

1 Land USE COMMISSION

2 STATE OF HAWAI'I

3 PROCEEDINGS HELD ON MAY 9, 2018

4 COMMENCING AT 9:00 A.M.

5 Maui arts & cultural center

6 ALEXA HIGASHI MEETING ROOM

7 One Cameron Way

8 Kahului, Maui, Hawai'i 96732-1137

9
10 AGENDA

11 I. Call to Order

12 II. Adoption of Minutes

13 III. Tentative Meeting Schedule

14 IV. ACTION SP08-402 Department of Environmental
15 Management, County of Maui to Consider a
16 30-year Time Extension to the Existing State Special
17 Use Permit in Order to Continue Ongoing Landfill
Operations at the Hana Landfill Situated Within the
State Land Use Agricultural District at Hana, Maui,
Hawai'i, Tax Map Key: 1-3-06:Por. 7 and Por. 12.

18 V. Status Report and Action (If Necessary)
19 A05-755 Hale Mua Properties, LLC (Maui)

20 VI. ACTION A07-773 Emmanuel Lutheran Church of Maui
21 Consider Waikapu Development Venture LLC's
22 Motion to be Copettitioner, or in the Alternative to
23 become a Party, or in the Alternative to Intervene

24 VII. ACTION A07-773 Emmanuel Lutheran Church of Maui
25 Consider Emmanuel Lutheran Church of Maui's
Motion to Extend Time to Complete Project

1 COMMISSIONERS:

2 ARNOLD WONG, Chair
JONATHAN SCHEUER, Vice Chair
3 AARON MAHI
LEE OHIGASHI
4 DAWN CHANG
NANCY CABRAL
5 GARY OKUDA

6 DANIEL E. ORODENKER, Executive Officer
RILEY K. HAKODA, Chief Clerk/Planner
7 BERT SARUWATARI, Planner
SCOTT A.K. DERRICKSON AICP-Planner

8
DIANE ERICKSON, ESQ.
9 Deputy Attorney General

10 DAWN APUNA, ESQ.
Deputy Attorney General
11 LORENE MAKI, Planner
TOMAS OBERDING, Planner
12 For Office of Planning

13 MICHAEL HOPPER, ESQ.
Deputy Corporation Counsel
14 PAUL FASI, Planner
JEFFREY DACK, Planner
15 TARA FURAKAWA, Planner
Department of Planning
16 County of Maui

17 ROBERT SCHMIDT
Solid Waste Operations Manager
18 County of Maui

19 ELAINE BAKER
Environmental management
20 Solid Waste Division
County of Maui

21
MURRAY SMITH
22 For Southwest 7

23 PETER HOROVITZ, ESQ.
Merchant Horovitz & Tilley
24 For Waikapu Development

25

1 APPEARANCES CONTINUED:

2 JENNIFER LIM, ESQ.

DEREK SIMON, ESQ.

3 Carlsmith Ball

For Emmanuel Lutheran Church (Maui)

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1 CHAIRPERSON WONG: Good morning. This is
2 the May 9th, 2018 Land Use Commission meeting.

3 The first item on the agenda is the
4 adoption of the April 2018 minutes. Any comments or
5 corrections on them?

6 Seeing none, is there a motion to adopt the
7 minutes?

8 VICE CHAIR CABRAL: Move to adopt.

9 COMMISSIONER MAHI: Whatever, second.

10 CHAIRPERSON WONG: A motion has been made
11 by Commissioner Cabral, Commissioner Mahi seconded.

12 All in favor say "aye". Any opposed?

13 None. Minutes have been adopted for April 19th.

14 The next agenda item is the tentative
15 meeting schedule. Mr. Orodener.

16 EXECUTIVE OFFICER: On May 23rd we will be
17 in Kona at NELHA for Waikoloa Heights and Shopoff,
18 Lanikai and HHFDC status report.

19 May 24th on will be on Oahu at the airport
20 for Hartung Bros. and IAL, and status report on
21 A92-683.

22 June 14th we will again be on Maui on
23 A89-649 status and LUC training.

24 On June 28th, we will be on Oahu for Kualoa
25 Ranch, and on July 11, 2018 we will be back on Maui

1 for Ka'ono'ulu Ranch status report.

2 The remainder of the calendar is open.

3 CHAIRPERSON WONG: Thank you, Mr.

4 Orodenker.

5 SP08-402 Department of Environmental
6 Management, County of Maui

7 This is an Action Meeting on Docket
8 SP08-402, Department of Environmental Management,
9 County of Maui to consider a 30-year time extension
10 to the existing State Special Use Permit in order to
11 continue ongoing landfill operations at the Hana
12 Landfill situated within the State Land Use
13 Agricultural District at Hana, Maui, Hawai'i, Tax Map
14 Key 1-3-06: Portion 7 and Portion 12.

15 Will the parties please identify themselves
16 for the record?

17 MS. BAKER: Elaine Baker, Solid Waste
18 Division, County of Maui.

19 MR. SCHMIDT: Bob Schmidt, Solid Waste
20 Operations Manager.

21 MR. HOPPER: Michael Hopper, Deputy
22 Corporation Counsel with Maui County Department of
23 Planning.

24 MR. FASI: Paul Fasi, Planning Department,
25 County of Maui.

1 MS. APUNA: Dawn Apuna on behalf of Office
2 of Planning. Here with me today is Tomas Oberding.

3 CHAIRPERSON WONG: Thank you.

4 I will now call for those individuals
5 desiring to provide public testimony on Docket
6 SP08-402 to identify themselves. All such
7 individuals will be called in turn to our witness box
8 where they will be sworn in prior to their testimony.

9 The Chair would like to note from time to
10 time I will call for short breaks.

11 After the completion of the public
12 testimony portion of this proceeding, we'll commence
13 with the hearing on this case.

14 Is there any person for public testimony?

15 EXECUTIVE OFFICER: Marty Smith signed up.

16 MR. SMITH: Yes, I'm sorry, I probably
17 signed in error. I am here on item V.

18 CHAIRPERSON WONG: Anyone else wanting to
19 provide public testimony on Hana Landfill? Going
20 once, twice. Seeing none, let's continue.

21 On April 12th, 2018, the Commission
22 received the partial record of the County of Maui
23 Planning Commission's proceedings recommending
24 approval of Applicant's application for amendments to
25 the Special Permit.

1 On April 19th and 23rd, 2018, the
2 Commission received additional parts of the record of
3 the County of Maui Planning Commission's proceedings
4 recommending approval of Applicant's application for
5 amendments to the Special Permit.

6 On April 26, 2018, a copy of the Hana
7 Community Association's correspondence to the Maui
8 Planning Commission was received to complete the
9 record.

10 On May 1st, 2018, the Commission mailed the
11 May 9th, 2018 Land Use Commission meeting agenda
12 notice to the parties and to the Statewide and Maui
13 mailing lists.

14 Let me briefly describe our procedure for
15 today on this docket.

16 First, I'll give opportunity for the
17 Applicant to comment on the Commission's Policy
18 governing reimbursement of hearing expenses.

