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**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on October 18, 2023

Commencing at 9:31 a.m.

Held at

Maui Arts & Cultural Center

Alexa Higashi Room

1 Cameron Way

Kahului, Hawaii 96732

I. CALL TO ORDER

II. ADOPTION OF MINUTES

October 4, 2023

III. TENTATIVE MEETING SCHEDULE

IV. A07-773(a) EMMANUEL LUTHERAN CHURCH OF MAUI (Maui)

Status and progress report and action (if necessary). The Petition area includes approximately 25.263 Acres of Land Situated at Wailuku, Island of Maui, State of Hawaii. Tax Map Key: (2)3-5-002:011.

V. A07-773(b) WAIKAPU DEVELOPMENT VENTURE, LLC (Maui)

Status and progress report and action (if necessary). The Petition area includes approximately 25.263 Acres of Land Situated at Wailuku, Island of Maui, State of Hawaii. Tax Map Key: (2)3-5-002:011.

VI. RECESS

BEFORE:

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PARTICIPANTS

LUC COMMISSIONERS :

- Dan Giovanni, Chairman
- Lee Ohigashi, Vice-Chairman
- George Atta
- Kuike Kamakea-Ohelo
- Melvin Kahele
- Michael Yamane
- Brian Lee

Nancy Carr Smith

LUC STAFF :

- Daniel Orodener, Executive Officer
- Scott Derrickson, Chief Planner
- Martina Segura, Staff Planner
- Ariana Kwan, Chief Clerk
- Julie China, Esquire, Deputy Attorney General

COUNTY OF MAUI :

- Michael Hopper, Esq., Deputy Corporation Counsel
- Ann Cua, Planning Department, Administrator
- Tara Furukawa, Planning Department
- Saumalu Mataafa, Deputy Director of Housing and Human Concerns

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PARTICIPANTS (Continued)

OPSD:

Brian Yee, Deputy Attorney General

Katia Balassiano, Planning Program Administrator

PETITIONERS

(a) **EMMANUEL LUTHERAN CHURCH:**

Joshua Rempfer, Principal

Leif Sjostrand, Congregation President

(b) **WAIKAPU DEVELOPMENT VENTURE:**

Jeffrey Ueoka, Esq., Counsel

Keoni Gomes, Owner's Representative

Heidi Bigelow, Project Manager

PUBLIC TESTIMONY:

Sandy Baz

Bruce U'u

1 **CHAIRMAN GIOVANNI:** Aloha mai kakou. Good
2 morning. This is the October 18, 2023 Land Use
3 Commission meeting. This is an in-person meeting
4 which is being held at the Maui Arts and Cultural
5 Center, Higashi Meeting Room, 1 Cameron Way,
6 Kahului, Hawaii 96732. And this meeting is open to
7 the public.

8 Court reporting transcriptions are being
9 done from the Zoom recording of this meeting.
10 That's why we have the Zoom, primarily, because it's
11 an in-person meeting.

12 All meeting participants, I'd like to
13 stress the importance of speaking slowly, clearly,
14 and directly into your microphone. Before speaking
15 each time, please state your name and identify
16 yourself for the record. That's for the minutes.

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

25 My name is Dan Giovanni, and I have the

1 pleasure to serve as the Land Use Commission
2 Chairman. And we currently have nine seated
3 Commissioners, eight of which are here today.

4 Along with me are Commissioners Lee
5 Ohigashi from Maui; Commissioner Michael Yamane from
6 Kauai; Commissioner Mel Kahele from Oahu;
7 Commissioner Kuike Kamakea-Ohelo from Oahu;
8 Commissioner George Atta from Oahu; Commissioner
9 Brian Lee from Oahu; and Commissioner Nancy Carr
10 Smith from the island of Hawaii. Commissioner Gary
11 Okuda is excused from today's meeting.

12 Also in attendance are the Land Use
13 Commission Executive Officer, Daniel Orodener; Land
14 Use Commission Chief Planner, Scott Derrickson; LUC
15 Staff Planner, Martina Segura; LUC Chief Clerk,
16 Ariana Kwan; and LUC Attorney General, seated to my
17 left, Ms. Julie China.

18 Again, court reporting transcriptions are
19 being done from the Zoom recording.

20 Our first order of business is the
21 adoption of the minutes from our meeting of October
22 4th, 2023.

23 Ms. Kwan, has there been any written
24 testimony submitted on October 4th minutes?

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

1 **CHAIRMAN GIOVANNI:** Thank you.

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

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

6 **CHAIRMAN GIOVANNI:** Thank you.

7 Commissioners, are there any corrections
8 or comments on the minutes from the meeting of
9 October 4th? Hearing none, do I have a motion to
10 adopt the minutes?

11 **COMMISSIONER OHIGASHI:** Mr. Chairman, I
12 move to adopt the minutes.

13 **CHAIRMAN GIOVANNI:** Thank you,
14 Commissioner Ohigashi.

15 Do I have a second for the motion?

16 **COMMISSIONER LEE:** I'll second it.

17 **CHAIRMAN GIOVANNI:** Thank you,
18 Commissioner Lee.

19 All in favor of adoption of the minutes,
20 please indicate by saying, "aye."

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

22 **CHAIRMAN GIOVANNI:** Is anyone opposed?

23 The minutes are adopted. Thank you.

24 The next agenda item is the tentative
25 meeting schedule. Mr. Orodener.

1 **MR. ORODENKER:** Thank you, Mr. Chair.

2 Tomorrow --

3 **AUTOMATED VOICE:** Recording in progress.

4 **MS. KWAN:** Sorry.

5 **MR. ORODENKER:** Tomorrow we will be here
6 once again for the WDV motion to -- for extension of
7 time. Our next meeting after that will be on
8 November 15th, which will be a virtual meeting.
9 Staff will be presenting for review the proposed
10 rule amendments that were discussed at the prior
11 meeting.

12 On November 16th, we will be in Kona for
13 Kona -- for WHCC, held at WHCC, for A81-525, Y-O
14 Limited Partnership's motion for reconsideration.
15 On December 6th, we will be on Oahu at the State
16 office tower for the OPSD Soil Study Presentation.
17 We do not have any meetings scheduled until January
18 24th, which will be Halekua Development status
19 report.

20 However, I would caution the Commissioners
21 that the Waimanalo Gulch matter is outstanding. We
22 don't know when the county's going to complete its
23 contested case hearing, and that could happen at any
24 time, and we will only have 45 days. So please,
25 keep your schedules open until you hear from us.

1 **CHAIRMAN GIOVANNI:** Thank you, Mr.
2 Orodenker.

3 Do any Commissioners have any questions or
4 comments on the tentative schedule?

5 Let me -- in the sense that we need to be
6 ready, Ms. Kwan, can I ask that, as you have in the
7 past, continue to survey the availability of the
8 Commissioners on a proactive basis.

9 **MS. KWAN:** Yes, Mr. Chair.

10 **CHAIRMAN GIOVANNI:** Thank you.

11 So our fourth order of business is the
12 status and progress report from A07-773(a) from
13 Emmanuel Lutheran Church of Maui.

14 I'd like to begin by having the parties
15 identify themselves. Petitioner, could you please
16 identify yourself and who will be with you?

17 **MR. REMPFER:** Good morning. My name is
18 Josh Rempfer. I'm the principal at Emmanuel
19 Lutheran School.

20 **MR. SJOSTRAND:** And I'm Leif Sjostrand,
21 Congregation President.

22 **CHAIRMAN GIOVANNI:** Do you have counsel
23 with you today?

24 **MR. REMPFER:** No, sir.

25 **CHAIRMAN GIOVANNI:** Okay. Fine. So from

1 -- from the Waikapu Development?

2 **MR. UEOKA:** Good morning, Chair. My name
3 is Jeff Ueoka. I represent Waikapu Development
4 Venture. With us today is the owner's
5 representative, Keoni Gomes, and Project Manager,
6 Heidi Bigelow. Thank you.

7 **CHAIRMAN GIOVANNI:** Thank you.

8 From the state?

9 **MR. YEE:** Good morning. Deputy Attorney
10 General, Brian Yee, on behalf of the Office of
11 Planning and Sustainable Development. With me is
12 Katia Balassiano from the Office of Planning and
13 Sustainable Development.

14 **CHAIRMAN GIOVANNI:** Thank you.

15 And from the County of Maui?

16 **MR. HOPPER:** Good morning, Chair and
17 Commissioners. Deputy Corporation Counsel Michael
18 Hopper. I represent the Maui County Department of
19 Planning. With me are Planners Ann Cua and Tara
20 Furukawa. And later, we will have Deputy Director
21 of the Department of Housing and Human Concerns,
22 Saumalu Mataafa, to be available for questions on
23 the WDV matter. Thank you.

24 **CHAIRMAN GIOVANNI:** Thank you.

25 Okay. I'd like to at this time review the

1 procedure for today for both the status report
2 agenda items. First, I will ask -- as I have done,
3 I've asked the parties to identify themselves for
4 the record, so if we have questions or commentary,
5 we know who we're speaking to. Thank you.

6 Next, I will recognize written testimony
7 that has been submitted on this matter, identifying
8 the person or organizations who have submitted the
9 testimony. Next, I will call upon members of the
10 public who wish to testify on the progress report.

11 Each member of the public will have two
12 minutes to provide their testimony and should stand
13 by after their testimony to respond to any questions
14 the parties or the Commissioners may have. When all
15 the questions have been completed, the Chair will
16 excuse the witness and call the next witness to
17 enter and give their testimony.

18 After completion of the public testimony
19 portion of the proceedings, the Chair would like the
20 petitioners to provide its status report. The Chair
21 will then call upon the County's Planning
22 Department, the Office of Planning and Sustainable
23 Development, or the State, for comments regarding
24 the status report. The Petitioner will then be
25 allowed to respond to the comments made by the

1 County and OPSD.

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

9 Once the public testimony concludes, the
10 Commission will enter into deliberations regarding
11 the status report and to decide if any action is
12 necessary. The Chair would also like to note for
13 the parties and the public that, from time to time,
14 I will be calling short breaks, normally, five to
15 ten minutes each hour. And also, we will be
16 scheduling a lunch break at approximately 11:30
17 today. The timing of that lunch break in part is
18 due to the availability and the hours that are open
19 at the college there at their cafeteria. So that
20 will give adequate time for everybody to get over
21 and back.

22 So let me ask the parties if they have any
23 comments or objections to the procedure. So
24 Petitioner?

25 **MR. REMPFER:** I have no objections.

1 **CHAIRMAN GIOVANNI:** Please state your
2 name.

3 **MR. REMPFER:** Josh Rempfer. I understand
4 what's going on.

5 **CHAIRMAN GIOVANNI:** Okay.

6 **MR. UEOKA:** Jeff Ueoka. No objections.
7 Thank you.

8 **CHAIRMAN GIOVANNI:** Thank you.
9 State?

10 **MR. YEE:** Brian Yee. No objections.

11 **CHAIRMAN GIOVANNI:** Thank you.
12 County?

13 **MR. HOPPER:** Michael Hopper. No
14 objections, Chair.

15 **CHAIRMAN GIOVANNI:** Thank you. Okay.
16 Disclosures. Do any of the Commissioners
17 have any disclosures on this matter to make at this
18 time? Hearing none, we will proceed.

19 Reference for the record. Please be
20 informed that the relevant records and documents
21 pertaining to this matter can be accessed for review
22 on the Land Use Commission website, specifically
23 under, "Pending Documents" tab. And interested
24 parties are welcome to review the documents at their
25 convenience.

1 Public Testimony. For the members of the
2 public, again, please be reminded that the
3 Commission will not be considering the merits of
4 this petition; rather, the Commission is interested
5 in learning about the current state of activities
6 related to the docket, including compliance with
7 conditions and we'll consider whether action is
8 necessary after that.

9 I will now recognize written testimony
10 submitted in this matter, identifying the person or
11 organization submitting the testimony.

12 Ms. Kwan, has there been any written
13 testimony submitted on this matter?

14 **MS. KWAN:** No testimony for the status
15 report, though we did receive four written
16 testimonies for tomorrow's agenda item regarding
17 Waikapu Development.

18 **CHAIRMAN GIOVANNI:** Have we had an
19 opportunity for folks to --

20 **MS. KWAN:** They are posted.

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

22 Now I will call any members of the public
23 to provide testimony here today on this agenda item.
24 Are there any members of the public present who
25 would like to testify in person? Please have a

1 seat.

2 **MS. KWAN:** First testimony is Sandy Baz.

3 **CHAIRMAN GIOVANNI:** Please state your name
4 and affiliation and address for the record, and I'll
5 swear you in before you give your testimony.

6 **MR. BAZ:** Aloha, Chair, Members, my name
7 is Sandy Baz. Sanando (phonetic) Baz is my legal
8 name. I am a parent volunteer with Emmanuel
9 Lutheran Church and School, and that's who I'm
10 testifying on behalf of today and myself. I'm a
11 resident of Kahului. I live at 91 Olina Street,
12 Kahului, Hawaii 96732.

13 **CHAIRMAN GIOVANNI:** Thank you. Do you
14 swear to tell the truth today?

15 **MR. BAZ:** I do.

16 **CHAIRMAN GIOVANNI:** Please proceed.

17 **MR. BAZ:** Thank you. Thank you, Chair.
18 You know, I appreciate the opportunity to come
19 before you. I've been a parent of Emmanuel Lutheran
20 School for about a year and a half now, and my two
21 boys that attend the school just love the school.

22 With a little bit of pulling, I got
23 participated into the volunteer building committee
24 that -- so I've been participating in that since
25 about the beginning of this year, I believe.

1 There's, you know, a lot of -- I know it
2 seems like there hasn't been a lot of activity going
3 on, but lately, we've been meeting sometimes weekly
4 to go over status updates. We get more details, of
5 course, from the principal, but the idea is that the
6 school itself -- and the reason why I'm very blessed
7 and happy to have my children attend there is that
8 it's a small school, a little over 200 kids in
9 total. The teachers, the small classroom sizes, the
10 parents, and teacher, and staff, it's very family
11 oriented, and the education is real top quality.

12 And so I'm really supportive of growing
13 the school. We're in a very landlocked situation
14 right now in a residential neighborhood in Kahului,
15 so I have the opportunity to build a new school in -
16 - it's kind of an infill area, if you -- I know in
17 the past they went from agriculture to the public
18 calls it public.

19 The project itself, if you look at the
20 surrounding areas now, it's an infill project.
21 There's a church. There's affordable housing close
22 by. There's another affordable housing project
23 which I support as well. And we really want to have
24 the opportunity to complete the project and move
25 forward and move this school. So again, thank you

1 for your time. I really appreciate the -- the
2 opportunity to present to you my support for the
3 project and -- as we move forward getting the
4 project -- moving to completion, so thank you,
5 Chair.

6 **CHAIRMAN GIOVANNI:** Thank you for your
7 testimony.

8 So any questions for the witness from the
9 Petitioners?

10 **MR. UEOKA:** Jeff Ueoka. None from WDV.
11 Thank you.

12 **CHAIRMAN GIOVANNI:** Thank you.

13 **MR. REMPFER:** Josh Rempfer. None from
14 Emmanuel Lutheran.

15 **CHAIRMAN GIOVANNI:** Thank you.
16 State?

17 **MR. YEE:** Brian Yee. No questions.

18 **CHAIRMAN GIOVANNI:** Thank you.
19 County?

20 **MR. HOPPER:** No questions, Chair.

21 **CHAIRMAN GIOVANNI:** Thank you.
22 Commissioners, any questions for the
23 witness?

24 Thank you for your time. Appreciate it.

25 **MR. BAZ:** Thank you.

1 **CHAIRMAN GIOVANNI:** We have somebody else?

2 **MS. KWAN:** For Waikapu. Are we taking
3 that testimony or are we just doing Emmanuel
4 Lutheran first?

5 **CHAIRMAN GIOVANNI:** Just Emmanuel
6 Lutheran. So we'll take that later.

7 So we'll move on. So the other witness is
8 -- you're going to testify in Emmanuel Lutheran or
9 the other project?

10 **MR. U'U:** The other project.

11 **CHAIRMAN GIOVANNI:** So you'll have an
12 opportunity when that comes up.

13 So let's go to the petitioner for Emmanuel
14 Lutheran and please provide your status report.

15 **MR. REMPFER:** My name is Josh Rempfer.
16 I'm representing Emmanuel Lutheran. This is my
17 first time being a part of the Land Use Commission,
18 so I just want to kind of give a little bit of
19 history of my knowledge of where our project started
20 and where we are now. Is that okay to do?

21 **CHAIRMAN GIOVANNI:** Yes. Please proceed.

22 **MR. REMPFER:** Okay. I came to Emmanuel
23 Lutheran in 2017, but as a teacher, and then took
24 over as principal in 2020. Prior to that, my
25 knowledge of the -- I learned more about the project

1 and its start and stop as I took over and became
2 more involved. So the first couple years I was
3 here, the enrollment declined and the project didn't
4 really have a leader, per se.

5 So when I took over as principal, one of
6 the things I wanted to do was to take a look at what
7 our requirements were and try and meet those
8 deadlines, but in order to do so you have to involve
9 a number of people. So one of the first things I
10 did was contact Leif, who is an active member, Leif
11 Sjostrand, and another school parent, and Sandy, who
12 joined us last year, and so I'd like to just talk a
13 little bit about the progress that we've made in the
14 time since I took over as principal.

15 So just a couple of notes that I have
16 written here. We first met, Leif and I did, with
17 Goodfellow in May of -- May of 2021, and we just got
18 a basic -- we talked with them about basic things
19 that we needed to get started. And then things came
20 together more appropriately in November of '21.
21 November of 2021, we formed an official building
22 committee, where we began to take a look at what we
23 needed to do to meet the phases and to keep moving
24 forward.

25 One of the reasons that the project

1 stalled, I said, just because of change in
2 leadership. There were COVID issues, but right now
3 Emmanuel Lutheran is as strong enrollment-wise as
4 it's ever been. So we are -- I think we're poised
5 and in good shape to continue moving forward to meet
6 some of these deadlines.

7 So the biggest piece that I think we've
8 made progress with is we've partnered with a -- a
9 consultant group named Grow. I think that was
10 mentioned at our last meeting. Unfortunately, the
11 day that we signed the contract or that we had
12 congregational approval was the same day that the
13 fires hit Lahaina. And so we haven't -- from August
14 until now, we haven't met, but we do have -- we have
15 made some serious progress with the -- with
16 different organizations in terms of completing those
17 plans or getting at least the concept out there.

18 And we've also partnered with an
19 organization called LCEF, which stands for Lutheran
20 Church Extension Fund. And a gentleman by the name
21 of Billy Brath has helped us with that process. So
22 we are -- we haven't -- we are making progress
23 financially in terms of looking at what kind of
24 loans we can secure. We're making progress with a
25 basic layout of our design, but we don't have -- we

1 -- we're still definitely some time away from seeing
2 things come to fruition, but we've made a lot of
3 steps from November 2021 until now, moving in that
4 direction both financially and with the layout of
5 what campus would look like.

6 **CHAIRMAN GIOVANNI:** So a few of the
7 members of this Commission are relatively new and
8 not -- may or may not be familiar with the details
9 of the record on a firsthand basis. In your own
10 words, can you describe the project for the benefit
11 of everybody here?

12 **MR. REMPFER:** So ideally, what we would
13 like to see, our campus right now is 1.25 acres, and
14 we have 220 kids. And we've basically outgrown the
15 space that we're in. What we would like to do for
16 our first phase is to build a facility that has 16
17 classrooms, four of those being for our preschool
18 and then 12 of those being for our grade school and
19 a gymnasium.

20 I think that's critical for phase 1. We
21 would like to move our entire campus at one time.
22 There were talks at one point about moving preschool
23 in phase 1 and then the grade school in phase 2.
24 For us, it's really important to be able to move
25 everyone at one time because part of the financial

1 piece would be selling the land we currently have to
2 help finance the project moving forward.

3 So to answer your question, what we would
4 like to do is build, in phase 1, 16 classrooms and a
5 gymnasium and then our phase 2 would be to look at
6 possibly building another -- a structure, another
7 gymnasium and a sanctuary for our church. Right now
8 -- well, I shouldn't say right now. For the last 40
9 years, our preschool runs out of the church
10 building. So every Sunday after church they tear
11 everything down, and the preschool sets up. And
12 they've been doing that since 1980.

13 So the idea and the excitement to have --
14 to be able to have a preschool -- and we have lots
15 of -- we could -- our preschool could truly grow if
16 we have a facility that could -- that could take on
17 more kids, so I think that it's just another
18 opportunity to serve the community in that way.

