



NAEGELI
DEPOSITION & TRIAL

(800) 528 - 3335

NAEGELIUSA.COM

Nationwide

- COURT REPORTING
- LEGAL VIDEOGRAPHY
- REMOTE DEPOSITIONS
- TRIAL PRESENTATION
- LEGAL TRANSCRIPTION
- COPYING AND SCANNING
- LANGUAGE INTERPRETERS

Powerful
LITIGATION SUPPORT

**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on May 8, 2024

Commencing at 9:00 a.m.

Held at

Maui Arts & Cultural Center, Haynes Room
1 Cameron Way
Kahului, HI 96732

I. CALL TO ORDER

II. ADOPTION OF MINUTES

April 3-4, 2024

III. TENTATIVE MEETING SCHEDULE

IV. A92-686 AMFAC Property Investment Corporation & Hawaii Housing Finance & Development Corporation, State of Hawaii (Maui) (Puukolii Mauka and Puukolii Triangle)

Status and progress report and action (if necessary) in response to the recently submitted annual report and supplemental report. Approximately 298.992 Acres at Hanakao'o, Lahaina, Island and County of Maui, State of Hawaii, Tax Map Key No. 4-4-15: parcels 1 through 29, 4-4-15:32, and portion of 4-4-15:33.

V. Discussion on the Results of the Commission's Performance Evaluation of the Executive Officer

Pursuant to HRS 92-5(a)(2), the Commission may enter into Executive Session where consideration of matters affecting privacy will be involved.

VI. ADJOURNMENT

BEFORE :

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

LUC COMMISSIONERS :

- Dan Giovanni, Chairman
- Lee Ohigashi
- George Atta
- Kuike Kamakea-Ohelo
- Michael Yamane
- Brian Lee
- Nancy Carr Smith

LUC STAFF :

- Daniel Orodener, Executive Officer
- Arnold Wong, Land Use Development Coordinator
- Scott Derrickson, Chief Planner
- Martina Segura, Staff Planner
- Ariana Kwan, Chief Clerk
- Julie China, Esquire, Deputy Attorney General

PETITIONER-KAANAPALI LAND MANAGEMENT CORP :

- Diane Praywell, Esquire, Schneider Tanaka Radovich
- Andrew & Tanaka
- Jeff Rebugio
- Chad Fukunaga

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

PETITIONER-HAWAII HOUSING FINANCE & DEVELOPMENT

CORPORATION "HHFDC":

Sandra Ching, Esquire
Stan Fujimoto, Project Manager
Randy Chu, Branch Chief

COUNTY OF MAUI:

Mimi Desjardins, Esquire, First Deputy Corporation
Kate Blystone, Planning Department, Director
Danny Dias, Planning Department, Head of Planning
Aliko Biniaris, Planning Department, Planner
Robert Schmidt, Department of Environmental Management,
Deputy Director

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT "OPSD":

Allison Kato, Esquire, OPSD Deputy Attorney General
Katia Balassiano, OPSD Planning Program Administrator

1 **LAND USE COMMISSION**

2 **FINAL Meeting held on May 8, 2024**

3 **Commencing at 9:00 a.m.**

4

5 **CHAIRMAN GIOVANNI:** It's 9:03, and call to
6 order. This is the Land Use Commission meeting of
7 May 8, 2024. Aloha mai kakou. Good morning,
8 everyone.

9 This is an in-person meeting that's being
10 held at the Maui Arts and Cultural Center, Haynes
11 Room, 1 Cameron Way, Kahului, Hawaii 96732. This
12 meeting is open to the public.

13 Court reporting transcriptions are being
14 done from this meeting based on a Zoom recording, so
15 that's why we have a Zoom recording even though it's
16 an in-person meeting. For all meeting participants,
17 I would like to stress the importance of speaking
18 slowly, clearly, directly, and loudly into your
19 microphone. Before speaking, please state your name
20 and identify yourself and affiliation for the
21 record.

22 So even though this is an in-person
23 meeting, please be aware, as I just said, that all
24 meeting participants are being recorded on the
25 digital record of this Zoom meeting, and it will be

1 posted to YouTube, and it will be used for court
2 reporting purposes. So your continued participation
3 is your implied consent to be part of the public
4 record of this event. If you do not wish to be part
5 of the public record, you should exit the meeting
6 now.

7 Also, I will share with everyone that
8 we're scheduled to go until mid-afternoon today, but
9 we will be taking breaks, approximately a five-
10 minute break or so every hour, and then we'll take a
11 little bit longer break for lunch.

12 So my name is Dan Giovanni, and I have the
13 pleasure to serve as the Land Use Commission
14 Chairman. We currently have eight seated
15 commissioners, and along with me today are
16 Commissioner Lee Ohigashi from Maui; Commissioner
17 Kamakea-Ohelo; Commissioner George Atta;
18 Commissioner Brian Lee from Oahu; Commissioner
19 Michael Yamane from Kauai; Commissioner Nancy Carr
20 Smith from the Island of Hawaii. Commissioner Mel
21 Kahele is excused from today's meeting, so we have
22 seven commissioners in attendance.

23 Also in attendance are LUC Executive
24 Officer Daniel Orodener; LUC Chief Planner Scott
25 Derrickson; LUC Staff Planner Martina Segura; LUC

1 Chief Clerk Ariana Kwan; and LUC Attorney General
2 Julie China.

3 Our first order of business today is the
4 adoption of minutes from our meeting of April 3 and
5 4, 2024. Ms. Kwan, has there been any written
6 testimony submitted on the April 3 and 4, 2024
7 minutes?

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

9 **CHAIRMAN GIOVANNI:** Thank you. Has there
10 been any members of the public who have signed up to
11 testify on adoption of these same minutes?

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

13 **CHAIRMAN GIOVANNI:** Thank you.

14 Commissioners, are there any corrections
15 or comments on the minutes of April 3 and 4, 2024?
16 If not, do I have a motion to adopt the minutes?

17 **COMMISSIONER OHIGASHI:** Mr. Chair, I move
18 to adopt.

19 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi,
20 was that you?

21 **COMMISSIONER OHIGASHI:** Yes.

22 **COMMISSIONER YAMANE:** Mr. Chair, second.

23 **CHAIRMAN GIOVANNI:** The motion to adopt
24 has been made by Commissioner Ohigashi and seconded
25 by Commissioner Yamane. All in favor of adoption of

1 the minutes, please indicate by saying, "aye."

2 Aye.

3 **(All said, "Aye.")**

4 **CHAIRMAN GIOVANNI:** Any opposed? The
5 minutes are adopted. Thank you.

6 Our next order of business is our
7 tentative meeting schedule going forward. So Mr.
8 Orodenger, can you please share with us the
9 tentative meeting schedule?

10 **MR. ORODENKER:** Thank you, Mr. Chair.
11 Well, for the month of May, this is the only meeting
12 being held, but this is the last of the easygoing
13 times. In June, we have -- on June 5th, we have a
14 Zoom meeting, a virtual meeting to have a
15 presentation on the OPSD soil study. On June 19th
16 and 20th, we will begin -- be here on Maui for the
17 Central Maui Landfill status report and the A11-792
18 DHHC status report on the following day, which is
19 the 20th.

20 In July we have -- on July 10th we have
21 the A&B Properties, Inc. motion on Maui again. And
22 on the 11th we have the Emmanuel Lutheran status
23 report also on Maui. And then the week of the 22nd,
24 we are trying to work with the Commissioners to
25 secure dates for commissioner training. It will be

1 on Oahu. But anywhere from the 22nd to the 24th is
2 currently what we're looking at. We only intend to
3 do that on two days, but we have to secure quorum
4 and find out what's available.

5 On August 7th and 8th we have the
6 Waimanalo Gulch Sanitary Landfill matter. We also
7 have on the 21st of August the Waimanalo Gulch
8 adoption of order, assuming that we get that far.
9 And the 22nd as well.

10 In September, on the 11th, 12th, and 13th,
11 there is the HCPO Conference at the Hapuna Beach
12 Resort on the Big Island. On the 25th and 26th of
13 September we have the Makakilo Quarry matter. And
14 then on October 9th and 10th we have the Mahi Solar
15 matter. And that takes us through October. It's
16 going to be a very busy summer and fall. We
17 appreciate the Commissioners making the time and
18 effort to appear at these meetings. We expect that
19 the calendar going after that will continue to be
20 full. We have a lot of matters percolating. Thank
21 you.

22 **CHAIRMAN GIOVANNI:** Commissioners, any
23 questions for Mr. Orodener on the tentative
24 schedule? Thank you, hearing none.

25 So our next order of business is a status

1 and progress report from A92-686 AMFAC Property
2 Investment Corporation and Hawaii Housing Finance &
3 Development Corporation, State of Hawaii (Maui) (the
4 Pu'ukoli'i Mauka and Pu'ukoli'I Triangle matter).

5 This is a status and progress report, and
6 it's possible that the Commission will take action
7 depending on the status report that's made today.
8 That would be in response to the 2022 annual report
9 and supplemental annual report and the 2020 master
10 plan update.

11 At this point, I'd like the parties to
12 identify themselves for the record. I don't know
13 where we can start here because I don't know who I'm
14 looking at. Let's go right to left.

15 **MS. PRAYWELL:** Good morning. My name is
16 Diane Praywell. I'm with the law firm of Schneider
17 Tanaka Radovich Andrew Tanaka, which is counsel to
18 Co-Petitioner Kaanapali Land Management Corp. We
19 have representatives of Kaanapali Land Management
20 Corp here today, Mr. Jeff Rebugio and Mr. Chad
21 Fukunaga.

22 **CHAIRMAN GIOVANNI:** Thank you for being
23 here.

24 **MS. CHING:** Sandra Ching on behalf of
25 Hawaii Housing Finance & Development Corporation,

1 State of Hawaii. And with me here today is Stan
2 Fujimoto, HHFDC Staff Member as well as Randy Chu,
3 Branch Chief for Development.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 **MS. DESJARDINS:** Oh, excuse me. Good
6 morning, Chair. Good morning, Commissioners. Mimi
7 Desjardins, First Deputy Corporation Counsel, here
8 on behalf of the County of Maui. And we have
9 various representatives from the Department of
10 Planning as well as the Department of Environmental
11 Management, and we can introduce those folks if
12 you'd like, or reserve that.

13 **CHAIRMAN GIOVANNI:** Please do.

14 **MS. DESJARDINS:** Okay. We have Kate
15 Blystone, our Planning Director. And then we also
16 have with us the Deputy Director of the Department
17 of Environmental Management, Robert Schmidt. He is
18 sitting in the back here.

19 And then, Kate, do you want to introduce
20 the folks from Planning that came with you?

21 **MS. BLYSTONE:** Aloha, Commissioners. I'm
22 joined today by Danny Dias, the Head of our current
23 Planning Division, and also the Planner for this
24 project, Aliko Biniaris.

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

1 Ms. Kato?

2 **MS. KATO:** Alison Kato, Deputy Attorney
3 General for the Office of Planning and Sustainable
4 development. Also here is Katia Balassiano from
5 OPSD. Thank you.

6 **CHAIRMAN GIOVANNI:** Thank you. Just a --
7 other than the attorneys, when any of you are
8 speaking or going on the record, I want to first
9 swear you in, so that's just a formality. If I
10 forget, please remind me of that. Thank you, all.

11 So now I'd like to briefly explain the
12 procedures for today. First I will ask if there are
13 any conflicts of interest or disclosures from the
14 Commissioners, and then I will update the record.
15 So let me do that now.

16 Commissioners, any disclosures to make on
17 this matter? I see none so we'll proceed.

18 As we go forward, I will then recognize
19 written public testimony that has been submitted in
20 this matter, identifying the person or organizations
21 who have submitted the testimony. Next I will call
22 for members of the public who wish to testify on the
23 status and progress report. That will be or oral
24 testimony before the Commission today.

25 Members of the public will each have two

1 minutes to provide their testimony and should stand
2 by after their testimony to respond to any questions
3 the parties or Commissioners may have. When all
4 questions have been completed, the Chair will excuse
5 the witness and call the next witness to enter the
6 witness box.

7 After the completion of public testimony
8 portion of the proceedings, the Chair would like the
9 Petitioners to provide their status report. The
10 Chair will then call on the parties, HHFDC, OPSD,
11 and the County's Planning Department for comment
12 regarding the status report that has been given by
13 the Petitioner. Petitioners will the be allowed to
14 respond to comments made by the County, HHFDC, and
15 OPSD. Then the Commissioners will ask questions of
16 the parties at the conclusion of each of their
17 presentations.

18 At the conclusion of the parties'
19 testimony and the Commissioners' questions, the
20 public will then be given a second opportunity to
21 provide public testimony in the same manner that was
22 set forth previously. Once public testimony
23 concludes, the Commission will enter deliberations
24 regarding the status report and decide if any action
25 is necessary.

1 Again, a reminder, I will be calling for
2 short breaks, five minutes every hour and a longer
3 one for lunch. Does anybody have any questions
4 about the procedures today? Starting with Diane?

5 **MS. PRAYWELL:** Diane Praywell. No
6 questions.

7 **CHAIRMAN GIOVANNI:** Thank you.
8 Name?

9 **MS. CHING:** Sandra Ching. No questions.

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

12 **MS. DESJARDINS:** Mimi Desjardins. No
13 questions, Chair.

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

16 **MS. KATO:** Alison Kato. No questions.
17 Thank you.

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

19 Okay. I need to read this into the record
20 pertaining to conflicts of interest and disclosures.
21 In accordance with HRS 84-14, Commissioners are not
22 allowed to take any official action affecting
23 business in which they or a member of their family
24 has a financial interest. They must therefore
25 recuse themselves from this matter if there would be

1 any benefit, monetary or otherwise, to themselves or
2 members of their family.

3 Also, in accordance with the legal ethical
4 standards, Commissioners should disclose any
5 relationship, business, social or otherwise that
6 they may have with Petitioner or its representatives
7 or any other parties in this proceeding that may
8 give rise to an allegation of bias or impropriety.

9 So again, I'm going to ask the
10 Commissioners, having read this, do any of the
11 Commissioners have any conflicts of interest or
12 disclosures to make at this time? I'm seeing none.

13 Reference of the record. Please be
14 informed that the relevant records and documents
15 pertaining to this matter can be accessed for review
16 on the LUC website. That's
17 <https://luc.hawaii.gov/a92-686>.

18 Public testimony. For members of the
19 public, again, please be reminded that the
20 Commission will not be considering the merits of
21 this petition. Rather, the Commission is interested
22 in learning about the status, the current state of
23 activities related to this docket, including
24 compliance with conditions and will then consider
25 whether any action is necessary.

1 I'll now recognize written public
2 testimony submitted in this matter and identify the
3 person or organization submitting the testimony.

4 Ms. Kwan, has there been any written
5 testimony submitted on this matter?

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

7 **CHAIRMAN GIOVANNI:** Thank you. And I'm
8 going to call for any members of the public to
9 provide testimony on this agenda item.

10 Ms. Kwan, are there any members of the
11 public present who have signed up to testify?

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

13 **CHAIRMAN GIOVANNI:** Great progress.

14 Status report. It's now time for the
15 Petitioner, Kaanapali Land Management Corp. Will
16 you please provide your status report? And before
17 you begin, just give us a general idea of how long
18 you will take.

19 **MS. PRAYWELL:** Estimated 30 minutes.

20 **CHAIRMAN GIOVANNI:** That would be great.
21 Please proceed.

22 **MS. PRAYWELL:** Thank you. Again, my name
23 is Diane Praywell, and we thank you for the
24 opportunity to be here today to provide the status
25 report. The three of us will be providing the

1 report. Mr. Fukunaga will start with a brief
2 overview of the location of the two portions of the
3 petition area. I'll provide a brief summary of the
4 Act 15 certification, the development agreement, and
5 the affordable housing agreement. And then each of
6 Mr. Rebugio and Mr. Fukunaga will provide an update
7 on the status of each portion of the petition area.

8 **CHAIRMAN GIOVANNI:** Let me swear them in
9 now if I may. Please state your name and
10 affiliation.

11 **MR. REBUGIO:** Hi. I'm Jeff Rebugio with
12 the Kaanapali Land Management Corp.

13 **CHAIRMAN GIOVANNI:** Do you swear the
14 testimony you're about to give today will be the
15 truth?

16 **MR. REBUGIO:** I do.

17 **CHAIRMAN GIOVANNI:** Thank you.

18 **MR. FUKUNAGA:** And Chad Fukunaga with
19 Kaanapali Land Management.

20 **CHAIRMAN GIOVANNI:** Do you swear that your
21 testimony today will be the truth?

22 **MR. FUKUNAGA:** Yes.

23 **CHAIRMAN GIOVANNI:** Great. Thanks.

24 Diane, you may proceed.

25 **MS. PRAYWELL:** Going to Chad.

1 **CHAIRMAN GIOVANNI:** I just want to -- it's
2 Praylaw (sic) is the correct -- Praywell. Apologize
3 for that. Thank you, Ms. Praywell.

4 **MR. FUKUNAGA:** So if you allow me, I'd
5 like to share my screen.

6 **CHAIRMAN GIOVANNI:** Please do.

7 **MR. FUKUNAGA:** All right. I realize this
8 map may be a little difficult to see on the TV, so
9 I'll try to zoom in to certain areas when
10 appropriate.