19 The Applicant will then make its
20 presentation.

21 After the completion of Applicant's
22 presentation, we will receive any public comments
23 from the Maui County Department of Planning.

24 After the completion of County's
25 presentation, we will receive any public comments

1 from the State Office of Planning.

2 After we receive public comments from the
3 State Office of Planning, the Commission will conduct
4 its deliberations.

5 Are there any questions on procedures for
6 today?

7 MS. BAKER: No.

8 MR. HOPPER: No.

9 MS. APUNA: No.

10 CHAIRPERSON WONG: Thank you.

11 Department of Environmental Management,
12 please proceed with your presentation.

13 MS. BAKER: Okay. Hana landfill is a small
14 landfill in East Maui. It receives approximately
15 four tons a day. Since we last applied for a Special
16 Permit, we have no longer accepted construction and
17 demolition waste. We no longer accept junk vehicles.
18 We don't collect and receive white goods or scrap
19 metal.

20 We do have collection events for those on a
21 quarterly basis where containers are brought in and
22 material collected, and it's hauled out after the
23 event, which occurs on a weekend.

24 We no longer accept green waste except as
25 it's separated, and it too is hauled out to the

1 compost site at Central Maui Landfill.

2 So basically we're down to just household
3 municipal solid waste. And as we -- there's no heavy
4 industry in the Hana area, so we don't get that much
5 objectionable materials.

6 We do test, sample and test the groundwater
7 quarterly, and report to the Department of Health on
8 the results. And our groundwater is good. We're
9 still in the Detection Monitoring Program.

10 We do use alternative cover. We tarp three
11 days a week, and then at the end of the week, we
12 cover with soil. Soil is now brought in. We have
13 vacated the cinder pit. We're no longer hauling
14 cinder from the local cinder pit to the landfill.

15 So we have basically changed since we were
16 last here to reduce the amounts and types of solid
17 waste that we handle out there.

18 CHAIRPERSON WONG: County, any questions?

19 MR. HOPPER: Questions? No.

20 CHAIRPERSON WONG: OP, any questions?

21 MS. APUNA: No questions.

22 CHAIRPERSON WONG: Commissioners, any
23 questions for the Applicant? Commissioner Cabral.

24 VICE CHAIR CABRAL: Yes. You referred to
25 some of this, and I don't know, I'm from the Big

1 Island, so I don't know your geography that well.

2 My question was, you're referring that
3 you're taking a lot of this waste to the Central
4 Landfill on an ongoing basis.

5 The question: How far away is that? And
6 how impractical, or what is the situation with the
7 ability of possibility to transfer all of it on an
8 ongoing basis to the Central in order to not
9 necessarily have a landfill in this Hana location?

10 MS. BAKER: Well, actually we looked at
11 that approach, but the Department of Health was not
12 keen on us shutting down the Hana Landfill all
13 together because it's so remote, and traffic on Hana
14 Highway is subject to interruption due to mudslide,
15 rain events, problems with the road.

16 So the Department of Health did not want us
17 transferring out all of the waste.

18 So as far as the mileage, it's 55 miles one
19 way, approximately, to Puunene where the Central
20 Landfill is located. And we only haul out the
21 greenwaste which is only a portion of the waste. And
22 as I said, on a quarterly basis scrap metal and white
23 goods.

24 VICE CHAIR CABRAL: Thank you. Excellent
25 response.

1 What is white goods, though?

2 MS. BAKER: Washers and dryers,
3 refrigerators, freezers.

4 VICE CHAIR CABRAL: Thank you very much.

5 CHAIRPERSON WONG: Commissioner Okuda.

6 COMMISSIONER OKUDA: I have a question
7 about what's in the record.

8 Before I ask that question, the request is
9 for extension of 30 years on the permit; is that
10 correct?

11 MS. BAKER: Yes.

12 COMMISSIONER OKUDA: Is there anything in
13 the record, or is there an EIS or EA in the record
14 with respect to this application or this request for
15 extension?

16 MS. BAKER: We didn't do an EA because this
17 time extension -- we have done two EAs in the recent
18 past, in 2003, to expand our landfill boundary, not
19 an actual footprint, but a buffer zone around the
20 landfill.

21 And we're currently working with the
22 Department of Land and Natural Resources to acquire
23 that land with an executive order, along with other
24 state agencies. That's what is taking so long.

25 But we did subdivide a portion of Parcel 7

1 to add to the landfill.

2 Then we also did an EA for our recent makai
3 clean up. We had an old landfill on the makai side
4 of the parcel, and we're removing that waste. We'll
5 take out the metals and haul those to Central
6 Recycler in Central Maui. But we did do an EA for
7 that as well. So we have done two EAs, and that was
8 done in 2016.

9 COMMISSIONER OKUDA: But for this specific
10 request to extend the permit for 30 years, was an EA
11 or EIS prepared for that?

12 MS. BAKER: No, not for this action.

13 COMMISSIONER OKUDA: Just a general
14 question, maybe a general question to the parties.

15 Do any of you believe or don't believe that
16 under the Supreme Court case Unite Here! Local 5
17 versus City and County of Honolulu which is 123
18 Hawai'i at 150, whether an EIS or an EA is required?

19 That's my question. And I would be
20 interested to know if anyone has an answer to that.

21 MS. BAKER: Well, we respond to the
22 triggers of using county lands or county funds.

23 COMMISSIONER OKUDA: Yeah, but didn't
24 Supreme Court in that case state that if there's, for
25 example, extensions of time or changes of time or

1 lapse of time, that under certain circumstances, or
2 those type of circumstances that would require either
3 an EA, EIS or an update?

4 MS. BAKER: I'm not familiar with that
5 interpretation. As I say, the triggers we have used
6 historically is the use of county lands or county
7 funds, and generally that's in support of a new
8 activity, not an established activity.

9 The Hana Landfill has been there since the
10 late sixties.

11 COMMISSIONER OKUDA: I don't mean to debate
12 this, it's just a question I have that passage of
13 time sometimes requires an update or supplemental EIS
14 or some type of supplemental pleading.

15 My only question is whether or not that was
16 considered here or resolved. I'm not saying the fact
17 that it hasn't been considered would necessarily
18 require denial, it's just a question I have.

19 MS. BAKER: No, we did not do an EA for
20 this. Our last EA was done two years ago for the
21 makai (unintelligible) project.

22 COMMISSIONER OKUDA: Let me be more
23 specific in my question.

24 The question is whether any of the parties
25 here considered whether or not -- specifically

1 considered whether or not the Unite Here! Local 5
2 versus City and County case applied or not, whether
3 that was specifically considered. Thank you.

4 CHAIRPERSON WONG: Any other questions?
5 Commissioner Chang.

6 COMMISSIONER CHANG: Good morning.

7 It does appear that the county is trying to
8 reduce the amount of waste that goes into the
9 landfill. I am interested in Condition 16 relating
10 to the Cultural Assessment.