19 Chair, did I answer your question?

20 **CHAIRMAN GIOVANNI:** I think so, but let me
21 ask the Commissioners if they have -- on this point,
22 if you have any questions about the scope of the
23 project as described?

24 **COMMISSIONER LEE:** Chair --

25 **CHAIRMAN GIOVANNI:** Commissioner Lee.

1 **COMMISSIONER LEE:** -- Commissioner Lee has
2 a question.

3 **CHAIRMAN GIOVANNI:** Commissioner Lee, go
4 ahead.

5 **COMMISSIONER LEE:** Can you tell us how
6 many students your school serves or plans to serve?

7 **MR. REMPFER:** We currently serve 220
8 preschool through eighth grade. And like I -- as I
9 mentioned a little bit earlier, that's as big as
10 we've been since I've been there. I think ideally,
11 we would love to see our preschool grow. Our
12 preschool has a maximum capacity right now of 36.
13 We have three classes of 12. If we -- with a lot of
14 kids on a waiting list.

15 We don't want to certainly -- we're not
16 looking to have a preschool with hundreds and
17 hundreds, but I think if we could increase the
18 number of kids in our preschool, it just ensures our
19 enrollment stability for years to come if we can get
20 more kids feeding from preschool into kindergarten.

21 If I'm dreaming big, I would say we would
22 love to have double grades, so you know, from
23 kindergarten through eighth. More realistically, I
24 think we can probably -- if we are able to finish
25 our project and move, I think we can really feasibly

1 have double grades, kindergarten through fifth,
2 because after fifth grade, students start looking
3 elsewhere. But to be able to do that, then we can
4 have a stronger middle school.

5 And in one of our phases, if we built
6 another -- like, a middle school type -- if we laid
7 the groundwork for it, that could be a potential
8 phase 2 possibility, so if we -- I'd say right now
9 we're at 220. I would think I would love to see the
10 school be maybe around 300 to 350 with an increase
11 in preschool and lower grades. Again, that's
12 idealistic, but I think it's certainly a possibility
13 if we're able to, you know, see the project through
14 to fruition.

15 **COMMISSIONER LEE:** Thank you, Chair.

16 **CHAIRMAN GIOVANNI:** Thank you.

17 **COMMISSIONER ATTA:** Mr. Chair.

18 **CHAIRMAN GIOVANNI:** Commissioner Atta.

19 **COMMISSIONER ATTA:** I just wonder right
20 now we're just -- the -- one -- K through sixth
21 grade, is that right now?

22 **MR. REMPFER:** Right now we're preschool
23 through eighth grade.

24 **COMMISSIONER ATTA:** Through eighth grade.

25 Okay.

1 **MR. REMPFER:** Yeah. So we have 36 in
2 preschool and then kindergarten through eighth
3 anywhere from 23 is our kindergarten class, and our
4 smallest class is 19, so roughly an average of 20
5 kids per class, which is, like Sandy mentioned a
6 little earlier, it's a good class size. Teacher to
7 student ratio is nice. We're not looking to, you
8 know, double or triple everything, but I think --
9 because we want to keep that family atmosphere, but
10 we still, if we're able to build, I think we can
11 also serve more people in the community.

12 **COMMISSIONER ATTA:** Right now you're under
13 two acres, this -- right now?

14 **MR. REMPFER:** 1.25 acres.

15 **COMMISSIONER ATTA:** Yes. Very small.

16 **MR. REMPFER:** You should see our field at
17 recess. It never gets -- it's always being used,
18 yeah.

19 **COMMISSIONER ATTA:** Okay.

20 **COMMISSIONER OHIGASHI:** Chair?

21 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

22 **COMMISSIONER OHIGASHI:** Going back to
23 2019, I think that there was an extension to 2025 to
24 complete the initial two phases. I think you
25 completed a first phase, right, to transfer the

1 property, pay off the mortgage? And again, a fund-
2 raising campaign, I think that's where we are right
3 now, is that right?

4 **MR. REMPFER:** That's correct, yeah. The
5 land has been subdivided and the two parcels, one
6 being Waikapu Development and the other, that's just
7 about finished. And then right where we are -- I
8 mean, we are -- if we hadn't had what took place on
9 the west side, we were moving towards starting or
10 looking our capital campaign. We were hoping to
11 have that kick off at the new year. I can tell you
12 that we won't do that just because the timing of
13 that is not right. But that's where we are right
14 now, looking to move towards our capital campaign,
15 so --

16 **COMMISSIONER OHIGASHI:** And the second
17 phase that you have to complete before 2025 will be
18 the -- construct a multipurpose building and the
19 necessary sitework and infrastructure. The building
20 will house a preschool and provide gym space during
21 the week and convert to worship services.

22 Is that your present plan?

23 **MR. REMPFER:** Our plan -- that was -- when
24 that was written in 2019, I wasn't the principal. I
25 was just on a teaching staff. And like I said, the

1 idea was that they would move the preschool and
2 build a gym. As our building committee formed, we
3 think it's more important that we move everybody at
4 one time.

5 **COMMISSIONER OHIGASHI:** Well, then, will
6 you be coming in to modify those plans to identify
7 new buildings or relocate the old buildings that you
8 plan to build? Will there be a modification of the
9 plan?

10 **MR. REMPFER:** I'm not aware that there
11 were plans submitted with that. That was just
12 talking through how it could be phased. We didn't
13 have a layout for that.

14 **COMMISSIONER OHIGASHI:** You don't have a
15 layout now?

16 **MR. REMPFER:** Not -- not for what you
17 described in the phase 1. We have a layout for what
18 we would like our phase 1 to look like now, just
19 some -- just some general drawings, yes, not
20 architectural. That's what we're working with the
21 consulting firm with to develop as we speak.

22 **COMMISSIONER OHIGASHI:** Given the problems
23 that you have now, when will these phases or the
24 second phase actually begin? Do you have an
25 estimation?

1 **MR. REMPFER:** The second phase? The
2 second phase, as is written in these documents, or
3 the second phase that we're -- what I'm -- what I'm
4 calling the second phase.

5 **COMMISSIONER OHIGASHI:** Well, I'm just
6 going over what was -- I'm assuming what's said at
7 the last hearing in 2019, that these are your plans.
8 This is how you're going to phase it in to meet your
9 objectives. And that's why we -- that's why we gave
10 you six years to do so.

11 So my question to you is: Given the -- given
12 the delays, are there -- is it anticipated,
13 essentially, is my question, that you will meet the
14 six-year deadline?

15 **MR. REMPFER:** I -- it's 20 -- by 2025 is
16 at the end of the six years, correct?

17 **COMMISSIONER OHIGASHI:** That's correct.

18 **MR. REMPFER:** I would -- I would love to
19 see that we have completed structures that we're
20 able to move into on the property, yes.

21 **COMMISSIONER OHIGASHI:** I understand. I'm
22 sorry, but I'm a lawyer, so I don't (inaudible) and
23 things like that and aspiration. I just wanted to
24 know will you be coming forward to this Commission
25 with a proposal as to what the timeline should be to

1 meet this six years, 2025 deadline? So therefore --
2 and so we can determine whether or not you're going
3 to have to ask for additional time or -- this is a -
4 - it's just a simple question.

5 **MR. REMPFER:** Go ahead.

6 **MR. SJOSTRAND:** This is Leif Sjostrand.
7 We may have to ask for additional time. We were
8 going full speed with planning. We're talking about
9 meeting next week to get that ruling again, or
10 within the next month. But our intent is to move
11 full speed.

12 We did get -- our schedule kind of got
13 delayed with just the fire and just the Lutheran
14 Church's response to all that. That kind of stopped
15 all of our building meeting and stuff like that.
16 But we were intending on moving forward and trying
17 to meet those deadlines.

18 If something comes up, we might have to
19 come and ask for an extension, but right now our
20 intent would be to meet that deadline.

21 **COMMISSIONER OHIGASHI:** Would you be able
22 to provide to the Commission, to make a
23 determination whether or not we should be monitoring
24 some kind of timeline based upon your anticipated
25 delays and how are you going to meet those, because

1 in order for you to have the same -- constructed a
2 building within 2025, the problem is -- is how are
3 you going to fund raise? How are you going to pay
4 for it? What infrastructure are you going to put
5 in? What's that going to cost?

6 So I think that -- I understand that you -
7 - you have good expertise on your board and your
8 community that you have that would be able to help
9 you put together that kind of timeline. That would
10 give us -- give you a realistic feel for whether or
11 not you should come in now with a more realistic
12 plan versus trying to hit the 2025 deadline.

13 **MR. SJOSTRAND:** We can put together a
14 timeline.

15 **MR. REMPFER:** I would -- I'd be happy to
16 sit down at our next building committee meeting and
17 lay out a timeline that is feasible at working
18 towards the 2025 goal. Is that what you're asking?
19 An updated timeline?

20 **COMMISSIONER OHIGASHI:** Well, a realistic
21 assessment as to whether or not you think you can
22 meet it and -- and what time do you need to complete
23 it so that we can determine whether or not the
24 additional extensions would be. Because if you come
25 here 2026, we're going to say, well, what's the

1 problem now, right? So I'm trying to give you the
2 opportunity to take a look at what would be
3 reasonable during that period of time.

4 I -- I'm not sure if my fellow
5 Commissioners are going to ask this question about
6 the cultural -- well, I'll leave it to him. That's
7 all the questions I have for now.

8 Thanks, Chair.

9 **CHAIRMAN GIOVANNI:** This is Chair
10 Giovanni. I want to build on what Commissioner
11 Ohigashi has just -- the issues he's raised. So
12 from the time in which this project was approved,
13 things have changed.

14 **MR. REMPFER:** Lots of change, yes.

15 **CHAIRMAN GIOVANNI:** Lots of change within
16 your organization within the greater Maui community,
17 within COVID, all of these impacts. And we want to
18 -- you know, I think the sentiment of this
19 Commission is we want you to be successful. We want
20 you to follow through.

21 But we are uncertain, other than your
22 aspirational descriptions today, about the details
23 of -- because the building configuration has
24 changed. The phases have changed. The timing has
25 changed. And there are other issues like do you

1 have the money. How are you going to get the money?

2 All of those sorts of things, right?

3 **MR. REMPFER:** Right.

4 **CHAIRMAN GIOVANNI:** So it would be very
5 helpful if you could kind of lay out exactly, you
6 know, your best understanding as of today, with your
7 building committee and any consultants or architects
8 you have available to you, and I think there was
9 some reference to Goodfellow. I don't know what
10 that reference means.

11 **MR. REMPFER:** That was me starting a
12 timeline of what I tried to do as of when I took
13 over. But we're not necessarily working with
14 Goodfellow, but we do have Grow as our, you know,
15 counsel -- not counseling, consulting planning,
16 yeah.

17 **CHAIRMAN GIOVANNI:** Okay. So with Grow
18 onboard with you, if you could put together kind of
19 a project prospectus which says, this is what we
20 want to build. This is the timing that we expect to
21 build it. And then we can cross-check that earlier,
22 not later, about any deadlines that have been
23 previously imposed by this Commission and have
24 plenty of time to adjust and modify.

25 **MR. REMPFER:** Okay.

1 **CHAIRMAN GIOVANNI:** But we need the
2 knowledge of the details, so you have to develop
3 them for us and present them to us. Does that make
4 sense?

5 **MR. REMPFER:** It does make sense, yeah.
6 This is new to me. Now I'm -- if we have something
7 laid out and on paper that you can go through and
8 see, then it's easier for you to see where we are.
9 Is that what you're saying?

10 **CHAIRMAN GIOVANNI:** Correct. And in the
11 process, you'll -- you may -- you may deduce on your
12 own that you need more time. That's where
13 Commissioner Ohigashi was going. And the sooner you
14 ask for more time, the sooner you get it without any
15 difficulty.

16 **MR. REMPFER:** Okay.

17 **CHAIRMAN GIOVANNI:** But we want the
18 project to go forward.

19 **MR. REMPFER:** Okay.

20 **MR. SJOSTRAND:** Chair, could I ask a
21 question?

22 **CHAIRMAN GIOVANNI:** Sure.

23 **MR. SJOSTRAND:** I apologize for butting in
24 there.

25 **CHAIRMAN GIOVANNI:** State your name again,

1 please.

2 **MR. SJOSTRAND:** Leif Sjostrand with
3 Emmanuel. I did submit a letter, but I don't know
4 if that's considered written testimony. I was asked
5 at the last meeting to provide a letter by, like,
6 August 15th or something like that. I did submit
7 that, and that was an attempt to update on the
8 project, kind of, status, but I'm sure it was highly
9 inadequate. But I did attempt that.

10 **CHAIRMAN GIOVANNI:** Do you want to take a
11 few minutes just to describe in your own words what
12 -- your perspective of what's in that letter?

13 **MR. SJOSTRAND:** I didn't -- of course --

14 **CHAIRMAN GIOVANNI:** You don't have to.

15 **MR. SJOSTRAND:** Yeah, I didn't bring a
16 copy of it. I did try to update.

17 **CHAIRMAN GIOVANNI:** If you submitted it,
18 it's on the record.

19 **MR. SJOSTRAND:** Okay.

20 **CHAIRMAN GIOVANNI:** But Commissioner
21 Ohigashi is basically trying to help.

22 **MR. SJOSTRAND:** Yeah, absolutely.

23 **CHAIRMAN GIOVANNI:** And we need the
24 details is what he's saying.

25 Commissioners, additional questions or

1 comments for Petitioner? Anything else you want to
2 put on the record?

3 **MR. REMPFER:** No, sir. Thank you.

4 **CHAIRMAN GIOVANNI:** Okay. Thank you.

5 Commissioner?

6 **COMMISSIONER KAMAKEA-OHELO:** Mahalo,
7 Chair, for the time.

8 I have a question for you, principal.
9 Moments earlier, in your testimony, I heard you make
10 a statement, and I'm just asking for clarification.
11 You stated, to my recollection, that you feel like
12 you guys completed phase 1. Is that accurate, in
13 your testimony?

14 **MR. REMPFER:** Well, I'm talking about
15 phase 1 as the way we're thinking about it. I know
16 in the previous meetings, phase 1 -- what
17 Commissioner Ohigashi said was that it was to get
18 the -- part of phase 1 was to get the land divided
19 so that there's two different TMKs. That part is
20 almost done. Not -- there's been no building in
21 phase 1, but that's -- what I mean to say was that
22 part of phase 1 is almost done where the land is
23 subdivided into two parcels.

24 **COMMISSIONER KAMAKEA-OHELO:** So to your
25 belief, phase 1 is almost completed?

1 **MR. REMPFER:** The subdivision part.

2 **COMMISSIONER KAMAKEA-OHELO:** Okay.

3 **CHAIRMAN GIOVANNI:** So I think the
4 difficulty is that the original plan and a phase 1
5 that included the subdivision and some buildings,
6 and now you're moving those buildings into a --
7 really, a phase 2, but you want to call it phase 1.
8 This all needs to be clarified.

9 **MR. REMPFER:** Gotcha.

10 **CHAIRMAN GIOVANNI:** Right?

11 **MR. REMPFER:** Mm-hmm.

12 **CHAIRMAN GIOVANNI:** So I would encourage
13 you, for example, to go back to the original
14 definitions of what was phase 1, identify what was
15 completed or will be completed and not, and what
16 will be moved to, you can call it, phase 1A and 1B,
17 or you can call it phase 1 and phase 2, whatever,
18 right?

19 **MR. REMPFER:** Mm-hmm.

20 **CHAIRMAN GIOVANNI:** But you can see how it
21 causes confusion.

22 **MR. REMPFER:** Right.

23 **COMMISSIONER KAMAKEA-OHELO:** I have a
24 follow-up.

25 **CHAIRMAN GIOVANNI:** Please.

1 **COMMISSIONER KAMAKEA-OHELO:** Mahalo,
2 Chair. All right. So you know, as Commissioners,
3 we have the responsibility of overseeing the
4 Petitioner's compliance with the conditions. And
5 you know, I'd like to emphasize the criticality of
6 fulfilling these conditions, especially condition 2,
7 from the 2019 decision and order granting the
8 Petitioner's motion for time extension, which
9 states, and I quote, "Petitioner shall have a CIA of
10 the petitioner area completed prior to the
11 Petitioner's completion of phase 1 of the updated
12 ELC project and Petitioner shall adhere to the
13 recommendations of said CIA," end quote.

14 And for the record, CIA is acronym for
15 cultural impact statement. So I have a question.
16 What's the status of the culture impact statement?

17 **MR. SJOSTRAND:** So Waikapu Development
18 Ventures has completed theirs. Our intent is to
19 reach out to their consultant and have them do ours
20 as well. That's the status.

21 **COMMISSIONER KAMAKEA-OHELO:** Okay.
22 Mahalo. And I just want to remind you, you know,
23 because I feel like it's very imperative that the
24 Petitioner acknowledges, you know, and adheres to
25 those recommendations, because it's part of the

1 conditions of your D&O from 2019.

2 Chair, that is all.

3 **CHAIRMAN GIOVANNI:** Thank you,
4 Commissioner.

5 Sure. Commissioner Ohigashi.

6 **COMMISSIONER OHIGASHI:** I read your
7 letter, your concerns about the traffic impact
8 report study. And I think that what -- I -- I'm
9 trying to get a hold of it. Are you saying that you
10 will do the traffic impact?

11 **MR. SJOSTRAND:** You know, again, Leif
12 Sjostrand, Emmanuel. There's a lot there. Can we,
13 you know, pay a consultant to do a traffic impact
14 analysis report? Absolutely, we can. That's cost -
15 -

16 **COMMISSIONER OHIGASHI:** You can, but I'm
17 just asking if you want to comply with that.

18 **MR. SJOSTRAND:** Well -- and if we can -- I
19 mean, it would be -- it would be -- you know, again,
20 I'm not an attorney. I'm just a person here.

21 **COMMISSIONER OHIGASHI:** I understand.

22 **MR. SJOSTRAND:** So talking in just plain
23 speak, I mean, there's a lot there. So we bought
24 this property in like around 2004. I don't quite
25 remember. I've been on the building committee that

1 whole entire time. I should be ashamed to say we've
2 done not a lot, but you know, part of that -- part
3 of what they're talking about is the intersection by
4 the cemetery which is Wainu (phonetic) and Waiola.
5 I've lived on the other side of that for 22 years.
6 And that traffic has always been bad.

7 I struggle with -- our church, there's ten
8 kids in our church that go to Emmanuel Lutheran.
9 The other 210-plus kids are from the community, you
10 know. The school serves the community. It doesn't
11 serve the church. It's the outreach. It's -- you
12 know, it's the church's outreach into the community.

13 I struggle with us paying for a light at
14 that intersection. My understanding is that light
15 is finally up on the stip for construction in 2024.
16 I don't know if that will actually happen, but it's
17 supposed to. It's very long overdue.

18 You know, so much growth has happened in
19 this area that the intersection at Waiola and
20 Kuikahi is quite often very congested. Just within
21 the last three weeks, I was stopped way up by Hana
22 Piilani Highway, waiting like three traffic lights
23 to get through that intersection. So it's tough.

24 You know, I know -- my wife's a first-
25 grade teacher, so I know some kids get dropped off

1 at 7. Some get dropped off at 8. I don't think
2 there's a big traffic impact in the morning. But in
3 the afternoon, you know, when all the kids are
4 getting picked up, and then some stay after school,
5 our school doesn't --- can we pay for the report?
6 Absolutely. Can we pay for the improvements in that
7 area? That would be -- I know last time you were
8 asking for like what's a go/no-go thing, and that
9 would be -- once we start paying for that, it's
10 going to be everything we can do to build the
11 school, so -- I don't know. It's an issue I wish we
12 could revisit.

13 **COMMISSIONER OHIGASHI:** Let me make a
14 commentary first because I took it as you're not
15 really answering the question. The comment there at
16 first was, it was a condition placed on the school
17 in Kihei about an over -- separated grade crossing.
18 And all that time, the DOE would say, we don't know
19 what to do with this condition. And then they came
20 in and lied about saying, yeah, they're going to
21 follow it, you know, and do it. And then they wind
22 up being stuck and forcing the governor and the
23 mayor of the County of Maui to give them special
24 exception so they could open the school.