11 So I'm sharing an aerial exhibit to point
12 out the petition areas and certain landmarks. This
13 aerial image represents the area from Kaanapali to
14 the left and Lahaina town to the right. And for
15 reference, Lahaina Civic Center is in the middle.
16 Also, this underlying aerial was taken circa 2010.

17 Puukolii Village Mauka is the outlying
18 area situated towards the top of the area. This
19 area is approximately 240 acres which we sometimes
20 simply refer to as Mauka or PVM. Puukolii Triangle
21 is outlined with dash lines. This area is
22 approximately 58 acres which we sometimes refer to
23 as Triangle.

24 In addition to the petition areas, I'd
25 like to point out the Kaanapali 2020 area, which we

1 refer to as K2020. This area is owned by KLMC and
2 is approximately 900 acres. The Triangle area is
3 within the K2020 along with the alignment of the
4 feature Lahaina ByPass Highway, which aligns with
5 the top of the K2020 area.

6 I'd also like to point out the proposed
7 West Maui Hospital and Medical and this project. I
8 don't know if you can see my cursor, but it's the
9 area outlined towards the bottom left side. That
10 area is owned by others. Kakaalaneo Drive provides
11 access to the petition area from Kaanapali Highway -
12 - I'm sorry, from Honoapiilani Highway.

13 And the existing Lahaina Bypass Alignment
14 terminates at Keawe Street in Lahaina, approximately
15 three miles away from the project area. Thank you.

16 **CHAIRMAN GIOVANNI:** Can we confirm that
17 these photos are -- have been provided to us to be
18 on the record?

19 **MR. FUKUNAGA:** Yes. This -- I'm showing
20 the exhibit that has been shared with the
21 Department.

22 **CHAIRMAN GIOVANNI:** Do you know the
23 exhibit number?

24 **MR. FUKUNAGA:** It was submitted on the
25 29th and marked as received. If you don't have it,

1 we can resend it.

2 **CHAIRMAN GIOVANNI:** Oh, that's fine. I
3 just wanted to confirm it was submitted.

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

5 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

6 **COMMISSIONER OHIGASHI:** Can I just ask one
7 clarification point?

8 **CHAIRMAN GIOVANNI:** Please.

9 **COMMISSIONER OHIGASHI:** There's a school
10 mentioned dedication. Could you identify that area
11 on this -- on our particular map as to where the
12 school dedication will be? Because that will help
13 me.

14 **MR. FUKUNAGA:** Commissioner Ohigashi, I do
15 show you this proposed school site. Let me zoom in,
16 please. I don't know if you can see on the screen,
17 but where I have my cursor, it's towards the middle
18 of the -- of the screen. It's -- it's, I'd say, on
19 the south makai portion of the Puukolii Mauka site.
20 That lot is 18 acres. Yes. That note is popping
21 up.

22 **CHAIRMAN GIOVANNI:** Thank you.

23 **MS. PRAYWELL:** Okay. Act 15 in the
24 development agreement and the affordable housing
25 agreement, in 1993 the state agency then known as

1 the Housing Finance and Development Corporation, now
2 known as the Hawaii Housing Finance and Development
3 Corporation, certified the petition area under Act
4 15.

5 That certification allowed development of
6 affordable housing within the petition area with
7 exemptions from certain county entitlement
8 processes. Pursuant to that Act 15 certification,
9 HHFDC and then owner of the petition area, AMFAC
10 Property Investment Corporation, entered into a
11 development agreement which set forth affordable
12 housing and development requirements for the
13 petition area.

14 Based on that development agreement, HHFDC
15 and APIC -- that's the shorthand for AMFAC Property
16 Investment Corp -- petitioned the Land Use
17 Commission for a land use district boundary -- or
18 land use district reclassification from ag to urban.
19 This resulted in -- oh, this resulted in the 1993
20 decision and order.

21 In 1999 the then owner of the petition
22 area started a master planning effort for the
23 petition area and other lands of the -- of APIC in
24 the area of the petition area, which were adjacent
25 to what we call Triangle. In that master planning

1 effort, it was determined that it made sense to
2 pursue Mauka separately from the areas south or
3 makai of Lahaina Bypass. It became apparent that
4 the area makai of the bypass would require
5 considerably more entitlements since it involved
6 areas outside the Triangle.

7 And so efforts were made to reconstitute,
8 so to speak, Mauka as a separate project.

9 In 2008, pursuant to Act 198, which
10 recognized the infeasibility of the 60 percent
11 affordable housing requirement of Act 15, HHFDC and
12 KMLC agreed to amend the affordable housing
13 requirements as to Mauka. This resulted in the
14 affordable housing agreement for Mauka which stands
15 to date.

16 Following entry -- following agreement of
17 the affordable housing agreement, HHFDC and KMLC
18 petitioned for an amendment to the 1993 decision and
19 order to reflect the new affordable housing
20 requirements for Mauka and to recognize Mauka as
21 essentially a different project from Triangle and
22 the balance of K2020 lands.

23 Turning back to Triangle, as part of the
24 plan to reconstitute Triangle as part of the larger
25 K2020 area, KMLC sought decertification from Act 15.

1 The HHFDC approved that decertification and KLMC and
2 HHFDC are currently in discussions regarding the
3 terms of that decertification. Thank you.

4 **MR. FUKUNAGA:** Chad Fukunaga with KMLC.
5 I'd like to provide an update on Puukolii Village
6 Mauka and describe the tasks that have been
7 completed and matters we're focusing on going
8 forward. Again, I'd like to share my screen.

9 Access to the petition area is available
10 via Kakaalaneo Drive. This allows access to Mauka -
11 - this allows access to Mauka without completion of
12 the Lahaina Bypass Highway. Kakaalaneo Drive was
13 installed by KMLC and is currently a private road.

14 6,200 feet of sewer line has been
15 installed from Honoapiilani Highway to the top of
16 Kakaalaneo Drive. The sewer line was sized with
17 capacity to service Mauka and Triangle. A water
18 line has been installed along Kakaalaneo Drive and
19 sized with capacity to service Triangle.

20 I'd like to switch my exhibit. A large
21 lot subdivision has been approved by HHFDC pursuant
22 to Act 15 certification. A subdivision created 25
23 development parcels including a lot for the school,
24 lot 11, towards the bottom right, and a lot for park
25 purposes, lot 12, in the bottom middle. These two

1 lots are adjacent to each other.

2 KLMC worked with consultants to produce
3 onsite and offsite master infrastructure plans for
4 roadways, drainage, sewer, electrical utilities,
5 landscaping, and water, including a 1 million gallon
6 reservoir. These plans have been approved by County
7 of Maui agencies and utility providers.

8 A grading permit application has been
9 submitted for all of Mauka master infrastructure,
10 and we are working with the County of Maui to
11 address the requirements. In connection with that
12 grading permit, we have completed a topographic
13 survey of Mauka. We have obtained an NPDES permit
14 from the State Department of Health. This was
15 issued on June 2020 and we approved recently in
16 April of '24.

17 We've completed an archeological inventory
18 survey, an archeological monitoring plan, and an
19 archeological preservation plan. These documents
20 were approved by State Historic Preservation
21 Division in February '23.

22 We completed a drainage report for Mauka,
23 which has been approved by the County. And we have
24 also completed a best management practices plan.
25 Regarding wastewater capacity, KLMC has sufficient

1 reserve capacity at the Lahaina Sewage Treatment
2 Plant to service the entire Mauka project.

3 We have been working closely with Hawaii
4 Water Service Company on potable water for Mauka.
5 Hawaii Water Service is the PUC potable water
6 provider for the service area that includes Puukolii
7 Village. Unfortunately, the Commission and Water
8 Resource Management, CWRM, designated all of West
9 Maui as surface and ground water management area and
10 has made the timing of services to new projects
11 uncertain. CWRM now requires existing and new uses
12 within West Maui to obtain a water use permit.

13 It is our understanding that CWRM will
14 process existing use permits first. It is uncertain
15 how long this process will take, but it is our
16 further understanding that they will process
17 existing use permits and then any new use permits
18 after.

19 KLMC is continuing its efforts to move
20 Mauka along. We are in discussions with interested
21 third-party housing developers; however, until water
22 use permit is obtained for Mauka, KLMC cannot
23 reasonably estimate timing for when Mauka can be
24 completed. Thank you.

25 **MR. REBUGIO:** Good morning, Chair,

1 Commissioners. I will be -- Jeff Rebugio, Kaanapali
2 Land Management. I'll be speaking about Puukolii
3 Village Triangle. As mentioned earlier, the
4 Triangle has been reconstituted into the Kaanapali
5 2020 project and so I -- it's appropriate then to
6 speak a little bit about the Kaanapali 2020 project.

7 It started back in 1999. It was a large
8 undertaking that involved the West Maui community
9 empowering certain community leaders to help stop a
10 land plan that would steer the growth of West Maui
11 and specifically Kaanapali.

12 The community group of leaders was tapped
13 to attend frequent planning sessions with
14 professional planners. The process took years. But
15 it also overlapped with the County's general plan
16 update at the time. This was seen as a way to
17 ensure the community's planning inputs were
18 recognized and included into the general plan.

19 Now, it should also be noted that the
20 result of the general plan update, a much more
21 detailed Maui Island plan document was prepared by
22 the County which include -- which includes, defines
23 specific urban growth areas. Eventually, the Maui
24 Island plan recognized our Kaanapali 2020 project
25 and designated the area to be within such urban

1 district.

2 This is the area makai or west of the
3 Lahaina Bypass as Mr. Fukunaga pointed out earlier.
4 It's bounded by the Lahaina Bypass to the east, and
5 a gulch way to the north and some fallow fields to
6 the south, depicted on the aerial or the exhibit map
7 up on the screen here.

8 After the general plan update was adopted
9 circa 2012, Maui County then pursued an update to
10 the various community plans within the county
11 starting with Molokai and Lanai and then eventually
12 West Maui in 2017. This process again took years
13 with an adopted West Maui community plan effective
14 then in 2022. However, the final West Maui
15 community plan was inconsistent with the Kaanapali
16 2020 land plan, leaving out a significant portion of
17 the urban area, mainly the entire south end, which
18 we approximate to be about 200 acres.

19 This area under the West Maui County plan
20 is now designated to be within the agriculture and
21 park areas. Because of this discrepancy with the
22 West Maui community plan, Kaanapali Land is
23 regrouping with consulting engineers and planners to
24 preliminarily identify a revised land plan with the
25 prospect of meeting the West Maui community plan or

1 otherwise identify necessary changes or exceptions
2 to consider that may trigger a community plan
3 amendment.

4 Ultimately, we hope to bring a
5 comprehensive urbanization plan for Kaanapali 2020
6 to the Land Use Commission consistent with the Act
7 15 decertification of the Triangle. In order to do
8 so, we recognize the need for resolution of water
9 and the West Maui community plan matters. Thank
10 you.

11 We're happy to answer any questions.

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

13 Commissioners, any questions for
14 Petitioner?

15 Commissioner Ohigashi?

16 **COMMISSIONER OHIGASHI:** I just have a few
17 questions. In 2011 the HHFDC decertified, and I
18 think it was your statement that you've been
19 negotiating since that time, 2011 to now. It's been
20 13 years. Have you not made any progress on the
21 determination of what type of low and moderate cost
22 housing would be required?

23 **MR. REBUGIO:** Jeff Rebugio, Kaanapali
24 Land. Yeah, the Triangle piece, again, was -- we
25 envisioned it to be incorporated into what we

1 imagine the Kaanapali 2020 plan would be and allowed
2 the general plan and the community plan, as well as
3 our community-based planning efforts to determine
4 the requirements. We acknowledge there's going to
5 be the need for affordable housing and it will be
6 addressed.

7 **COMMISSIONER OHIGASHI:** Well, it seems
8 like it took 13 years to this point where there
9 hasn't been reaching an agreement whereas it was
10 agreed previously on the mauka side that -- that it
11 would not be covered by Act 15. There were
12 development agreements placed into effect. My
13 question to you is: Why haven't during that 13
14 years developmental agreements been placed into
15 effect given the fact that both were decertified?

16 **MR. REBUGIO:** Yes. This is Jeff Rebugio,
17 Kaanapali Land. I will say that the various
18 community planning efforts took priority in
19 determining what the 2020 area would be and, again,
20 the Triangle piece being reconstituted into that.
21 Our focus has been on the Mauka. And we realize
22 that's a significant amount of housing units to
23 develop. And yes, our attention was primarily on
24 Mauka and recognize that the affordable housing
25 requirements for Kaanapali 2020 will be something to

1 address.

2 **COMMISSIONER OHIGASHI:** How soon do you
3 believe during the fact that you pass Kaanapali
4 2020, I think, sometime in -- I'm not sure what year
5 it was, but since that time, what effort have you
6 made to sit down and have a developmental agreement
7 for that plan? Because you did all the planning,
8 and so I'm just asking whatever --

9 **MR. REBUGIO:** Yeah. Most of the time
10 after the 2011 was focused on the general plan
11 update and then the West Maui community plan
12 updates. We embrace those and recognize that that
13 is part of the entitlement process, so we've worked,
14 again, with our community and followed the county's
15 process for adoption of these plans.

16 **COMMISSIONER OHIGASHI:** Is there -- are
17 there plans to use the Triangle for other than
18 residential purposes?

19 **MR. REBUGIO:** Allow us to come in with an
20 exhibit here. The land plan was developed, again,
21 through the community based process. I think the
22 short answer to your question, Commissioner, is yes.
23 However, again, we recognize that it has the
24 urbanization designation. The strategy here was to
25 incorporate all of the requirements of that and have

1 that as part of the 2020 plan. It does look like
2 there are at least projected to have some
3 residential in there.

4 **COMMISSIONER OHIGASHI:** Okay. And some
5 residential, you indicate.

6 **MR. REBUGIO:** Yes.

7 **COMMISSIONER OHIGASHI:** Now, of the 1,700
8 originally in the D&O promised by your predecessor
9 and applies to yourself, how much of that is in this
10 particular -- in the Triangle and how much of that
11 is in the Mauka area?

12 **MR. REBUGIO:** The original designation was
13 340 units in the Triangle.

14 **COMMISSIONER OHIGASHI:** And will that 340
15 units be built in the Triangle?

16 **MR. REBUGIO:** That's part of the new
17 development. We will --

18 **COMMISSIONER OHIGASHI:** No. The answer is
19 you're not sure.

20 **MR. REBUGIO:** We're -- it's to be
21 determined.

22 **COMMISSIONER OHIGASHI:** To be determined.
23 I just wanted to know.

24 Assuming that the 3,000 -- 340-some-odd
25 units are not built in the Triangle, how will you

1 make it up in the rest of the 1,700?

2 **MR. REBUGIO:** Yes. I think that's going
3 to be part of the negotiation with HHFDC in revising
4 a development agreement.

5 **COMMISSIONER OHIGASHI:** The only problem
6 with that is we have a D&O where you promise to
7 deliver 1,700 units. And my recollection is -- I
8 just wanted to figure out where the 1,700 units will
9 be, what is -- essentially, what is -- how soon can
10 we expect the 1,700 units and -- those are -- those
11 are my main concerns, so that's why I'm asking these
12 questions. I'm not trying to be tricky or anything.

13 **MR. REBUGIO:** Sure. Thank you,
14 Commissioner Ohigashi. 940 units is set to be
15 within the Mauka project and that's our focus, so
16 it's the bulk of what I believe was the 1,700, but
17 during the Act 198 Re-entitlement that 1,700 was
18 reduced by 360 units, so we're still focused on the
19 940 units in Mauka.

20 **COMMISSIONER OHIGASHI:** Okay. The act --
21 I'm sorry, maybe your lawyer, Praywell -- Ms.
22 Praywell can respond. That -- 198, did that address
23 this particular project and reduce the total amount
24 of units that are required under the D&O?

25 **MS. PRAYWELL:** There's an Act 198

1 modification of the development agreement. That --
2 under that Act 198, the parties came back and came
3 back with the affordable housing agreement which set
4 forth the current affordable housing requirements
5 for Mauka, which is a total of 940 units of which
6 480 are to be affordable. So it's --

7 **COMMISSIONER OHIGASHI:** I'm not -- I'm not
8 concerned about it. I'm just questioning is the D&O
9 required 1,700 units or not. And even if the Act
10 198 gave you the ability to modify the 60 percent
11 requirement of affordable housing, that didn't
12 necessarily reduce the total amount of housing that
13 you promised to develop; is that right?

14 **MS. PRAYWELL:** I need to confirm, but my
15 understanding is following the reduction in
16 affordable housing units with the affordable housing
17 agreement, the parties did come back for the amended
18 D&O, and I think -- and I would need to confirm --
19 that the amended D&O picked up that reduced number.

20 **COMMISSIONER OHIGASHI:** Of?

21 **MS. PRAYWELL:** Of 940 for Mauka. And I
22 think it's 340 for Triangle.

23 **COMMISSIONER OHIGASHI:** Okay. So that
24 indicates 1,200 units, though. 1,200, 1,300.

25 **MS. PRAYWELL:** That sounds about right.

1 **COMMISSIONER OHIGASHI:** And it -- so
2 you're saying that the amended D&O reduced the total
3 amount of requirement from 1,700 to --

4 **MS. PRAYWELL:** I believe that's the case.