11 What were the findings in the Cultural
12 Assessment and what was OHA's comments, responses, if
13 any?

14 MS. BAKER: The Cultural Assessment done
15 for the expansion at that time, or conditions of our
16 permits here?

17 MR. HOPPER: She's referencing Condition
18 16.

19 Just to clarify, talking about Condition 16
20 of the existing Land Use Commission permit?

21 COMMISSIONER CHANG: Yes.

22 MS. BAKER: That was done by Hanapono.
23 Yes, we did a report, and OHA's response to that was
24 approval of the report, and the main findings of that
25 report was that we were to leave the cinder pit

1 within five years, which we have done.

2 The concern of the cultural assessment was
3 basically we were, by continuing to mine the cinder,
4 we were changing the topography from the topography
5 that existed from the -- when the ancestors were
6 living in the area. So we have vacated the cinder
7 pit. We no longer mine it.

8 COMMISSIONER CHANG: Were there any other
9 comments that you received on the cultural
10 assessment?

11 MS. BAKER: That was the main one,
12 basically to leave the cinder pit because we were
13 changing the topography from what had existed from
14 when the ancestors lived in the area.

15 COMMISSIONER CHANG: What's the distance of
16 the landfill to the ocean?

17 MS. BAKER: We're right there. There's a
18 250-foot wide buffer zone between us and the ocean,
19 and that's why we're removing all of the old trash
20 that's on the makai side of our parcel.

21 COMMISSIONER CHANG: Thank you very much.

22 CHAIRPERSON WONG: Commissioner Scheuer.

23 VICE CHAIR SCHEUER: Good morning.

24 Can you point to me where in the record, if
25 it's there, is the reason behind seeking a 30-year

1 time extension rather than the shorter period of
2 time?

3 MS. BAKER: Well, the 30-year time period
4 is in alignment with the estimated life of the
5 landfill. The estimated life was 59 years based on
6 our last topography which was done a year ago. But
7 since then we have moved some of the waste over from
8 the makai side. So it seemed reasonable to at least
9 approach -- we expect we will reduce the life of the
10 landfill from 59 years by moving the waste from the
11 makai side, so that will approximate 30 years.

12 But it was basically to be able to operate
13 within a time period that is close to the remaining
14 life of the landfill.

15 VICE CHAIR SCHEUER: Is that in the record?

16 MS. BAKER: Paul, is it in the record?

17 MR. FASI: Yes.

18 VICE CHAIR SCHEUER: Could you point out to
19 me where in the record that is, please?

20 MR. FASI: The request for 30 years?

21 VICE CHAIR SCHEUER: The justification for
22 30 years as opposed to a shorter period of time.

23 MR. FASI: No, that part is not in the
24 record. That was a report done by MEHR and I didn't
25 put that in the record.

1 The request basically was from DEM, and I
2 basically asked their time frame period, and it was
3 30 years via email to the department.

4 MR. HOPPER: I think we would also state
5 that in entering your question I think that's
6 something you do have as a matter of record now as
7 well from the department, and they've explained their
8 reasoning as well, if there was a reason to rely on
9 that for a Decision and Order in the future --
10 (inaudible).

11 If there is additional information you
12 want, I think the department could get that to you.

13 VICE CHAIR SCHEUER: I think we're limited
14 to the record as presented to us as passed up from
15 the Planning Commission, but I'm not positive about
16 that.

17 CHAIRPERSON WONG: Commissioner Ohigashi.

18 COMMISSIONER OHIGASHI: Just following up.

19 Is there anything in the record that would
20 indicate what future plans you have for the landfill?
21 And alternative sites that you'll be seeking within
22 this 30 period time limit which we now know as the
23 lifetime of landfill?

24 You have to start planning to figure what
25 you're going to do after 30 years.

1 MS. BAKER: And so we did that as a part of
2 the transfer station study, and actually the best
3 location is just to expand next to our existing
4 landfill onto Parcel 7. That's already fairly
5 removed from neighbors. There's an established
6 infrastructure there. So that at the current time
7 that's our best location, but the landfill would have
8 to be lined per the new regulation.

9 COMMISSIONER OHIGASHI: Would that be
10 contained in the record before the Planning
11 Commission in the request for extension?

12 MR. FASI: Your question is the future
13 plans for the landfill, would that be in the Planning
14 Commission's record? I don't believe we discussed
15 that at the Planning Commission what the future
16 alternatives where.

17 COMMISSIONER OHIGASHI: I'm trying to
18 formulate if I have another question or not. You can
19 come back to me.

20 CHAIRPERSON WONG: Any other questions?
21 Commissioner Chang.

22 COMMISSIONER CHANG: Yes. Is there
23 anything in the record reflecting whether the
24 community has had an opportunity to provide input on
25 this 30-year extension?

1 MS. BAKER: The Hana Advisory Committee
2 recommended acceptance of the our Application as we
3 presented it. And I think the recommendation is a
4 part of the record; isn't it, Paul?

5 MR. FASI: That is correct.

6 MR. HOPPER: In addition -- Mike Hopper,
7 with Department of Planning.

8 The Planning Commission also had a public
9 hearing on the matter, I believe, and in both of
10 those cases recommended approval.

11 COMMISSIONER CHANG: Was the community in
12 support of the 30-year extension during these public
13 forums?

14 MR. FASI: Yes, that's correct.

15 CHAIRPERSON WONG: Commissioner Scheuer.

16 VICE CHAIR SCHEUER: You're referring to
17 the Hana Commission Hearing on February 13th of 2018
18 held in Wailuku?

19 MR. FASI: The Hana Advisory Committee as
20 well as the Maui Planning Commission. The Hana
21 Advisory Committee makes a recommendation of approval
22 to the Maui Planning Commission.

23 VICE CHAIR SCHEUER: Thank you.

24 MR. HOPPER: For the record, Hana Advisory
25 Committee meeting is held in Hana.

1 CHAIRPERSON WONG: Commissioner Ohigashi,
2 do you have followup?

3 COMMISSIONER OHIGASHI: No.

4 CHAIRPERSON WONG: Any other questions?
5 Commissioner Chang.

6 COMMISSIONER CHANG: If I understood you
7 correctly, are you working with DLNR to extend the
8 landfill?

9 MS. BAKER: Actually, to extend it only as
10 a buffer zone for environmental controls, not the
11 actual waste footprint. But we are working with DLNR
12 to -- because we have groundwater monitoring wells,
13 and landfill gas monitoring probes that are outside
14 our boundary Parcel 12. So we need to basically
15 include them in our parcel, and DLNR is fine with
16 that.

17 What has taken some time is that he's also
18 basically providing parts of Parcel 7 to other state
19 agencies.

20 COMMISSIONER CHANG: Maybe this is a
21 followup to Commissioner Okuda's question.

22 With the use of state lands that DLNR --
23 will you be doing an updated environmental document?

24 MS. BAKER: Well, we already did that EA to
25 cover this action. That was the one done in 2003.

1 COMMISSIONER CHANG: And that did include
2 the additional DLNR land?

3 MS. BAKER: Yes. In fact, the action for
4 that EA was to add this additional DLNR --

5 COMMISSIONER CHANG: That's all part of
6 your record?

7 MS. BAKER: No, I don't believe so, but it
8 is part of the landfill's record that would be filed
9 with OEQC on their website, that EA is available.