25 So going back and taking a look at that

1 scenario, wouldn't it be in your best interest for
2 you to determine what the TIR did, the traffic
3 impact study would -- would cost and yet you folks
4 haven't done. What are the ramifications of that?
5 And at this point, seek whatever assistance you can,
6 whether it be a request to reduce the -- change the
7 condition or work with highways division to make
8 sure that they're not going to ding you for those
9 things.

10 Wouldn't that be the prudent method of
11 pursuing this matter rather than saying, I don't
12 know if we should do it or not?

13 **MR. SJOSTRAND:** I agree with you.

14 **COMMISSIONER OHIGASHI:** Well, thank you.
15 I wish the DOE agreed with me.

16 **MR. SJOSTRAND:** We -- we absolutely can do
17 the report, and there's been reports in that area,
18 and we're familiar with what they say. I do work
19 for a good fellow, so we do some --

20 **COMMISSIONER OHIGASHI:** Mr. -- sir, I'm
21 not telling you to --

22 **AUTOMATED VOICE:** Recording in progress.

23 **COMMISSIONER OHIGASHI:** I'm not telling
24 you not to do the report or to do the report or
25 whatever. I'm -- I'm pleading upon you to -- for

1 your organization to take proactive measures right
2 now and deal with the Department of Highways to
3 determine what that condition may cost you or may
4 not cost you to get assurances from people like the
5 County of Maui who's -- who wants to have this
6 housing portion of that property go through and to
7 have a nice community over there and build more
8 houses for our people to see what mechanisms are --
9 are there at this point to reduce the potential of
10 that condition of impacts on -- on -- of that
11 condition.

12 I don't think it's a question. It's just
13 a suggestion at this point. No further questions,
14 Chair.

15 **CHAIRMAN GIOVANNI:** Thank you,
16 Commissioner.

17 Quick question and then I've got more
18 later, but when you fully build out the school,
19 phases 1, 2, 3, whatever, how many students you got?

20 **MR. REMPFER:** I would say if we did the
21 double grades that I was talking about, if we hit
22 our max capacity, is that what you're asking?

23 **CHAIRMAN GIOVANNI:** Yeah.

24 **MR. REMPFER:** 350.

25 **CHAIRMAN GIOVANNI:** So basically, you're

1 talking about a -- going from 250 to 350, and you're
2 250 today, correct?

3 **MR. REMPFER:** 220.

4 **CHAIRMAN GIOVANNI:** Well, with teachers
5 and every --

6 **MR. REMPFER:** Oh, yeah.

7 **CHAIRMAN GIOVANNI:** Yeah. So what these
8 traffic studies try to anticipate is what will be
9 the impact if the project builds out. And so it --
10 my understanding is it is a condition that the study
11 would be done and be -- it's my understanding that
12 your representatives have met with LUC staff and
13 indicated your willingness, as you said today, to do
14 the study.

15 It sounds like what you're worried about
16 is if you do the study, it will identify
17 infrastructure upgrades that have a cost to them,
18 and there might be a condition going forward, and
19 you don't want to deal with that, and unanticipated
20 costs. But as Commissioner Ohigashi has indicated,
21 the sooner you understand what that might be, the
22 sooner you might be able to get others involved to
23 do the necessary work.

24 It's a congested area. It's going to get
25 worse. I don't know how much more you're going to

1 contribute to it relative to others. That's what
2 this study is all about. And it is a condition of
3 the -- of the decision and order going forward. So
4 the study needs to be updated.

5 Commissioner Carr Smith?

6 **COMMISSIONER CARR SMITH:** Thank you,
7 Chair.

8 Good morning. It sounds like a wonderful
9 project. I'm still trying to wrap my head around
10 all this. This is the first time I've looked at all
11 these documents.

12 You mentioned your August 18th letter, I
13 believe it was -- 15th, and it says in that letter
14 that you're hoping to break ground in 2025. I
15 thought I understood you to say a little bit earlier
16 that you were hoping to have buildings by 2025.
17 What your letter says sounds a lot more realistic to
18 me, but I just wanted some clarity, please.

19 **MR. SJOSTRAND:** Yeah, I apologize. Leif
20 with Emmanuel. I wrote that letter, so our stories
21 didn't quite jibe there, but that is me putting the
22 timeline together in my mind. And you guys have
23 suggested maybe we need to start laying all that out
24 better, and we definitely intend to. We'll be on
25 that.

1 **COMMISSIONER CARR SMITH:** Because it seems
2 you don't have plans. Correct?

3 **MR. SJOSTRAND:** You're right. We just
4 signed with a planning company. So we -- we bought
5 this property in like 2004, and at that time our
6 enrollment was very similar to what it is now. And
7 then what happened is Pomaikai School was built and
8 a lot of kids -- brand-new public school went there.
9 We've slowly grew back, and then it wasn't long --
10 well, Puu Kukui School, and we kind of took a hit
11 then.

12 And then what happened is -- I mean, with
13 Josh's leadership and COVID, all of a sudden we're
14 bursting at the seams again. And it's like we've
15 got to get back on this. But our plans were for the
16 full 25 acres, and it was -- they were ready to be
17 permitted. They were something we could have never
18 afforded to build. It was super oversized. So
19 we're kind of back to the drawing board.

20 So we just started back with the planning
21 with the 12 acres that we have with the planner to
22 kind of lay that out and start siting things. And
23 then from there, our intention is to go straight to
24 design and permitting and get that.

25 And the financing has come up a few times.

1 There is a Lutheran Church extension fund that is
2 willing to, you know, finance the project. Of
3 course, we've got to pay them back and, you know, so
4 figuring all that out is a work in progress, but a
5 big part of that is selling the existing property.

6 **COMMISSIONER CARR SMITH:** Thank you.

7 **COMMISSIONER YAMANE:** Mr. Chair?

8 **CHAIRMAN GIOVANNI:** Commissioner Yamane.

9 **COMMISSIONER YAMANE:** Thank you. Kind of
10 going back to your letter again, one of the concrete
11 subs -- and I think this question was answered --
12 asked differently by the -- I didn't hear a clear
13 answer on the -- how are you going to grow
14 development? What exactly will their role be for
15 you folks? What are they scoped to do? And are
16 they starting and -- I see a six months. What's the
17 expectation there for growth development?

18 **MR. SJOSTRAND:** Again. Leif at Emmanuel.
19 They're an architectural planner, so their job is to
20 kind of site, you know, size building, site them,
21 kind of do kind of a layout, and then produce stuff
22 that we could use to communicate the project for,
23 you know, fundraising, stuff like that. And then
24 we'd go to a local firm that can make it fit the
25 land and -- you know what I mean, and just make it

1 feel like it should, and design permittable plans.

2 They're very preliminary front-end planner.

3 **COMMISSIONER YAMANE:** And are they going
4 to design develop a new scope, or are they going to
5 use what was proposed in 2018 or -- like, what --
6 were they given any information or was -- or do they
7 propose -- are they just going to start like clean
8 slate?

9 **MR. SJOSTRAND:** Well, we didn't have plans
10 in 2018, as far as -- the plans we had previously
11 were well before 2018, and they were over the 25
12 acres. Most of it was on the south side, which is
13 now like a new development venture. So even what
14 was designed there, even if we just tried to rotate
15 it or shrink it. And we can even put it on the 12
16 acres that we have.

17 **COMMISSIONER YAMANE:** Thank you.

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

20 Commissioners, anything further?

21 I'm going to try to summarize what's been
22 going on here for a few minutes from the
23 Commission's point of view. So you've come forth
24 and expressed that you are in a much better position
25 now to go forward than you were a couple years ago.

1 And despite COVID, you know, you're bursting at the
2 seams and you want to go forward. You want to get
3 this built, right?

4 But there are conditions of the original
5 decision and order which have yet to be fulfilled,
6 the traffic study update, the cultural impact
7 assessment, et cetera. And you have also indicated
8 that you're just at the front end at a preliminary
9 design, scoping for the buildout. We've got
10 confusion about phases as you have them in your mind
11 versus what was detailed in the original decision
12 and order.

13 So what this Commission really needs for
14 you to do over the next weeks to months is to put
15 this -- work with Grow, or whoever, and put your
16 project together with each of its elements. One
17 would be the preliminary layout of the buildings.
18 Another would be the cultural impact assessment.
19 That's absolutely necessary. Another would be the
20 updated TIAR. And build all that into a timeline.
21 That's what we want to see.

22 Our expectation is there's no way you're
23 going to get this thing built by the original
24 deadline. That's okay. But let's not wait until
25 that expires and you come back and say, oh, sorry.

1 I think we know enough and you know enough
2 already that you can recast it in a realistic
3 timeline, incorporating all the parts you need to
4 do, and bring that back to us so we can understand
5 it with you. And if there's a need to modify the
6 scope of the approval, we can consider it at that
7 time. Does that make sense?

8 **MR. REMPFER:** Yes, Chair. Thank you.

9 **CHAIRMAN GIOVANNI:** Okay.

10 **MR. SJOSTRAND:** Can I ask one follow-up
11 final question there?

12 **CHAIRMAN GIOVANNI:** Sure.

13 **MR. SJOSTRAND:** I think -- I think the way
14 that condition for the TIAR reads is that it's after
15 the school opens. Is that -- can they just do the
16 study with the student population numbers? Because
17 I guess that's what our -- that's what a concern is
18 of mine -- I don't know about ours -- but is just
19 that we wait to do the study then --

20 **CHAIRMAN GIOVANNI:** No, you don't wait.
21 You basically --

22 **MR. SJOSTRAND:** Yeah.

23 **CHAIRMAN GIOVANNI:** Basically, you have
24 225-plus staff there now. And when you finish this
25 project, you're going to have 350 plus staff or

1 something like that. What's the impact to the
2 traffic of that coming to fruition? That's what the
3 study addresses.

4 **MR. SJOSTRAND:** Yeah, yeah.

5 **CHAIRMAN GIOVANNI:** And whether or not it
6 requires any infrastructure upgrades, I don't know,
7 and what the options might be for that and for
8 getting it accomplished, if necessary. A study will
9 be a step in that direction to understand it. But
10 your obligation is to update the study based on your
11 current plans and timeline.

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

13 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

14 **COMMISSIONER OHIGASHI:** My inquiry will be
15 to probably State or -- as to whether or not, even
16 though that this requirement is on Emmanuel
17 Lutheran, whether or not the -- the traffic impact
18 study should include the development of the housing
19 project. That probably would be my request to the
20 Office of Planning. The -- I mean, the scope of
21 that.

22 **MR. YEE:** Would you like me to answer that
23 now or include it as part of our response?

24 **CHAIRMAN GIOVANNI:** Why don't you respond
25 if you can, Mr. Yee.

1 **MR. YEE:** Our understanding is the time
2 that this matter was bifurcated, there was not a
3 bifurcation of conditions. Consequently, the
4 conditions as currently drafted apply equally to all
5 parties. Now, that might be something that could be
6 changed int eh future, but at the moment that's
7 where it stands.

8 **COMMISSIONER ATTA:** If it hadn't been
9 bifurcated, then whose responsibility is it? Is it
10 your -- for the -- for Waikapu Development?

11 **MR. YEE:** Right. So let me separate two
12 separate questions. One question is: who currently
13 has the responsibility. The separate question could
14 be who should have the responsibility. And those
15 are two different questions.

16 Currently, I think both parties have the
17 responsibility for each of -- each other's
18 obligations. You could certainly make an argument
19 that there should be a separation for those
20 responsibilities, but I don't think one has been
21 made. So it could be that the "should" is a
22 different answer than what is current.

23 **CHAIRMAN GIOVANNI:** Thank you.

24 Commissioner Ohigashi, anything further?

25 **COMMISSIONER OHIGASHI:** Nothing except

1 that I think that the parties need to talk to each
2 other about that.

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

4 Commissioners, any questions before we
5 move on to the County? Okay. So what time is it?
6 Let me check on that. 10:30. Let's take an eight-
7 minute -- I've got 10:32. We'll come back at 10:40,
8 and we'll resume with the County.

9 **(Recess taken from 10:32 - 10:40 a.m.)**

10 **CHAIRMAN GIOVANNI:** Okay. We're back on
11 the record. Has the recording begun? Thank you,
12 Ariana.

13 So let's turn to the County for remarks
14 and presentation. Mr. Hopper?

15 **MR. HOPPER:** Thank you, Chair. I don't
16 think we have much to add from the Commissioners'
17 questions. I think we're in the same perspective as
18 to what's been put on the record as far as the staff
19 -- the compliance report and then -- and the letter,
20 and I think we share the Commission's sentiment that
21 the landowner needs to be aware of all the
22 conditions. And if it has any issues complying with
23 them, come in for appropriate amendments. So I
24 don't have much to add on that.

25 We do have planners Ann Cua and Tara

1 Furakawa available, but I think that's -- that's our
2 position at this point. It's pretty substantially
3 similar to what the Commission seems to be getting
4 at in its questions.

5 **CHAIRMAN GIOVANNI:** Thank you, Mr. Hopper.
6 Commissioners, any comments or questions
7 for the County?

8 Okay. Thank you.

9 OPSD, Mr. Yee?

10 **MR. YEE:** Thank you. I think I'm in
11 general agreement with the County, but as is
12 typical, I may take longer to express them.

13 **CHAIRMAN GIOVANNI:** As is typical, I
14 agree.

15 **MR. YEE:** I think the presentation on the
16 status report is less robust than we would normally
17 expect from a petitioner, which is okay because
18 we're still early, before the deadlines are done.
19 But there are three particular conditions that I
20 just want to raise both for the LUC as well as for
21 the Petitioners. And that is the requirement for a
22 cultural impact assessment. The second is the TIAR,
23 and the third is the development deadline for
24 construction by 2025.

25 The cultural impact assessment, of course,

1 is just as important because they are always
2 important. I will note that Waikapu Development has
3 completed their ethnographic study, so for -- so it
4 does give some comfort because the ethnographic
5 studies normally are not quite so specific to the
6 particular parcel. So much of the work that has
7 been done, I think, for Waikapu Development is going
8 to be equally applicable to the school just because,
9 geographically, they're just right there.

10 Nevertheless, there is a requirement for a
11 CIA to be done before the first phase is done, which
12 is the subdivision. Subdivision is not yet done.
13 It is -- my understanding is that, technically, all
14 of the steps for the subdivision are not completed.
15 There's not a violation going on, but that is
16 something that needs to be looked at.

17 The second, as I said, is the TIAR, the
18 traffic impact analysis report. Again, the Waikapu
19 Development Ventures did finish their TIAR, so we
20 have that done, and there is an existing condition.
21 I'm not going to get into the pluses and the
22 minuses, the whys and wherefores, whether that
23 should or shouldn't be changed.

24 All I'm going to say is there is a TIAR
25 requirement, and, as evidenced by the letter from

1 Emmanuel Lutheran, they have concerns about that
2 condition. And if so, then they cannot just ignore
3 the condition. They'll need to come back at some
4 point and have discussions with people. And then
5 eventually, if they still have concerns, come back
6 and ask for modification.

7 The third is the development deadline,
8 which the first deadline is 2025, and, as noted by
9 Commissioner Carr Smith, the letter suggests that
10 they're going to break ground in 2025 with
11 construction completed two years later, indicating
12 they did not expect to complete to meet this
13 requirement and so would anticipate having some
14 issues.

15 I will also note that there are not
16 explicitly stated, but there are always concerns --
17 I guess, as a practical matter, when you look at it,
18 the likelihood that they get the financing and all
19 the approvals and then begin construction just makes
20 it seem unlikely. Again, they are not currently in
21 violation, so they're not currently at risk, but
22 now, this status conference is well set in a way
23 because it is set early, and so this gives the
24 Petitioner an opportunity to go back, anticipate
25 these problems, and then come back to the Land Use

1 Commission and fix them.

2 What I would suggest is they ensure that
3 they have an appropriate consultant. I don't know -
4 - I'm not familiar with Grow Developments. We did a
5 quick look online, which indicates that they don't
6 have a focus on architecture, so I'm not sure that
7 they developed the actual architecture plans.

8 I'm also not sure whether they are the
9 typical land use consultants or not in the State of
10 Hawaii. I'm perfectly happy to work with them, but
11 whoever they get, whether it's Grow Development or
12 someone else, they should get appropriate
13 consultation. I know it is very tempting to try to
14 do as much as possible yourself without hiring other
15 experts to help you, but there is a reason why
16 experts are paid, because they can really assist you
17 in this -- in this process.

18 So it is up to them; I will not tell them
19 they have to do something, but they should at least
20 consider seeking some additional assistance in
21 understanding the process of what has to be done.

22 Finally, I do want to recommend, and
23 frankly, strongly recommend, that when they figure
24 out what they want to do and -- and have maybe a
25 better, clearer understanding, they meet with the

1 Office of Planning and Sustainable Development.
2 We're happy to meet with them to go over some of the
3 requirements.

4 We cannot be their attorney. We cannot be
5 their consultant. We can still assist them in
6 understanding the process and going over and
7 discussing the potential risks and vulnerabilities
8 their proposal may have. We can also assist and
9 explain to them, from the State's perspective, why
10 certain conditions are important, what conditions
11 are reasonable as alternatives, and to assist them
12 in coming up with a plan, moving forward, so that
13 they can -- if there are some things they cannot
14 meet currently or they're unlikely to meet, to
15 change it early and to change it to an alternative
16 that, you know, everyone can live with.

17 We certainly support the proposal. We
18 have to acknowledge that this proposal comes in the
19 middle of a case that has been, you know, existing
20 since 2008, so it has already gotten extensions.
21 But that does not mean that we are opposed to any
22 further extensions. It just means we have to be
23 cognizant of that and sensitive to the idea that we
24 don't want to use more time than necessary for this
25 development. I'm happy to answer any questions.

1 **CHAIRMAN GIOVANNI:** Thank you, Mr. Yee.

2 Commissioner Ohigashi has a question.

3 **COMMISSIONER OHIGASHI:** Yeah. In all of
4 our D&Os we place a condition that you will develop
5 in substantial compliance with the representations
6 made during the hearing.

7 We've heard today that Emmanuel Lutheran
8 Church intends to modify the footprint plan that
9 they presented to us concerning the development of
10 this project. Will -- is it your opinion that --
11 Office of Planning's opinion that they would have to
12 come back to the Commission so that it's on record
13 as to what that footprint would look like prior to
14 proceeding?

15 **MR. YEE:** Right. So just to verify, in
16 2008, the first condition is compliance with
17 representations, which does, as you say, require
18 that they develop the property in substantial
19 compliance with their representations. So to the
20 extent that they are changing their plans different
21 than at least what was proposed to the Commission in
22 2018, I believe, which is when the last time they
23 came back to them, then they should make that clear.

24 It's because this presentation, like I
25 said, has been -- I think the term I used was "less

1 robust," it's still not entirely clear to me what
2 the differences are between the original plan and
3 this plan. They did plan, in 2008, to expand the
4 school and to put in housing. And they are
5 expanding the school and putting in housing. That
6 might -- but how they do it might change. The
7 number of classrooms could change. I don't know.
8 So that's one of the reasons I'm suggesting they
9 figure out what they want to do.

10 I'm not restricting them at all in their
11 future plans. But in figuring out how to move
12 forward, to come and talk to the Office of Planning
13 so we can go over some of those changes and figure
14 out, yes, this is something that needs to be
15 addressed or you're golden on that.

16 **COMMISSIONER OHIGASHI:** Okay. My second
17 question is that -- it's more of a procedural one.
18 Once subdivision takes place, my understanding is
19 that they fall below the 15-acre threshold. Is it
20 the County's responsibility from thereon or is it
21 still the Land Use Commission's?

22 **MR. YEE:** Well, I'll let the County speak
23 for themselves as to what they think. I think my
24 view would be once subdivision occurs, this remains
25 with the Land Use Commission because that is how it

1 initially started, and that is how it should remain.

2 **COMMISSIONER OHIGASHI:** I was just
3 interested in your opinion. Thank you for coming
4 today, Mr. Yee. I've longed to see you since I
5 thought you were promoted, but now I find out
6 otherwise.

7 **CHAIRMAN GIOVANNI:** Mr. Hopper, do you
8 have a comment on that last question?

9 **MR. HOPPER:** I mean, I think we have a
10 decision and order that's recorded on the property
11 that's going to dictate that, so I don't see that
12 necessarily changing. I mean, so yeah, I think I
13 would generally agree with Mr. Yee on that.