5 **COMMISSIONER OHIGASHI:** Okay.

6 During the break would you be able to
7 provide me the site on that particular --

8 **MS. PRAYWELL:** Sure, I'll check --

9 **COMMISSIONER OHIGASHI:** -- because I've
10 been -- the stuff that I've been reading still
11 indicates 1,700 units.

12 **MS. PRAYWELL:** Okay. Happy to do so.

13 **COMMISSIONER OHIGASHI:** And then the other
14 questions I have is this Lahaina Bypass, it hasn't
15 been built, right?

16 **MR. REBUGIO:** Yes. Jeff Rebugio,
17 Kaanapali Land. The Lahaina Bypass, only a portion
18 of it, the southern --

19 **COMMISSIONER OHIGASHI:** Yeah. I -- but
20 the portion applies to this project --

21 **MR. REBUGIO:** Correct. It has not been
22 developed.

23 **COMMISSIONER OHIGASHI:** And it's a state
24 highway. That -- it's a state highway, right?

25 **MR. REBUGIO:** Yes, that's correct.

1 **COMMISSIONER OHIGASHI:** So is there any
2 kind of indication when this Lahaina Bypass will be
3 built, if you know? If you don't know, that's fine.

4 **MR. REBUGIO:** No. We don't know. We have
5 been pressing and inquiring with the state DOT for a
6 number of years. There doesn't seem to be much of a
7 momentum to move that towards the north. We still
8 have a development agreement with the DOT and have
9 fulfilled the -- our portion of that agreement, have
10 funded what has been built.

11 There are some commitments remaining for
12 the northern segment and have tried to use that as
13 leverage to get the DOT to build it going north and
14 --

15 **COMMISSIONER OHIGASHI:** My question is
16 focused on this part. I'm going to get it -- my
17 question now.

18 **MR. REBUGIO:** Yes.

19 **COMMISSIONER OHIGASHI:** The question is:
20 Does the fact that you don't have a bypass affect
21 the timing and the development of this area?

22 **MR. REBUGIO:** In a way, yes. During the -
23 -

24 **COMMISSIONER OHIGASHI:** Just to interrupt
25 you. Just one second. The reason why I ask is that

1 I noticed in some of the documents with some of the
2 requirements that it's contingent upon -- that
3 certain requirements are contingent upon the
4 completion of the bypass. And that's why I'm asking
5 you these questions about that.

6 **MR. REBUGIO:** That's correct. That
7 condition was addressed -- re-addressed in the 2009
8 D&O, giving some relief to that condition, allowing
9 it. That was sort of the reason -- one reason we
10 decided to omit the Mauka out of the effort for
11 Kaanapali 2020 since it had some level of
12 entitlements we could move forward with that
13 housing. But still, certainly the traffic -- you
14 know, dealing with traffic, not having the Lahaina
15 Bypass Highway as an access point complicates the
16 development.

17 **COMMISSIONER OHIGASHI:** Assuming that you
18 have the water. Assuming that you have the
19 necessary agreements, developmental agreements in
20 place at this point in time, will the lack of a
21 bypass affect the development and construction of
22 these homes?

23 **MR. REBUGIO:** For Mauka, our traffic
24 report indicates not so much. We are prepared to
25 have the access via Kakaalaneo Road with the

1 condition of improvements at that intersection. But
2 certainly, the Lahaina Bypass will facilitate the
3 densities that we're talking about for an area of
4 development that's isolated from the Mauka, the
5 developed areas --

6 **COMMISSIONER OHIGASHI:** So I'm -- I'm
7 looking at KLM, okay. You guys, okay. And I'm just
8 trying to get an idea. Let's say that the state
9 doesn't build a bypass, okay? And you guys are all
10 ready to go. Will you make a decision not to
11 proceed until the bypass road or will you make a
12 decision to proceed with your development? Because,
13 as I said before, certain requirements seems to
14 hinge on the bypass road being there.

15 **MR. REBUGIO:** Yes. We're committed on the
16 Mauka. Certainly, that -- I think we have a clear
17 path to doing it. We believe water is the roadblock
18 at this stage, so technically we can work with the
19 Kakaalaneo Road and a traffic mitigation work that
20 provides that connection now, but --

21 **COMMISSIONER OHIGASHI:** I'm just seeking -
22 - I'm just seeking from you guys a commitment that
23 the bypass road is not going to delay the
24 development of the Mauka. It may delay the
25 development of the Triangle, but it's not going to

1 delay development of the Mauka?

2 **MR. REBUGIO:** Given the magnitude of the
3 Kaanapali 2020 project, the Lahaina Bypass
4 undoubtedly will be needed, necessary for
5 connectivity and such.

6 **COMMISSIONER OHIGASHI:** I'm -- I'm a bad
7 person as a lawyer because I just try to seek simple
8 answers. I just want your assurances that the Mauka
9 development will not be affected by whether or not
10 the bypass road is built?

11 **MR. REBUGIO:** Yes, that's correct.

12 **COMMISSIONER OHIGASHI:** Okay. Thank you.
13 I don't have any more questions for now.

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

16 Commissioner Carr Smith, did you have your
17 --

18 **COMMISSIONER CARR SMITH:** I did. I was
19 just wondering, do we have the amended D&O in our
20 documents? We do? Okay. Sorry. Thanks.

21 **MR. ORODENKER:** Clarification. It is not
22 linked, but it is on the website.

23 **CHAIRMAN GIOVANNI:** Commissioners --
24 Commissioner Yamane.

25 **COMMISSIONER YAMANE:** Thank you.

1 Question for the developers. Speaking of
2 the 940 for Mauka, I think I understood that number
3 correctly, and you mentioning that that's your
4 priority right now. What's a general timeframe and
5 some steps that will get it completed just for my
6 own -- like in general, approximate, if you have
7 anything like that.

8 **MR. REBUGIO:** Yes. We are prepared to
9 move forward once the resolution of water is better
10 understood. All of the land development, the main
11 primary infrastructure has been designed. We have
12 near-approved plans both onsite and offsite, so we
13 would certainly start that as soon as water is made
14 available.

15 **COMMISSIONER YAMANE:** Okay. And then also
16 in the amended order, it mentions multi-family I
17 think about 300. Is that included also, or is that
18 another phase in the Mauka?

19 **MR. REBUGIO:** 940, I believe, represents a
20 combination of multifamily and single family all
21 within the Mauka piece -- parcel. And as mentioned
22 earlier, it includes the school and the park sites,
23 and there's a small little village commercial
24 component at the entrance of the project.

25 **COMMISSIONER YAMANE:** Yeah, I see that 600

1 multifamily -- the other one was commitment to
2 elderly rental halls and -- okay. Thank you. Thank
3 you.

4 No more questions, Mr. Chair.

5 **CHAIRMAN GIOVANNI:** So just a quick
6 follow-up to Commissioner Yamane's question. This
7 contingency on the water is obviously very
8 problematic, but assuming -- and we can't resolve
9 that today, but assuming it's resolved by the first
10 of 2025, January 2025, what's the schedule look like
11 for building houses after that?

12 **MR. REBUGIO:** We would immediately move
13 into the land development phase, the bringing in the
14 infrastructure to the parcels, the 25 parcels that
15 was outlined in there. We currently have a lot of
16 interest since the fires in Lahaina about more
17 housing and feel that we could have building
18 developers on hand immediately behind the
19 infrastructure work.

20 **CHAIRMAN GIOVANNI:** So when you talk about
21 infrastructure work, you know, my roads, utilities,
22 et cetera?

23 **MR. REBUGIO:** Yes.

24 **CHAIRMAN GIOVANNI:** So in general terms,
25 would you be doing all the infrastructure before you

1 commence any housing?

2 **MR. REBUGIO:** There are strategies with an
3 incremental phasing. The primary points of
4 connection of all the utility and extensions
5 originates from the north end, so it's very
6 reasonable to assume that development would phase --
7 be phased in or incrementally built from the north
8 to the south. We haven't made any determination as
9 of yet, but that is very likely to be only because
10 of these points of connections.

11 **CHAIRMAN GIOVANNI:** So a phased
12 implementation plan intuitively makes sense. Are
13 you developing that plan in black and white as a
14 document?

15 **MR. REBUGIO:** Yes.

16 **CHAIRMAN GIOVANNI:** When might that be
17 available?

18 **MR. REBUGIO:** It's -- that's the plans
19 that are used for the permitting, primarily grading
20 permit at this stage would be able to move us
21 forward. We've got most of the requisite approvals
22 from the utilities and other service providers.

23 **CHAIRMAN GIOVANNI:** Is that mapped out on
24 a schedule or is it just mapped out in sequence?

25 **MR. REBUGIO:** It --

1 **CHAIRMAN GIOVANNI:** A calendar.

2 **MR. REBUGIO:** On a calendar? No, no,
3 nothing on a calendar, per se. But we -- we feel
4 that given the size of the improvements --
5 infrastructure improvements, that would likely be --
6 and we're talking about a combination of offsite and
7 a short segment of the onsite roadways to be about a
8 year in construction.

9 **CHAIRMAN GIOVANNI:** So housing is a couple
10 years. So you've got to get the water. Then you
11 got to do the infrastructure --

12 **MR. REBUGIO:** That's fair to say, yes.

13 **CHAIRMAN GIOVANNI:** -- and then you can do
14 the first phase of the housing?

15 **MR. REBUGIO:** I would fairly estimate it
16 to be two years from the point that we could get all
17 of the water resolved.

18 **CHAIRMAN GIOVANNI:** That's very helpful.
19 Thank you.

20 Commissioners, anything further at this
21 time? Who's that? Commissioner Ohigashi. I can
22 take a break right now. It's been an hour. What
23 did he say?

24 Okay. It's 10:03. We'll take a seven-
25 minute break and be back at 10:10.

1 (A recess was taken from 10:03 a.m. to
2 10:13 a.m.)

3 **CHAIRMAN GIOVANNI:** Okay. It's 10:13, and
4 we're back on the record. A couple of follow-up
5 items. Before we go any further, we have the
6 pleasure today, I want to introduce to you a future
7 Commissioner of the LUC, Mr. Bruce U'u from Maui.
8 If you don't mind standing and waving your hand.
9 Commissioner U'u will be joining the Commission
10 officially on July 1st. We welcome you. And thank
11 you for being here today to watch us do what we do.
12 Thank you.

13 Okay. So Ms. -- there's a follow-up
14 question that you were going to confirm some
15 numbers, Ms. Praywell?

16 Oh, Commissioner Ohigashi --

17 **COMMISSIONER OHIGASHI:** No. I was going
18 to ask her. She told me outside that she had
19 confirmed some numbers or --

20 **CHAIRMAN GIOVANNI:** Yeah. So I'm asking
21 her for you.

22 **MS. PRAYWELL:** Yes. The amended D&O
23 recites that the affordable housing agreement, with
24 respect to Mauka, reduced Mauka total number of
25 units from 1,300 to 940 and then in the amended D&O

1 conditions, it provides that Mauka should be
2 developed in accordance with the affordable housing
3 agreement which has all those reduced numbers.

4 **COMMISSIONER OHIGASHI:** And it's my
5 understanding that doesn't affect the Triangle
6 portion.

7 **MS. PRAYWELL:** That doesn't affect the
8 Triangle. So originally, in the original
9 development agreement, the Triangle units were
10 separated from Mauka.

11 **CHAIRMAN GIOVANNI:** Testing one, two. You
12 hear an echo?

13 **MS. KWAN:** Yeah, there's an echo.

14 **CHAIRMAN GIOVANNI:** What do you want to
15 do? You're the boss.

16 **MS. KWAN:** Five minutes.

17 **CHAIRMAN GIOVANNI:** Five-minute break.

18 **(Recess taken from 10:15 a.m. to 10:18**
19 **a.m.)**

20 **CHAIRMAN GIOVANNI:** We're good. We're
21 back on the record. It is -- the recording is
22 going. It's 10:18.

23 So Ms. Praywell, you were -- did you want
24 to affirm those numbers again without an echo?

25 **MS. PRAYWELL:** Diane Praywell. Yeah, the

1 affordable housing agreement reduced the housing for
2 Mauka from 1,300 to 940. That did not alter
3 Triangle.

4 **CHAIRMAN GIOVANNI:** So of the 940, how
5 many are affordable?

6 **MS. PRAYWELL:** 480.

7 **CHAIRMAN GIOVANNI:** 480.

8 **MS. PRAYWELL:** That's all pursuant to the
9 terms of the affordable housing agreement.

10 **CHAIRMAN GIOVANNI:** Okay. So 460 are not
11 -- are market?

12 **MS. PRAYWELL:** Correct.

13 **COMMISSIONER OHIGASHI:** So --

14 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi.

15 **COMMISSIONER OHIGASHI:** That follows up --
16 I'm going to follow up with that. With regard to
17 Triangle, then, there's no development or agreement
18 and I go back to my next -- my last -- my previous
19 question that I asked, are you considering -- and
20 I'll modify it. Are you considering reducing the
21 total amount in the Triangle because it appears that
22 your plans are -- include non-residential uses
23 within that Triangle area?

24 **MR. FUKUNAGA:** Chad Fukunaga with
25 Kaanapali Land Management. It is our intent to

1 incorporate the Triangle area into the greater
2 Kaanapali 2020 master plan. And when you look at
3 that master plan, we envision having more units than
4 what would have just been in the Triangle area. We
5 have not yet determined, you know, the exactly
6 number of units, but in working with our community
7 members, we've identified in a large area of that
8 2020 area to be in single family or multifamily. It
9 also identified other community uses.

10 **COMMISSIONER OHIGASHI:** I'm glad that you
11 answered it in such a way that is indicative of your
12 future plans in how you consider this area, but I'm
13 -- but right now it's a petition -- part of a
14 petitioned area, and it's part of a condition on a
15 petition. So the question really has to do with
16 that particular parcel and how -- what are your
17 particular plans for that particular parcel under a
18 requirement by the petition, by the -- a condition
19 under the D&O that says that you're going to build
20 about -- what is it, 343, is that what it is?

21 And are you guys going to meet that
22 condition or do you plan to come here and modify
23 that condition in the future? So it seems as though
24 you're planning right now to reduce the total amount
25 of 343, is that right?

1 **MS. PRAYWELL:** Where we are on this is
2 back to the Act 15 decertification from HHFDC. That
3 action approved the decertification. We're still in
4 discussions and will need to work out with HHFDC the
5 terms of that decertification which may include a
6 new or modified version of the current development
7 agreement. Once that's worked out, we would have to
8 come back to the Commission to modify the land use
9 D&O -- Land Use Commission D&O to reflect what's
10 been worked out.

11 **COMMISSIONER OHIGASHI:** I want -- I'm
12 hoping that the parties are understanding the sense
13 of urgency in that area and that 13 years to do a
14 development agreement and put into a plan is kind of
15 unacceptable. The 343 units are desperately needed
16 no matter what. The 900 units are desperately
17 needed. So I am -- I'll put it this way, I'm not
18 happy with the fact that we don't have a sense of
19 urgency on the part of the Petitioner in this matter
20 and that I'm hoping that given the grave situation
21 in Lahaina, that being good neighbors and working
22 hard at your development and taking into account
23 community concerns that you've done over the past
24 years will translate into a more sense of urgency,
25 along with, of course, the other players in this

1 section.

2 And I'm not only speaking to you, I guess.
3 I was speaking to everybody that there's a sense of
4 urgency, right? If you can put houses in within --
5 starting building with two years because you don't
6 need that bypass and you can get the water, that's
7 great. And it adds -- if you're going to -- if
8 you're going to say that, well, we cannot meet the
9 343, well, come up with a -- come with up with an
10 urgent plan or a plan quickly enough to reach those
11 goals within the area, you know.

12 The other thing I wanted to touch on was
13 that I noticed that the past decision that -- the
14 second -- the 2009 decision appears to formally
15 divide up the responsibilities between the Mauka
16 section and Triangle. And the problem -- the
17 benefit and -- the benefit of that is obvious that
18 it gives the Mauka a chance to push through and we
19 don't -- you don't have -- you can focus in on one
20 area.

21 The problem is that too many times
22 developers have sold off portions like the Triangle.
23 And that we're set with a situation where each
24 party's pointing the fingers at the other, whereas
25 the D&O specifically requires your -- the Petitioner

1 to be responsible irrespective if he sell it off the
2 buyers. So that is my concern.

3 And I just hope that in the future that
4 we're able to -- that that doesn't happen and that
5 every -- all the parties are aware of that problem
6 and aware of their responsibilities under the D&O,
7 okay?

8 No further questions.

9 **CHAIRMAN GIOVANNI:** Thank you.

10 Ms. Praywell, earlier in the remarks there
11 was a mention about coming back before the LUC. And
12 now you just clarified that pending an agreement on
13 the Triangle, you -- that would be one reason you
14 would come back for the LUC, to get a modification
15 of that -- an amendment to D&O. Is there any other
16 reason that you can foresee that you might come back
17 before the LUC?

18 **MS. PRAYWELL:** Not concrete reason enough
19 right now. That would be the most relevant reason
20 at this time.

21 **CHAIRMAN GIOVANNI:** When you mentioned
22 earlier an anticipation to come back, it would be
23 for that purpose?