10 CHAIRPERSON WONG: Any other questions,
11 Commissioners? Seeing none. County, do you have any
12 witnesses or any statements?

13 MR. HOPPER: No witnesses, Mr. Chair.

14 Just to clarify, the request is a 30-year
15 time extension which would be amending the -- 30-year
16 time extension with the existing conditions being
17 retained. So with the exception of, I believe,
18 Condition 1 being changed to reflect the different
19 date to February 28, 2048 would be the request, and
20 the Planning Department recommends approval.

21 Again, subject to the existing conditions
22 of the LUC.

23 The Planning Department also requested that
24 the reference to the county Special Permit be deleted
25 from the existing condition, because there's been a

1 bit of confusion when they're listed with the State
2 Special Permit. The County Special Permit is a
3 separate permit that the county grants, and there
4 were a few references to that in the existing
5 conditions.

6 So that's a request. If that's not
7 granted, I don't think it's necessarily a major
8 issue, but that's something that the Planning
9 Department requested be changed.

10 But based on the record, the Hana Advisory
11 Committee's review, as well the Planning Commission's
12 review, the County Department of Planning would
13 recommend that you approve the time extension request
14 subject to the original conditions already on the
15 subject permit.

16 CHAIRPERSON WONG: Thank you.

17 Commissioners, any questions for County of
18 Maui? Commissioner Okuda.

19 COMMISSIONER OKUDA: Thank you.

20 What is the county's position on whether or
21 not a Supplemental EIS or EA is necessary for this
22 30-year request? And maybe I can be more specific.

23 If you -- calling attention to HAR Section
24 11-200-26 which was cited by the Hawai'i Supreme
25 Court, says that you really don't need an update if

1 the action has not changed substantially in size,
2 scope, intensity, use, location or timing, among
3 other things, the Supreme Court emphasized the word
4 "timing". And then went on to quote the fact that if
5 there's changes in those things, you need a
6 Supplemental EIS. And in the Local 5 versus city and
7 county case, Kuilima had an existing EIS, but then
8 there was this passage of time.

9 MR. HOPPER: I think in general, if you're
10 talking about a special permit for a landfill, and
11 the original permit covered the landfill operation
12 and dealt with the issues to mitigate the impacts of
13 that landfill, in this case you're not talking about
14 a substantially different impact over time, I think
15 would be the Planning Department's position.

16 Because if the landfill is going to
17 continue the same use, it's a bit different than a
18 project that maybe hasn't been built yet and 20 years
19 passed, and there's additional traffic in that area,
20 or something like that, such that the impacts are
21 different.

22 I think in this case you're talking about
23 the exact same landfill use over a period of time,
24 there is a time extension, and if the Land Use
25 Commission or other agencies have required

1 consistently a new EA for the same use to continue
2 just for a longer period of time that would be, i
3 believe, a novel approach to these types of permits.

4 So I think the county's position generally
5 would be mere passage of time, since the use is the
6 same, and impact generally the same, you know, this
7 is not something that would generally require an EA.

8 But we can further analyze that question if
9 there's an issue for the Land Use Commission in this
10 case, but in general -- and you know, there have
11 been, from time to time, permit extensions for these
12 types of uses, I believe, across the state.

13 I don't know if every time there's only a
14 time extension request and not expansion request,
15 there has been an EA done in those cases. Generally
16 you would not see that as a requirement if there's no
17 expansion with the trigger being, I guess, the argued
18 trigger would be use of state or county lands, but
19 that use is continuing and is the same use.

20 COMMISSIONER OKUDA: That's correct, the
21 use is continuing, but we're talking use over what
22 period of time? I can see if, for example, it was a
23 smaller extension of time, I guess to some extent it
24 might be a balancing issue, but where you're asking
25 for an extension of the permit for 30 years, doesn't

1 a government agency or the decisionmaker need an EIS
2 to weigh the different alternatives in making the --
3 or making the decision, or deciding whether or not to
4 grant 30 years? I think 30 years is kind of long
5 time. We all might be dead by that time 30 years
6 comes around.

7 COMMISSIONER MAHI: Hopefully.

8 VICE CHAIR SCHEUER: Commissioner, speak
9 for yourself.

10 COMMISSIONER OKUDA: Do you agree that's
11 what the Supreme Court was basically stating on its
12 rationale in the Local 5 case that the passage of
13 time itself can be a factor which indicates or which
14 requires the need for an updated EIS or a brand new
15 EIS?

16 MR. HOPPER: I believe under certain
17 circumstances that could be true, but I don't think
18 there is a clear rule that says, for example, if a
19 use continues for 10, 20, 30 years that there has to
20 be an EA updated in every single case. I don't
21 believe that's necessarily been consistently applied
22 throughout the State of Hawaii.

23 If that was the case, then every municipal
24 agency that continued to run a landfill would have to
25 do an EA every five, ten years, and I don't think

1 that's necessarily what the Hawaii Supreme Court has
2 ruled in all cases.

3 I don't know if you're consistently
4 requiring that certainly of every applicant for a
5 special permit, and maybe you are, and that's
6 information for us for not just this landfill, but
7 also multiple other landfills that the county runs
8 and other counties across the state run.

9 I do believe in certain circumstances
10 passage of time can lead to an argument that an EA
11 needs to be updated, but I don't think that's
12 necessarily the case for this permit or for permits
13 in general.

14 If we're going to come up with a rule that
15 says if you have a time extension of an existing use,
16 that is going to require an EA, then we'll have to
17 look at that, but I don't believe that's what the
18 Administrative Rules require in all cases.

19 COMMISSIONER OKUDA: I'm just trying to see
20 whether or not the Supreme Court case applies here or
21 not.

22 Thank you, Mr. Chair.

23 CHAIRPERSON WONG: Any other questions for
24 the county? Commissioner Ohigashi.

25 COMMISSIONER OHIGASHI: Can you tell me

1 what the Planning Commission, the standard that the
2 Planning Commission used to determine whether or not
3 to grant the time extension? Was there a standard?
4 Was there a list of items that had to be checked off
5 before granted?

6 MR. FASI: At the Planning Commission
7 meeting, the Planning Commission reviews their annual
8 report. The Department of Environmental Management
9 is required to submit an annual report of their
10 ongoing operations every year, so for 30 years it's
11 not unregulated or unmonitored.

12 They do have to file an annual report with
13 the Planning Department. If there's anything unusual
14 or significant, we have the authority to take it back
15 to the Planning Commission to address that certain
16 issue, whatever it may be.

17 At the last Planning Commission review,
18 they did review the annual report, and they basically
19 check for compliance with the conditions, and they
20 agreed that the landfill operation is complying with
21 the current conditions of all three permits.