14 **CHAIRMAN GIOVANNI:** Thank you. The
15 question that was raised earlier having to do --
16 this is for Mr. Yee. I think it's for Mr. Yee, but
17 Mr. Hopper, you're -- I would invite you to comment
18 as well -- having to do with the bifurcation and the
19 conditions and who they apply to. I mean, from the
20 Commission's point of view, we have to hold both
21 parties accountable for all the conditions, but
22 whether or not it makes sense to modify those
23 conditions or -- and further clarify who has
24 explicit responsibility for what, can you comment on
25 that? What would be the appropriate way to proceed?

1 **MR. YEE:** I think the Commission has the
2 authority to change its D&O and to make certain
3 conditions applicable to one party and certain
4 conditions applicable to another or even to change
5 the conditions so that, for example, the traffic
6 impact analysis report for the Waikapu Development
7 portion is the responsibility of Waikapu Development
8 and not Emmanuel Lutheran. And the traffic impact
9 analysis report for Emmanuel Lutheran should be
10 Emmanuel Lutheran's responsibility and not Waikapu
11 Development. I think it's perfectly logical and
12 appropriate. I just don't know that that's been
13 done yet.

14 **CHAIRMAN GIOVANNI:** Mr. Hopper, any
15 comment?

16 **MR. HOPPER:** I think I would agree with
17 that.

18 **CHAIRMAN GIOVANNI:** Thank you.
19 Commissioner Atta?

20 **COMMISSIONER ATTA:** I -- I just -- this
21 bifurcation issues situation, I was wondering what -
22 - about the elimination of the parking greenspace in
23 the original plan, who's responsible for that?

24 **MR. YEE:** I'm going to -- I'm going to
25 actually give you a guess, which is we think it's

1 Waikapu Development's responsibility, but you know,
2 obviously that has not been something we've -- I
3 think we've specifically discussed.

4 **CHAIRMAN GIOVANNI:** So we'll revisit that
5 question when we get to Waikapu presentation.

6 So any other questions for the state?
7 Okay.

8 So at this point I'd like to invite the
9 Petitioner to -- if they have any further comments
10 or rebuttal based on the comments made by the State
11 and the County at this time?

12 Please state your name again for the --

13 **MR. REMPFER:** Josh Rempfer. I think it's
14 made it clear for me what our building committee
15 needs to do, so I appreciate that, and that's what
16 we'll set to do so we can bring some things with
17 better detail back to the Commission and State and
18 the County.

19 **CHAIRMAN GIOVANNI:** Can you summarize what
20 your understanding is if it's clear to you?

21 **MR. REMPFER:** That because we've --

22 **CHAIRMAN GIOVANNI:** Because we've got to
23 be on the same page here.

24 **MR. REMPFER:** Right. Since all the
25 changes that took place in leadership, myself, and

1 what the original -- what was written in 2018 or
2 2019, our ideas have changed some. So what we will
3 do between our building committee at Emmanuel
4 Lutheran is lay out a phase plan of what we intend
5 to do, with some timelines, to bring that back to
6 you, and that may require that we ask for
7 extensions.

8 And if we need to do so, we do that in a
9 timely manner, not waiting until the end. So Leif
10 and Sandy have -- we just met during the little
11 break to say, we know that we need to do that and
12 lay those things out, and we are going to continue,
13 like the State said, to partner with Grow so that
14 there's some -- some things on paper that you can
15 see and it's not just all my, you know, dreams,
16 okay?

17 **CHAIRMAN GIOVANNI:** Thank you. And I
18 agree with what you just said. I would add two
19 things to it. One is I think you've got a very
20 generous offer from Mr. Yee and the State to work
21 with you to help figure out how to interpret these
22 requirements and if any of them are -- you feel that
23 you'd like to look at an alternative, they may offer
24 to discuss with you informally what that might look
25 like or possibly look like. Take advantage of that,

1 especially since you are representing yourself. You
2 don't have a lot of professional consultants on
3 board and attorneys onboard that are very familiar
4 with this, so if you can get that help, take it.

5 Secondly -- second point is on these
6 conditions, this Commission would welcome, if you
7 and Waikapu could meet privately and come up with a
8 recommendation on how these conditions should be
9 apportioned to each of you, so that we have -- so
10 that it's all taken care of and it all fits together
11 and we're not pointing fingers at each other later.
12 Does that make sense?

13 **MR. REMPFER:** Okay. Mm-hmm.

14 **CHAIRMAN GIOVANNI:** Okay.

15 Commissioners, anything else?

16 **COMMISSIONER CARR SMITH:** Chair?

17 **CHAIRMAN GIOVANNI:** Commissioner Carr
18 Smith?

19 **COMMISSIONER CARR SMITH:** Thank you.

20 A couple things. I also encourage you to
21 have a consultant, get a planning consultant that
22 can help you navigate this process. It's a lot to
23 expect to understand everything that you have to do
24 and the timelines and everything. Maybe you have a
25 parent or somebody within your church that has that

1 expertise. I think it's really important for you
2 guys.

3 But the other thing -- I'm trying to
4 understand the relationship, and you said the
5 subdivision isn't even complete yet, right?
6 Correct?

7 **MR. UEOKA:** If I may, Chair?

8 **CHAIRMAN GIOVANNI:** State your name.

9 **MR. UEOKA:** Jeff Ueoka. I represent
10 Waikapu Development Venture.

11 So it's one parcel right now. We're in it
12 for a two-lot subdivision. We're almost there.
13 We're really -- I promise this time we're really
14 close.

15 **COMMISSIONER CARR SMITH:** I think I'm
16 trying to understand how you are without a legal
17 parcel going ahead and getting the CIA and the
18 traffic study done without owning a separate parcel
19 yet?

20 **MR. UEOKA:** Jeff Ueoka. We're tenants in
21 common on the parcel. We do have ownership over the
22 parcel, Waikapu Development Venture. It's tenants
23 in common right now.

24 **COMMISSIONER CARR SMITH:** Okay. But your
25 studies have only been for your portion that you're

1 purchasing?

2 **MR. UEOKA:** We're going to work on that.
3 Typically, those CIAs are done for large areas.
4 Ours was just completed just for our project. But
5 we are going to work with -- Dr. Watson was here
6 earlier, and we're going to ask her what the process
7 to update the study to include Emmanuel Lutheran
8 would be for that. And we feel it should be a
9 relatively simple, not too painful process. That's
10 the hope at least.

11 And I will say, we're going to talk about
12 it after I talk to my clients, but we'd like to --
13 I'd like to help the Emmanuel Lutheran guys out a
14 little bit, not that I'm an expert on this process
15 at all, but I'd like to try to help if I can. So I
16 just got to check with my clients later. Thank you.

17 **COMMISSIONER CARR SMITH:** Thank you.

18 **CHAIRMAN GIOVANNI:** So the cherry on top
19 of this thing is that you need to come back. And
20 you need to come back in a reasonable timeframe.
21 Don't wait until 2025 and then come back and say,
22 oh, my God, we're still at the front end of this
23 thing.

24 So once you get that timeline finished --
25 figured out, and I hope you can figure it out in a

1 matter of weeks to months, three months, two months,
2 three months. That's the type of timeline that
3 would be welcome where you could come back to us and
4 say, this is what the timeline is. It dictates
5 we're going to need an extension.

6 This is how we're going to modify the
7 conditions and take responsibility for this, this,
8 and this and Waikapu take its, et cetera. This is
9 what the layout looks like. It's either consistent
10 or inconsistent with the original plans that were
11 approved. And therefore, we need to modify those
12 plans. We want to put them on record.

13 This is the updated traffic study that
14 we're going to do. Even if it's not done yet, don't
15 wait for that. Come back here and show us the
16 timeline. So you can work with our staff to figure
17 out if and when you come back and get back on the
18 agenda before this Commission, but we encourage you
19 to do it sooner rather than later.

20 **MR. REMPFER:** When is the next meeting?

21 **CHAIRMAN GIOVANNI:** So let me go to Mr.
22 Orodenker and have him explain to you how you would
23 get it agendized and on our docket.

24 **MR. ORODENKER:** Yeah. Once you complete
25 your work, you can send us a request for a petition

1 for a hearing. And then we'll schedule you at our
2 earliest possible convenience.

3 **MR. REMPFER:** When you say, finish our
4 work, finish the things that we've just discussed in
5 the last couple of minutes?

6 **CHAIRMAN GIOVANNI:** Yeah. I think what
7 we're looking for is -- you may not have finished
8 your architectural design, but you'll have an idea
9 of who's doing it, how long it will take, when you
10 can get plans, when you can go for permitting,
11 what's that schedule look like.

12 When you can -- when we can see it on a
13 PowerPoint or a blackboard, and you can submit it to
14 us. But the process is that when you're ready, you
15 contact staff and you request a hearing, and we'll
16 just accommodate that as soon as possible as opposed
17 to us having regular meeting dates and you just show
18 up. We would design it to be agendized specifically
19 for you. Does that make sense?

20 **MR. REMPFER:** Yes, thank you.

21 **CHAIRMAN GIOVANNI:** Okay.

22 So at this point in time, I would like to
23 give the public an opportunity for a second round of
24 public testimony if they so desire. So is there
25 anyone here who would like to --

1 **AUTOMATED VOICE:** Recording in progress.

2 **CHAIRMAN GIOVANNI:** -- would like to
3 provide public testimony on what they've -- on the
4 Emmanuel Lutheran portion of today's meetings, a
5 second opportunity? Seeing none, we'll proceed.

6 Commissioners, this has been a status
7 report. We're not required to take any action at
8 this time, although we've already given some
9 specific guidance to the Petitioner. If no action
10 is taken, the requirement of continued annual status
11 reports remains intact. The Commissioners feel that
12 a concern has not been addressed and we need to be
13 more specific and take action. We can do that at
14 this time.

15 So the Chair will entertain a Petitioner
16 status -- will either entertain a Petitioner status
17 report is not sufficiently addressed to the
18 Commissioners' concerns and that further meetings or
19 status updates are necessary to provide the
20 opportunity to do so at a future date, to be
21 determined by the LUC staff. Or if we feel that
22 there is reason to believe the petitioner will not
23 adhere to the conditions set forth in the DO, and
24 request the staff move forward with a formal order
25 to show cause proceedings which would mean that we

1 think you might be in violation of the order.

2 So Commissioners, your discussion on how
3 we proceed would be welcome at this time.

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

5 **CHAIRMAN GIOVANNI:** Who is that?

6 **COMMISSIONER OHIGASHI:** It's me.

7 **CHAIRMAN GIOVANNI:** Mr. Ohigashi --
8 Commissioner Ohigashi.

9 **COMMISSIONER OHIGASHI:** I move that we
10 grant additional time to Emmanuel Lutheran Church to
11 provide us an updated status report and that said be
12 scheduled by the staff.

13 **CHAIRMAN GIOVANNI:** So this is not an
14 extension of your 2025 deadline. This is just a --
15 if I understand correctly, Mr. Ohigashi, that you
16 are -- the motion is to request the follow-up status
17 report for the items of concern that were expressed
18 today by the commission, is that correct?

19 **COMMISSIONER OHIGASHI:** Yes.

20 **CHAIRMAN GIOVANNI:** Okay. Do I have a
21 second to that motion?

22 **COMMISSIONER KAHELE:** Mel Kahele. I
23 second.

24 **CHAIRMAN GIOVANNI:** Thank you,
25 Commissioner Kahele. Any further discussion on this

1 point?

2 **COMMISSIONER CARR SMITH:** Chair?

3 **CHAIRMAN GIOVANNI:** Commissioner Carr

4 Smith?

5 **COMMISSIONER CARR SMITH:** I would just be

6 concerned -- or suggest possibly adding to the

7 motion that the reason for that is because the

8 status report was insufficient?

9 **CHAIRMAN GIOVANNI:** So Commissioner

10 Ohigashi, are you willing to accept this friendly

11 amendment?

12 **COMMISSIONER OHIGASHI:** I have no problem

13 in accepting it. I was going to do some discussion

14 about that, but that's -- that's fine. I don't need

15 to discuss it then.

16 **CHAIRMAN GIOVANNI:** Okay. So the motion,

17 as amended -- and who had second? Commissioner

18 Kahele, you also second the amendment?

19 **COMMISSIONER KAHELE:** Yes, Chair.

20 **CHAIRMAN GIOVANNI:** Okay. So let me state

21 my understanding of the motion. The motion is for

22 you to come back for that updated status report,

23 work out the schedule of when you can do that with

24 our staff, and the reason we're asking you to do

25 that for the items of concern that have been

1 expressed today by this Commission and have been
2 agreed to by the County and the State is because we
3 felt that the report today, in terms of its detail,
4 was insufficient, and we don't have a good grasp of
5 exactly where you stand and how you're going to
6 proceed in detail, and that's what we need. Okay?

7 So further comments by the Commissioners
8 on the motion?

9 **COMMISSIONER LEE:** Chair?

10 **CHAIRMAN GIOVANNI:** Commissioner Lee?

11 **COMMISSIONER LEE:** On the proposed
12 amendment to the original motion, I'd like to see if
13 we could put some kind of a time on there. I don't
14 want this to take nine months because they might as
15 well just wait a year. Would six months be
16 something that would be agreeable to you guys?

17 **MR. REMPFER:** Yes.

18 **COMMISSIONER LEE:** Okay. So I don't know
19 if we need to amend the --

20 **CHAIRMAN GIOVANNI:** We would. So -- and
21 it could be less than six months, if you're ready,
22 obviously. But Commissioner Ohigashi, would you --

23 **COMMISSIONER OHIGASHI:** I -- I (inaudible)
24 six months. I think (inaudible).

25 **CHAIRMAN GIOVANNI:** Okay.

1 **COMMISSIONER LEE:** Chair, I've got no
2 problem, Chair.

3 **CHAIRMAN GIOVANNI:** Okay. So the motion -
4 - I'm sure Mr. Orodenger has all of this down -- is
5 to come back with an updated status report
6 addressing all of the concerns that have been
7 expressed today by the Commission and as concurred
8 to by the County and the State, and the reason for
9 that is that we found that what you had to share
10 with us today doesn't sufficiently address our
11 questions. And thirdly, we'd like you to work out
12 the details of when do you schedule that with our
13 staff but with a target of, nominally, six months or
14 sooner you can come back. Fair enough?

15 Okay. Anybody want to comment?
16 Commissioners?

17 Commissioner Carr Smith?

18 **COMMISSIONER CARR SMITH:** I just have a
19 question for staff since I'm still learning here.
20 Does staff provide the Petitioner with a list of the
21 things that we want clarification on or no, that's
22 their kuleana to know that?

23 **MR. ORODENKER:** Usually, the transcript of
24 the proceeding provides the concerns, but we have,
25 at times, at the Commission's request, sent letters

1 to petitioners laying out what the specific concerns
2 are.

3 **CHAIRMAN GIOVANNI:** I think that would be
4 a great idea, especially since these guys have not
5 been to this rodeo before, and they don't want to
6 fall off their horse, so the more guidance that we
7 could offer them in assistance.

8 So let me ask the staff to, consistent
9 with the transcripts of today's meeting, provide the
10 Petitioner as much guidance -- specific guidance of
11 the questions and issues that need to be addressed
12 in this matter.

13 **MR. ORODENKER:** We can do that, Mr. Chair.

14 **CHAIRMAN GIOVANNI:** Thank you.

15 **MR. ORODENKER:** Assuming the motion
16 passes.

17 **CHAIRMAN GIOVANNI:** Assuming the motion
18 passes.

19 Mr. Lee, you've got your light on.
20 Anything else?

21 **COMMISSIONER LEE:** Oh, no. I'm sorry.

22 **CHAIRMAN GIOVANNI:** That's fine.

23 Anybody else?

24 Okay. So I'm going to call for a roll
25 call vote on the motion. So please restate the

1 motion and take the roll call vote, Mr. Orodenger.

2 **MR. ORODENKER:** Thank you, Mr. Chair.

3 Due to today's status report being
4 insufficient, we would like to grant additional time
5 to Emmanuel Lutheran Church to provide the LUC an
6 updated status report addressing all the
7 Commission's concerns and a hearing scheduled by
8 staff within six months.

9 Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** Aye.

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

12 **COMMISSIONER KAHELE:** Aye.

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

14 **COMMISSIONER ATTA:** Aye.

15 **MR. ORODENKER:** Commissioner Carr Smith?

16 **COMMISSIONER CARR SMITH:** Aye.

17 **MR. ORODENKER:** Commissioner Lee?

18 **COMMISSIONER LEE:** Aye.

19 **MR. ORODENKER:** Commissioner Okuda is
20 absent. Commissioner Kamakea-Ohelo?

21 **COMMISSIONER KAMAKEA-OHELO:** Aye.

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

23 **COMMISSIONER YAMANE:** Aye.

24 **MR. ORODENKER:** Chair Giovanni?

25 **CHAIRMAN GIOVANNI:** Aye.

1 **MR. ORODENKER:** Thank you, Mr. Chair. The
2 motion passes with eight votes.

3 **CHAIRMAN GIOVANNI:** So one other comment,
4 what we just did was to tell you to come back and
5 tell us the details. What we did not do is
6 recommend a show cause hearing which says we think
7 you're in violation and you're at risk of losing --
8 of the decision and order being reverted. So we're
9 not there. So this is an opportunity for you to do
10 your homework and come back and answer our
11 questions. Is that clear?

12 **MR. REMPFER:** Yes, sir.

13 **CHAIRMAN GIOVANNI:** Okay. Great.

14 So we'll move onto our next order of
15 business, which will be the status and progress
16 report on A07-773 (b) from Waikapu Development
17 Venture.

18 Please be informed that the relevant
19 records and documents pertaining to this matter can
20 be accessed and reviewed on the LUC website,
21 specifically under pending documents tab.
22 Interested parties are welcome to review these
23 documents.

24 And we'll now move forward with public
25 testimony. So for members of the public, again,

1 please be reminded that the Commission will not be
2 considering the merits of this petition but, rather,
3 the Commission is interested in learning about the
4 current state of the activities related to the
5 docket, including compliance with the conditions and
6 whether or not action is necessary.

7 So now we'll recognize any public
8 testimony that has been written public testimony
9 that's been submitted in this matter. Ms. Kwan, has
10 there been any written public testimony?

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

12 **CHAIRMAN GIOVANNI:** Thank you.

13 I will now call on members of the public
14 who would like to provide testimony before us today.
15 Are there any members of the public that would like
16 to testify?

17 **MS. KWAN:** We have first up Bruce U'u. I
18 think I said that right.

19 **CHAIRMAN GIOVANNI:** So Mr. U'u, would you
20 please state your name, affiliation, and address for
21 the record, and then I'll swear you in?

22 **MS. KWAN:** Use the mic. Turn on the mic.
23 Thank you.

24 **MR. U'U:** Aloha. My name is Bruce U'u,
25 lifelong Maui resident, testifying on behalf of Maui

1 Nui Empowered.

2 **CHAIRMAN GIOVANNI:** Do you swear that the
3 testimony you're about to give will be the truth?

4 **MR. U'U:** Yes, I do.

5 **CHAIRMAN GIOVANNI:** Okay. Please proceed.

6 **MR. U'U:** Again, I'm on behalf of Maui Nui
7 Empowered. It's a non-profit which mission serves
8 for both all housing needs for Maui County
9 residents. To put it simply, we are in dire need of
10 homes. Sadly, our Maui residents are our number one
11 export. Projects like Waikapu Development Venture
12 gives 80 families an opportunity of home ownership.

13 Pivoting to another way, say it
14 differently. My niece lived with me for five years.
15 Got a home, I see, about three years ago through the
16 development of lotting this subdivision. The
17 problem is there are few and far between, the
18 projects.

19 So any way you guys can support projects
20 like these moving forward housing projects will be
21 greatly appreciated. I humbly ask for your support.
22 Mahalo for the time to testify. I'm really happy
23 how you guys help people along the way, so I'm
24 sitting in the back, minding my own business, but
25 listening to how you guys conduct yourselves, so I

1 was really impressed.

2 And again, if you guys get past this
3 project, we'd be better. Aloha. Thank you for the
4 opportunity.

5 **CHAIRMAN GIOVANNI:** Thank you very much
6 for coming forward. We appreciate you taking the
7 time to be with us today as well.

8 **MR. U'U:** Thank you.

9 **CHAIRMAN GIOVANNI:** We're going to open it
10 for -- people may have some questions for you.

11 **MR. U'U:** Sure.

12 **CHAIRMAN GIOVANNI:** So first of all, for
13 the Petitioner, Waikapu, do you have any questions?

14 **MR. UEOKA:** Jeff Ueoka. Thank you, Mr.
15 U'u. No questions.

16 **CHAIRMAN GIOVANNI:** Thank you.
17 State?

18 **MR. YEE:** No questions.