24 **MS. PRAYWELL:** Correct.

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

1 **MS. PRAYWELL:** Thank you.

2 **CHAIRMAN GIOVANNI:** As Commissioner
3 Ohigashi mentioned, we're here to help in any way we
4 can to get this moving forward. So having a heads-
5 up about what's coming is also helpful to us.

6 **MS. PRAYWELL:** Understood. Thank you.

7 **CHAIRMAN GIOVANNI:** Okay. Anything more
8 from the Petitioner at this time? You'll get
9 another chance to talk after you hear everybody
10 else.

11 **MS. PRAYWELL:** Nothing further. Thank
12 you.

13 **CHAIRMAN GIOVANNI:** Okay. Thank you.
14 Commissioners, any questions? Okay.
15 Let's move on to HHFDC.

16 **MS. CHING:** Sandra Ching for HHFDC. We
17 don't have anything to add to the Petitioner's
18 presentation. We do want to clarify that as part of
19 the decertification of the Triangle that was done by
20 HHFDC, that that decertification stated that HHFDC
21 is requiring 340 affordable units. So that number
22 is still, as far as HHFDC is concerned, a
23 requirement as part of the decertification.

24 Any change to that would, of course, need
25 to be brought to the Commission as well as be through

1 a tri-party agreement with HHFDC, KLMC, and the
2 County. That's pursuant to Act 198. So we just
3 wanted to make that clarification, that we have been
4 -- the plan has been working with the Petitioner.
5 There's feasibility issues that they've spoken about
6 and has tried to cooperate them in trying to
7 envision their Kaanapali 2020.

8 My client, if you -- we're available for
9 questions, and Stan Fujimoto might have more clarity
10 as to specific steps or things that occurred. He
11 knows this project from the inception. Thank you.

12 **CHAIRMAN GIOVANNI:** Okay. So the
13 negotiation or agreement that you're undertaking now
14 on the Triangle to get it resolved how -- whether or
15 not you need to adjust the numbers, the one you're
16 referring to. Who's involved in that negotiation?

17 **MR. REBUGIO:** Jeff Rebugio. We are. I
18 am.

19 **CHAIRMAN GIOVANNI:** And who are you
20 negotiating with?

21 **MR. REBUGIO:** Primarily our point of
22 contact has been with Stan.

23 **CHAIRMAN GIOVANNI:** So it's with HHFDC?

24 **MR. REBUGIO:** HHFDC.

25 **CHAIRMAN GIOVANNI:** So it's just a two-

1 party agreement or is the county involved?

2 **MR. REBUGIO:** Well, the amended D&O
3 introduced the County's housing department as part
4 of the agreement that evolved to what we have with
5 the Mauka piece. We imagined that would be this --
6 we'd have the same blueprint for an agreement.

7 **CHAIRMAN GIOVANNI:** So have discussions
8 with the County started yet?

9 **MR. REBUGIO:** We have in past years
10 brought that to their attention. Nothing recent
11 that was -- no recent discussions on it recently,
12 but it has been brought to their attention in the
13 past.

14 **CHAIRMAN GIOVANNI:** Okay. So to pick up
15 with Commissioner Ohigashi's suggestion for
16 increasing priority and urgency, if you anticipate
17 an agreement that will require three-party
18 agreement, then discussions of it be going as soon
19 as possible with all three parties, in my view.
20 Would you agree with that?

21 **MR. REBUGIO:** I'm sorry, Chair. Can you
22 repeat he question?

23 **CHAIRMAN GIOVANNI:** If a -- specific to
24 the Triangle and if a new agreement has to be made
25 which involves yourself and HHFDC and the County

1 before you can come back to us and ask for an
2 amendment, in the spirit of urgency shouldn't those
3 discussions involving all three of those be
4 scheduled and going forward?

5 **MR. REBUGIO:** Yes, I would agree.

6 **CHAIRMAN GIOVANNI:** Okay. We would
7 encourage that. Okay. I'll leave it at that.

8 Commissioners, any questions for HHFDC?
9 Commissioner Carr Smith?

10 **COMMISSIONER CARR SMITH:** Can you folks
11 confirm, so is HHFDC involved in the Mauka parcel
12 for those 480 affordable housing units?

13 **MS. PRAYWELL:** That's correct because they
14 are a party to the affordable housing agreement,
15 which stands with respect to Mauka.

16 **COMMISSIONER CARR SMITH:** Okay. And it
17 seems as though you folks are saying that the Mauka
18 area is what you've been focusing on, correct?

19 **MS. PRAYWELL:** That's correct.

20 **COMMISSIONER CARR SMITH:** So the urgency
21 that the Commission is asking about, can you speak
22 specifically to the Mauka area? That's a good
23 amount of affordable housing, especially
24 percentagewise of the total. I don't understand the
25 timing there other than what we spoke about in

1 infrastructure.

2 **MR. REBUGIO:** That's the project we spoke
3 to regarding a rough timeframe of about two years
4 upon the resolution of water. We have approved
5 offsite and onsite infrastructure plans that we
6 would immediately pull the trigger upon for
7 development, and that would bring about the building
8 community for the housing. We believe that could
9 run concurrently with the further small lot
10 subdivisions or multifamily developments that would
11 immediately be behind the infrastructure work.

12 **COMMISSIONER CARR SMITH:** Okay. So it's
13 solely the water.

14 **MR. REBUGIO:** Yes.

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

16 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi.

17 **COMMISSIONER OHIGASHI:** HHFDC, what is
18 this road in the Mauka section, specifically?

19 **MS. PRAYWELL:** Can I have my --

20 **CHAIRMAN GIOVANNI:** I'm going to have to
21 swear him in.

22 Please state your name and affiliation.

23 **MR. FUJIMOTO:** Stan Fujimoto, HHFDC,
24 Project Manager. HHFDC approved the modification.

25 **CHAIRMAN GIOVANNI:** Wait, wait. I've got

1 to swear you in.

2 **MR. FUJIMOTO:** Oh, sorry.

3 **CHAIRMAN GIOVANNI:** Please state your name
4 nice and loud into the microphone.

5 **MR. FUJIMOTO:** Stan Fujimoto, HHFDC.

6 **CHAIRMAN GIOVANNI:** Do you swear the
7 testimony you're about to give will be the truth?

8 **MR. FUJIMOTO:** Yes.

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

10 **MR. FUJIMOTO:** HHFDC approved the
11 modification of the Act 15 approval and re-executed
12 the affordable housing agreement, so our role is
13 basically complete. In the affordable housing
14 agreement, the County's responsible for enforcing
15 the affordable requirements because the affordable
16 housing agreement basically complied with the
17 County's affordable requirements at that time.

18 **COMMISSIONER OHIGASHI:** Did the Petitioner
19 receive any benefit, state benefit from the
20 agreements?

21 **MR. FUJIMOTO:** You mean, other than the
22 approval? No.

23 **COMMISSIONER OHIGASHI:** Is HHFDC, are they
24 in a position to provide funding or sources of
25 funding for the project?

1 **MR. FUJIMOTO:** Possibly. We respond to
2 applications. Most of our programs are competitive
3 so they would have to comply with our program
4 requirements.

5 **COMMISSIONER OHIGASHI:** If you are just
6 limited to writing an agreement, why are you a
7 partner in this matter?

8 **MR. FUJIMOTO:** Because we were requested.
9 Under Act 15, I think we were the only agency that
10 had the authority under Act 15. And the original
11 agreement was approval under 15.

12 **COMMISSIONER OHIGASHI:** And what are the
13 status of the Triangle negotiations? The counsel
14 for Petitioner answered, so I'm asking you now.

15 **MR. FUJIMOTO:** Our board approved in 2011
16 decertification of Act 15 for the Triangle in
17 compliance with Act 198. Act 198 requires three-
18 party agreement between a developer, the County, and
19 HHFDC. You know, approval, we did specify our
20 desire for maintaining the 240 units, affordable
21 units. In our mind, we're not married to the
22 existing location. We're flexible where it goes.
23 We're concerned mainly about trying to maintain the
24 240 units.

25 And in --in accordance with the prior

1 affordable housing agreement, KLMC basically
2 negotiated the deal between themselves and the
3 County first before they came to us with request to
4 modify the previous approval. So we were kind of
5 expecting the same approach because we just wanted
6 to respond to --

7 **COMMISSIONER OHIGASHI:** When -- when was
8 the last time that you were involved in a
9 negotiation? Was it by letter or in person?

10 **MR. FUJIMOTO:** Not until recently.

11 **COMMISSIONER OHIGASHI:** What does recently
12 mean?

13 **MR. FUJIMOTO:** Yes. Oh, 2024.

14 **COMMISSIONER OHIGASHI:** And you received a
15 letter or a call or what?

16 **MR. FUJIMOTO:** It's just discussions in
17 response to this inquiry.

18 **COMMISSIONER OHIGASHI:** Okay. So that was
19 -- prior to that time, 2024, what was -- was there
20 any other negotiation being conducted?

21 **MR. FUJIMOTO:** No, not -- not that I'm
22 aware of.

23 **COMMISSIONER OHIGASHI:** Okay. So there's
24 been 13 years of non-negotiations in this matter.

25 **MR. FUJIMOTO:** Yes.

1 **COMMISSIONER OHIGASHI:** Is that right?

2 **MR. FUJIMOTO:** Yes.

3 **COMMISSIONER OHIGASHI:** Okay. No further
4 questions.

5 **CHAIRMAN GIOVANNI:** Any further questions
6 by the Commissioners? Okay. Thank you.

7 We'll turn to the County.

8 **MS. DESJARDINS:** Thank you, Chair. Mimi
9 Desjardins, Deputy Corporation Counsel.

10 Thank you for scheduling this item. I've
11 learned more about this development today than I was
12 able to find in our records, unfortunately. I did
13 inquire with the Department of Housing and Human
14 Concerns about what history of this project exists.
15 There was very little, I'll be frank.

16 I did locate, however, the affordable
17 housing agreement for the Puukolii Mauka portion
18 that was executed in 2008, which does include the
19 County of Maui as a party. I don't have any
20 amendment to this. I don't see any indication that
21 we've been involved in any negotiations regarding
22 the Triangle. I will definitely reach out to
23 counsel for the developer and to try to get any
24 documentations that we can, but we are supportive,
25 obviously, of any efforts to try to do this;

1 however, we just don't have a lot of -- I can't find
2 a lot of evidence.

3 However, I did ask the Department of
4 Environmental Management if they have any comments.
5 They don't at this time, but I know the Department
6 of Planning does have some comments to make, so I'm
7 going to pass it over to the Director at this time.
8 Thank you.

9 **CHAIRMAN GIOVANNI:** Director, would you
10 please state your name and position and I'll swear
11 you in.

12 **MS. BLYSTONE:** My name is Kate Blystone.
13 I'm the Director of the Planning Department.

14 **CHAIRMAN GIOVANNI:** Ms. Blystone, do you
15 swear the testimony today will be the truth?

16 **MS. BLYSTONE:** I do.

17 **CHAIRMAN GIOVANNI:** Please proceed.

18 **MS. BLYSTONE:** I just have a couple points
19 of clarification, really one point of clarification
20 on KLMCs testimony today. As they mentioned, the
21 community plan for West Maui was adopted in January
22 2022, and that process took roughly five years if my
23 math is correct. That was the first plan that we
24 did under the new 2.80B Maui County Code, which made
25 the whole process quite a bit more robust, so were

1 learning a lot along the way. We've moved more
2 quickly lately.

3 What I wanted to mention is that through
4 that process we learned that the community is very
5 supportive of growth in this area in Puukolii Mauka
6 and the Puukolii Triangle, the area under discussion
7 today, so I know that KLMC mentioned that there was
8 some disappointment in the outcome of that process.
9 That was not in relation to the area that we're
10 under discussion today. So Puukolii Mauka and
11 Puukolii Triangle were assigned the designation
12 small town center.

13 Small town center includes -- it's in the
14 new community plan designations are not meant to
15 regulate uses as much as they are to regulate form
16 and character of a place. So small town center is
17 what you would imagine a small town center to feel
18 like. Lower profile buildings, all the amenities
19 that a community would need.

20 So that said, you know, residential,
21 commercial, public, quasi-public uses, public uses
22 of all kinds are appropriate for this designation.
23 So I just wanted to add that to your thought process
24 today and I and my team are available for any
25 questions that you have.

1 **CHAIRMAN GIOVANNI:** Commissioners,
2 questions?

3 Commissioner Ohigashi.

4 **COMMISSIONER OHIGASHI:** Yeah. What's the
5 difference between Kaanapali 2020 and the actual
6 general and community plan?

7 **MS. BLYSTONE:** I'm sorry, can you say that
8 again?

9 **COMMISSIONER OHIGASHI:** They mentioned
10 Kaanapali 2020 and the general and community plan.
11 What's the difference?

12 **MS. BLYSTONE:** So Kate Blystone responding
13 to your question. Thank you for that, Commissioner.
14 Kaanapali 2020 is a master plan of a project. The
15 general plan and the community plan -- the general
16 plan is the long-range planning document and the
17 community plan falls within that suite of long-range
18 planning documents, which also includes the --

19 **COMMISSIONER OHIGASHI:** Okay.

20 **MS. BLYSTONE:** -- plan.

21 **COMMISSIONER OHIGASHI:** And it's your
22 testimony today that the project area that we're
23 talking about, which is the Triangle and the Mauka
24 section, fall -- are consistent with the community
25 and general plan.

1 **MS. BLYSTONE:** Correct. So the south --
2 the -- sorry, the West Maui Community Plan adopted
3 in January of '22 designated these two areas small
4 town center.

5 **COMMISSIONER OHIGASHI:** So what we're
6 talking about -- when they -- the Petitioner talks
7 about a change in plans would be their own internal
8 plans, isn't that right?

9 **MS. BLYSTONE:** Kate Blystone. I cannot
10 speak to what they're saying there, but -- if there
11 was a change in community plan designations as a
12 result of this new community plan update.

13 **COMMISSIONER OHIGASHI:** It's a lawyer's
14 trick to make a statement without asking a question.

15 **MS. BLYSTONE:** Oh, thank you, sir.

16 **COMMISSIONER OHIGASHI:** I just -- one
17 further question. This area falls within the
18 Governor's emergency proclamation, is that right?

19 **MS. DESJARDINS:** Mimi Desjardins,
20 Corporation Counsel. Well, the entire -- yeah, the
21 entire island falls within the Governor's emergency
22 proclamation.

23 **COMMISSIONER OHIGASHI:** As such, there may
24 be availability of using that emergency plan to
25 speed up the Mauka and the Triangle sections, isn't

1 that right?

2 **MS. DESJARDINS:** Mimi Desjardins. Yes, we
3 have looked at and identified areas in West Maui
4 where that might be appropriate, but certainly
5 everything is on the table, Commissioner Ohigashi,
6 in terms of speeding up housing on the West Side.

7 **COMMISSIONER OHIGASHI:** Okay. Has any
8 discussions been brought to the attention of the
9 Petitioner, HHFDC, the Office of Planning,
10 Governor's Office, to try and see what can we do to
11 fast track the water development as well as to fast
12 track this project to assist in helping the people
13 of West Maui get homes? Has there been anything
14 that you know of from your point of view?

15 **MS. DESJARDINS:** Thank you. Mimi
16 Desjardins. No, Commissioner Ohigashi, I am not
17 aware of any discussions specifically about the
18 water for this area or for this particular
19 development.

20 **COMMISSIONER OHIGASHI:** And -- okay.
21 Thank you.

22 **CHAIRMAN GIOVANNI:** Thank you,
23 Commissioner.

24 So make some editorial comments here.
25 When we look through the Land Use Commission files

1 going back 30, 40 years, unfortunately we find
2 projects such as this where D&Os were approved years
3 and decades ago and promises or representations were
4 made that houses would be built, and there's no
5 shovel in the ground.

6 I don't know the exact number but people -
7 - we're talking about 50,000 affordable houses
8 around the state, but certainly Maui, in the wake of
9 the tragic fire, is in desperate need. What we're
10 trying to do in hearings like we're having today is
11 to identify projects such as this that might need
12 some type of acceleration, that might have an
13 obstacle that nobody even is working on, and we
14 could bring the resources together of the right
15 people, County, HHFDC, the Petitioner, to work on
16 the issues so that these projects can be brought
17 forward. That's what we're trying to help you all
18 do.

19 So I appreciate your comments that kind of
20 speaks to the importance of a hearing like this,
21 which is it's educational. It brings everybody up
22 to speed, what -- where we stand and what we need to
23 do, so thank you for that. But we really encourage
24 you to move this to the front burners of the stove
25 if you can.

1 Commissioners, anything more for the
2 County?

3 Thank you very much.

4 State? Ms. Kato?

5 **MS. KATO:** Alison Kato for OPSD. With
6 respect to the Puukoolii Village project, which is
7 the Mauka area at the top, Petitioner appears to be
8 moving the project forward subject to certain
9 hurdles like the water issue, which seems like it's
10 the main issue holding things up, given that
11 Petitioner has already spent a lot of money and
12 gotten various documents and permits.

13 OPSD understands that further changes will
14 be needed to update various aspects of this project,
15 but the project will provide housing in a location
16 where it's appropriate and very much needed,
17 especially after the wildfires.