22 MR. HOPPER: And, Mr. Chair, and Mr.
23 Ohigashi, you could also reference the February --
24 I'm sorry, there was a staff report done for the
25 permit as well in the original permitting standards

1 for a special permit -- yeah, actually dated
2 February 13th, 2018, and the standards for the
3 permits, the department -- I'm sorry, if you give me
4 a minute, I'm trying to find in the record here, that
5 you could look for to find the standards.

6 Generally the standards applied by the
7 Commission. There's a 2018 staff report as well as
8 the staff report for the original permit which
9 required the Planning Commission to look at Special
10 Management Area Permit, County Special Permit and
11 State Special Permit.

12 In looking at the State Special Permit,
13 they applied the criteria of the LUC rules required a
14 review of a variety of issues, including the permit
15 criteria, whether the use is an unusual and
16 reasonable use, and as well as other issues whether
17 the use is contrary, the objectives sought to be
18 accomplished by 205 and 205A, whether it would
19 adversely affect the surrounding property.

20 The use would not unnecessarily burden
21 public agencies, et cetera, and those were various
22 conditions that the State Land Use Commission -- or
23 various criteria the State Land Use Commission
24 requires in its rules, and the Planning Commission is
25 required to review that as part of the record.

1 COMMISSIONER OHIGASHI: As part of the time
2 extension?

3 MR. HOPPER: I think in applying the time
4 extension they gave -- Paul, can give the details --
5 but I think they monitored the compliance with the
6 conditions to see if the conditions were followed and
7 determined that they had been followed.

8 COMMISSIONER OHIGASHI: So the record would
9 include something -- what I'm trying to say is, I'm
10 assuming that -- correct me if I'm wrong -- that the
11 record would include evidence that would support that
12 the five conditions or the conditions that you
13 mentioned requiring Land Use Special Use Permit are
14 still in existence, and that because they're still in
15 existence, that the question is how long should the
16 permit be extended. Is that right?

17 MR. FASI: That is correct.

18 COMMISSIONER OHIGASHI: So one of the -- I
19 have my cheat sheet in front of me. Says: One, the
20 desired use would not adversely effect surrounding
21 property.

22 There seem to be indications that you're
23 creating a buffer zone around the property utilizing
24 state lands, and is that indicative of the fact that
25 none of the surrounding areas or contiguous areas to

1 the property has changed since the inception of the
2 Special Use Permit?

3 MR. FASI: That is also correct.

4 COMMISSIONER OHIGASHI: So the same affect
5 on those properties that existed way back then would
6 exist now?

7 MR. FASI: Correct.

8 COMMISSIONER OHIGASHI: And that would be
9 included in the record?

10 MR. FASI: Yes.

11 COMMISSIONER OHIGASHI: I don't have any
12 more questions.

13 CHAIRPERSON WONG: Commissioners, any more
14 questions? If not, thank you, county.

15 OP.

16 MS. APUNA: Office of Planning doesn't have
17 any objections to the request for extension of time.

18 CHAIRPERSON WONG: Thank you.

19 So, Commissioners, do we have any final
20 questions or comments. Seeing none -- Commissioner
21 Cabral.

22 VICE CHAIR CABRAL: Sorry, I'm not sure, I
23 think probably Petitioner would be the one to address
24 this.

25 Based on your reduction of materials going

1 into your landfill -- and I do understand that
2 landfills have become very studied and scientific and
3 a lot of federal regulations. I'm from Hilo. We
4 have to start transferring our rubbish across the
5 island due to rainfall, et cetera.

6 How many years do you anticipate this
7 location that size with what you're looking for?
8 You're asking for 30 more years.

9 Do you anticipate -- what you're asking to
10 receive at this point, is that going to last you
11 30 years at this point, based on your projections?

12 MS. BAKER: Yes.

13 VICE CHAIR CABRAL: Okay, thank you.

14 CHAIRPERSON WONG: Commissioners, any other
15 questions or comments? Seeing none, Commissioners,
16 what is your pleasure?

17 COMMISSIONER OHIGASHI: I got to go through
18 my cheat sheet.

19 CHAIRPERSON WONG: Commissioner Ohigashi.

20 COMMISSIONER OHIGASHI: I'm going to move
21 that we authorize the extension of 30 years subject
22 to the conditions enumerated by the County of Maui to
23 clean up some of the language, and that all other
24 conditions of SPO8-402 do remain binding as Decision
25 and Order dated August 27, 2009, and that I believe

1 that the Chair is authorized to sign the order on
2 behalf of the Commission.

3 CHAIRPERSON WONG: Is there a second?

4 VICE CHAIR CABRAL: I'll go ahead and
5 second it. Neighbor island folks have to stick
6 together. Thank you.

7 CHAIRPERSON WONG: Commissioner Cabral
8 second.

9 Any discussion on this matter,
10 Commissioners? Commissioner Scheuer.

11 VICE CHAIR SCHEUER: I have the same set of
12 concerns that Commissioner Okuda more ably explored
13 regarding what the interaction is of our action today
14 with the need for further 343 review.

15 So I guess I'm saying I'm open to further
16 discussion or enlightenment from Commissioner Okuda
17 or others.

18 CHAIRPERSON WONG: Commissioner Okuda.

19 COMMISSIONER OKUDA: You know, my concern
20 is the warning that is always given to us on
21 government agencies, and the warning or admonition I
22 used to give when I wasn't on a government agency,
23 which is, you know what, don't create red tape when
24 it's unnecessary, don't have good hard working public
25 servants have to waste their time and jump through

1 hoops and things like that.

2 And I'm cognizant of that, and I don't mean
3 to waste anyone's time, but the problem I personally
4 had with analyzing this request is the fact that we
5 don't have the basic tool which helps us evaluate
6 these type of decisions which is an up-to-date EIS or
7 EA, which has clearly gone through the consultive
8 process with the community and other people.

9 And if that was just my concern in a
10 vacuum, then who am I to second guess what you folks
11 do as professional planners. But the concern I have
12 is we now have the Hawai'i Supreme Court case in the
13 Kuilima case saying that passage of time is a factor
14 that has to be looked at.

15 And especially when you're asking for a
16 30-year extension of time on a landfill which almost
17 by it's very nature has environmental impacts, when
18 we look at the requirements that the Supreme Court
19 laid out in the Kuilima case, and the fact that the
20 Supreme Court referenced back to the public policy
21 reason why we have these requirements, which is a
22 specific provision in Hawaii's Constitution that
23 there's an obligation to protect natural resources, I
24 think it's consistent with the constitution and the
25 Hawaii Supreme Court case that we have this planning

1 tool, or this analytical tool which is the updated
2 EIS or EA, and the Supreme Court said, you know,
3 under certain circumstances, including passage of
4 time, there's no such thing.

5 I think Justice Koba said that in his
6 concurring opinion, you don't have a perpetual EA or
7 EIS, and so that's the reason for my concern about
8 the lack in the record here of an updated or
9 supplemental EIS or EA.