19 **CHAIRMAN GIOVANNI:** Thank you.
20 County?

21 **MR. HOPPER:** No questions, Chair.

22 **CHAIRMAN GIOVANNI:** Okay.
23 Commissioners, questions or comments?
24 Again, thank you for --

25 **MR. U'U:** I'd just like to add one thing.

1 My niece just two months ago gave birth to twins, so
2 I'm so fortunate she has her own place, so -- aloha
3 again.

4 **CHAIRMAN GIOVANNI:** Thank you for adding
5 to the population of Maui.

6 Okay. The time is 11:15.

7 **MS. KWAN:** We only have one more
8 testimony.

9 **CHAIRMAN GIOVANNI:** And I think we have
10 one more. Proceed.

11 **MS. KWAN:** Sandy again.

12 **CHAIRMAN GIOVANNI:** You're still under
13 oath, so just restate your name for the record.

14 **MR. BAZ:** Thank you, Chair. Sandy Baz,
15 and it's interesting because Bruce -- one of the
16 first things I worked with him back in 2003 was on
17 the idea of trying to figure out what's wrong with
18 our housing on Maui and how to address the
19 affordability and the need. And it's still a
20 problem, obviously.

21 And this project, you know, while it's
22 only homes, it's critical. You know, this is the
23 area that people -- I live, actually, really close
24 by in Maui Lani, and so I'm a resident of that area
25 and jus support the development itself and the

1 Commission giving the review and extension that they
2 need to be able to move the project forward.

3 As you'll hear, they've done a lot of
4 activity since then and really want to make sure
5 that they have the ability to get the job done, so
6 please support this project and ask for your support
7 as well. Dire need, especially with the fires. And
8 we have so many families that are overcrowded right
9 now. It got worse, and so we want to make sure that
10 any opportunity we can to provide affordable housing
11 to people gets pushed forward and moved forward, and
12 so thank you for the opportunity.

13 **CHAIRMAN GIOVANNI:** Thank you very much.
14 Sadly, the issues that you're facing are statewide,
15 but Maui is the focal point today.

16 **MR. BAZ:** Yes. Thank you.

17 **CHAIRMAN GIOVANNI:** So questions,
18 Commissioners, for the -- let's start with the
19 petitioner, any questions for the witness?

20 **MR. UEOKA:** Jeff Ueoka. Thank you very
21 much, Mr. Baz. No questions.

22 **CHAIRMAN GIOVANNI:** Okay.
23 State?

24 **MR. YEE:** No questions.

25 **CHAIRMAN GIOVANNI:** County?

1 **MR. HOPPER:** No questions, Chair.

2 **CHAIRMAN GIOVANNI:** Commissioners, any
3 questions? Hearing none. Thank you for your time
4 again.

5 **MR. BAZ:** Thank you, Chair.

6 **CHAIRMAN GIOVANNI:** So time for the
7 Petitioner to do their status report. Can you give
8 us an idea just overall what you plan to do and how
9 much time you would like for your presentation?

10 **MR. UEOKA:** Thank you, Chair. Jeff Ueoka.
11 I have a slideshow, a quick one. I think it can be
12 quick. Maybe we can do that before lunch, if okay
13 with you guys.

14 **CHAIRMAN GIOVANNI:** So I think we do --
15 you do your prepared slideshow, and then we'll
16 basically come back and do questions after lunch.
17 Is that what you're suggesting?

18 **MR. UEOKA:** I think if you're okay with
19 that.

20 **CHAIRMAN GIOVANNI:** I think so. We've got
21 about 15 minutes, so is that sufficient for you?

22 **MR. UEOKA:** Jeff Ueoka. I think I can get
23 it that quick.

24 **CHAIRMAN GIOVANNI:** And you've made a copy
25 of the slideshow available to staff?

1 **MR. UEOKA:** Not yet.

2 **CHAIRMAN GIOVANNI:** But you will?

3 **MR. UEOKA:** I will.

4 **CHAIRMAN GIOVANNI:** Okay. So please
5 proceed.

6 **MR. UEOKA:** Thank you, Chair. Just a
7 reminder, Waikapu Development Venture, 80 units in
8 Wailuku -- or Wailuku Waikapu. Total cost of
9 construct we're looking at is a little under 49
10 million. Owners have invested over 5 million at
11 this point in the project, and they secured a County
12 subsidy of 10.65 million.

13 I'm going to share my screen. There we
14 go. So it's an October 18th, 2023 status update.
15 Just to put everything in perspective, this is a
16 location map. It's Emmanuel Lutheran's portion of
17 the parcel. This is the Waikapu Development portion
18 of the parcel. The highway is here. Waiale Road
19 runs along here.

20 So background, July 11, 2019, there was a
21 findings of fact and conclusions of law, decision
22 and order from the LUC and bifurcating the project
23 from Emmanuel Luthera and, you know, just basic
24 approvals, generally.

25 Completion of project deadline was July

1 11, 2023. We've passed that at this point. In
2 2018, Resolution 18-150 was a 201H approval to give
3 this project the County entitlements. Construction
4 commencement deadline was met, which was September
5 7th -- I'm sorry, extended in September of 2021 due
6 to COVID.

7 Resolution 20-107 in 2020 extended the
8 construction completion deadline, and you know, we
9 got it further on to September 7th, 2024, and it was
10 approved in 2020.

11 So the approved project description was a
12 hundred percent residential workforce housing units,
13 80 units on 74 lots, 68 single-family, with six
14 duplex dwellings for 12 units.

15 Income group distribution. The 12
16 duplexes were intended to go to our low-income
17 group. Below moderate-income group were 12. 40 for
18 the moderate-income group, and 16 in the above
19 moderate.

20 So this is the changes. Instead of having
21 duplexes, we're going to go all single-family
22 dwelling units, and we're still going to market them
23 at the low-income group. So as you can see, this
24 was the old project layout. Here were the duplex
25 units. Here was the park. And this is a new

1 project layout on the right, without the park.

2 So this gives you an idea of the pricing
3 of the units. Depending on interest rates, we're
4 going to follow the County of Maui's Affordable
5 Housing Guidelines and we're actually going a little
6 further with the Bill 197. That was one of the
7 conditions of the County funding, so they're a
8 little lower, takes into account 31 percent for
9 total housing costs. 31 percent of your annual
10 gross income can go toward your mortgage payment,
11 and that would also include total housing costs as
12 opposed to what it normally was, it was just 30
13 percent. So as you can see, these units, three
14 bedrooms, will be very, very affordable.

15 All that will be contingent on the time we
16 actually market them and sell them, of course. So
17 we heard on Commissioner Atta's concerns at the last
18 meeting regarding the removal of the park. So we
19 did an analysis because we're not getting any
20 denser. We're not building more units. We're just
21 being single family instead of duplexes.

22 So as you can see from this analysis,
23 there were 319,177 square feet of lot. Now with the
24 proposed 80 single-family lots, there's 375, so
25 we've increased -- the lot size has increased,

1 essentially.

2 And the impervious surfaces, they have
3 gone up a bit, about 10,000 square feet total, based
4 on these assumptions that a single-family home will
5 have 2,000 square feet of impervious surface and a
6 duplex will have about 2,300 square feet of
7 impervious surface.

8 So it actually worked out to an increase
9 in yard space of approximately 45,000 square feet,
10 about 570 square feet per unit. But of course, we
11 lost about 27,000 square feet of park. So we did an
12 analysis on the overall greenspace in the project.
13 So as you can see with the yards, we have less roads
14 and sidewalks, more yard, less roads and sidewalks,
15 less open space, park, and drainage to the park is
16 gone. But we still end up with around 27,200 square
17 feet of green -- additional greenspace with the
18 removal of the roads, some sidewalk reduction, and
19 the park. So net overall, there's more greenspace
20 in the project now.

21 **CHAIRMAN GIOVANNI:** Just one
22 clarification. The original duplexes, did they have
23 any yards?

24 **MR. UEOKA:** They did, very small, though.

25 **CHAIRMAN GIOVANNI:** So now it's all homes

1 with larger yards?

2 **MR. UEOKA:** Yes, sir.

3 **CHAIRMAN GIOVANNI:** Okay.

4 **MR. UEOKA:** So we went through that go/no
5 go analysis at the last meeting. The County
6 subsidy, it's been approved. It's in the FY-24
7 budget. The 201H amendment, we haven't submitted
8 it. We were ready, had some discussion internally,
9 and early August there was a disaster on Maui, so we
10 haven't pursued that with the County at this time.
11 We -- moving forward with that, we want to touch
12 base with some of the County Council members to see
13 on their availability scheduling, so we're being
14 sensitive to that.

15 And also, our two-lot subdivision is not
16 quite, but we're very close, though, as I said. So
17 the two-lot subdivision, the water improvements were
18 completed in July 2023. We're awaiting acceptance
19 of those improvements by the Water Department. It's
20 complicated, but we're close. We're close.

21 And after that's done, the Fire Department
22 will need to inspect the lines because we also did
23 some hydrants. They'll need to inspect all of that.
24 Once that's all done, our two-lot subdivision should
25 be complete. Then we'll take care of deeding the

1 lots out, one to us and one to Emmanuel Lutheran
2 Church.

3 The subdivision infrastructure plans and
4 permitting, they're very far along. I want to say
5 they're almost done, but we're -- having submitting
6 that we're pending on the two-lot subdivision be
7 completed and the 201H amendment.

8 House plan developments are still in
9 process. We've made progress. They're not
10 completely done, as the two-lot subdivision isn't
11 complete, nor is the 201H amendment. Subdivision
12 infrastructure improvements, County waterline and
13 sewer. So the County waterline extension, as I
14 mentioned, is completed. We're waiting exception.

15 We checked. County sewer capacity is
16 currently available for the project. They typically
17 will not fully commit until you pull a building
18 permit. That's when they'll tell you the absolute
19 yes. My understanding is planning did check with
20 wastewater, and there are no major sewer line
21 improvements that will be required for this project.

22 Construction loan, we have letters of
23 support from a couple of banks; however, they won't
24 fully commit until they've reviewed the construction
25 documents, pro formas, and bids, so all we can get

1 is a preliminary yes, you've done projects before.
2 We will work with you, but they won't say, here's
3 your money at this point. But we are moving towards
4 that.

5 Next steps. Tomorrow, my understanding is
6 we'll hopefully get the time extension and the
7 approval of the 201H modification. I guess you guys
8 aren't approving the 201H, but you're recognizing it
9 because we did have the requirement to follow the
10 old 201H plan. So we're hoping you'll approve what
11 we submitted or authorize us to build to what we are
12 submitting to the County Council. Then we'll have
13 to go to the County Council, submit the amendment to
14 site plans, modification of the exemptions, and
15 extension of construction completion deadline.

16 Then we'll have to submit an affordable
17 housing fund application. It's appropriated, but
18 you know, we still have to go through the
19 application process for the 10.65 million with the
20 County. And finally, then we'll start physically
21 getting our subdivision improvement approvals,
22 building them, getting building permits, and then
23 building homes.

24 So we did go through the conditions. We
25 did talk with Emmanuel Lutheran. So as you guys had

1 mentioned, no matter what, both parties are required
2 to comply with all conditions. The big ones were
3 the condition 2 was a project completion. WDV's
4 deadline expired in 2023, and they'll be -- Emmanuel
5 Lutheran will be responsible for meeting their July
6 11th, 2025 completion and getting that extension.

7 The condition 5 relating to highways and
8 roads, so basically it was a TIAR update and
9 mitigation. So when we read it, ELC has to update
10 it when school opens for classes. That's how we saw
11 it. And for our project it's unspecified. Maybe
12 after lunch we have some information and discussion
13 relating to condition 5 that we'd like to present to
14 the committee, and hopefully, something can be
15 figured out tomorrow at our actual motion to amend
16 our D&O.

17 Cultural impact assessment requirement.
18 As we previously stated, it's a requirement of both
19 parties. One was completed for our portion of the
20 property, but we are going to work with our
21 consultant and see if an update can be done. And
22 basically, my understanding is the survey found that
23 while the project area may have been used for
24 traditional habitation, farming, gathering, much of
25 those activities stopped as land ownership changed

1 in the area, and the project was utilized for modern
2 agricultural activities.

3 So then to the extent Native Hawaiian
4 rights will be affected, it goes on to state Waikapu
5 is an important region for traditional and customary
6 practices, and there are many Hawaiian families that
7 continue to live in the area. Practitioners
8 identified plants with cultural importance that grow
9 within the project area, but these plants are common
10 and can be easily found in larger region. There's
11 no adverse impact to the practitioner's ability to
12 access these plants anticipated to result from the
13 project.

14 So that was the findings there, and we
15 would imagine it would be very similar as we share
16 the same 25-acre parcel for ELC, but we --
17 naturally, we need to check with our Honua
18 Consulting on that.

19 Finally, timeline, we're hoping at the end
20 of this year we can get your approval. 201H
21 amendment starting a process maybe if we're lucky,
22 we finish through the County Council. We're hoping
23 to complete the two-lot subdivision this month.
24 We'd like to submit our subdivision construction
25 plans and house plan development finalized this

1 year.

2 Late next year, we'd like to start
3 building the subdivision improvements and hopefully
4 we can do our subdivision improvements and our
5 building permit processing concurrently. In '25,
6 we'd like to start building the homes and do the
7 marketing by our applications, lottery, and sales
8 contracts later in the year.

9 And hopefully, in '26, homes will be done,
10 and people can start moving in, and then we
11 anticipate the full buildout of the 80 homes
12 probably will take a little -- you know, a year,
13 maybe a little longer, so -- and hopefully, we can
14 meet September 2027. And if you guys will give us
15 that time, and we'll come back if we do need more
16 time. Thank you.

17 **CHAIRMAN GIOVANNI:** Thank you. So you're
18 right on the money timewise. Just one quick
19 question. Is it 80 homes now or 74? What is it?

20 **MR. UEOKA:** 80 homes. The old lineup was
21 74 lots, single-family lots, six duplex lots.

22 **CHAIRMAN GIOVANNI:** Ah, okay. But the
23 same number of homes?

24 **MR. UEOKA:** Yes, sir.

25 **CHAIRMAN GIOVANNI:** Okay. Thank you.

1 Let's take a break now for lunch. It's
2 11:30. Since we've got to walk over and walk back -
3 -

4 **MR. ORODENKER:** Mr. Chair.

5 **CHAIRMAN GIOVANNI:** Yeah?

6 **COMMISSIONER LEE:** Just a request. If we
7 could have that presentation for us for the
8 afternoon session that was just presented? Is it
9 possible to request that information, your
10 slideshow?

11 **MR. UEOKA:** Do you want me to email it to
12 the staff?

13 **COMMISSIONER LEE:** Yeah, that would be
14 great.

15 **MR. UEOKA:** I'll take care of that.

16 **COMMISSIONER LEE:** Thank you.

17 **CHAIRMAN GIOVANNI:** Yeah. So ordered.

18 Okay. Thank you very much. We will
19 reconvene at 12:30.

20 **(Lunch recess taken from 11:30 a.m. to**
21 **12:38 p.m.)**

22 **CHAIRMAN GIOVANNI:** Let's get back to the
23 meeting. Okay. We are back on the record. Mr.
24 Ueoka, we'll come back to you. So we concluded with
25 your presentation of the first PowerPoint. You sent

1 a copy of the PowerPoint and then a new attachment.
2 Could you explain that second attachment you sent
3 over?

4 **MR. UEOKA:** Jeff Ueoka. Just a
5 discussion. We met with another attorney yesterday,
6 and we have some comments on condition 5. I'm going
7 to direct it to Mr. Hopper. I think Deputy Director
8 Mataafa has to go at 1:30, so --

9 **MR. HOPPER:** Sorry, Chair. Just to -- we
10 have the Deputy Housing Director today, and I just --
11 -- we're informed that he's available until 1:30. I
12 don't know if there will be questions for Housing.
13 This would be maybe on the County as far as the
14 affordable housing project and the County's position
15 from the Housing standpoint. He's available until
16 1:30 today, so I don't know if there's an option to
17 go to him.

18 I understand we haven't done our
19 presentation and everything, but if there are
20 questions on that aspect that he could answer, I
21 would offer him up, if possible, to -- to have that
22 completed, just so we can get his -- if there's
23 questions on that realm. And I apologize again,
24 but, you know, this is -- I think that he'd be good
25 to answer some of the questions you have.

1 **CHAIRMAN GIOVANNI:** How long is your
2 presentation? How long is that if you do know?

3 **MR. HOPPER:** Well, I think we are sticking
4 to the motion or the response to the motion that we
5 have filed. I think, frankly, it's more important
6 to have some Saumalu available for the questions and
7 not miss out on that.

8 **CHAIRMAN GIOVANNI:** Okay. So basically,
9 what I'm hearing between Petitioner and the County
10 is that you want to suspend your presentation and Q
11 and A with you and shift to the
12 County, and then we'll return back to you? Or
13 depending on the question, you might come to you
14 directly, is that right?

15 **MR. UEOKA:** Jeff Ueoka. That would work
16 for us. Thank you very much, Chair.

17 **CHAIRMAN GIOVANNI:** Okay. So if there's
18 no objections by the Commission --

19 **COMMISSIONER OHIGASHI:** I -- I have a
20 question.

21 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

22 **COMMISSIONER OHIGASHI:** Mr. Hopper, will
23 you be available tomorrow on the extension of time,
24 or is -- is -- it's the only time we get to --

25 **MR. HOPPER:** Mr. Mataafa is checking, but

1 I don't believe for the whole day, and I -- there's
2 a possibility that no, so I think that's why we're
3 looking at --

4 **COMMISSIONER OHIGASHI:** Because --

5 **MR. HOPPER:** -- doing him today.

6 **COMMISSIONER OHIGASHI:** Okay. I just
7 wanted to know if he won't be here tomorrow.

8 **MR. HOPPER:** Yes. Yeah, he can check --
9 we'll check now, but his availability might be --
10 he'd be available from 10 to 11 tomorrow, he said,
11 and I don't know what your schedule's going to be
12 for tomorrow, so that's why we thought -- then,
13 again, I apologize, but I think some of these
14 questions --

15 **CHAIRMAN GIOVANNI:** No, that is very
16 helpful and appreciated. I mean, we can't get it
17 all done today and then our lingering questions
18 we'll arrange for -- to meet his time at 10 to 11
19 tomorrow.

20 **MR. HOPPER:** Yes. And I'll be here and
21 the rest of the County folks, but he won't be
22 available for the whole day tomorrow.

23 **CHAIRMAN GIOVANNI:** Okay. That works.

24 So Mr. Hopper, why don't you give us your
25 presentation, and then we'll open it up for

1 commissioners' questions regarding anything you have
2 to say or Housing.

3 **MR. HOPPER:** Yes. Very briefly, the
4 County of Maui Department of Planning did file a
5 position statement on the -- on the motion, not
6 necessarily anything specific to the status report,
7 but I think it covers the same topics. The County
8 is in support of allowing an extension for this
9 project and the proposed modifications, so as to
10 allow the project to -- to move forward.

11 The County Council has provided
12 conditionally some funding for this project, and I
13 have Planner Ann Cua and Deputy Director of the
14 Department of Housing and Human Concerns, Saumalu
15 Mataafa, here to perhaps give a brief statement of
16 the County's position on that aspect or answer
17 questions if you've got those questions.

18 Mr. Mataafa, I think we would swear him in
19 at this point and give him access to --

20 **CHAIRMAN GIOVANNI:** Mr. Mataafa, you'd
21 have to use your --

22 **MR. HOPPER:** Yeah, do you want him on
23 there or over here?

24 **CHAIRMAN GIOVANNI:** Why don't you go over
25 there, and then we can speak to both of you and

1 probably save a little time.

2 **MR. HOPPER:** Right. Good idea.

3 **CHAIRMAN GIOVANNI:** Mr. Mataafa, let me
4 just say up front thank you. I know you're pretty
5 busy these days, and we appreciate you making the
6 time for us. Please state your name and affiliation
7 for the record.

8 **MR. MATAAFA:** Thank you, Commission. My
9 name is Saumalu Mataafa, and I'm the Deputy Director
10 for the Department of Housing and Human Concerns
11 with the County.

12 **CHAIRMAN GIOVANNI:** And do you swear that
13 your testimony today will be the truth?

14 **MR. MATAAFA:** Yes, the truth. Thank you.

15 **CHAIRMAN GIOVANNI:** Please proceed with
16 any statement you might have.