18 With respect to Puukoolii Triangle, OPSD
19 understands that the portion -- that portion will be
20 included in the remaining K2020 development plan and
21 that further changes will be required at a later
22 time. It sounds like the future intended use will
23 be similar to what was represented in their original
24 and amended D&O, and, again, it is suitable and a
25 needed use for that area.

1 Regarding the conditions, OPSD met twice
2 with HHFDC and HHFDC is in attendance today to
3 represent its interests. OPSD also requested
4 comments twice from DOT, DOH, DOE, and HI-EMA on the
5 status of relevant conditions in this matter. DOT
6 responded that they had no comments on the DOT-
7 related conditions. DOE and HI-EMA did not provide
8 a response.

9 The Petitioner has already worked closely
10 with DOT on many improvements, so OPSD interprets
11 their no comments as satisfaction with the working
12 relationship to date. As for DOE and HI-EMA, we
13 assume their interest in the project will increase
14 when the likelihood of people moving into the area
15 is closer to being realized.

16 DOH provided comments on the DOH-related
17 conditions. They had no comments on Condition No.
18 12 regarding the Lahaina Wastewater Treatment Plant.
19 For Condition No. 15 regarding drainage and erosion
20 control plan. Submittal of the drainage and erosion
21 control plan is no longer required and applicants
22 must instead prepare a stormwater pollution
23 prevention plan.

24 DOH confirmed that they processed KLMCs
25 NPDS permit, coverage renewal request for a Puukolii

1 Village, which does not include Puukolii Triangle.
2 For Condition 19 regarding erosion and dust control,
3 erosion control requirements are incorporated into
4 the NPDES permit that KLMC received. For Condition
5 No. 20, air quality monitoring, DOH confirmed that
6 does not have an air quality monitoring program
7 specific to the West Maui area.

8 And last for Condition No. 21, DOH just
9 noted that the Integrated Solid Waste Management Act
10 isn't applicable to KLMC. To summarize, for DOH
11 some conditions are no longer relevant and some have
12 been satisfied.

13 Regarding the water issue, OPSD also
14 consulted with CWRM regarding the water use approval
15 issue for Puukolii Mauka, Puukolii Village. As a
16 result of the designation of the Lahaina Aquifer
17 Section, areas of ground and surface water
18 management area, CWRM is currently in the process of
19 reviewing many existing water use permit
20 applications in a prioritized manner, and they have
21 their own priority system.

22 And they do not anticipate beginning
23 decision making on those applications until late
24 2024 at the earliest because there's a whole process
25 that they have to go through. And it appears that

1 CWRM has not yet approved a permit for the entire
2 projected buildout of Puukolii Mauka, so Petitioner
3 may need to file an additional or a new water use
4 permit to secure water for the full protected
5 buildout of Puukolii Mauka.

6 That is -- that's all our comments for
7 now. I'm available for questions. Thank you.

8 **CHAIRMAN GIOVANNI:** Thank you.

9 Commissioners?

10 Commissioner Ohigashi.

11 **COMMISSIONER OHIGASHI:** Yeah. I -- do you
12 have anything in writing from the CWR -- what is it,
13 the water resources committee -- commission?

14 **MS. KATO:** You mean like formal written
15 comments?

16 **COMMISSIONER OHIGASHI:** Yeah.

17 **MS. KATO:** No. But OPSD consulted with
18 them.

19 **COMMISSIONER OHIGASHI:** Would they be able
20 to provide us in writing the status of the permits
21 and whether or not the permits have been adequately
22 filed or -- for their review? Would that be
23 available to OPSD?

24 **MS. KATO:** We can ask them, but by
25 permits, the status of --

1 **COMMISSIONER OHIGASHI:** Yeah --

2 **MS. KATO:** -- specific one here.

3 **COMMISSIONER OHIGASHI:** Earlier you said
4 that they had applied for a permit and that it's
5 going to take -- it's not going to be taken up, but
6 they might have to apply for a fuller permit because
7 it's more places -- that's what I got from your
8 testimony when you talked, more -- it's a bigger
9 project involved. And so my question to you is:
10 Can we get the status or can you get the status from
11 them in writing as to what specifically is holding
12 this up.

13 **MS. KATO:** We can ask them for it.

14 **COMMISSIONER OHIGASHI:** And when you get -
15 - when you get it, would you supplement the record
16 in this case, at least, so that we have something in
17 writing on file? Because I'm not -- I'm not
18 questioning your truthfulness or not, but it would
19 be good to have something in writing from them to
20 state what exactly is the problem and how long it
21 may take and what steps do they need to go forward
22 with it so that at least the record in this case is
23 more complete so we know that that is their
24 requirements. Is that all right with you?

25 **MS. KATO:** Yes. We can request that and

1 we can submit to the Commission anything that we
2 receive in writing from CWRM. And I suspect part of
3 it may be them explaining this process that they're
4 going through right now.

5 **COMMISSIONER OHIGASHI:** Yes. And do you
6 agree about the reading that the Petitioner has
7 given about what the -- what applies to the D&O that
8 there's -- it's 900-some-odd houses reduce and 480
9 and 140 -- reduce it to 140 on the Mauka and about
10 343 still exists on the -- what is it called? The -
11 - -- the 44 housing component?

12 **MS. KATO:** Is your question about the
13 current number of affordable housing units --

14 **COMMISSIONER OHIGASHI:** Yeah, I just want
15 you to confirm that this what the second part of --
16 that second D&O, the amended D&O says.

17 **MS. KATO:** I believe that is accurate what
18 the current amended D&O says, that there is 940
19 currently required for Mauka.

20 **COMMISSIONER OHIGASHI:** In the last area
21 I'm going to ask you this. What can OPSD do to
22 increase or to go forward with trying to get a
23 priority on this particular project with the -- with
24 the Water Resources Commission so that affordable
25 housing can be built in Lahaina area as soon as

1 possible?

2 **MS. KATO:** Sorry. Can my client speak?

3 Katia Balassiano.

4 **CHAIRMAN GIOVANNI:** Okay. Let's swear you
5 in again. Name

6 **MS. BALASSIANO:** Katia -- excuse me.

7 Katia Balassiano, OPSD, Land Use Division.

8 **CHAIRMAN GIOVANNI:** Do you swear your
9 testimony today will be the truth?

10 **MS. BALASSIANO:** Yes, I do.

11 **CHAIRMAN GIOVANNI:** Okay. Proceed.

12 **MS. BALASSIANO:** Yes. Good morning. OPSD
13 meets on a weekly basis every Friday morning with
14 members of the Governor's Disaster Recovery Team
15 along with several other state agencies. And the
16 Governor's Office identifies -- works with the
17 County and FEMA and others to identify priority
18 projects in Maui to respond to the wildfire
19 disaster.

20 And through those negotiations, the
21 Governor's Office brings to the state agencies the
22 various projects that are the priority projects and
23 asks a very similar question to the state agencies,
24 what's the status and what can be done to expedite
25 these particular projects.

1 **COMMISSIONER OHIGASHI:** So are you aware
2 of any -- of this particular project being --

3 **MS. BALASSIANO:** This project is currently
4 not on that list of priority projects.

5 **COMMISSIONER OHIGASHI:** And could you
6 explain to me why not?

7 **MS. BALASSIANO:** No, I cannot.

8 **COMMISSIONER OHIGASHI:** Okay. Has this
9 project gained a radar of the Governor?

10 **MS. BALASSIANO:** It is on the radar of the
11 Governor. And I believe that this project has been
12 examined to be on that priority list, but it is
13 currently not. And I don't know what the behind-
14 the-scenes negotiations involve with the particular
15 landowners --

16 **COMMISSIONER OHIGASHI:** Will we ever know?

17 **MS. BALASSIANO:** I don't know if I'll
18 know.

19 **COMMISSIONER OHIGASHI:** All right.
20 Because I see 900-some-odd homes within two years
21 being started as being something -- because the way
22 I envision Lahaina -- and I may be wrong -- but
23 there's going to be immediate needs. And then
24 there's going to be interim needs. And then there's
25 going to be long-term needs. And the interim and

1 long-term needs seems to have some kind of place
2 with this project. And if the only -- if we limit
3 ourselves to one area, we may not be able to -- we
4 may delay the long-term needs and the interim needs
5 for future development.

6 So I -- my question --

7 **MS. BALASSIANO:** I understand --

8 **COMMISSIONER OHIGASHI:** -- my concern and
9 comment is that I hope that you're going to take a
10 holistic approach to this rather than only
11 concentrate on the immediate approach.

12 **MS. BALASSIANO:** The fact of the status
13 meeting and this project has been brought to that
14 group's attention by myself, so they are very much
15 aware of this meeting and the entitlements that this
16 project already has. But there are other projects
17 that have risen in level of priority at this point
18 in time, and I cannot tell you how or why that is.

19 **COMMISSIONER OHIGASHI:** Okay.

20 **CHAIRMAN GIOVANNI:** Commissioners, anybody
21 else?

22 I have a couple. Even though the Mauka
23 project we heard today will proceed even if the
24 bypass is delayed, it would be really helpful if
25 that bypass got some priority from DOT. Did they

1 comment at all about the status of their plans to
2 build a bypass?

3 **MS. KATO:** They had no comments. We asked
4 them twice.

5 **CHAIRMAN GIOVANNI:** So as a follow-up as
6 we go forward in this process because I'm sure we'll
7 revisit this process, but let's be specific in
8 asking them about that bypass road and their timing
9 and plans for that.

10 And then following up on Commissioner
11 Ohigashi's interest, it just seems that we've got --
12 we're prepared to do something really important and
13 valuable for the community in the Mauka project and
14 it's all hung up because of this water issue. And
15 my sense is that they've made a generalized
16 priority, as we heard earlier today, to prioritize
17 all of the existing applications or existing water
18 uses before they would consider something new at
19 all.

20 That seems to me to be pretty myopic in
21 the grand scheme of things, and I would really
22 encourage this Friday morning meeting to consider
23 opportunities to make an exception to get a little
24 more priority for consideration of the water
25 application for a new project such as this. Because

1 it just seems so important for the community in this
2 part of the island. So I want to encourage you to
3 make that case. And if there's anything this
4 Commission can do to help you make that case, let us
5 know.

6 **MS. KATO:** Thank you. We can raise that
7 again with them, but we don't make CWRM's decisions
8 for them.

9 **CHAIRMAN GIOVANNI:** I understand. But
10 they're aware that this meeting is happening, I
11 hope.

12 **MS. KATO:** They are aware, yes.

13 **CHAIRMAN GIOVANNI:** Okay. And that --

14 **MS. KATO:** We've explained it.

15 **CHAIRMAN GIOVANNI:** -- all -- everything's
16 pointing to them, being what's holding this up. Is
17 that a fair representation? We're hearing from the
18 Petitioner that that's the plug in the wall right
19 there, so anything you can do to help, that would be
20 greatly appreciated.

21 **MS. KATO:** Thank you.

22 **CHAIRMAN GIOVANNI:** Okay. Commissioners,
23 anything further for the State? Okay.

24 So Petitioner, you've heard from the
25 HHFDC. You're heard from the County. You're heard

1 from the State. Do you have any further remarks,
2 comments, or corrections that you want to put on the
3 record?

4 **MR. REBUGIO:** Jeff Rebugio, Kaanapali
5 Land. No, Chair.

6 **CHAIRMAN GIOVANNI:** Is that for all three
7 of you? Okay. Thank you.

8 I'm going to Commissioners for final
9 questions and comments for any of the parties.
10 Commissioner Lee?

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

12 For the Petitioner -- and before I start
13 this question, I guess I wanted to bring up that one
14 of the things under consideration is that we give
15 CWRM and OPSD, but mainly CWRM, veto power over
16 whether they can even come to us, so that's
17 something that has been considered for
18 administrative rules for this organization. So I
19 think ourselves, we need to reconsider that. If
20 CWRM is going to be the obstacle, why are we
21 deferring to them without any examination?

22 So for the Petitioner, what kind of
23 carrying costs do you have for this project?

24 **MR. REBUGIO:** Jeff Rebugio. It's hard to
25 answer that question because of the time this

1 project has lingered, but obviously that's something
2 we try to reduce as much as possible. There are
3 still land management of the area. You could
4 perhaps, you know, point to the cost to it. As well
5 as power consulting consultants on -- that are
6 hired. I can't put a number on that but certainly
7 something to consider.

8 **COMMISSIONER LEE:** Do you have financing
9 costs that you're continuing to pay?

10 **MR. REBUGIO:** No.

11 **COMMISSIONER LEE:** Okay. So you have no
12 reason to delay this, right?

13 **MR. REBUGIO:** No reason.

14 **COMMISSIONER LEE:** But at some point you
15 could walk away from this project.

16 **MR. REBUGIO:** It would be a hard decision
17 given the time and investment and effort that has
18 transpired over the years.

19 **COMMISSIONER LEE:** Okay. Thank you.

20 And Chair, I wanted to ask one question of
21 HHFDC.

22 Okay. So you mentioned that they might
23 come back to you for whatever, financing, whatever,
24 you know, credits, whatever. I know it's still
25 rough right now, but in broad strokes if they came

1 to you with their proposal, how competitive would
2 they be under your current qualified allocation
3 plan?

4 **MR. FUJIMOTO:** Under -- under our existing
5 programs, as I -- I'm not involved in the tax credit
6 programs, but I don't know that we have, but we
7 might be considering giving a preference to projects
8 in Lahaina or for the areas impacted by the
9 wildfires. But we would need to follow our rules
10 appointing -- and trying to make -- we need to
11 follow our rules and I don't know offhand whether we
12 do have any -- we can give them any preference, them
13 or anybody else in their situation, advantages over
14 other applicants.

15 **COMMISSIONER LEE:** Thank you.

16 Thank you, Chair.

17 **CHAIRMAN GIOVANNI:** Thank you.

18 Commissioners?

19 I have one point of confusion in my mind,
20 and it has to do with the Triangle and the
21 negotiations that are going on to settle the scope
22 of that project and whether or not you'll be able to
23 sustain the No. 342 or not. My confusion is I
24 thought that the Petitioner said they're talking to
25 HHFDC and eventually would talk to the County. And

1 then from HHFDC I got the impression nobody's
2 talking to them at all and that they're waiting for
3 the Petitioner and the County to come to agreement.

4 So can you clarify to me in your
5 understanding how this process works? Who's
6 involved and who's on first?

7 **MR. REBUGIO:** Thank you, Chair. Jeff
8 Rebugio.

9 The long drawn process of trying to define
10 Kaanapali 2020 given the different layers of
11 entitlements at the County level, as well as really
12 embracing the community process by inviting the
13 leaders of the community to have a say in the -- in
14 the land plan. The need will eventually be defined
15 through that process. We're perhaps not there yet.

16 I also want to clarify that there is, at
17 least for me, the process of bringing the County
18 housing agency to this, perhaps that was an
19 assumption on my part given what was done with the
20 Mauka piece. It makes sense to me. It has the
21 same, you know, parties under the County's
22 affordable housing, workforce housing project where
23 I believe the authority there is the County housing
24 agency.

25 There was a new administration installed

1 last year and we at least reached out to the
2 leadership at the department. I believe that
3 department is also being bifurcated, separating
4 housing and human concerns from -- I'm sorry,
5 separating human concerns from housing. And it's
6 something that we certainly need to stay on and get
7 an agreement with.

8 **CHAIRMAN GIOVANNI:** So my confusion is a
9 little bit -- is along those lines, but basically
10 what I heard on the Mauka piece was that you came to
11 an agreement with the County and then asked HHFDC to
12 agree to it. Is that the same process that you're
13 going to deal with the County first and then ask
14 them to reach -- they're on record saying they want
15 to retain 342 if possible, but they don't seem to be
16 party to the negotiation.

17 **MR. REBUGIO:** Yes. Again, bringing the
18 County housing agency into this, I believe was the
19 result of the Act 198. I believe at that time there
20 was a lot of effort and these two have home rule,
21 have the County -- have them be at the table and
22 have a say into the proposed development. This
23 would be how we would handle the Triangle piece as
24 well.

25 **CHAIRMAN GIOVANNI:** Okay. I don't have

1 anything further at this time.

2 So now it's time once again -- oh, did I
3 have somebody? Where?

4 **COMMISSIONER CARR SMITH:** Over here.

5 **CHAIRMAN GIOVANNI:** Oh. Sorry, Nancy.

6 **COMMISSIONER CARR SMITH:** That's all
7 right.

8 **CHAIRMAN GIOVANNI:** Commissioner Carr
9 Smith, I didn't see you. Please.

10 **COMMISSIONER CARR SMITH:** That's okay.
11 Thank you.

12 Petitioner, how long have you been working
13 on this project?

14 **MR. FUJIMOTO:** Well, perhaps a total of 17
15 years.

16 **COMMISSIONER CARR SMITH:** 17 years? Okay.
17 And how much money have you spent on the project?

18 **MR. FUJIMOTO:** I can only provide an
19 estimate, and it's millions of dollars into it.

20 **COMMISSIONER CARR SMITH:** Okay. Well, the
21 Commission is the one that brought this to the
22 table, right? I'm just curious, I wanted to get a
23 sense of prior to being called to provide a status
24 report, what would you say was your level of
25 engagement in this project specifically?

