motion for an extension, and at that time we would
20 hear it.

21 And let's elaborate on what our -- I think
22 they heard it once already, but what our
23 expectations would be at that point in time, but
24 we're basically looking to something in the next,
25 say, three months from now where we'd invite both

1 parties back jointly with some common goals. Number
2 one, to get a clear understanding of what the church
3 is planning to do. Secondly, you can assure this
4 commission that none of the -- none of the original
5 conditions are falling by the wayside and being lost
6 in the transaction.

7 You can give us a clearer update on the
8 financial transaction between the parties and
9 whether that has closed. You can give us a clear
10 indication on the go/no go decisions that you faced
11 and the progress that you made. You can give us a
12 clearer indication from the County of Maui and how
13 you have progressed.

14 We would invite the County of Maui to give
15 us a more detailed presentation on their view of
16 this project. Because I think the message we're
17 trying to send is -- at least coming from the Chair,
18 is this could be a very important workforce housing
19 project for Maui, and there's no question about the
20 need.

21 If anything we want to do, we want to
22 assist to make it successful and to keep it on track
23 and to give you what you need. But there's some
24 balls in the air here, and they're being juggled,
25 and I'm not sure who the juggler is and I'm not sure

1 how many balls. We need to understand all that.

2 So Commissioners, that was a message to
3 you. Should I let them over here?

4 **COMMISSIONER OHIGASHI:** Mr. Chair?

5 **CHAIRMAN GIOVANNI:** Yes.

6 **COMMISSIONER OHIGASHI:** They pay you --
7 they must pay you the big bucks to be the chair over
8 here.

9 **CHAIRMAN GIOVANNI:** I don't make nothing.
10 It's a volunteer job, you know that.

11 **COMMISSIONER OHIGASHI:** I see your
12 suggestion, and I -- one of the -- since we don't
13 have the -- technically, we don't have the motion in
14 front of us to schedule something.

15 I suggest that we continue the status
16 hearing until -- for a period of time of three
17 months and to schedule a status hearing on ELC at
18 the same time. If -- if Mr. Kuata's (sic) motion
19 could be heard, we can -- he can petition to have
20 that matter heard within the three -- at that same
21 time. So that's my suggestion rather than waiting
22 one year --

23 **CHAIRMAN GIOVANNI:** Oh, totally. Yeah.

24 **COMMISSIONER OHIGASHI:** Right. So I'm
25 going to make a motion to that.

1 **CHAIRMAN GIOVANNI:** I don't think we even
2 need a motion. I think I can just ask the staff to
3 --

4 **COMMISSIONER OHIGASHI:** That's fine. You
5 get the big dollars.

6 **CHAIRMAN GIOVANNI:** Yeah. Well, the big
7 dollars he's talking about are the two lemon bars he
8 brought me today, which I appreciate, by the way.

9 Commissioners, any further comment on the
10 motion before us? Makes sense? Okay. So the Chair
11 requests that the LUC staff work with the parties on
12 both dockets to schedule an agendized, at the same
13 hearing, same meeting date, in which we would hear a
14 status report from Emmanuel Lutheran. And secondly,
15 we would hear a -- on your motion for an extension.

16 And consistent with that motion, we're
17 looking for more detailed status report on some of
18 the -- on all of the issues that you heard surface
19 today. And we would -- I'd also encourage you to --
20 on matters that you may not personally be fully up
21 to speed on, bring some witnesses like this
22 consulting group that's doing the -- you know, the
23 cultural study or the traffic stuff.

24 That's very helpful. We don't want to put
25 any unnecessary further delay in the project, but if

1 -- if it's like -- if the answer to pertinent
2 questions are: Well, we'll have to go get you
3 answers, that's a delay. So we would encourage you
4 to bring all the expertise at the time and schedule
5 that with our staff. And the point of contact is
6 Mr. Orodenger, our Executive Director. Fair enough?

7 **MR. ORODENER:** May I just for
8 clarification, for everyone's clarification. We
9 will be contacting you, and we will also be sending
10 out a letter with some -- containing some of the
11 questions that have been brought up at this hearing,
12 so that there's a full understanding of what the
13 commission is expecting when you come before us
14 again.

15 **CHAIRMAN GIOVANNI:** Thank you. I think
16 those questions will be very helpful to focus the
17 conversation. And I also have the sense that this
18 request by the commission doesn't add any undue
19 delay to the process because the process is, I
20 understand it and as you've described it, is really
21 governed by what's going on with the county. So
22 make haste. We encourage that. Thank you.

23 Okay. I want to thank the parties for
24 your being here today, and this part of our agenda
25 today is closed. Thank you.

1 In consideration that lunch is
2 unavailable, we're going to reconvene in ten minutes
3 for executive session.

4 (WHEREUPON, the LUC Commission is in
5 Executive Session.)

6 CHAIRMAN GIOVANNI: Okay. It's 12:03.
7 Executive session had ended. We're back in normal
8 session, and we have no further business today, so
9 this meeting is adjourned at 12:04.

10 (Meeting adjourned at 12:04 p.m.)
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1 CERTIFICATE

2
3 I, Jodi Dean, 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
13 hand this 22nd day of June, 2023.

14
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19 _____
20 Jodi Dean
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