17 **MR. MATAAFA:** I'll just reiterate some of
18 the discussion and public testimony that you guys
19 heard already. The Department is in support of this
20 project being built and for the extension of the
21 modification that they had requested.

22 As you all know, two events happened, the
23 COVID-19 pandemic and then also the Lahaina
24 wildfires, so before the pandemic the County needed
25 10,000 units by 2025, and that need has been further

1 exacerbated, so the need for housing is really
2 crucial. And even though it is only 80 units, it
3 will add to that inventory, so we appreciate you
4 taking the time to consider it.

5 **CHAIRMAN GIOVANNI:** Thank you.

6 Commissioners, any questions for Mr.
7 Mataafa or the County?

8 Commissioner Ohigashi?

9 **COMMISSIONER OHIGASHI:** Yeah. How
10 familiar are you with the funding of the Council's
11 funding in this matter?

12 **MR. MATAAFA:** Yeah. So I'm pretty
13 familiar. The Council made the budget allocation
14 this past May at their budget session, and that's
15 one of the steps that it takes in order for that
16 funding to be recognized for the project. The other
17 step is for the administration to take an
18 application from the petitioner and we'll vet that,
19 and we'll make a decision, too, based off of what
20 they're requesting for the reimbursement, other
21 funding.

22 **COMMISSIONER OHIGASHI:** These funds --
23 these funds were -- I guess, were allocated by
24 budget amendment, is that right?

25 **MR. MATAAFA:** That's correct.

1 **COMMISSIONER OHIGASHI:** And then what --
2 is there a term? In other words, is there a date
3 when they expire or --

4 **MR. MATAAFA:** Thank you, commissioner.
5 Yes. So the funds were recognized in the FY-24
6 budget for the County. The fiscal year runs from
7 July 1st, 2023 to June 30th, 2024, so within that
8 period, the Petitioner would need to be able to sign
9 a grant agreement with the County and the Department
10 specifically in order to move forward with the
11 funding requests.

12 **COMMISSIONER OHIGASHI:** With the funding
13 requests, would it be correct to say that the County
14 -- with the County subsidy, would it be correct to
15 say that this becomes a project that is public in
16 nature?

17 **MR. MATAAFA:** Can you clarify that
18 question, please?

19 **COMMISSIONER OHIGASHI:** Whenever you use
20 public funds for a project, it becomes a public kind
21 of project, isn't it, or isn't that right?

22 **MR. MATAAFA:** I think the Department would
23 still look at the project being a private project
24 that would be carried out by the Petitioner, but
25 they would be receiving public funding, and it would

1 be subject to any laws pertaining to that funding.

2 **COMMISSIONER OHIGASHI:** So as such, would
3 the developer be able to control who applies for
4 this project?

5 **MR. MATAAFA:** So if you're requesting
6 whether the Petitioner has the ability to discern
7 who can apply for the project based off of public
8 funding?

9 **COMMISSIONER OHIGASHI:** Yes.

10 **MR. MATAAFA:** I think it would depend on
11 whether they are also receiving any State funding,
12 too, because there are requirements for funding that
13 they may receive through HHFDC if they're going that
14 route. But for the County funding, no, there's no
15 requirement for the affordable housing fund, but one
16 of the requirements for the County is being eligible
17 under Chapter 2.96, which is our workforce --
18 residential workforce housing code, which requires
19 certain eligibility requirements.

20 **COMMISSIONER OHIGASHI:** Does that mean
21 that only Maui residents can apply for this?

22 **MR. MATAAFA:** No. Sorry.

23 **COMMISSIONER OHIGASHI:** What does that
24 mean, then? Who can apply?

25 **MR. MATAAFA:** It would be open to anybody

1 to apply for the project.

2 **COMMISSIONER OHIGASHI:** If they didn't
3 receive this funding, would they be able to restrict
4 who would be able to apply?

5 **MR. MATAAFA:** Yeah. I'll defer real
6 quickly to Mr. Ueoka.

7 **MR. UEOKA:** Jeff Ueoka. So we're on
8 Chapter 201H project, so we're 100 percent
9 affordable. We are going to follow that regardless
10 of the County funding, and part of the 201H process
11 when you work with the County of Maui is you follow
12 Chapter 2.96 in regards to affordable housing
13 selection, application, lottery, et cetera. So we
14 will be following the County rules. Thank you.

15 **COMMISSIONER OHIGASHI:** Who from -- who
16 from the County would be ensuring that these rules
17 are followed?

18 **MR. MATAAFA:** It would be through our
19 department with our Housing Division staff.

20 **COMMISSIONER OHIGASHI:** And would -- are
21 there specific guidelines besides 2.96 that you have
22 to follow? In other words, are there agency rules
23 that you have to follow?

24 **MR. MATAAFA:** The other chapter would be -
25 - I think it's Chapter 3.35 with the affordable

1 housing fund there's requirements there that the
2 applicant would need to follow as well.

3 **COMMISSIONER OHIGASHI:** Would those
4 regulations preclude, for example, a mainland person
5 from applying for housing in that area?

6 **MR. MATAAFA:** We can't exclude mainland
7 residents from applying for the project.

8 **AUTOMATED VOICE:** Recording in progress.

9 **COMMISSIONER OHIGASHI:** About the funding,
10 given the circumstances of the fires and the
11 incredible need probably for monies for immediate
12 relief for residents, is -- are these monies locked
13 in or is there -- or what -- can they be reallocated
14 for other purposes?

15 **MR. MATAAFA:** So right now, the -- for the
16 budget, they did receive Council approval, which is
17 a big step for getting funding from the County. The
18 other step I talked about earlier is on the
19 administration side, making sure that we can
20 understand the scope of what the funding will be
21 used for, and that, you know, we can issue a grant
22 agreement between the County and the developer of
23 the project.

24 So there are a couple more steps that need
25 to be followed before the funding can be, you know -

1 - the funding grant can be executed but having that
2 Council approval is a big first step of getting
3 there.

4 **COMMISSIONER OHIGASHI:** I'm just curious
5 what -- what -- what other approval is necessary?

6 **MR. MATAAFA:** So they would need to get
7 the approval from the administration, Mayor Bissen
8 and his team, through us, DHHC.

9 **COMMISSIONER OHIGASHI:** And what -- do
10 they -- what is the timetable for receiving that
11 approval?

12 **MR. MATAAFA:** I believe Mr. Ueoka
13 presented earlier that before that grant agreement
14 can be executed, one of the steps is making sure
15 that they get their modification in for the 201H
16 application. And so once -- once counsel's able to
17 move forward with that 201H modification, it's a
18 signal for us that we can move forward and have
19 those discussion with the Petitioner on executing
20 that grant agreement for funding.

21 **COMMISSIONER OHIGASHI:** And so it all --
22 so the answer to the question is yes, everybody
23 wants to do it, everybody's pulling in that way.
24 What is required is the -- a certain modification of
25 the 201H conditions; however, you can't say that it

1 can't be repurposed for some other use should the
2 need arise. Would that be a fair statement?

3 **MR. MATAAFA:** Currently, it's earmarked in
4 our budget, so we couldn't right now use that
5 funding for another project.

6 **COMMISSIONER OHIGASHI:** And the last
7 question I have is that how many other projects have
8 received this type of funding?

9 **MR. MATAAFA:** Are you referring to this
10 fiscal year or in general?

11 **COMMISSIONER OHIGASHI:** In general. First
12 of all, in general. And then if you have any this
13 fiscal, you would be good.

14 **MR. MATAAFA:** Generally, we get anywhere
15 from 10 to 15 applications for affordable housing
16 fund, and then what happens is it goes through a
17 committee that looks at them in a totality. So from
18 a bird's eye view, they'll look at all the funding
19 sources that a project may receive, and there's
20 other eligibility requirements for the funding that
21 they'll take a look at. And then they'll score all
22 those proposals.

23 And so once that scoring is done, that
24 gets sent to the Mayor, so you'll have all the
25 projects ranked from 1 to 15 if you have 15

1 applications. And then based off of the funding
2 available, the Mayor will help -- the Mayor will
3 decide which projects to fund based off that
4 priority eligibility and amount available in
5 affordable housing fund or projected for the next
6 fiscal year.

7 **COMMISSIONER OHIGASHI:** And so can you
8 give us an example of how the fund was used recently
9 or who has been granted the fund?

10 **MR. MATAAFA:** Yeah, I can speak generally.
11 Generally, what the fund is used for is for
12 leveraging of other funding because we don't give
13 out huge amounts out of the affordable housing fund.
14 And the totality of these projects, which can go up
15 to hundreds of millions of dollars, some of them,
16 some others tens of millions of dollars, what
17 happens is the affordable housing fund is usually
18 used to leverage funding at the State or the federal
19 government or other private financing sources, so
20 it's mainly used as seed funding where the developer
21 can go ahead and then use that to show other
22 financiers that, hey, I have approval from the County
23 for this amount of money. Would you be willing to
24 also, you know, look at my application for -- for
25 the developer.

1 **COMMISSIONER OHIGASHI:** Can you give me an
2 example of where it has been used this year or
3 subsequent years?

4 **MR. MATAAFA:** Yeah. So -- sorry.

5 **COMMISSIONER OHIGASHI:** You know, just who
6 have you given money to? That's what I want to
7 know.

8 **MR. MATAAFA:** Oh, okay. So yeah, so most
9 of the projects that you've seen have utilized --
10 are in construction right now, have utilized
11 affordable housing fund a lot, the ones are like TIP
12 projects, so there's the ones out in West Maui, Kai
13 Ono Ulu. Okubohi (phonetic) was one of them. Sorry
14 I'm butchering it. Kaiaulu o Kukuia is another one
15 that applied for affordable housing fund, and
16 there's also a few other developments in Kihei.

17 And if you're familiar with Lytic
18 (phonetic) projects, those are typically geared for
19 60 percent of the AMI and below, so all of those
20 projects we use it. And then we also have requests
21 for for-sale projects as well. A couple on the
22 books from last year and then some on the books for
23 this year, too, for funding.

24 **COMMISSIONER OHIGASHI:** And my last
25 question was -- is that \$10 million, is that an

1 unusual amount? Is it a large amount compared to
2 the other -- the other people who received the
3 money?

4 **MR. MATAAFA:** Yeah, so typically we give
5 out anywhere from, I'll say, \$5 to \$10 million.
6 It's a little bit at the higher range of the average
7 for -- from the Department, from the affordable
8 housing fund to give out, but it's not unusual.

9 **COMMISSIONER OHIGASHI:** I'm sorry.
10 Lawyers always lie and say this is the last
11 question. I want -- I wanted to --

12 **CHAIRMAN GIOVANNI:** Is that true, Mr.
13 Hopper?

14 **MR. HOPPER:** I'm going to put an objection
15 on the record.

16 **COMMISSIONER OHIGASHI:** so generally, do
17 you give out more? Is the 5 to 10 million, is that
18 a conglomerate of all the projects, or is that each
19 individual projects that you can give out? Because
20 I -- I know the -- I'm not sure of what the total
21 fund is available at this present time.

22 **MR. MATAAFA:** So for this past fiscal
23 year, when the budget session was going on, I think
24 the amount was 43 million in the total pot, but
25 since the fire I think that will affect the amount

1 that we can collect through real property to fund
2 that amount. So the Department is taking a more
3 holistic view of all the projects that submitted and
4 were approved at the budget session -- or during
5 budget session, so I would take that into
6 consideration as well.

7 **COMMISSIONER OHIGASHI:** So being a simple
8 person, I don't quite understand what you just said.
9 My question was more like does it -- how much do you
10 give out every year? Is it 5 to 10 million, like is
11 that what you're referring to, or is it -- or is it
12 all 40 million or all 30 million or what?

13 **MR. MATAAFA:** Typically, we have more
14 applications than we can fund that come through the
15 Department, so we typically do utilize most of that
16 appropriation coming out of that fund for the
17 projects.

18 **COMMISSIONER OHIGASHI:** \$43 million is
19 available normally?

20 **MR. MATAAFA:** And just to -- it's -- it's
21 based off of, I believe it's 8 percent of real
22 property tax goes into the affordable housing fund.

23 **COMMISSIONER OHIGASHI:** But it was about
24 43 -- 40 million --

25 **MR. MATAAFA:** It -- it changes from year

1 to year, but generally around that number --

2 **COMMISSIONER OHIGASHI:** Last year?

3 **MR. MATAAFA:** Yeah.

4 **COMMISSIONER OHIGASHI:** I just want to

5 know --

6 **MR. HOPPER:** Chair, I think --

7 **COMMISSIONER OHIGASHI:** I don't have any

8 more questions.

9 **MR. HOPPER:** Chair, just for the record, I

10 think it's 3 percent of the annual budget rather

11 than 8 for affordable, but we can have that

12 information provided.

13 **MR. MATAAFA:** So in the Charter it says 3

14 percent, but the Mayor, this past fiscal year, he

15 moved it up to 8 percent of the real property tax.

16 **MR. HOPPER:** Okay. Yeah, I stand

17 corrected. Just further clarification, there's a

18 Charter requirement and then what was done, correct?

19 **CHAIRMAN GIOVANNI:** Is that the final

20 question?

21 **COMMISSIONER OHIGASHI:** Yeah.

22 **CHAIRMAN GIOVANNI:** Commissioners, anybody

23 else like to ask --

24 **COMMISSIONER LEE:** Chair, I have a

25 question.

1 **CHAIRMAN GIOVANNI:** Commissioner Lee.

2 **COMMISSIONER LEE:** Deputy Directory, so
3 you mentioned that this project was seeking 201H
4 from the City. Do you know -- or from the County.
5 Do you know if -- or maybe this question is for Mr.
6 Ueoka.

7 Do you know if the developer's also going
8 to seek 201H money from the State?

9 **MR. UEOKA:** Jeff Ueoka. Not intending to
10 seek money from the State.

11 **COMMISSIONER LEE:** Okay. Deputy Director,
12 so the 201H at the County, that \$10 million is cash
13 that they're seeking? Is it in -- does that include
14 sewer fee hookup waivers, plat review waivers,
15 property tax? What does that 10 million consist of?

16 **MR. MATAAFA:** Yeah. So right now it's
17 \$10.65 million to the development. When they come
18 in for their application, we'll be able to get down
19 to that level of detail and where the money is going
20 to go to for their project.

21 **COMMISSIONER LEE:** Okay. So that could be
22 waivers of fees and no -- I see Mr. Ueoka shaking
23 his head.

24 **MR. UEOKA:** If I may. Thank you. Jeff
25 Ueoka. It's 10.65 million when we present it to the

1 County. That's just to meet the project pencil.
2 The County passed Bill 107 a few years ago -- or not
3 even a few years ago, a year or two ago, but it
4 changed the real property -- I'm sorry, the
5 affordable housing prices, so it lowered them.

6 That, coupled with the increase in
7 interest rates, increase in interest rates causes
8 affordable housing guidelines to make the prices go
9 down, so the prices went down because interest rates
10 further down because of Bill 107, and the cost of
11 borrowing money increased tremendously as interest
12 rates increased, and the cost of construction, both
13 materials and labor, went up tremendously. So the
14 project wasn't penciling on those brought up to one
15 of the Councilmembers, the County Councilmembers,
16 and they suggested that, you know, we approach the
17 County to ask for a -- an appropriation from the
18 affordable housing fund.

19 Councilmember Cook did make the proposal
20 at the budget deliberations. It was approved in the
21 FY-24 budget, as the Director stated. So that money
22 is just to kind of make the project pencil, so there
23 are also a few 201H exemptions that are built into
24 the County Code that allow for fee waivers and et
25 cetera, but those are smaller in scale to this

1 10.65.

2 And also, just for clarification, we did
3 go in and ask for a lesser amount, but we asked to
4 follow the old affordable housing sales guidelines.
5 The Council elected to give us the bigger amount to
6 go to the even lower prices, so just a
7 clarification. Thank you.

8 **COMMISSIONER LEE:** Okay. So Mr. Ueoka, do
9 you think that the developer will be seeking
10 additional fee waivers, plan review waivers, hookup
11 waivers from the City, and you said that's a small
12 amount, but in Honolulu County, it's in the millions
13 when they do this. I guess, you're saying for your
14 project -- do you have a ballpark idea of how much
15 more they would be asking the County for?

16 **MR. UEOKA:** When I said, "small," the ones
17 that already cooked into the County Code when you do
18 a hundred percent affordable housing project,
19 there's certain fees that are just waived. They're
20 not astronomical, but water hookups, we're probably
21 not going to get a waiver for that. Those are
22 around 12,000 per unit. We've probably not going to
23 get a waiver from the DOE. It's probably -- is it
24 3,500 per unit or in that ballpark in Wailuku.

25 So those are big numbers, don't get me

1 wrong, but we aren't seeking waivers for those --

2 **COMMISSIONER LEE:** Plan review waivers,
3 hookup waivers.

4 **MR. UEOKA:** I'm not sure if the building
5 permit fee reviews one of those. Sorry. Yeah.
6 We're not planning on asking for anything else,
7 though.

8 **COMMISSIONER LEE:** I was just trying to
9 get an idea of if additional help might be needed
10 from the County.

11 But going back to Deputy Director, you
12 mentioned that this was a 201H project and it's a
13 use of government funds. Would this project fall
14 under State Chapter 104 for prevailing wages for the
15 contractors?

16 **MR. MATAAFA:** Yes.

17 **COMMISSIONER LEE:** All right. No more
18 questions.

19 **CHAIRMAN GIOVANNI:** I love one-word
20 answers. Thank you.

21 Just two questions. So we saw today that
22 the design of the units went from basically all
23 single family instead of the duplexes. From your
24 position in County government, what's your reaction
25 to that, from a policy perspective? Do you support

1 it? Do you prefer more duplexes, more dense
2 multiple dwelling? What are you looking for in
3 projects like this?

4 **MR. MATAAFA:** Thank you, Chair. Yes. So
5 we do support it because the unit count isn't
6 changing. If the unit count changed, it would
7 probably warrant us to look further into why those
8 changes were being made, but because it's still
9 staying at 80 units, the Department still supports
10 the project.

11 **CHAIRMAN GIOVANNI:** And second question
12 also, maybe a policy question. This is all for sale
13 --

14 **AUTOMATED VOICE:** Recording in progress.

15 **CHAIRMAN GIOVANNI:** -- versus for sale and
16 rental or all rental? Do you have a preference from
17 a policy perspective from the county when you look
18 at a project like this?

19 **MR. MATAAFA:** Thank you for the question.
20 If you look at the latest data that the Hawaii
21 Housing Planning Study had, and it was a 2019 study.
22 It's quite old compared to what we're dealing with
23 now. They plan to update it in 2023. We need
24 housing across all AMI levels at almost every type
25 of housing unit. So we do need rentals, but we also

1 have shown that a lot of the rental need is being
2 taken care of by Lytic (phonetic) for the lower AMI.

3 There's not a lot of focus for, you know,
4 anything above 60 percent AMI on it, so this project
5 would be welcomed in Maui County because it does
6 help chip away at that need that we need for the
7 higher AMI and -- and we also do need market rate
8 rentals and for sale across the board. You know, we
9 need all types of housing at all different AMI
10 levels.

11 **CHAIRMAN GIOVANNI:** And this is a question
12 for you or Mr. Ueoka. But is there -- what is
13 planned or baked in, in terms of date restrictions
14 for resale of these units? Will it be required to
15 sustain the low-income requirements?

16 **MR. UEOKA:** Jeff Ueoka. So it is a 201H
17 project, so there's a ten-year resale restriction,
18 so I think sales prices go up 1 percent per year if
19 you're going to resell during that period. And
20 we're working with the -- we're going to work with
21 the County Council. We've discussed with the
22 administration what they'd like to see as far as
23 further date restrictions. That was part of the
24 discussion we had when the budget appropriation was
25 made. They knew that when we came back in for the

1 201H amendment, they could work with us on further
2 deed restrictions.

3 **CHAIRMAN GIOVANNI:** So that sounds pretty
4 open-ended, so from the County's perspective, what
5 is your position for these projects or if you have
6 one for a deed restriction for resale beyond ten
7 years?

8 **MR. MATAAFA:** Right now, we would follow
9 the Code 2.96. Chapter 2.96, they're specified deed
10 restrictions for years based off of your income
11 category. Because there hasn't been a bigger policy
12 discussion on it yet, we would still follow that
13 Chapter 2.96.

14 **CHAIRMAN GIOVANNI:** Okay. I'm good with
15 that.

16 Commissioner Lee?

17 **COMMISSIONER LEE:** Thank you, Chair.
18 Could you refresh my memory, how -- what's the
19 square footage of these homes?