1 **MR. FUJIMOTO:** It has been a top priority
2 even before the August fires. There was already a
3 housing crisis. There's been a lot of people
4 inquiring. And this perhaps points back to the
5 process of CWRMs actions in the past years. The
6 designation was made, I believe, in 2022, but
7 leading up to that there were a number of hearings
8 held with the -- with what I believe an intent to
9 set end stream flow standards for West Maui.

10 All of that culminated with the decision
11 to do the designation, to designate a water
12 management area. And that process in itself puts
13 pause into whether you need to move forward with
14 design development for particularly the water
15 system. And so I'd say we've constantly been active
16 in that -- in that realm. We -- we're at the mercy
17 of CWRMs decision and how they would move forward
18 with water.

19 **COMMISSIONER CARR SMITH:** And when did you
20 apply for that permit?

21 **MR. FUJIMOTO:** So to clarify, Hawaii Water
22 Service is a private utility, PC regulated utility
23 company that has an established service area that's
24 equivalent to most of our lands, the Kaanapali 2020,
25 including the Mauka area. So our request for water

1 service would go through that company.

2 They in turn have submitted the -- like
3 everyone who draws and uses water submits the
4 existing water use permit applications to CWRM, I
5 believe CWRM gave every user one year to submit your
6 existing water use permit application. That is the
7 permit I believe they're trying to process now. And
8 we heard that there has been no permits issued based
9 on those applications.

10 CWRM explained their process of
11 establishing existing water use permits first before
12 they would take up -- before they would take on any
13 new water use permits, so through Hawaii Water
14 Service Company, we've been constantly in
15 discussions with them. We talked about source
16 location, a well location and understand their
17 capacity to serve. We have a good sense of that, so
18 there hasn't been -- we formally haven't filed, but
19 there is a request for service and they simply
20 cannot provide a will serve letter at this time
21 because of the situation with -- understanding what
22 they're allowed to do beyond what has already been
23 established as existing use.

24 **COMMISSIONER CARR SMITH:** That's helpful.
25 Thank you.

1 **MR. FUJIMOTO:** Thank you.

2 **CHAIRMAN GIOVANNI:** Okay. Anything
3 further?

4 Final round of public testimony. Once
5 again, are there any members of the public who wish
6 to provide new and additional testimony on the
7 status and progress of A92-686, Ms. Kwan?

8 **MS. KWAN:** Seeing none, Chair.

9 **CHAIRMAN GIOVANNI:** Thank you.

10 Further discussion. Commissioners, this
11 is a status report. We're not required to take any
12 action at this time. And if no action is taken,
13 it's the requirement of continued annual status
14 reports will remain in effect, and I believe the
15 next status report is due in approximately nine to
16 ten months from today.

17 However, if the Commission feels that its
18 concerns have not been addressed, based on the
19 comments and responses provided by the Petitioner,
20 the Chair will entertain a motion that either the
21 Petitioner's status report has not sufficiently
22 addressed the Commission's concerns and that further
23 meetings or status updates are necessary to provide
24 the opportunity to do so at dates to be determined
25 by the LUC Staff.

1 Or if there's reason to believe that the
2 Petitioner will not adhere to conditions set forth
3 in the decision and orders, it may request that
4 Staff move forward with a formal order for show
5 cause proceedings.

6 Commissioners, are there any questions on
7 how we move forward? Hearing none, it's time for
8 deliberations.

9 The Chair will entertain a motion
10 regarding how the Commission should proceed on this
11 matter. So Commissioners, what's your pleasure?

12 Commissioner Ohigashi?

13 **COMMISSIONER OHIGASHI:** I'm going to
14 preface this by saying that I agree with corporation
15 counsel's statement that this has been educational.
16 And that it permitted us to understand what are the
17 obstacles and items that are necessary to make this
18 project go forward, which is much needed in Lahaina.

19 So I think -- and I'm not going to be
20 here. It will be up to Mr. U'u to carry the torch,
21 but I think that a status report, it says here,
22 should be scheduled about the same time as status
23 report occurs from the Petitioner. And that way,
24 the Commission's at least kept up to date as to what
25 has been going on and what is the progress that's

1 been made and whether there's changes.

2 If there's an agreement reached between
3 the three parties regarding the Triangle, I would
4 hope that at that time the parties would be able to
5 submit a proposed or come in for modification of the
6 D&O to reflect any changes that are necessary. But
7 I think that everybody -- I think that a status
8 report -- a status conference is necessary in the
9 future to keep everybody's feet to the fire and try
10 and figure this thing out. And who knows? Perhaps
11 the Governor's new appointments carry much more
12 weight than us at this point.

13 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi
14 --

15 **COMMISSIONER OHIGASHI:** I make that
16 motion.

17 **CHAIRMAN GIOVANNI:** -- was there a motion
18 in there somewhere?

19 **COMMISSIONER OHIGASHI:** Yes. The motion
20 was to at the time of the status -- the finding of
21 the status report -- I'm not sure when it's due.
22 When is this due?

23 **CHAIRMAN GIOVANNI:** It's nine or ten
24 months from now.

25 **COMMISSIONER OHIGASHI:** Yeah. Time of the

1 next status report is due, that a status conference
2 be held to update everybody what's going on. And I
3 hope that the Office of Planning and County of Maui
4 and HHFDC at least file things in writing so -- but
5 I won't be here, so I won't read them.

6 **CHAIRMAN GIOVANNI:** So could I ask you to,
7 in your mind, address the adequacy of today's status
8 report?

9 **COMMISSIONER OHIGASHI:** I think that they
10 explained it well enough to be adequate. After
11 being pressed on timetables and things like that, I
12 think that the Petitioner expressed what obstacles
13 are in their way to try to complete it, to get a
14 proper timetable in this regard.

15 I am disappointed, though, that we're
16 blaming Kaanapali 2020. As the Planning Director
17 indicated, it conforms with our -- the existing --

18 **CHAIRMAN GIOVANNI:** So let me see if I can
19 articulate your motion.

20 **COMMISSIONER OHIGASHI:** I find that it is
21 -- it is sufficient.

22 **CHAIRMAN GIOVANNI:** So we have a position
23 that the status report today was sufficiently
24 adequate?

25 **COMMISSIONER OHIGASHI:** Yes.

1 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi,
2 I'm going to attempt to summarize your position in
3 the form of a motion. So the status report today
4 provided by the Petitioners is sufficient and
5 adequate and no specific action is required in terms
6 of show cause or anything of that effect. But there
7 is a -- the motion does include a specific request
8 that the Petitioner come back for a follow-up status
9 report at a time that's consistent and in the same
10 timeframe as your next annual report, which is
11 approximately nine, ten months from now, specific
12 dates to be worked out with the LUC Staff.

13 How was that? Was that good? Okay.

14 Do I have a second? Do I have a second to
15 that motion?

16 Commissioner Carr Smith seconds the
17 motion.

18 Commissioner Atta?

19 **COMMISSIONER ATTA:** Yeah. The -- this --
20 my -- I see all this kind of talk from all of the
21 agencies as an action. I'm wondering that I don't
22 know if we have to use a time factor because I don't
23 know how -- whether time factor like we had or
24 something, but it depends on the -- on the -- I
25 guess -- what I'm trying to say is that the

1 project's time table follows different kind of
2 things, depending on what the issues are, and it
3 depends on what kind of issues are involved so that
4 they should be able to request a status update so
5 that they can, you know -- they can ask for the LUC
6 to set up a time and not leave it for -- for us to
7 say six months, eight months, like that, but leave
8 it up to the situation.

9 **CHAIRMAN GIOVANNI:** So I'm going to
10 interpret that to be a suggestion for a friendly
11 amendment to the motion and that the amendment would
12 be that a follow-up status conference will be
13 scheduled either coincident with the submittal of
14 the annual report or earlier if it is of a
15 significance to the Petitioner based on the progress
16 or lack thereof that they're making.

17 **COMMISSIONER ATTA:** Right.

18 **CHAIRMAN GIOVANNI:** Correct?

19 **COMMISSIONER ATTA:** Right.

20 **CHAIRMAN GIOVANNI:** So movant, are you
21 acceptable to this friendly amendment to your
22 motion?

23 **COMMISSIONER OHIGASHI:** Sure.

24 **CHAIRMAN GIOVANNI:** Ms. Carr Smith --
25 Commissioner Carr Smith, are you amenable to the

1 amendment?

2 **COMMISSIONER CARR SMITH:** Yes.

3 **CHAIRMAN GIOVANNI:** Okay. Let me restate
4 the motion as amended. Though the status report
5 today was sufficient, no need for a -- to call for a
6 show cause proceeding, we encourage the parties to
7 move forward expeditiously and we are asking that
8 you provide a follow-up status report to this
9 Commission on or about the time that you submit your
10 annual report, progress report, or earlier if there
11 is significant issues that materialize in the
12 meantime. Understood?

13 Okay. Commissioner Ohigashi, did you want
14 to speak to your motion further, or are you good?

15 **COMMISSIONER OHIGASHI:** No.

16 **CHAIRMAN GIOVANNI:** Commissioner Carr
17 Smith, do you want to speak to it?

18 **COMMISSIONER CARR SMITH:** No. I'm fine.
19 Thank you.

20 **CHAIRMAN GIOVANNI:** Okay. Anybody else?

21 **COMMISSIONER LEE:** Chair, I have a
22 comment.

23 **CHAIRMAN GIOVANNI:** Commissioner Lee.

24 **COMMISSIONER LEE:** You know, it's quite
25 possible that nine months from now nothing has

1 happened, so I'm not sure we should just have a
2 status report just for the heck of having a status
3 report conference. Could there be something where,
4 you know, if the board agrees, let the Executive
5 Officer decide whether or not one would be
6 appropriate?

7 **CHAIRMAN GIOVANNI:** I'm going to go back
8 to your premise, Commissioner Lee. If nothing's
9 happened in nine months, I want to know about it.
10 So I think it is appropriate that they inform us of
11 that.

12 **COMMISSIONER LEE:** Well, I think they can
13 do that in writing without having to go through this
14 expense of this whole -- you know, whatever the
15 board decides, but you know, this is not without
16 cost to do this, and so if the Executive Officer
17 gets the written status report from the Petitioner
18 that nothing has happened, I don't think we need to
19 be here to hear again that nothing has happened
20 because CWRM hasn't done anything, you know.

21 Now, if the Executive Officer feels -- I
22 guess I want him to have some discretion so that
23 it's not a mandatory thing but --

24 **CHAIRMAN GIOVANNI:** Fair enough.

25 **COMMISSIONER LEE:** Thank you.

1 **CHAIRMAN GIOVANNI:** So I'm going to
2 interpret that to be another friendly amendment.
3 And the amendment is a modification of the amendment
4 that was put forth by Commissioner Atta, so it --
5 we're asking you to come back for a status report on
6 or about the date of your annual report, sooner if
7 there is significant events you want to share and
8 later if there's nothing to report.

9 Is that okay, Commissioner --

10 **COMMISSIONER LEE:** I think we mentioned
11 that the --

12 **CHAIRMAN GIOVANNI:** -- Ohigashi?

13 **COMMISSIONER LEE:** -- Executive Officer
14 would be the one to have the discretion to --

15 **CHAIRMAN GIOVANNI:** The Staff will work it
16 out. Yeah.

17 Commissioner Ohigashi, you okay with that?
18 Okay.

19 Commissioner Carr Smith, you okay with
20 that? Okay.

21 So Mr. Orodenker, will you --

22 **COMMISSIONER YAMANE:** Mr. Chair.

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

24 Commissioner Yamane?

25 **COMMISSIONER YAMANE:** So I agree with the

1 Chair that if there's nothing going on in nine
2 months, I would want to be here sitting to find out
3 why. I agree with the Corp counsel that it's been
4 enlightening to learn, and I think, yeah, it cost
5 money for the State, but if we can get the housing
6 going because of these meetings, then I'm all for
7 it, so I kind of disagree with not meeting because
8 there's nothing to report. Thank you, Mr. Chair.

9 **CHAIRMAN GIOVANNI:** Staff will take that
10 under consideration as well.

11 So I wanted to make just a clarifying
12 comment. It sounds to me like, of course, the water
13 issue is a big issue. We'll be looking for an
14 update on that. We also want an update from
15 Department of Transportation and the status of the
16 bypass road. And then status of negotiations
17 between the three parties regarding the Triangle.
18 Those are the three top of my list. I'm sure
19 there's others.

20 Commissioner -- I mean, Mr. Orodenger,
21 please take a roll call vote.

22 **MR. ORODENKER:** I was just going to defer
23 to what you said.

24 **CHAIRMAN GIOVANNI:** It's in the record.

25 **MR. ORODENKER:** Yeah, it's in the record.

1 The motion is for -- that the status
2 report today has been sufficient but a status
3 hearing may be scheduled when the next status report
4 has been filed or earlier significant activity
5 occurs. The Executive Officer is authorized to
6 determine whether or not a status report -- a status
7 conference or hearing is required at that time.

8 Commissioner Ohigashi?

9 **COMMISSIONER OHIGASHI:** Aye.

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

11 **COMMISSIONER CARR SMITH:** Aye.

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

13 **COMMISSIONER ATTA:** Aye.

14 **MR. ORODENKER:** Commissioner Kahele is
15 absent.

16 Commissioner Kamakea-Ohelo?

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

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

19 **COMMISSIONER LEE:** Aye.

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

21 **COMMISSIONER YAMANE:** Aye.

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

23 **CHAIRMAN GIOVANNI:** Aye.

24 **MR. ORODENKER:** Thank you, Mr. Chair. The
25 motion passes unanimously.

1 **CHAIRMAN GIOVANNI:** Yeah. Final comment.
2 I just think that what I'm hearing from everybody is
3 that this has been worthwhile enterprise today. I'm
4 glad that it was. Hopefully, the Petitioner finds
5 it helpful, the County finds it helpful and puts
6 some priority on it, and the State can do the same.
7 So thank you, call.

8 I'm going to take a --

9 **MR. ORODENKER:** Mr. Chair, before we
10 recess, I would like to offer to the Petitioners our
11 assistance. Arnold Wong is here to assist with
12 issues such as the Commission of Water Resource
13 Management and the Department of Transportation, so
14 please call on him so that he can assist you.

15 **CHAIRMAN GIOVANNI:** Yeah. What that kind
16 of means is if you run into an obstacle, big or
17 small, bring it to our attention and we might be
18 able to help, and the contact person is Mr. Wong.

19 Okay. I'm about to recess. I just want
20 to make sure there's nothing more on this agenda
21 item. That concludes this agenda item. We will
22 take a lunch break now. It is 11:32. We'll return
23 at 12:05. Thank you.

24 **(A lunch recess was taken from 11:32 a.m.**
25 **to 12:09 p.m.)**

1 **CHAIRMAN GIOVANNI:** (Inaudible.) We would
2 -- each Commissioner would fill out on their own
3 rating the performance in different categories and
4 offering comments if they wanted. Secondly, we ask
5 for a copy of the employment contract for Executive
6 Officer to be distributed to everyone, all
7 Commissioners. We ask for, thirdly, a copy of the
8 relevant budget for the Land Use Commission, state
9 budget to be issued everyone. And then we ask for
10 the Executive Officer to do a self-evaluation on the
11 same from that we're all looking at and distribute
12 that to all of us. And then once we had all that,
13 we were to send -- each of us to send it to Lee --

14 **COMMISSIONER OHIGASHI:** Also had a
15 contract.

16 **CHAIRMAN GIOVANNI:** I said contract. It's
17 the second thing. Were you not listening? Probably
18 not. Yeah, so the four things were blank form,
19 contract, budget, and self-evaluation. Right? And
20 to get that back to Lee in time for him to compile
21 it and send it back.

22 In the meantime, I had received specific
23 guidance from Dan Morris, the Assistant Attorney
24 General, on the process. And in contrast to how it
25 was done in previous years, previous years we went

1 into Executive Session and did our deliberations and
2 made motions and decisions and recommendations on
3 how to proceed.

4 What he has recommended as guidance this
5 time is that we bifurcate that process and that if I
6 have a motion to go into Executive Session I can
7 accept that motion and that would be for sharing of
8 information and discussion purposes among the
9 Commissioners and sharing of the compilations and
10 sharing of comments and any Q and A about that. And
11 we can do that all under sunshine with the presence
12 of the Attorney General in our Executive Session.

13 However, once we complete those
14 discussions, which was kind of the fact-finding part
15 of it, if we went to go into a decision making in
16 terms of -- the decisions would be a specific
17 recommendation on performance quantitatively and a
18 recommendation, if we so choose, relative to a
19 salary adjustment or, thirdly, any recommendation we
20 choose to make optionally relative to his contract,
21 we would do that in public session. So the process
22 this year will be bifurcated accordingly.

23 So the only option that would -- there is
24 an option to that, and that's option at the
25 Executive Officer's choice, and that would be

1 whether or not he'd like us to do the entire process
2 in a public forum.

3 So let me ask you, Mr. Orodenger, would
4 you like us to proceed on a bifurcated as I
5 described or do you want to see the whole thing
6 played out in front of you publicly?

7 **MR. ORODENKER:** Thank you, Chair. I'm
8 comfortable with the bifurcated process.

9 **CHAIRMAN GIOVANNI:** Okay. Then that's the
10 way we'll proceed.