10 CHAIRPERSON WONG: Thank you, Commissioner.

11 Any other questions or discussion?
12 Commissioner Chang.

13 COMMISSIONER CHANG: I think we all share
14 Commission Okuda's concerns about environmental -- or
15 just having sufficient information to evaluate this
16 additional 30 years. As I look through the
17 conditions, I think the county appears to be trying
18 to address and minimize the amount of waste that
19 you're putting in. Looking at the geographic
20 location, it is very difficult to be transporting the
21 waste to Kahului, but I think some lessons learned
22 from our Oahu situation with Waimanalo Gulch, I think
23 it is incumbent upon the County of Maui to begin --
24 even if it's 30 years, you're still required to
25 comply with the law.

1 If the law changes, if there are higher
2 standards upon which you have to comply with,
3 environmental standards, cultural standards, you have
4 to comply with the law. So that in my view is a
5 safeguard, notwithstanding that we don't have updated
6 additional information, because I think the county
7 has said the use is the same, appears to be trying to
8 mitigate some of these concerns, like the community
9 needs to have some landfill that is nearby where they
10 live, so this is a unique situation.

11 But I believe it is in the county's best
12 interest not to just rely on the 30 years, but to
13 begin to start planning and begin to look for an
14 alternative landfill and begin to start doing the
15 appropriate studies.

16 It gives me some comfort that there were
17 public meetings on this, so the public was given an
18 opportunity to comment. You have a Hana Advisory
19 Council who I have to believe is doing what is in the
20 best interest of that community.

21 But through our annual reports we will be
22 looking at monitoring; are you being in compliance
23 with the current regulations? And like the Kuilima
24 case, that wasn't the government that sued, that was
25 community.

1 So the community has a right to hold you
2 accountable as well. So while we may not have the
3 most up-to-date information, environmental
4 disclosures, the fact that you have to comply with
5 the law, and are urging you to start looking at
6 alternative sites, even if it's 30 years, that
7 30 years creeps upon you very quickly. Hopefully
8 there will be some of us around even within 30 years.

9 So just word of caution, don't wait until
10 it's too late. In my view this is somewhat of a
11 unique geographic circumstance, and to ensure that
12 that community has accesses to these resources.

13 I think it's just a difficult situation,
14 but I'm hoping you're beginning to see the issues
15 that we're struggling with here, wanting to do what
16 is the right thing. Thank you.

17 CHAIRPERSON WONG: Thank you. Commissioner
18 Ohigashi.

19 COMMISSIONER OHIGASHI: I support this.
20 The reason is this. I agree that the case law cited
21 by Commissioner Okuda raises some questions, but I'm
22 sure that the Planning Department and their
23 Corporation Counsel have explored that whether or not
24 the decision was an advisable thing or not.

25 I think that they went through the criteria

1 and found that the same criteria that used to extend
2 this or issue this Land Use Commission permit in the
3 first place were still in -- presently were still
4 applicable today.

5 I'm concerned, like, that it's 30 years,
6 that's why my question was basically what are you
7 guys doing to figure out what's going on. I feel
8 assured that your department is looking into
9 alternative or additional land in this matter to take
10 care of the problem.

11 And from the reports that we receive, it
12 seems as though, it appears that the environmental
13 concerns have been met. That being the case, I'm in
14 support of this matter.

15 I ask my Commissioners, fellow members to
16 support my motion.

17 CHAIRPERSON WONG: Any other statements,
18 Commissioners, or discussion?

19 Thank you, very much.

20 Mr. Orodener, if you will please poll the
21 Commissioners.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.

23 The motion was made by Commissioner
24 Ohigashi and seconded by Commissioner Cabral to
25 authorize the extension of 30 years for the subject

1 property to conditions, and clean up of language as
2 requested by the county.

3 Commissioner Ohigashi?

4 COMMISSIONER OHIGASHI: Aye.

5 EXECUTIVE OFFICER: Commissioner Cabral?

6 VICE CHAIR CABRAL: Aye.

7 EXECUTIVE OFFICER: Commissioner Chang?

8 COMMISSIONER CHANG: Aye.

9 EXECUTIVE OFFICER: Commissioner Aczon is
10 absent.

11 Commissioner Scheuer?

12 VICE CHAIR SCHEUER: Aye.

13 EXECUTIVE OFFICER: Commissioner Okuda?

14 COMMISSIONER OKUDA: No.

15 EXECUTIVE OFFICER: Commissioner Mahi?

16 COMMISSIONER MAHI: Aye.

17 EXECUTIVE OFFICER: Chair Wong?

18 CHAIRPERSON WONG: Aye.

19 EXECUTIVE OFFICER: Thank you.

20 Mr. Chair, the motion passes with six
21 votes.

22 CHAIRPERSON WONG: Thank you very much.

23 We'll take a five-minute recess for the
24 next agenda item to set up.

25 (Recess taken.)

1 A07-755 Hale Mua Properties, LLC

2 CHAIRPERSON WONG: The Chair would now like
3 to hear the next agenda item Status Report and
4 appropriate action on Docket A07-755 Hale Mua
5 Properties, LLC (Maui).

6 Would the parties please identify
7 themselves for the record?

8 MR. SMITH: Good morning, Chairman, Members
9 of the Commission. I'm Murray Smith, resident of
10 Maui and I represent today the owners of the property
11 Southwest 7.

12 MR. HOPPER: Michael Hopper, Deputy
13 Corporation Counsel for Department of Planning. With
14 me is planner Jeffrey Dack.

15 MS. APUNA: Deputy Attorney General, Dawn
16 Apuna on behalf of Office of Planning. With me is
17 Tomas Oberding.

18 CHAIRPERSON WONG: Thank you. Let me
19 update the record in this docket.

20 On February 25th, 2013, the Commission
21 received correspondence from Robert Cooper notifying
22 the Commission of a change of ownership from Hale Mua
23 Properties, LLC to Southwest 7.

24 On April 13, 2018, the Commission mailed
25 notice to Southwest 7, LLC to appear and provide a

1 status report at its May 9, 2018 meeting.

2 From April 17, 2018 to April 30, 2018,
3 Commission staff exchanged email with Thomas
4 Millspaugh of Veneable LLP to establish who the
5 proper and responsible contacts were for this docket
6 and advise them that the LUC would be requesting a
7 status update on May 9, 2018.

8 On May 1, 2018, an LUC meeting agenda
9 notice for the May 9, 2018 meeting was sent to the
10 Parties and the Statewide, and Maui mailing lists.

11 On May 2, 2018, the Commission received
12 correspondence from Petitioner's Representative,
13 Murray Smith.

14 On May 6, 2018, the Commission received
15 additional email correspondence from Petitioner's
16 Representative, Murray Smith.

17 For members of the public, please be
18 reminded that the Commission will not be considering
19 the merits of the A07-755 Petition; rather the
20 Commission is interested in learning what the current
21 state of the activities of Petitioner relating to
22 this docket are.