20 **MR. UEOKA:** Jeff Ueoka. I believe they're
21 average around 1,200 square feet, maybe a little
22 less, some of them.

23 **COMMISSIONER LEE:** Okay. So I like to do
24 this with a lot of projects is I take the full
25 amount of 50 million, divide it by 80 units. It

1 comes out to 625,000 per unit. And if I divide that
2 by 1,200, that's \$520 a square foot. So I'm
3 going to ask the County, do you feel that that's a
4 good investment?

5 **MR. MATAAFA:** Sorry. You talk quickly.
6 Could you repeat that one more time?

7 **COMMISSIONER LEE:** Yeah. So the project
8 is supposed to cost about \$50 million for 80 units,
9 and that comes out to about \$625,000 per home, all
10 costs, I'm assuming that is. Is that -- did the
11 County do that kind of analysis? Because some
12 people might argue that you're better off giving
13 somebody a half million dollars, they can buy
14 something with no strings attached, build equity, so
15 do you feel that that's -- I know it's reaching the
16 lowest AMI levels, but did the County do analysis on
17 the value of this proposal?

18 **MR. MATAAFA:** Thank you. Generally, yes,
19 we would support it, but we won't get to that point
20 until we review the application with the developer
21 when they submit it after their 201H approval, so
22 we'll get to that level of detail at that time.

23 **COMMISSIONER LEE:** Okay. Thank you.
24 Thank you, Chair.

25 **CHAIRMAN GIOVANNI:** Thank you.

1 Commissioners? Okay.

2 Mr. Hopper, anything else?

3 **MR. HOPPER:** I don't think I have anything
4 to add. Again, we'll have Ms. Cua and Ms. Furukawa
5 available, and I will be here, obviously, but if
6 there's any more questions for Mr. Mataafa, I think
7 now would be the time. If not, then we can be
8 finished with our presentation.

9 **CHAIRMAN GIOVANNI:** So Petitioner, I'll
10 give you an opportunity to comment or rebut
11 anything you heard from the County.

12 **MR. UEOKA:** Thank you. Jeff Ueoka.

13 Deputy Director, just to confirm, you guys
14 are reviewing the exemption for the project under
15 11.200.1, which allows for NDA exemption for
16 affordable housing projects where the only trigger
17 is the use of County funds.

18 **MR. MATAAFA:** That is correct. We
19 received their request, and we're reviewing that
20 now.

21 **MR. UEOKA:** Thank you, Mr. Mataafa.

22 That's all, Chair. Thank you.

23 **CHAIRMAN GIOVANNI:** Okay.

24 Commissioners, any final? Okay.

25 Mr. Hopper, Mr. Mataafa, thank you so much

1 for making the time, and I think you can go.

2 **MR. MATAAFA:** And I'll just say thank you
3 for having me again. And if you need me, I can be
4 available tomorrow again from 10 to 11, if need be.

5 **CHAIRMAN GIOVANNI:** Okay. We'll give you
6 a heads-up on that as soon as we could. Okay.

7 Back to Mr. Ueoka.

8 **MR. UEOKA:** Thank you, Chair. As
9 mentioned earlier, we discussed with Emmanuel
10 Lutheran the condition 5. And if you don't mind,
11 I'd like to share my screen.

12 **CHAIRMAN GIOVANNI:** Please do. This slide
13 was also distributed to the Commissioners during the
14 lunch break, right? Okay.

15 **MR. UEOKA:** So Jeff Ueoka. Condition 5
16 relating to highways and roads. It starts off -- so
17 I don't know if you guys want me to read it to you,
18 but it basically discusses the revised TIAR to be
19 initiated after Phase 1 is completed and
20 approximately three months after the date upon which
21 the school opens for classes. . . to determine the
22 regional and local traffic impacts of the project
23 and recommended appropriate mitigation measures. So
24 that's the first part of condition 5 relating to
25 updating a TIAR.

1 The second part we're leading to
2 alleviating project generated traffic impacts. So
3 it's basically Petitioner shall contribute to or
4 construct state highway improvements in the
5 immediate vicinity of the Petition area. . .
6 including those generated by the project and uses.

7 And the next part is the State DOT
8 coordination, which basically says we need to work
9 with Highways Division. And all of this will be
10 done at no cost to the State. So that's the
11 existing condition 5.

12 So we had a -- as part of the 201H
13 process, a TIAR was done for the Waikapu Development
14 project. So basically the recommendations coming
15 out of that one were construct one northbound left
16 turn storage lane along Waiale Road at each of the
17 two project accesses. Left turn storage lane should
18 accommodate a minimum of 50 feet of storage length.
19 So that would be a County requirement. It does not
20 affect the State highway.

21 Waiale Road/Kuikahi Drive, optimize the
22 signal, so that would also be a County requirement.
23 And they probably would ask for those things as part
24 of subdivision. It would be a subdivision comment
25 when we go in for our 80 lots.

1 So basically, we did reach out to the
2 traffic consultant who conducted a 2018, and he will
3 be here available for questions if we want to
4 discuss that further tomorrow. He was not available
5 today.

6 But essentially, they did one for Kukahi
7 Village. It's Mauka below Wailuku Heights. I'm not
8 sure how familiar you guys are with the area.
9 Across the street from -- across Kuikahi Drive from
10 Kahalani. And basically, a lot of the studies were
11 the same and very general similar findings to the
12 approved 2018 TIAR.

13 And they said one of the bigger ones
14 they're looking at is the Waiale Road-Waiinu Road
15 intersection. That's, I guess, more -- I always
16 mess this up -- north. Yes -- no -- yeah, that's
17 north -- more north of the Waiale Road-Kuikahi Drive
18 intersection of this project. And it's already
19 included in the State transportation implementation
20 program, or STIP. I'm not -- I probably butchered
21 that part -- got that acronym wrong, but it's in the
22 STIP. It's up for construction. We're hoping it
23 gets done because that has been a need for years.
24 That should help with the queuing along Waiale Road.

25 And then the next one was the approved

1 Kuikahi Village TIAR kind of also talked about the
2 future Maui Lani Parkway Extension. So that's
3 basically from Baldwin High School. There's that
4 road that runs past like the Safeway and everything,
5 and it will go towards the existing Maui Lani
6 Subdivision and it will connect with the existing
7 Maui Lani Parkway around the LDS Church in there.

8 That's quite a major undertaking. That
9 will be a very difficult road to build, based on
10 cultural concerns, at a minimum, along with just
11 it's going to be a difficult road to build. So
12 that's the current update. You said if we're to do
13 a TIAR, that's probably what it would say. Those
14 would be the mitigation measures.

15 State DOT commented in 2018, and they said
16 that there's no significant impacts to State highway
17 intersections for this project, and OPSD confirmed
18 that original determination in their report letter.

19 So I guess there's no State highway
20 traffic impacts, so we would respectfully request --
21 I don't know how this will work for you guys, but
22 please don't require Waikapu Development Venture or
23 Emmanuel Lutheran Church to spend the money to
24 update a TIAR. They're not cheap to do. There's
25 going to have to be a lot of traffic counts, and I

1 know that's not always the reason why you put a
2 condition on. Cost doesn't have to be a
3 consideration, but we're asking, so you understand
4 that.

5 State DOT has already stated there are no
6 significant impacts to the State highways. It would
7 be an additional cost imposed on 100 percent
8 residential workforce housing project and a
9 church/school. And unknown potential future cost to
10 alleviate being placed on a 100 percent residential
11 workforce housing project and a church/school.

12 It's not part of our motion for tomorrow.
13 We just know there's been a lot of discussion about
14 the allocation of this traffic study and who's going
15 to do what, who's going to be responsible for what,
16 but as a group, you guys did ask us to talk after
17 the last meeting. We have been in discussions, and
18 we were just hoping that somehow -- and it might be
19 a separate motion, but we'd really like to discuss
20 the idea of removing this TIAR concept from both
21 projects moving forward. Thank you.

22 **CHAIRMAN GIOVANNI:** Anything more to
23 present?

24 **MR. UEOKA:** We're okay. Thank you.

25 **CHAIRMAN GIOVANNI:** Okay.

1 So Commissioners, any questions you have
2 on either of the PowerPoint presentations or any
3 comments along with those?

4 Commissioner Atta.

5 **COMMISSIONER ATTA:** (Inaudible) doing a
6 lot of coordination with --

7 **MS. KWAN:** Microphone.

8 **COMMISSIONER ATTA:** -- with -- you know
9 when you -- the water and sewer line, what -- are
10 you working with them or saying -- and they're sewer
11 and water line on the adjacent parcel?

12 **MR. UEOKA:** Jeff Ueoka. So Commissioner,
13 so we -- the two-lot subdivision was serving both of
14 us, and the requirement was the 12-inch water line
15 and the hydrant, so yes, Waikapu Development Venture
16 took care of that at their expense.

17 And sewer, our understanding is there
18 shouldn't be any need for major sewer upgrades
19 along, you know -- the -- still the standard
20 hookups, of course, but not replacing a line or
21 extending a line. Thank you.

22 **COMMISSIONER KAHELE:** Chair, I've got a
23 question.

24 **CHAIRMAN GIOVANNI:** Commissioner Kahele?

25 **COMMISSIONER KAHELE:** The 80 units, so --

1 how many -- I mean, what's going to be the average
2 AMI? Is that the 60 percent? All units are going
3 to be 60 percent?

4 **MR. UEOKA:** Jeff Ueoka. So 12 units will
5 be the low-income group, which are 70 to 80 percent
6 -- oh, do you want me to pull the slide up? Would
7 that be easier?

8 **COMMISSIONER KAHELE:** Yeah, so we
9 understand.

10 **MR. UEOKA:** You got to bear with me so I
11 can figure out how to. Sorry. One second. I think
12 I may have made a promise I can't keep. The 12
13 units will be between 70 and 80 percent. That's the
14 low-income group. Twelve units will be between 81
15 and 100 percent, which is the below-moderate-income
16 group. Forty units will be between 101 to 120
17 percent, which is the moderate-income group. And 16
18 units will be between 121 and 140 percent, which is
19 the above-moderate-income group. Did I say 16?
20 Sixteen is the last one.

21 **COMMISSIONER KAHELE:** Sixteen?

22 **MR. UEOKA:** Yeah. One-six.

23 **COMMISSIONER KAHELE:** And the 16 would be
24 120 and above?

25 **MR. UEOKA:** 120 to 140.

1 **COMMISSIONER KAHELE:** What would qualify
2 me being a family -- having a family of two kids and
3 a wife --

4 **AUTOMATED VOICE:** Recording in progress.

5 **COMMISSIONER KAHELE:** -- the -- oh,
6 actually, let's go to the 80 percent, 80 to 100
7 percent for one of the 12 units. How much would I
8 have to make?

9 **MR. UEOKA:** Jeff Ueoka. So the max income
10 for that low-income group would be \$84,640.

11 **COMMISSIONER KAHELE:** For a family of
12 four?

13 **MR. UEOKA:** I think that's all income and,
14 you know, I don't think they call kids, so I guess
15 it would be family of however many --

16 **COMMISSIONER KAHELE:** Sorry.

17 **MR. UEOKA:** -- I think for the County's --

18 **COMMISSIONER KAHELE:** All right. Thank
19 you.

20 Thank you.

21 **CHAIRMAN GIOVANNI:** Commissioner Lee?

22 **COMMISSIONER LEE:** You read my mind.

23 Thank you, Chair.

24 Mr. Ueoka, has the developer been working
25 with or selected or narrowed down its choice of

1 prime contractor for the project?

2 **MR. UEOKA:** I don't think it's been
3 decided yet, but one of the members has a civil
4 sitework construction company, and one of the
5 members has a home building company, so probably go
6 with one of those, I guess. I assume. Or go with
7 them, I'd assume.

8 **COMMISSIONER LEE:** And the -- was this --
9 was this -- was the ownership the same throughout
10 from the beginning, or has the project been sold to
11 a new group of developers?

12 **MR. UEOKA:** Jeff Ueoka. Sort of. The one
13 partner came in -- one member came in and two
14 members went out, but two or three of the other
15 members are still the same.

16 **COMMISSIONER LEE:** And those folks, are
17 they Maui people or Maui residents?

18 **MR. UEOKA:** Yes, sir, all Maui -- Maui
19 people with a long history here.

20 **COMMISSIONER LEE:** Okay. Thank you.
21 Thank you, Chair.

22 **CHAIRMAN GIOVANNI:** Thank you.
23 Commissioners?

24 **COMMISSIONER CARR SMITH:** Chair?

25 **CHAIRMAN GIOVANNI:** Commissioner Carr

1 Smith?

2 **COMMISSIONER CARR SMITH:** Thank you.

3 I'm still trying to wrap my head around
4 the relationships. Once you're subdivided and you
5 proceed with your project, is there any scenario
6 where if, for some unfortunate reason, Emmanuel
7 Lutheran project does not come together, does that
8 affect you at all?

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

10 So once the subdivision is completed, the
11 two-lot, so technically speaking, it's -- well, not
12 technically. It is common ownership right now.
13 We'll do deeds for lot 1 to Emmanuel Lutheran and
14 lot 2 to Waikapu Development Ventures. And -- I
15 shouldn't say fortunately. I don't know what I want
16 to call it, but the docket has been bifurcated, so
17 the sins of Waikapu Development Venture should not
18 pour over onto Emmanuel Lutheran and vice versa.
19 That is my hope.

20 **COMMISSIONER CARR SMITH:** Okay. There's
21 nothing that's shared beyond that? No other
22 easements or sewer lines or anything, water lines
23 that are shared?

24 **MR. UEOKA:** We don't -- we don't
25 anticipate it. And easements, I can't say for

1 certain what the access and everything's going to
2 look at right now, but right now nothing.

3 **COMMISSIONER CARR SMITH:** Okay. Just
4 wondering. Thank you.

5 **CHAIRMAN GIOVANNI:** Just a quick question.
6 Are all utilities underground, or do you have some
7 overhead?

8 **MR. UEOKA:** Yes, it will be going
9 underground.

10 **CHAIRMAN GIOVANNI:** The electrical
11 internet all underground?

12 **MR. UEOKA:** Yes.

13 **CHAIRMAN GIOVANNI:** Can you expand a
14 little more of your -- of your approach to secure
15 the financing from the banks? I think you quickly
16 said what has to happen first and that you've got
17 letters of intent which are useless because they
18 don't guarantee any money. But they're willing to
19 talk with you, I think, is what those letters mean.

20 Anyway, could you expand upon your
21 approach and timetable for securing the financing?

22 **MR. UEOKA:** Yes. Jeff Ueoka. So I guess
23 the letters of support meant they won't -- they're
24 not saying no right now, so that was positive, in
25 our opinion. The first step, of course, was

1 securing the County grant, the 10.65 million. It's
2 not secured, but it's been appropriated, so we have
3 to move forward with the assumption it's there.

4 After we get the two-lot subdivision
5 approved, we're going to move forward with getting
6 the -- I just call it the subdivision, but 80-plus
7 lots, you know, roads and the 80 units and roads and
8 everything. And at some point we'll have the
9 construction documents, the pro formas, and the bids
10 in place to do all of the sitework improvements,
11 civil improvements, and at that point, we'll
12 probably go and talk to the banks and see. They're
13 going to look at the pencil before they loan any
14 money.

15 And we're hoping -- I believe my timeline
16 said that will be, hopefully, '24, mid-'24 we'll be
17 going out there, I believe. We're hoping to
18 construct the subdivision improvements in late '24,
19 so mid-'24, hopefully, we can be there. That's
20 hoping, though. It's optimistic.

21 **CHAIRMAN GIOVANNI:** So on the matter of
22 the distribution assignment of the condition,
23 notwithstanding your request on condition 5, what
24 are you proposing will take place in the ensuing
25 months to clarify who has responsibility for what?

1 **MR. UEOKA:** Jeff Ueoka. So there were 23
2 original conditions, and I think one was removed.
3 I'm not -- I forget which one that was, but it was -
4 - it made sense to remove it.

5 Out of most of those, there really were
6 like civil defense. You have to go through SHPD,
7 drainage, that type of stuff, which will both be
8 required to do individually for our projects. The
9 only three that stood out to me as each project had
10 to do was project completion, condition 2, condition
11 5 related to the highways and roads as, you know,
12 their traffic demand and our traffic demand will be
13 a little -- it will be different. I should clarify
14 -- sorry -- when I said, State DOT made the comment,
15 it was only for our project. It didn't include the
16 -- the school.

17 Finally, the cultural impact assessment
18 requirement was -- we should have done it for both
19 of us. Oversight, kind of tunnel vision when you're
20 in the heat of things, trying to get them done, but
21 we do plan on working with Goodwill Consulting on
22 getting that expanded. So other than that, I'd say
23 condition 2 and 5 would be the only ones that are
24 kind of over -- or -- I don't know what the word is,
25 but we both have to complete our own separate ways

1 for our -- I'm sorry.

2 We both have the -- I don't know how to
3 say this right -- separate, but they're linked to
4 each other. I'm not sure -- yeah, I hope that makes
5 sense. But if not, most of them will be handled as
6 your own project-specific requirements as you move
7 your project forward.

8 **CHAIRMAN GIOVANNI:** Okay.

9 Commissioners, anything further?

10 Commissioner Ohigashi?

11 **COMMISSIONER OHIGASHI:** If you get the
12 waiver for the environmental assessment, how would
13 that affect the cultural impact assessment for your
14 property and the other, I guess, Emmanuel Lutheran?

15 **MR. UEOKA:** As far as the environmental
16 assessment goals, I don't think it will affect the
17 cultural impact assessment, necessarily or at all,
18 actually, because it was a review -- an independent
19 review was completed as to the cultural aspects of
20 this, and I will say because this was a 201H
21 project, as part of the 201H application, many, if
22 not all, of the similar studies that are included in
23 environmental assessment were included in the 201H
24 application.

25 Comment letters were sent out. That's how

1 the 2018 letter was received from State DOT highways
2 on the roads, but the difference is because there
3 was no trigger for the project, it was never
4 published in the environmental notice, the document
5 done by the OPSD ERP now, I believe, Environmental
6 Resource Program. So I wouldn't say there'd be any
7 effect to the cultural impact assessment based on
8 NEA exemption for this project. Thank you.

9 **COMMISSIONER OHIGASHI:** My other question
10 deals with the -- the -- your comment or plea or
11 statement about condition 5. Is it your intent to
12 file a motion to modify condition 5? Or are you
13 asking us to sua sponte change it?

14 **MR. UEOKA:** Thank you. Jeff Ueoka. Yes,
15 Commissioner Ohigashi, if you could please sua
16 sponte change it, we -- I'd greatly appreciate it.

17 **COMMISSIONER OHIGASHI:** It probably
18 wouldn't happen, but -- so my first question was, do
19 you intend to file a motion?

20 **MR. UEOKA:** Jeff Ueoka. We'll discuss
21 internally. We're thinking about that strongly.
22 Thank you.

23 **COMMISSIONER OHIGASHI:** The second
24 question is that if you don't file, where the
25 condition was, you build -- you finish up. You

1 occupy. But then you've got to do the condition of
2 the Land Use Commission. Is your -- if you don't
3 apply, would it be fair to say it's your intent that
4 you won't follow that? Because there is no
5 enforcement mechanism that the Land Use Commission
6 can do after you build it and the church is built.
7 So if you don't file a motion, is -- wouldn't it be
8 fair for us to assume that you don't intend to
9 follow that condition?

10 **MR. UEOKA:** Jeff Ueoka. No, that would
11 not be fair. I don't think we've ever represented
12 that we're not willing to follow the requirement.
13 It just says the requirement, as worded, is after
14 phase 1 is complete at approximately three months
15 after the date upon the school breaks for classes.

16 The TIARs is what they were -- we're not
17 saying we're not complying with that. It may not
18 apply to us directly as this project will never be
19 opening a school for classes, but the bigger
20 discussion is should we come back in because is it
21 appropriate for either party to be doing an updated
22 TIAR?

23 So I'm not going to say we're not going to
24 comply. We will comply with every condition that is
25 applicable to us. But not closing any doors and not

1 trying to be flippant about anything, but I want to
2 make it clear that we are not saying that we are not
3 going to comply with anything. Thank you.

4 **COMMISSIONER OHIGASHI:** I hope that you
5 understand my question.

6 **MR. UEOKA:** Jeff Ueoka. Understood,
7 Commissioner. And it was the way it was phrased was
8 very troubling. We have to -- I had to clear the
9 record on that. Thank you.