11 So do I have a motion to go into Executive
12 Session for purposes of discussions on the
13 performance of the Executive Officer?

14 **COMMISSIONER OHIGASHI:** So moved.

15 **CHAIRMAN GIOVANNI:** So moved by
16 Commissioner Ohigashi. Okay.

17 **COMMISSIONER YAMANE:** Second.

18 **CHAIRMAN GIOVANNI:** Seconded by
19 Commissioner Yamane.

20 All I favor, say, "aye."

21 **(All said: "Aye.")**

22 **CHAIRMAN GIOVANNI:** Any opposed? No.
23 Okay. So we'll go in Executive Session.

24 **(Commission in Executive Session from**
25 **12:14 p.m. to 1:32 p.m.)**

1 **CHAIRMAN GIOVANNI:** Okay. We'll go back
2 in session, public session. It's 1:32.

3 So we've had a bifurcated process on the
4 performance evaluation. We've -- we're proceeding
5 with a bifurcated process on your performance
6 evaluation which is different than how it was done
7 in previous years. So let me explain again exactly
8 how we're going to proceed.

9 So based on the discussions that we had in
10 Executive Session, we're going to share with you the
11 numerical compilation of the performance evaluation,
12 which is the same forum than Mr. Orodener, that you
13 did your self-evaluation on. We'll give you those
14 scores and what they mean.

15 Secondly, we're going to throw it open to
16 the Commissioners that may want to make specific
17 comments, either positive, neutral, or negative,
18 opportunities for improvement, whatever. We also
19 want to let you know that several Commissioners, if
20 not all, may want to speak with you individually and
21 privately about their relationship and your
22 performance from their perspective, and I know that
23 you would invite that.

24 We've concluded with the Assistant
25 Attorney General's -- or is it Deputy or what --

1 Deputy Attorney General's advice that for us in
2 public session to take any position or motion --
3 make any motion on salary, we need to more
4 explicitly agendize that. So that's going to be
5 agendized and deferred to the next meeting. Okay?

6 So did I get that right, everybody? I
7 think so.

8 So I'm going to verbally give you these
9 numbers. You can write them down if you want. You
10 may still have in your files a blank form. So there
11 are eight categories and then an overall would be
12 the ninth. And then for each category, the ratings
13 are 1 through 5, with 1 being doesn't meet, 3 being
14 meets expectations, and 5 means exceeds the
15 expectations. So 3 or higher is meets or exceeds.

16 So in the first category, Job Knowledge,
17 you got an overall rating of 4.125. In the second
18 category, which is Planning and Organization, you
19 got 3.51. The third category of Communication,
20 3.51. Leadership/Teamwork, 4.0. Decision-making
21 and Judgment, 3.51. Professionalism, 3.625.
22 Commitment to the Commission, 3.75. Planning,
23 Organizing and Setting Priorities, 3.65. For an
24 overall rating of 3.71.

25 Now, that's relative to meets expectation,

1 which would be a 3.0, so the 3.71 is higher. And
2 these are just numerical averages of every
3 Commissioner who participated, and Commissioner
4 Okuda did not participate, so we had eight
5 Commissioners participating.

6 So now I want to throw it open to -- do
7 you have any questions on what I've done so far?
8 Okay.

9 Commissioner --

10 **COMMISSIONER OHIGASHI:** Ask for a recap of
11 what happened in Executive Session so that --

12 **MS. CHINA:** Yes, you do.

13 **CHAIRMAN GIOVANNI:** Yeah. Well, if you
14 give me time, I will. You want to do it?

15 **COMMISSIONER OHIGASHI:** Thank you. No,
16 no, no.

17 **CHAIRMAN GIOVANNI:** Why don't you do it?

18 **COMMISSIONER OHIGASHI:** I don't have the
19 notes. I lost them.

20 **CHAIRMAN GIOVANNI:** So what we did in the
21 Executive Session was we went through -- there were
22 a few of the categories in which there was a pretty
23 wide range from high to low among the eight
24 Commissioners who voted, so we discussed that, why
25 high, why low. And there were a few of those.

1 And let me give you a perfect example of
2 that. That was Commitment to the Commission. So a
3 couple of us gave you a 5.0, recognizing that you're
4 -- and the interpretation was your personal
5 commitment to the success of the business of this
6 Commission. But there were others that rated you
7 with 3.0 or even a 2.0. And a lot of that was
8 because of the small words under here, not the
9 commitment to but the paragraph under it which
10 doesn't comport, in my mind, anymore to the top.

11 And that says, "Demonstrates full
12 understanding of the responsibility within the
13 context of the Commission, effectively implements
14 all laws, policies, and procedures, and supports the
15 work of the Commission, including legislative
16 representation. And you know that was a hot button
17 issue at our last meeting, right?

18 So again, that's an example of the
19 discussions that we had. And I think -- can I call
20 upon you, Brian, if you don't mind, to give an
21 example of what we would be looking for, what you
22 would be looking for? And I think we had a
23 consensus. We're talking about the small words.

24 **COMMISSIONER LEE:** Yeah. There's not a --
25 the headline and the details don't exactly match, so

1 that's a little bit -- maybe that's something that
2 can be corrected in the future. But you know, it's
3 kind of like in law, the summary doesn't cover, you
4 know, so anyway.

5 I guess one example is the -- and we
6 brought this up before -- is the legislative
7 representation. I was hoping there's be better
8 communication on the legislative aspects of what
9 affects the Commission, what types of legislation we
10 should pay attention to and brought to our
11 attention. We might be able to provide some input
12 that might be helpful, so that -- that's an example.

13 **CHAIRMAN GIOVANNI:** So I think that one of
14 the areas which we feel that -- I'm going to expand
15 upon what Brian was saying, at least my
16 interpretation of our discussion.

17 And it's kind of a result of what we've
18 been going through the last six months with all of
19 these status conferences. We're learning that there
20 are numerous decisions and orders that the
21 Commission has made over the last 30 years, many of
22 which there's been little or deficient action. And
23 they hit us one by one when you agendize them.

24 And I don't have -- I don't think any of
25 us have a feel for how many of these there are and

1 what is the -- and I think that's maybe something
2 that you and Arnold Wong are reviewing. But we want
3 to know, right? So we'd like to be informed of
4 almost on a -- almost by -- a number by case by case
5 basis, are you getting -- are there missing progress
6 reports? Are they deficient? You know, if there's
7 been action or no action in the last X number of
8 years, that type of thing, because in addition to,
9 you know, staff scheduling a conference like we had
10 today, we may reach out and say, we want you to
11 bring in these guys or those guys.

12 That type of thing, right, Brian?

13 **COMMISSIONER LEE:** Yeah. I apologize. I
14 forgot to be more comprehensive. But yeah, if we're
15 given better information of which projects make up
16 those 50,000 unit short that aren't being produced,
17 we might be able to provide some input. And the
18 only tools we have are to call them in, you know,
19 and perhaps threaten order to show cause, and we
20 shouldn't be seeing people five years that they
21 didn't give a report and then only now we find out
22 about it.

23 You know, if we have a better reporting on
24 who's delinquent, you know, we may have a better
25 picture on how to -- and which guys, you know, we

1 should apply more pressure to. And you know, with
2 Arnold here, I'm sure that will be a lot more easily
3 done, but that's the information that we don't know
4 that we don't know, so that's something I'd like to
5 see.

6 **MR. ORODENKER:** Thank you for your
7 comments, Commissioner Lee. And believe me, it's a
8 frustration of ours. We have started -- we started
9 down this road of trying to find out what's going on
10 with a lot of these, for lack of a better word, dead
11 petitions about three or four years ago that took me
12 two years to get a position out of the legislature.

13 And we're hoping that this will allow us
14 to collate all this information. And as soon as we
15 get it, we'll share it with the Commissioners.

16 And with regard to your comments on the
17 legislature, most certainly -- I mean, it -- it's
18 been a tough thing for me to figure out how much
19 information to bring to the Commission with regard
20 to the legislature because there have been
21 Commissions in the past who just didn't want to
22 know. You know, they didn't want anything to do
23 with it.

24 But understanding now that this current
25 Commission would like as much information as

1 possible with regard to the legislature, I'll be
2 more than happy to bring everything to the
3 Commission as often as possible.

4 **CHAIRMAN GIOVANNI:** So I want to share
5 with you one other thing for which we achieved a
6 consensus, and it stemmed from concerns we have as
7 we go into the new year, which is July 1. We are
8 going to have a very lean and young tenured
9 Commission. We've got three people who have never
10 served on it. We've got two more that have
11 nominally a year. And believe it or not, I'm the
12 most senior guy with about three and a half years.
13 We don't have the experience.

14 And secondly, we're going to be facing a
15 lot more complicated petitions than what we've dealt
16 with in the last year. We're going to see,
17 hopefully, some special use permits. We're going to
18 see maybe an EIS. We're going to see motions to
19 amend and maybe even a DBA. We're going to have to
20 rely on the Staff who has that far more experience
21 than what we have in dealing with these matters.
22 And you guys live it 30 days a month. We live it
23 three to four.

24 So it's a symbiotic relationship between
25 the Commissioners and the Staff. I want you to know

1 that we recognize it, and we're going to lean on you
2 guys. But I think if there's anything we're asking
3 for is for you to -- I'm going to use a word we
4 didn't actually say, but I'm going to say overly
5 communicate. Overcommunicate. Don't try to figure
6 out what we need to know. Tell us more than we need
7 to know because we're so young as a Commission.

8 **MR. ORODENKER:** Thank you, Chair. And
9 Staff has actually talked about this. We recognize
10 that we don't have a lot of Commissioners with a
11 long-term serving on the Commission.

12 **CHAIRMAN GIOVANNI:** We don't have any.

13 **MR. ORODENKER:** I'm being kind. And so
14 what we're attempting to do is revise the way we do
15 our Staff reports to contain a lot more information.
16 I would -- one of the reasons that I communicate
17 with all of the Commissioners before the hearings is
18 to give them the opportunity to ask questions. And
19 I appreciate questions. And I will do what I can to
20 answer them as best I can.

21 One of the -- in Staff's defense because
22 it's not just me. One of the things that happens
23 very often also we don't get everything until the
24 last possible minute. And so then we're hustling
25 and trying to get everything done to get ready for

1 the hearing. But I mean, we have the ability to put
2 more extensive factual information into our Staff
3 reports.

4 I don't know if it would benefit the
5 Commission for us to get the Staff reports out
6 earlier. I mean, is that something that might help
7 because then it will give Commissioners the
8 opportunity more time to fill in the blanks. We can
9 do that. OPSD will complain about that because
10 we'll have to get their information a week earlier,
11 but we can do that if that would help.

12 The amount of information that we have on
13 file for any given docket is significant. And so
14 one of the things we try to avoid is having to put
15 the Commissioners in a position of reading
16 everything going back 20, 30 years. But on the
17 other hand, you know, I can understand the
18 Commission's desire to know more.

19 With regard to procedure, maybe we can
20 make those part of the Staff reports, you know, what
21 the procedure is with regard to the hearings and
22 what we expect. One of the things that we're very
23 careful about is not providing a Staff report that
24 takes the Commissioners down a road towards a
25 decision that is not theirs. We're very careful

1 about that because the Commission is the one that
2 makes the decisions. We're just here to provide you
3 with whatever you need. So we will take that into
4 consideration to see if we can work something out.

5 And I would welcome any input from any of
6 the Commissioners at any point in time as to how we
7 can better disseminate information.

8 **COMMISSIONER LEE:** Chair, if I could make
9 a comment?

10 I think your -- I agree with the Chair.
11 We'd be in big trouble if the Staff was not here,
12 you know. If there was a brand new staff, we'd be
13 lost, you know, so we definitely appreciate that the
14 Staff has a lot of experience. And I agree, the
15 thing to do is to overcommunicate.

16 I noticed that for this meeting there was
17 a lot more communication than in previous meetings,
18 so we're moving in the right direction. One
19 suggestion would be if anything new is posted, of
20 course, earlier the better, you know, depending on
21 your partners that you have to deal with, but any
22 time anything new is posted, if you could let us
23 know.

24 Because sometimes the minutes are posted
25 and I think, okay, I've read the minute. But if I

1 didn't check again, I wouldn't know that there was
2 an amended minutes, you know? So if something new
3 is posted, in the old days they would just give --
4 mail us a copy or send us an email of the actual
5 thing, which is cumbersome, but at least let us know
6 that we've posted something new whenever that
7 happens. That would be helpful.

8 **MR. ORODENKER:** Thank you, Commissioner
9 Lee. That is very easily done, and we will make
10 sure that we do that.

11 **CHAIRMAN GIOVANNI:** Let me ask a question
12 to Commissioners. It just popped in my head. I
13 think you guys know that I read from a script at
14 every one of our hearings almost word for word, the
15 script that's prepared by Ariana and Martina and
16 Scott and the Staff.

17 You probably review it as well, Dan.

18 Would it be helpful for you guys to have a
19 copy of that so you know what's involved or is it
20 good enough just the way we do it? That's easy to
21 do. They just send it out by email to me the day
22 before the meeting. So if you want it, let me know
23 or let them know. No problem with that.

24 **COMMISSIONER OHIGASHI:** I have a question
25 from --

1 **CHAIRMAN GIOVANNI:** Lee.

2 **COMMISSIONER OHIGASHI:** Dan, can you tell
3 us -- the eel -- can you tell us generally how you
4 guys go about writing up Staff reports? And just
5 generally assigning them out and how you guys go
6 about writing D&Os.

7 **CHAIRMAN GIOVANNI:** It's all by AI now.
8 No, just kidding.

9 It's actually -- I mean, it sounds like
10 it's a simple process but it's not. When we do a
11 staff report, one of the -- first of all, different
12 -- and we're missing a planner right now, and we're
13 trying to fill it desperately. But you know, we
14 would parcel out -- I parcel out the different
15 petitions, motions, whatever to various Staff so --
16 to handle.

17 Scott does the most complex ones because
18 he's our Planner V and he's been around the longest.
19 Martina does a lot of them, too. And then what they
20 do is first they go back to the file and they look
21 at everything that's on file to see if there's any
22 relevance to what's currently happening.

23 An example of that, coming up will be
24 Waimanalo Gulch. There's a huge file on Waimanalo
25 Gulch, but the motion to extend is only relevant

1 from a certain point in time forward. So once they
2 determine what is relevant in the historical file,
3 they'll put that into a Staff report. And that's
4 why you see on the Staff reports, there's often a
5 long history of the case if it's relevant.

6 Then what happens is that they do a
7 synopsis of the various filings, the Petitioner's
8 filings, the OPSD's filings, and the County's
9 filings. As I said, some of the difficulty with
10 that is that OPSD doesn't file until a couple of
11 days before the hearing, but you know, we try and
12 get as much information in there as we can.

13 With regard to the issues that are
14 presented, those come from the filings. And the
15 issues that are raised by the petitions themselves,
16 by the motions or whatever, in conjunction with
17 Chapter 205. And the Planners will then -- if they
18 -- they'll look at Chapter 205 to sort of figure out
19 what sections of Chapter 205 are implicated so the
20 Commissioners know what the parameters are and what
21 they need to do to render a decision.

22 The final portion of the Staff report
23 notices concerns that Staff has, and those are
24 things that we don't know the answer to but we
25 should or we should get out of the Petitioner or the

1 County or the State. Those are done -- well, from a
2 practical standpoint, what happens is the Planner
3 who is assigned to that particular petition does a
4 first draft, and then we do peer review. The other
5 Planners look at it to make sure that they don't see
6 anything that was missed. And then I review it from
7 the standpoint of if I was a Commissioner and I
8 didn't know anything about this case, is this
9 sufficient. And once that's completed, we finalize
10 it and send it out.

11 If it's -- there's a lot of legal issues
12 involved, we'll run it by the AG first. And that's
13 how Staff reports -- it's an arduous process on
14 complicated cases because it means we have to pull
15 apart the historical file.

16 I commend Staff because it does take a lot
17 of time and a lot of effort to get to there. The
18 differences are when we have something like we had
19 today, which is a status report, where what's really
20 happening is that Staff is communicating with
21 everybody, OPSD, the County, and the Petitioners to
22 find out, you know, hey, you know, are we missing
23 something here. Do we need to call you in or do you
24 have a quick and dirty answer for this. And then
25 the Staff, of course, look a little bit different.

1 Does that answer your question? I don't
2 know if I --

3 **COMMISSIONER OHIGASHI:** -- the second part
4 about D&Os and how those are prepared, generally.

5 **MR. ORODENKER:** I'm sorry. Okay. When
6 D&Os are prepared, we -- okay. We haven't had any
7 DBAs in a while, but usually when there's a DBA, we
8 ask the parties to give us proposed Decisions and
9 Orders. And those become the backbone of the final
10 decision and order. Staff uses those to cite back
11 to the record and then massages them so that they
12 end up looking like what the Commission decided.

13 With -- up until recently with motions and
14 status reports and things like that, we're creating
15 them from scratch. I mean, the Staff is actually
16 creating them from scratch. That can be a long
17 process because often the AG has to weigh in on
18 that, and -- not often but always the AG has to
19 weigh in on that.