23 Let me go over the procedures for this
24 docket.

25 First, those individuals desiring to

1 provide public testimony for the Commission's
2 consideration will be asked to identify themselves
3 and will be called in order to our witness box where
4 they will be sworn in prior to their testimony.

5 At the conclusion of the public testimony,
6 the Chair will next call for the Petitioner to
7 respond and provide its status update on this matter.

8 After questioning of the Petitioner, the
9 Chair will call on the County of Maui.

10 After questioning of the County, the Chair
11 will call OP.

12 After questioning OP, the Chair will
13 entertain any final questions or comments.

14 The Chair will also note from time to time
15 I'll be calling for short breaks.

16 Are there any questions for today on the
17 procedures? Mr. Smith?

18 MR. SMITH: No questions.

19 CHAIRPERSON WONG: County?

20 MR. HOPPER: No.

21 CHAIRPERSON WONG: OP?

22 MS. APUNA: No questions.

23 CHAIRPERSON WONG: Any public testimony?

24 We don't have anyone written. Anyone out there?

25 Going once, twice, three times, okay, no one.

1 Mr. Smith, please make your presentation
2 and provide your status report.

3 MR. SMITH: Yes, let me take a moment to
4 give you some history on the property.

5 In 2003 and -4 the property was purchased
6 from Wailuku Agribusiness and Alexander & Baldwin by
7 Mr. Kim, who I'll use interchangeably with Hale Mua
8 Properties. It was his entity.

9 In 2005, approximately, he received
10 conditional approval from the County of Maui for a
11 466 lot subdivision on the property.

12 In 2008 he gained reclassification from
13 your Commission for 114 acres approximately to Urban
14 Land Use from the Ag Land Use.

15 Also in 2008 Mr. Kim felt he needed to go
16 to the marketplace and raise some capital to continue
17 with his operation. He wasn't ready to construct,
18 but he needed additional funds at that time, is my
19 understanding.

20 And this is where our client comes in. He
21 provided some interim financing to Mr. Kim to tied
22 over until the project was completely ready to be
23 constructed, and then he was to get a construction
24 loan.

25 In 2012 Southwest 7, who was the lender,

1 pursued action for nonperformance under the trust
2 deed and payment as required; and Mr. Kim, I don't
3 believe, had made very many payments on it, so it was
4 a large sum that was due. And they pursued, through
5 the courts, a foreclosure on the property.

6 Southwest 7, subsequent to this, we did
7 receive a commissioner's deed for the property from
8 the state. Subsequent to this, it must have been
9 very shortly after the letter from Rob Cooper, he
10 passed away, and the property went into an estate,
11 which is held for the benefit of Mr. Cooper's widow.

12 So since that time, I'm not sure even if
13 they were very familiar with the project or the
14 conditions that were given or asked for Mr. Kim, so
15 he probably didn't hear anything. I'm not even sure
16 how he knew to notify you, but that stands on its
17 own.

18 Currently, they have retained my services
19 -- well, backing up a minute. They tried to sell the
20 property because it's an asset. The beneficiaries
21 live back East, and it's just a problem for them. So
22 they tried to market the property since 2012. Had
23 many offers and they -- no one stepped up and closed
24 on the property because there are some title issues
25 that are clouded, and no one felt they could get

1 clear title and title insurance even for the project
2 and come up with a viable project.

3 This stemmed from actions of the
4 foreclosure proceeding, no fault of the state, but it
5 was improper legal description on the trust deed.

6 So I came into the picture very recently
7 and they retained me to try to get the property -- I
8 know the condition of the property very well, and I'm
9 familiar with the legal position on the title. And
10 other issues, such as your conditions which we're in
11 default on, county conditions.

12 And I'm here primarily to ask that we
13 consider at least giving some period of time before
14 you take action to negate any of the past grants.

15 We would be more than willing to provide
16 updates currently. Our plan is for me to clean the
17 property up, number one. If anyone's familiar with
18 it, it's quite a mess. There's many car bodies and
19 auto parts, and they have received several
20 notifications from the county in violation of
21 ordinances for dumping.

22 Although I did have a Phase I report done
23 recently, and there's no environmental concerns other
24 than perhaps small leakage around some of these
25 automobiles.

1 So that's one of the items that I'm charged
2 to get cleaned up.

3 And also, if I can, rectify the title
4 issues, come into compliance with some of the
5 recommendations or the requirements of your board,
6 Commission, and try to get this property so that it's
7 saleable and usable to a perspective purchaser.

8 That, I guess, gives you a little bit of
9 the history, it's not by way of excuse, but this is
10 an unfortunate situation. We're kind of like a bank
11 that's foreclosed on some property that we didn't
12 want.

13 And I would ask that maybe not 30 years,
14 but we be given perhaps a year or something to see if
15 we can't bring this property into compliance with the
16 county ordinances and Health Department concerns, and
17 to see if we can't find some type of purchaser to
18 pick up where Mr. Kim took off.

19 Unfortunately, when he accepted the
20 conditions from the County, and I believe this is
21 probably -- I understand there's two issues that deny
22 him the ability to proceed. One of them being, if
23 anyone is familiar with the Imi Kala Bridge, that was
24 a condition of approval that that bridge constructed
25 and the roadway extended to the highway to alleviate

1 the traffic concerns.

2 This had to be completed before the first
3 house was sold. And Mr. Kim had an estimate of
4 \$10 million, which I feel at least was 20, and today
5 it's more like 50 or 60, because Corps of Engineering
6 is requiring a complete redesign of the bridge, and
7 it's an onerous condition that is impossible to
8 fulfill. The benefits of the sale of land doesn't
9 come anywhere close to the cost of the bridge.

10 So that's really one reason why I feel that
11 he failed in his efforts to complete the project.

12 But be that as it may, we're now the
13 unfortunate owners of the property, and we ask your
14 consideration in helping us to bring the property
15 into compliance and do what we can to get it sold and
16 get some one in there that can perform on the
17 construction.

18 A new plan would be required. The County
19 has rescinded the old approval of the preliminary map
20 that Mr. Kim had done, so we would have to start
21 over. But we would like to continue to offer the
22 property with this Urban Land Use classification.

23 We feel it will assist us in finding
24 someone that can perform on the property.

25 CHAIRPERSON WONG: Thank you, Mr. Smith.

1 Commissioners, do you have any questions
2 for Mr. Smith? Commissioner Mahi.

3 COMMISSIONER MAHI: Just to catch me up on
4 the information, Mr. Smith.

5 So my understanding is at present the land
6 designation in terms of how it's interpreted is still
7 Agriculture?

8 MR. SMITH: It's still zoned Agriculture.
9 The land use classification was changed by your
10 Commission to Urban on 114 acres.

11 COMMISSIONER MAHI: Okay. I just wanted to
12 clarify that.

13 CHAIRPERSON WONG: Thank you, Commissioner.
14 Any other questions? Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you for your
16 testimony, Mr. Smith.

17 When the lender made its loan on this
18 property, the lender knew that the property was
19 subject to certain conditions including the Land Use
20 Commission's conditions, correct?