10 **COMMISSIONER OHIGASHI:** (Inaudible.)

11 **CHAIRMAN GIOVANNI:** Let me remind everyone
12 that the -- your PowerPoint on condition 5, it says
13 the TIAR would be initiated after phase 1 and the
14 school is operational. So it's not even as written
15 any obligation to -- until both projects are
16 complete and operating. That could take forever.
17 Right? So we need to clean this up, at a minimum.

18 **MR. UEOKA:** And if I may, Chair. Jeff
19 Ueoka. It -- it's always scary when you have an
20 open-ended requirement based on you're forced to
21 contribute to or construct State highway
22 improvements. And if you're that far along, it's
23 trouble. The financing is already there, you know
24 what I mean? So it's -- we need to address that
25 earlier -- sooner rather than later. Thank you.

1 **CHAIRMAN GIOVANNI:** I'll just share my own
2 personal view on this. I think it's messy right now
3 and uncertain and given you've got both parties, a
4 lot of angst and concern because of what -- that
5 last part you just said. I would encourage you to
6 make a motion to modify this and come up with
7 language that works for you -- both of you as a
8 starting point. And I wouldn't encourage you to
9 wait too long until we come to some problem later.

10 **MR. UEOKA:** Jeff Ueoka. Thank you, Chair.
11 Noted.

12 **CHAIRMAN GIOVANNI:** Okay.

13 Anything else?

14 Okay. Stand by. We're going to shift.
15 It's been an hour, so let's take a six-minute break,
16 so 1:40, and we'll return with the State.

17 **(Recess taken from 1:34 to 1:42 p.m.)**

18 **CHAIRMAN GIOVANNI:** On the record. So
19 OPSD, please make your remarks and presentation.

20 **MR. YEE:** Thank you. Deputy Attorney
21 General Brian Yee. Let me start with the particular
22 issue before you today, which is the status report.
23 And as to that, the Office of Planning and
24 Sustainable Development is satisfied and happy with
25 the contents and completeness of the status report.

1 Let me address a couple of issues,
2 however, that arose during this process. The -- the
3 -- probably the most important question is the issue
4 of condition 5, which was raised this afternoon.
5 The Office of Planning and Sustainable Development
6 was not aware of this issue until this afternoon.
7 So it would be our position, I think, that this does
8 not affect any of the matters before you today or
9 tomorrow, does not affect your approval of the
10 status report, and does not affect your approval of
11 motion for extension of time.

12 This is not to say we are necessarily
13 opposed, but we don't think it would be appropriate
14 to deal with it during this set of hearings. We
15 have not had an opportunity to consider this. We
16 certainly are supportive of this project. We don't
17 want to do anything to endanger the project, but it
18 doesn't seem to us necessary to deal with it, sort
19 of, at the last minute, especially where we've had
20 no notice.

21 But we are happy -- but I will also say
22 that we are happy to have discussions with Waikapu
23 Development as well as the Department of
24 Transportation, see what's appropriate.

25 The second issue, which is very much

1 related to that, is the bifurcation of the
2 conditions. Again, doesn't affect any of the
3 matters before you today or tomorrow. We continue
4 to support the motion to amend tomorrow and don't
5 think that issue needs to be decided in order to
6 make that decision.

7 The bifurcation is something that I think
8 is a good idea to do. Sorry, let me be clear about
9 when I say bifurcation. The case was bifurcated.
10 The question is what do we do about the conditions.
11 So with respect to who is assigned what
12 responsibility, I think it would be a very good idea
13 to be much clearer about this.

14 I don't want to get into an argument as to
15 what is the effect or non-effect if we do nothing.
16 I think maybe we can just all agree it would be
17 better to be clearer, and the Office of Planning and
18 Sustainable Development is happy to participate in
19 those discussions, even before a motion is filed, as
20 to what's the best way to do that.

21 And I think -- I think that's all I have.
22 I'm happy to answer any questions.

23 **CHAIRMAN GIOVANNI:** Thank you.

24 **COMMISSIONER OHIGASHI:** I have a question.

25 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

1 **COMMISSIONER OHIGASHI:** Yeah. Brian -- or
2 Mr. Yee -- I don't want to be too familiar. Mr.
3 Yee, isn't condition 5 a standard condition
4 requested by the Department of Transportation and to
5 be placed within our D&O? Because I've seen it in
6 every D&O.

7 **MR. YEE:** So it is a standard condition.
8 I think the deletion of the condition is not my
9 immediate response as a good idea, but perhaps their
10 concerns can be alleviated after we have a further
11 review of the record. So for example, if they have
12 done a TIAR, let's see whether Department of
13 Transportation is satisfied with that and whether
14 anything else needs to be done with respect to
15 Waikapu Development.

16 I'm not sure a TIAR was done for Emmanuel
17 Lutheran, and, therefore, I think the elimination of
18 a TIAR would mean we would have to be approving
19 something for which we have no analysis as to the
20 impacts, if any, from traffic.

21 We're still willing to have a discussion.
22 We're -- you know, we're -- we're not opposed to
23 either of these projects. But we do want to make
24 sure -- and we are also aware that the level of --
25 of analysis that is done, we're happy to look at

1 whether or not that particular information is needed
2 for a particular project. But it is not something
3 we would, sort of, automatically say, oh, yeah,
4 sure.

5 I mean, this is an important -- TIARs are
6 in every single case. And it's in there for a
7 reason, because -- a TIAR doesn't say just make
8 improvements. A TIAR looks at what's the impact of
9 your project and see what the impact of your project
10 is so that you mitigate not just anything. You
11 mitigate the impacts from your project, not the
12 impacts from other projects.

13 You know, I don't want to -- like I said,
14 I don't want to prejudge what the outcome of the
15 discussion are going to be, but it is not something
16 we are prepared to say today should be deleted.

17 **COMMISSIONER OHIGASHI:** Is the position of
18 the State that we should take a look at these TIARs
19 on a case-by-case basis and, therefore, in every --
20 in every contested case that we do when we need
21 information or evidence on these TIARS? Because
22 basically, these are catchall types of conditions
23 that are normally placed upon and agreed to by the
24 parties when they were originally put on. And you
25 knew full well that -- that these are there.

1 So now to say, "oh, I knew -- I don't -- I
2 don't know anything. I just came onboard," this is
3 bad for me. That's kind of like defeating the
4 purposes of -- of placing this catchall and we
5 should do it on a case-by-case basis?

6 **MR. YEE:** So let me step away from this
7 particular case and just talk more generally. The
8 traffic -- the -- in almost all cases, we require a
9 TIAR as part of the Chapter 343 process. So it has
10 to be done before you come to the Land use
11 Commission.

12 We then frequently come to the Land Use
13 Commission and say, in addition to the TIAR that was
14 already done, we want an additional update done
15 because things happen. So if you say you're going
16 to get the approval today but you don't construct
17 for like ten years, traffic conditions may change.
18 Maybe your -- your other improvements will be made
19 for you, and so maybe we don't need something from
20 you. But it might be the opposite. It might be,
21 oh, no, you have a lot more impact than we thought
22 you were going to have, based upon current
23 conditions, and so now you're going to need a
24 traffic light or a storage lane or anything else.

25 So the traffic -- so I think if you're

1 going to assume, what is the assumption? The
2 assumption is you need a TIAR. I mean, the -- the
3 idea of doing a case-by-case, sure, we'll do a case-
4 by-case in every contested case hearing. But the
5 assumption, I think, generally, would be a TIAR is
6 needed. A revision is probably going to be needed
7 if this is going to be something that's going to be
8 standing out --

9 **AUTOMATED VOICE:** Recording in progress.

10 **MR. YEE:** And the exception would be if
11 someone comes in and says, I don't think I should
12 have to do a revision or an update. We'll look at
13 it. I'm not saying we're going to agree to it, but
14 we'll look at every single case and say yes or no.
15 That's -- I don't know if I answered your question
16 directly, but TIAR is important. The traffic
17 impacts of the especially large -- you know, many of
18 these projects are much larger -- are important.

19 **CHAIRMAN GIOVANNI:** Is that it? Okay.

20 So just to follow up on this updated TIAR.
21 Does it make sense to you to do it after the
22 projects are complete as opposed to prospectively
23 what the impacts might be once they get the design
24 final?

25 **MR. YEE:** You know, I haven't talked to my

1 client. I will say past practice has been to have a
2 TIAR done before they get to you in the first place.

3 **CHAIRMAN GIOVANNI:** Yeah.

4 **MR. YEE:** So if one was never done, that
5 would be a red flag. If one was done a long time
6 ago, an update seems like would be the normal
7 requirement that we would -- I mean, I -- we're
8 willing to listen to any particular person who says,
9 my project is so small it couldn't possibly have any
10 additional impact 20 years from now. We will listen
11 to every single issue, but we want to hear it, not
12 just sort of say, okay, fine, this --

13 **CHAIRMAN GIOVANNI:** Yeah, fair enough.

14 **MR. YEE:** -- condition.

15 **CHAIRMAN GIOVANNI:** Fair enough. Thank
16 you.

17 Anything else? So I don't have any
18 further -- Katia, did you have something you wanted
19 to say?

20 **MS. BALASSIANO:** Sure. The TIAR is also
21 impacted by how predictable and -- or unpredictable
22 a particular development is. So based on
23 assumptions about that particular use, some are very
24 stable. Home is very stable in terms of predicting
25 how many cars are going to be needed for a

1 particular home. But a drive-through restaurant is
2 not predictable, and that's where TIARs after the
3 fact, you know, can really be useful to help
4 mitigate unanticipated impacts.

5 **CHAIRMAN GIOVANNI:** Fair enough. Thank
6 you.

7 **COMMISSIONER OHIGASHI:** I have -- just a
8 follow-up on that. So in this case, we have a
9 school placing up to 350 kids, assuming they're
10 driven there or bussed there, a portion of them are
11 going to be dropped off. Would that be a high use
12 type of event that would require --

13 **MS. BALASSIANO:** It has -- I think it has
14 less to do with the high-use event as opposed to how
15 predictable it is. So if they're predicting that
16 they're going to be increasing their student
17 population and they've got the basis for that, then
18 --

19 **CHAIRMAN GIOVANNI:** Katia, could I ask you
20 to --

21 **MS. BALASSIANO:** Yes, hi. Katia
22 Balassiano.

23 **CHAIRMAN GIOVANNI:** Could you confirm that
24 your remarks to date and your future remarks on this
25 record will be the truth?

1 **MS. BALASSIANO:** I swear.

2 **CHAIRMAN GIOVANNI:** Thank you.

3 **MS. BALASSIANO:** Katia Balassiano, Office
4 of Planning and Sustainable Development, Division
5 Administrator.

6 **CHAIRMAN GIOVANNI:** Thank you.

7 **MS. BALASSIANO:** So it has less to do with
8 the quantity of cars or the use -- you know, the
9 students -- the number of students. They can
10 predict the number of students based on their past
11 experience, and that could be fairly stable going
12 out. It's -- it's certain uses, again, like a
13 drive-through is a very good example where it's, you
14 know, based on economics and it's based on, you
15 know, consumer preferences and competition that's
16 nearby, and that will impact how predictable the
17 number of cars that are, you know, passing through
18 that drive-through will be.

19 **COMMISSIONER OHIGASHI:** So I -- I'm just -
20 - in my mind, I'm asking that question, not
21 necessarily to indicate which way I would like to
22 rule or not, but it would be good in terms of
23 anybody bringing a motion in that regard to have an
24 idea of what type of burden of proof that they have
25 to meet in order to make sure or to find that this

1 type of -- in order to modify condition 5 in the
2 matter they wish to.

3 Because even if you reach a stipulation,
4 we still require evidence be placed on the record to
5 try and figure out to make sure that any decision is
6 supported by evidence in this case, and especially
7 in this case because you're asking for an exception
8 from a rule that has been required by the State, not
9 the Land Use Commission but asked -- we are asked to
10 put on every single D&O.

11 **MS. BALASSIANO:** Agreed.

12 **COMMISSIONER OHIGASHI:** That's all.

13 **CHAIRMAN GIOVANNI:** Thank you,
14 Commissioner.

15 Commissioner Carr Smith?

16 **COMMISSIONER CARR SMITH:** Just a quick
17 question about TIARs. Is there a time limit on
18 them? This one appears to be six years old, so if
19 it were four would it be acceptable or what --
20 what's the --

21 **MR. YEE:** I don't believe there's a
22 particular time limit. I think you sort of look at
23 -- the people will look -- I think engineers will
24 look at that particular project, and they will have
25 a general sense of whether there have been

1 significant traffic changes recently.

2 **CHAIRMAN GIOVANNI:** Okay. Thank you.

3 So that's enough, yeah?

4 Petitioner, any comments, remarks,
5 rebuttal to State or County?

6 **MR. UEOKA:** Jeff Ueoka. No. Just
7 comments, no rebuttals.

8 I understand the importance of the TIARs
9 and I understand why it's a general rule for
10 everyone. I just would hope everyone understands
11 that if you look at the policeman of these two
12 projects, and it's an affordable housing and a
13 church/school, the improvements that could be done,
14 they're kind of far away. You know, we're on top of
15 Waiale Road. It's an infill project. So the
16 specifics do matter in this case, I feel.

17 And it's really like a shifting of money,
18 I guess. The State can come in and do all of the
19 improvements at the State's dollar. So can the
20 County. And that all the taxpayers on Maui or all
21 the taxpayers in the State of Hawaii would pay for
22 these improvements, and they would share them
23 because these are all roads that are used by
24 everyone on Maui and everyone in Hawaii.

25 I live up the street from this project,

1 and you know, I use Waiale Road. I use Kuikahi
2 Drive. But that's neither here nor there at this
3 point.

4 And talking about the money, I know it
5 doesn't sound like much, but an updated TIAR --
6 sorry, if we were to both do one, we might be
7 looking at 100 grand between, you know, all the
8 traffic counts, the studies, and all the engineering
9 that goes into it. And yeah, it's a \$50 million
10 housing project, but it's an affordable housing
11 project. We're already getting 10.6 million from
12 the County. A hundred thousand does count there,
13 and they're a church and a school. I don't think
14 they have all of this extra money to be doing
15 studies for the sake of doing studies.

16 But again, I totally understand the policy
17 standpoint, and I will say when we go I for
18 subdivision improvements, I'm confident the County
19 will look at various things we need to do for
20 traffic impact, so just a comment. So appreciate
21 your time. I don't disagree with anything they
22 said. It makes sense. I'm just saying from our
23 perspective, that's how we're looking at it. So
24 thank you.

25 **CHAIRMAN GIOVANNI:** Thank you.

1 Okay. Commissioners, do you have any
2 final questions or comments for the parties?

3 Public Testimony, final call. Is there
4 anybody -- any members of the public in the room who
5 wish to testify at this point in time?

6 **MS. KWAN:** No.

7 **CHAIRMAN GIOVANNI:** Okay. Seeing none.

8 Further discussion. So Commissioners,
9 this is a status report. We are not required to
10 take any action at this time. If no action is
11 taken, the requirement of continued annual status
12 reports will remain in effect.

13 However, if the Commission feels that its
14 concerns have not been addressed, based on the
15 comments and responses provided by Petitioner, the
16 Chair will entertain a motion that either the
17 Petitioner's status report has not sufficiently
18 addressed the Commission's concerns and then,
19 further, meetings or status updates are necessary to
20 provide the opportunity to do so at a future date to
21 be determined by LUC staff.

22 Or that there is reason to believe that
23 the Petitioner will not adhere to the conditions set
24 forth in the decision and order and request the
25 staff move forward with formal order to show cause

1 proceedings.

2 On that basis, do we have any comments or
3 motions from the Commissioners?

4 **COMMISSIONER OHIGASHI:** I have a comment.

5 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi.

6 **COMMISSIONER OHIGASHI:** I find that the
7 status report meets the requirements of the Land Use
8 Commission, and I think that given the fact that we
9 have the motion tomorrow as well as maybe more
10 motions later on, according to his word as a lawyer,
11 that any further action is unnecessary in this
12 matter except for the annual reports.

13 **CHAIRMAN GIOVANNI:** Thank you for that.
14 Let me add my two cents. I agree with the comments
15 of Commissioner Ohigashi. And let me hearken back a
16 few months to the previous status report which we
17 did find to be not adequate, and we counseled you on
18 what we hope to see when you came before us again
19 for an update. And I think you met -- you met what
20 we were looking for.

21 I know you don't have absolute answers to
22 every go/no-go decision even though you thought you
23 might, but you are making great progress on the ones
24 that are still unresolved.

25 Let me confirm with you that there is no -

1 - you haven't reached any no-go decision as of yet?

2 **MR. UEOKA:** Jeff Ueoka. That is correct,
3 Chair.

4 **CHAIRMAN GIOVANNI:** Okay. Commissioner
5 Ohigashi, you're still -- your light's on. Okay.
6 Thank you.

7 So Commissioners, we heard from
8 Commissioner Ohigashi, which suggested that -- and
9 myself regarding the adequacy of the status report
10 today and in light of the motion before us tomorrow,
11 there's no need for any specific motion or action
12 requesting another specific status report or a show
13 cause order. Is that the -- I'd appreciate if the
14 Commissioners would weigh in on that question.

15 Am I reading the room right?

16 **COMMISSIONER YAMANE:** Chair?

17 **CHAIRMAN GIOVANNI:** Commissioner Yamane.

18 **COMMISSIONER YAMANE:** Yeah. I agree that
19 Petitioner does meet the requirement of their status
20 report. I commend their report. I find that very
21 informative. Looking forward to more discussion
22 tomorrow because I think there's a larger discussion
23 at hand with the proposed order and the TIAR issue
24 and how we go forward from there. But as far as
25 meeting the status report, I agree that -- I'm

1 satisfied. Great job from the last time we had you
2 folks here. So thank you.

3 **CHAIRMAN GIOVANNI:** Yeah. I think
4 Commissioner Yamane kind of hit it on the head what
5 today is about, and that you check the box. Okay?
6 Commissioner Carr Smith?

7 **COMMISSIONER CARR SMITH:** Yes. I just
8 wanted to agree with that. I did wonder how -- if
9 bifurcation of the conditions is a topic to discuss
10 more, how does that happen? When does that happen?

11 **CHAIRMAN GIOVANNI:** Do you want to take
12 that one, Mr. Orodenger?

13 **MR. ORODENKER:** Thank you, Chair.

14 Bifurcation conditions is usually done at
15 the parties' request. It very often and in most
16 circumstances there's a desire on the parties to
17 eliminate -- to limit their exposure to various home
18 and sub -- decision and order.

19 The risk that the parties run is that if
20 they do not move to separate the conditions or to
21 define who is responsible for which conditions, then
22 if one of them violates, then the other one can
23 still be held responsible. It can be done in motion
24 format, and we would strongly suggest that the
25 parties do that so it's clear who's responsible for

1 what.

2 It would be a miscarriage of the system
3 if, for instance, Mr. Ueoka's clients were found
4 responsible for a TIAR that was actually with regard
5 to something that Emmanuel Lutheran was doing or any
6 other condition. So we look to the parties to do
7 that, really. I mean, it benefits us if they're
8 both held responsible, but I don't think that's what
9 they really want.

10 **CHAIRMAN GIOVANNI:** Yeah. I don't think
11 you can rely on common sense to adjudicate who does
12 what. So I -- I echo that it would be really
13 welcome if the parties -- if the two Petitioners can
14 sort it out and then recommend to the Commission how
15 to bifurcate the conditions, where applicable. But
16 as you said earlier --

17 **AUTOMATED VOICE:** Recording in progress.

18 **CHAIRMAN GIOVANNI:** -- many of the
19 conditions apply to both no matter what, so --

20 Does that answer your question?

21 **COMMISSIONER CARR SMITH:** Yeah, thank you
22 for clarifying.

23 **CHAIRMAN GIOVANNI:** Okay. Is there any
24 further discussion today? No?

25 Okay. Thank you. I don't think we have

1 any further business today. We'll continue tomorrow
2 morning.

3 What time are we scheduled, Ms. Ariana?

4 **MS. KWAN:** 9:30 a.m.

5 **CHAIRMAN GIOVANNI:** 9:30 a.m. We'll see
6 you here tomorrow. Thank you very much. Have a
7 nice evening.

8 **(Meeting recessed at 2:05 p.m.)**

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CERTIFICATE

I, Jodi Dean, do hereby certify that the proceeding named herein was professionally transcribed on the date set forth in the certificate herein; that I transcribed all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true, and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 3rd day of November, 2023.



Jodi Dean