20 **COMMISSIONER OHIGASHI:** So when you're
21 crafting the D&O, you also have advice from the
22 Attorney General as to whether or not this meets the
23 necessary factual requirement necessary to support a
24 conclusion of law or a finding of fact or things
25 like that. So you have the AG to review everything,

1 is that right?

2 **MR. ORODENKER:** Yes. Although the AG
3 gives a lot of deference to the findings of fact
4 made by the Commission, and they're really -- Julie
5 can answer this better than I can -- they're really
6 looking at it for legal sufficiency.

7 **MS. CHINA:** Really, ultimately, the
8 decision is that of the Commission, what you want
9 in, what you want out, you know. You want to add
10 stuff in, it's your call. What we do is we review
11 it to make sure that it complies with the statute
12 and the administrative rules and that it's -- and
13 you know, it would pass muster, you know, if
14 appealed.

15 **COMMISSIONER OHIGASHI:** Okay. Just to be
16 clear, then the D&O comes to -- the proposed D&O
17 comes to the Commission for its final vote on it, is
18 that right?

19 **MR. ORODENKER:** That's correct.

20 **COMMISSIONER OHIGASHI:** And then that's
21 how the process works.

22 **MR. ORODENKER:** Yes.

23 **COMMISSIONER OHIGASHI:** Okay. I just
24 wanted to know.

25 **CHAIRMAN GIOVANNI:** I think there's maybe

1 one other step, or maybe you said it and I didn't
2 get it, but you get a first draft and people looking
3 at it, but don't you have Commissioners that look at
4 it as well?

5 **MR. ORODENKER:** If a particular
6 Commissioner takes an interest in that D&O, we will
7 -- usually at their request, we'll give it to the
8 Commissioners for review. There's a twist to that,
9 though, because if the Commissioner actually drafts
10 the D&O, then the process changes. Our rules would
11 require a completely different process for adoption.

12 **CHAIRMAN GIOVANNI:** Explain that.

13 **MR. ORODENKER:** I believe -- I don't have
14 -- it's never happened, so I don't have the section
15 in front of me, but maybe Scott can help me out a
16 little bit here. If a Commissioner drafts a D&O,
17 doesn't it have to go to the Commission first? And
18 then the decision gets made or something like that?

19 **MR. DERRICKSON:** Yeah. It's part of
20 Chapter 91, I believe, that if one of the
21 Commissioners -- one or more Commissioners are
22 involved in drafting proposed decision and order,
23 then all the parties have to be served of that
24 proposed decision and order, and there has to be
25 allowance for comments on that. Then a final

1 decision and order based on that would have to be
2 brought to the Commission. You know, redrafted,
3 brought to the Commission for approval.

4 **CHAIRMAN GIOVANNI:** So I think I'm looking
5 for a half step. That was a full step. So if you
6 have a draft D&O and it is complicated, has a lot of
7 different parts to it, but if there's a -- let's say
8 one condition that is of particular interest to one
9 Commissioner and you know that because that
10 Commissioner in the actual hearing drove that
11 condition. Does that -- does that -- how does that
12 process work when you want that Commissioner to look
13 at that one condition?

14 **MR. ORODENKER:** Well, what happens -- and
15 I know of circumstances, and that is a regular
16 occurrence, but what we will do is we'll run it by
17 that Commissioner and say: Is this what you meant?

18 **CHAIRMAN GIOVANNI:** Yeah, right. That's a
19 very important step, I think.

20 **MR. ORODENKER:** Yeah.

21 **COMMISSIONER OHIGASHI:** And at the -- when
22 you adopt a D&O, I've seen modifications made by the
23 Commissioners at that stage of the --

24 **CHAIRMAN GIOVANNI:** Yeah.

25 **COMMISSIONER OHIGASHI:** -- up to that

1 order and decision. So I'm just wanting -- I know
2 it's a complicated matter, but I just wanted to be
3 sure that everybody understands that everybody's a
4 part of the D&O. The final decisions are made by
5 the Commission, and that input even up to the
6 adoption of it can be made by motion, of course, if
7 it's sustained or not at that time. Is that right?

8 **MR. ORODENKER:** Yeah. We have had
9 situations where the recommended changes by the
10 Commissioners have been such that we've had to say,
11 okay, we'll go back and redraft and then we'll have
12 another meeting for adoption, and that happens.

13 **COMMISSIONER OHIGASHI:** Thank you.

14 **COMMISSIONER LEE:** Chair, okay, so I have
15 some experience with that, and that seems like a
16 much better method than letting a Commissioner draft
17 it. You know, to have the Commissioner propose a
18 modification or an amendment, but the -- but the
19 first draft I think should come from the Staff based
20 on their recommendations and their expertise and
21 their knowledge, and then, you know, of course, it's
22 up to the Commissioners to amend that or not, but I
23 think that's what Staff is there for is to rely on
24 them and --

25 And there's one more wrinkle to the whole

1 packet thing. A bill passed this session effective
2 already, HB1598, which says that the board packets
3 need to be made -- published on the website two days
4 before the meeting and that public testimony should
5 be distributed even up to right before the meeting
6 starts. So I just wanted to call that to your
7 attention if you didn't know about that already.

8 **MR. ORODENKER:** Thank you, Commissioner.
9 We do know about that already and we have been doing
10 that.

11 **COMMISSIONER LEE:** Oh, so that means our
12 Check Point site might be moot, then. Invite all --
13 it would almost be the public version.

14 **MR. ORODENKER:** Well, we maintain the
15 Check Point, first of all, for convenience because
16 then you don't have to search through the website to
17 see a lot of that stuff. But second of all, because
18 it's not uncommon for us to get advice from the AGs
19 that is privileged. And so that's one of the
20 reasons that we maintain it.

21 **CHAIRMAN GIOVANNI:** Commissioner Carr
22 Smith?

23 **COMMISSIONER CARR SMITH:** Yeah. It seems
24 like the testimony is now in an easier spot to find,
25 yeah? Is that -- or is that coincidence? In some

1 past cases it was hard to find it. It wasn't with
2 our documents in Check Point.

3 **MS. KWAN:** I mean, in Check Point it's on
4 the docket page and we just link the docket page and
5 there's a tab for public comments. That website
6 template has been active for two years, three years,
7 the template. The template itself is relatively
8 new, but yeah, it's always been like that since we
9 switched over to this new template --

10 **COMMISSIONER CARR SMITH:** Yeah, yeah.

11 **MS. KWAN:** -- with "Public Comment" tab
12 right there.

13 **COMMISSIONER CARR SMITH:** Okay.

14 **COMMISSIONER LEE:** Yeah. I think there
15 was a recent example where it was on admin rules,
16 and the admin rules weren't in the agenda section.
17 It was in the admin rules section, so if you didn't
18 look in the -- if you just looked in your what's
19 coming up for the agenda, you would have missed it,
20 so that -- that may have been one of the things you
21 had noticed.

22 **COMMISSIONER CARR SMITH:** Well, even in
23 the amended -- the amended decision and order today
24 that we didn't really have access to. I'm not being
25 critical. I'm just pointing it out as a thing to

1 remember.

2 What's that?

3 **MS. KWAN:** It wasn't on the docket page
4 because it wasn't an active filing for today's
5 meeting. It was an old historical document, so it
6 was located on the historical page. So that's how
7 the website is broken up, what's the current status
8 report page and what has been filed for that status
9 report. And then if you go to the main page for
10 that docket, it will have the historical years,
11 historical D&Os, historical documents, but yeah,
12 you're supposed to treat the meeting by what's filed
13 for that meeting for your decision. Right?

14 **COMMISSIONER OHIGASHI:** Maybe you should
15 do a tutorial for all new Commissioners on how to
16 use the page.

17 **MR. ORODENKER:** We can do that at our --

18 **CHAIRMAN GIOVANNI:** Well, we've got a
19 training coming up.

20 Dan, do you have any questions for us? Or
21 suggestions?

22 **MR. ORODENKER:** No. I -- other than the
23 fact that I -- it helps if I know what information
24 that you're looking for, for a particular docket or
25 agenda. The more that you communicate with me, the

1 easier I can -- more responsive that I can be. I
2 mean, I try and stay in touch with the
3 Commissioners, but I also have to recognize that
4 this is just a volunteer part-time gig, so --

5 **CHAIRMAN GIOVANNI:** Yeah. And you've got
6 to recognize -- and I'm quoting a Commissioner here,
7 we don't know what we don't know. So we can't ask
8 for what we don't know.

9 **MR. ORODENKER:** Yeah, I understand that.
10 That's why I, like I say, try to call the
11 Commissioners before every hearing and at least give
12 them what I see as the pertinent issues and things
13 like that. And like I keep saying, I really
14 encourage you to ask questions when I call. We
15 usually try and get the Staff reports out on Friday,
16 first of all, because we have to by law now. But
17 second of all, because it gives the Commissioners
18 the opportunity over the weekend to read them, and
19 then I usually make calls on Monday and Tuesday
20 before the hearings to see if there's any questions.

21 I will take your suggestions to heart,
22 though, about sending the Commissioners notice
23 whenever something comes in and it's posted for
24 their review.

25 **COMMISSIONER LEE:** Yeah. I'd just like to

1 add that, in general, I found the Staff reports
2 really good. I mean, the information is all there.
3 More times than not it's because we didn't read it
4 because I hear sometimes the questions that are
5 asked is that some people may or may not have
6 actually read the report because it's been asked and
7 answered in there. I'm not accusing anybody. But
8 you know, it happens. That's why if we are notified
9 that something new has been posted, it's very
10 helpful.

11 **MR. ORODENKER:** I appreciate that, and we
12 -- Staff will take that to heart.

13 **COMMISSIONER OHIGASHI:** In fact, I think
14 that the Staff reports are so good that they sort of
15 like require some questions to be asked.

16 **CHAIRMAN GIOVANNI:** Okay. Let me ask the
17 Commissioners, anything else you want to put on the
18 record today directly to -- or anything I missed?

19 Nancy?

20 **COMMISSIONER CARR SMITH:** I didn't know
21 whether we were going to have any conversation about
22 the budget or the contract since we asked for those
23 things?

24 **CHAIRMAN GIOVANNI:** Well, I think that on
25 the budget, you're -- it's -- it was FYI and you got

1 the opportunity to ask Dan any questions you want
2 about it. I don't think it's -- I didn't anticipate
3 a general discussion on that.

4 But for the salary and whether or not you
5 want to address any contract terms, that will be
6 agendized for the next meeting.

7 **MR. ORODENKER:** If the budget -- it
8 literally took me years, and not in this position
9 but in a prior position, to understand state
10 budgets, and they don't make sense, to be honest
11 with you. You know, when I was running Molokai
12 Ranch, if I would have budgeted like that in front
13 of Singapore, they would have fired me on the spot.

14 But just for your edification, each one of
15 these hearings when we travel costs us between 6 and
16 \$8,000. If we don't -- and the way the budget is
17 set up it assumes that we're going to be travelling
18 every two weeks. So -- and we don't, so there is
19 some surplus there. We also have a couple of
20 vacancies right now, so there's surplus there.

21 On a year-to-year basis it's always
22 difficult. And the money allocated, for instance,
23 for a Planner V is assuming that that Planner V is
24 at the top of the scale. But when we hire a new
25 one, we may hire somebody at a lot less. These

1 little things that don't show up in the budget --
2 because I mean, we don't even do a projected cash
3 flow, so I -- when I asked our accounting staff for
4 projected cash flow, they lock up.

5 The past couple of years we've had
6 significant leftover funds that we've used to buy
7 things like this and stuff like that. So the budget
8 is not an iron-clad thing. I just would forewarn
9 you about that. And it -- money gets moved around
10 all over the place all the time.

11 We have categories in that budget that are
12 totally obsolete, but if I take them out, then I
13 have to do a month's worth of paperwork to explain
14 why and why I want to reallocate the money to
15 another section, so it's easier for me to just lead
16 them in and then spread the money around, yeah. So
17 --

18 **CHAIRMAN GIOVANNI:** George?

19 **COMMISSIONER ATTA:** Yeah. You know, one
20 discussion that we had that, you know, that I think
21 it's not the evaluation, but the question comes up
22 what is the role of the LUC in this -- I guess what
23 you call in this kind of a State government, you
24 know. And especially if the question is, you know,
25 what kind of leadership role should we play, because

1 the -- our tools are for implementation of very
2 limited -- limited, and so -- but yet, at the same
3 time, we do have a sense of leadership that the
4 state agencies -- about the things that are coming
5 into the future.

6 And so I was just wondering if it's
7 something that the Staff and the Commission would
8 spend some time to think about the role of the Land
9 Use Commission from here on out. I think that would
10 be useful in both expecting but especially, you
11 know, you and the Commission, who's playing what
12 kind of role. And I think we -- we should be a
13 leadership. That's just my personal feeling, but
14 you know, I think we should.

15 And if we have to call the different
16 agencies and call them up, like I noticed today, you
17 know, OP and HHFDC, they didn't -- the head people
18 of those agencies and not before us, and so you
19 know, we can't really ask them. Maybe we ask them,
20 what -- where do they get the direction, and they
21 have -- if it's not them, they have to go to higher
22 up in their agency. And so that says something
23 about what they're -- what they're looking at LUC's
24 position. So I think it's worth looking at.

25 **MR. ORODENKER:** Thank you, Commissioner.

1 This is probably what I spend most of my time
2 worrying about. And when I say that I don't mean
3 that Staff wants to drive Commissioners in one
4 policy direction over another. That's not our role.
5 But this -- the role of this Commission has changed
6 many times over the years in terms of, you know,
7 driving policy.

8 What Staff does and what we try and do --
9 and that's reflected in some of the rule amendments,
10 and, by the way, we're completely changing that rule
11 amendment proposal and it will look completely
12 different when it comes back in front of you -- is
13 to be in front of a lot of these issues. I mean,
14 once sustainability became a big deal back five or
15 six years ago, we amended our rules to make that
16 part of the process.

17 OPSD is supposed to give us policy
18 guidance. When -- under different administrations,
19 OPSD took that role a lot more seriously. Towards
20 the end of the last administration, towards this
21 administration -- let me back up.

22 The Land Use Commission is a tremendous
23 tool for the State. I mean, you can -- you know,
24 land and power in Hawaii, right? It can really
25 impact how the State looks what its economic

1 activity is, even, and all the rest of that stuff.

2 But the Governor has to recognize that. Some
3 governors do. Some governors don't.

4 I think we're in a situation right now
5 where there's a disconnect, a little bit of a
6 disconnect. We understand what the Governor's
7 policy is, which is to promote housing. We're very
8 cognizant of that. But we don't -- OPSD is not
9 giving us any information with regard to some of the
10 Governor's other initiatives which are food
11 sustainability and renewable energy.

12 We had a manager's meeting the other day
13 at Department of Business and Economic Development
14 where it was decided that DBEDT itself, since we
15 didn't get any -- we were trying to get the
16 legislature to give us, you know, some money and
17 some guidance on this. DBEDT itself is going to be
18 undertaking a study with regard to how all those
19 things interplay with each other.

20 This is this -- you know, sort of like
21 what's the direction that we're getting, for lack of
22 a better word. It makes it hard for the
23 Commissioners to understand what they're supposed to
24 be doing and to recognize that.

25 We're planning on having a general

1 discussion about this at our training session. And
2 a lot of that is not so much so that we can tell the
3 Commissioners, you know, what their role is, but to
4 find out from the Commissioners what they want their
5 role to be. I mean, that's -- you know, like I
6 said, we're here to support the Commission. If this
7 Commission decides it wants to be in the forefront
8 of sustainable energy, we'll do that, you know?

9 But I think that my message here is that
10 this Commission can make -- in this situation given
11 the current administration, this Commission within
12 certain boundaries can make of it what it wants.
13 But we do have the potential to be a leadership
14 organization.

15 **CHAIRMAN GIOVANNI:** I think that's a good
16 note to end on. Unless somebody wants to make a
17 speech, anybody have a motion to adjourn?

18 **COMMISSIONER YAMANE:** Move to adjourn, Mr.
19 Chair.

20 **COMMISSIONER OHIGASHI:** Second.

21 **CHAIRMAN GIOVANNI:** I thought we had
22 addressed that for you, Nancy, did we not?

23 **COMMISSIONER CARR SMITH:** (Inaudible.)

24 **CHAIRMAN GIOVANNI:** No. My position is
25 that it's a unique science that's understood by few

1 and the best way to do a deeper dive on the budget
2 is to get one on one with Dan.

3 **MR. ORODENKER:** I would be more than
4 happy.

5 **CHAIRMAN GIOVANNI:** Not to go into a
6 public session about it.

7 **MR. ORODENKER:** In actuality, having a
8 public session on our budget would probably make the
9 Governor and B&F --

10 **CHAIRMAN GIOVANNI:** Very nervous --

11 **MR. ORODENKER:** Yeah.

12 **COMMISSIONER LEE:** You can discuss that in
13 Executive Session next time.

14 **CHAIRMAN GIOVANNI:** I have a motion and a
15 second to adjourn. All in favor?

16 **(All said, "Aye.")**

17 **CHAIRMAN GIOVANNI:** Opposed?

18 We're adjourned at 2:19.

19 **(The HAWAII LUC meeting adjourned at 2:19**
20 **p.m.)**

21

22

23

24

25

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 24th day of May, 2024.



Jodi Dean