21 MR. SMITH: I assume so, yes. I can't
22 swear to it, but I would assume so.

23 COMMISSIONER OKUDA: Usually before a
24 lender makes a loan, a prudent lender anyway, would
25 order a preliminary title search and do due diligence

1 to determine what the state of title is; correct?

2 MR. SMITH: That's correct.

3 COMMISSIONER OKUDA: Because the lender
4 understands that if the loan is not paid and the
5 property goes into foreclosure, the foreclosure sale
6 is going to be subject to whatever conditions are on
7 the property, easements, land use restrictions,
8 things like that; is that correct?

9 MR. SMITH: That's correct.

10 COMMISSIONER OKUDA: So when the lender
11 made its loan to Mr. Kim, it understood that there
12 would be some risk if the conditions that Land Use
13 Commission, or any other government agency, imposed
14 could be met?

15 MR. SMITH: Of course.

16 COMMISSIONER OKUDA: Thank you.

17 MR. SMITH: I might interject here that
18 this appears to be one of the things -- and there
19 were a number of items that were very poorly
20 accomplished at that time. Mr. Cooper was working
21 through an agent who received a commission for this,
22 and did a very poor job, and we are suffering because
23 of it. And I don't expect that that's your problem,
24 but the owner, in reading the documentation, if he
25 did at that time, there was a lot to absorb, and I'm

1 sure that he never expected and hoped -- the property
2 at that time was valued, according to the appraisal,
3 38 million, so he didn't assume that he would ever
4 own it. But unfortunately, he does. I know that
5 there were a number of things that where improperly
6 accommodated for.

7 COMMISSIONER OKUDA: You know, it's not to
8 downplay the hardship, or not have any sympathy to
9 your client and things like that, but you can have an
10 understanding that -- or tell me if you disagree that
11 when property is reclassified from Agriculture to
12 Urban, just that fact gives value to the property in
13 many cases. Would you agree that's a fair statement?

14 MR. SMITH: Yes.

15 COMMISSIONER OKUDA: And so it's reasonable
16 for the State of Hawaii, through LUC, to basically
17 say, okay, look we're going to give you this
18 reclassification. You're going to get value out of
19 it, but there's certain conditions that the owner has
20 to live up to in exchange for the government
21 basically bestowing through its actions an increase
22 in value.

23 Do you agree that's a fair statement?

24 MR. SMITH: Yes, I do. I think it's up to
25 the Commission to decide whether or not that land use

1 should be there. They felt it should be at one time.
2 All I'm asking for, if you still feel that way, that
3 we are willing to cooperate to make this come to
4 fruition.

5 COMMISSIONER OKUDA: Thank you.

6 CHAIRPERSON WONG: Commissioner Chang.

7 COMMISSIONER CHANG: Mr. Smith, are you the
8 owner's legal counsel? Are you a developer?

9 THE WITNESS: Professional civil engineer
10 registered in the State of California, but our
11 residence is here, so I would be an independent
12 contractor, provider of my services and expertise.

13 COMMISSIONER CHANG: Thank you.

14 I just want to confirm, is it your
15 testimony or your statement on behalf of the
16 landowner that your intention, the landowner's
17 intention, is not to comply or develop the land as it
18 was proposed, but it is to sell the land? Is that
19 the landowner's intention?

20 MR. SMITH: Yes, that's correct.

21 COMMISSIONER CHANG: Thank you, that's
22 helpful.

23 CHAIRPERSON WONG: Commissioner Scheuer.

24 VICE CHAIR SCHEUER: I know you went over
25 this in your testimony, but can you please explain

1 again who Southwest 7 is?

2 MR. SMITH: Southwest 7, LLC is a Colorado
3 limited liability company that was formed by Mr.
4 Cooper sometime prior to my knowledge. It's the
5 entity that made the loan, and currently the owner of
6 the property.

7 VICE CHAIR SCHEUER: And Mr. Cooper is the
8 sole member of Southwest 7?

9 MR. SMITH: He was. He was deceased in
10 -13, I believe.

11 VICE CHAIR SCHEUER: Who are his heirs?

12 MR. SMITH: His heirs now are his wife --
13 the property is in trust for her. It's monitored by
14 Mr. Millspaugh that you spoke of, and another
15 gentleman that is a trust -- he takes care of all of
16 the assets in the trust.

17 VICE CHAIR SCHEUER: Thank you.

18 CHAIRPERSON WONG: Commissioner Cabral.

19 VICE CHAIR CABRAL: I read this, and some
20 of what I'm reading I'm not sure I'm supposed to even
21 ask this, but I'm a lay person. It almost sounds
22 like it might be easier for your life, based on
23 potential market value of the property without these
24 conditions versus with these conditions for a future
25 buyer that perhaps you might want to be completely

1 removed from this and just go back to full
2 agriculture, you're still zoned Agriculture. I mean,
3 I don't know if this is a question for somebody
4 smarter than me, if you can just opt out of this and
5 have us all go away. I don't know what that takes,
6 but I almost feel like that might be the simplest
7 thing for you at some point in time.

8 And I don't know if you would like to ask
9 us to do that for you now, if we are allowed, or if
10 you're going to ask for that in the future, but it
11 does seem like that would be something I would be
12 looking at if I was in your unfortunate position or
13 Mrs. Cooper's unfortunate position here. I don't
14 know the answer to these things.

15 MR. SMITH: Would you like me to respond?

16 VICE CHAIR CABRAL: Okay.

17 MR. SMITH: My first reaction, and first
18 email to you after discussing with the powers that be
19 in the trust, they felt that that was probably the
20 best solution, but we looked at it as a very, very
21 viable site for a 201H project. And I really feel
22 that that's the highest and best use for the
23 property.

24 So I convinced them that we should at least
25 temporarily follow the same path that we're on right

1 now and try to find a purchaser that is willing to go
2 forth and come up with an affordable program for the
3 property.

4 That's what was originally anticipated by
5 Mr. Kim. And knowing county's need for housing, I
6 think this is a very, very good place to locate it.

7 So I would ask that we leave status quo for
8 the current time, and I will report to you as you
9 wish on our progress.

10 VICE CHAIR CABRAL: Okay.

11 CHAIRPERSON WONG: Commissioner Ohigashi.

12 COMMISSIONER OHIGASHI: One of the
13 conditions that you mentioned was the bridge, Imi
14 Kala Bridge. Was that a condition that the Land Use
15 Commission placed on you?

16 MR. SMITH: No. That was a county
17 condition.

18 COMMISSIONER OHIGASHI: So if you are to
19 proceed, to alleviate yourself of that condition,
20 that would be a county decision, right?

21 MR. SMITH: That would be a county
22 condition. We would have -- the new purchaser would
23 have to go back through the county procedure.
24 Hopefully being able to convince the county that
25 there must be some other way to help alleviate the

1 traffic, because the bridge and extension, number
2 one, there is no right-of-way currently existing.
3 There are no plans approved. The bridge cost is
4 phenomenal now because the clear span, and the corps
5 recognized some additional flood potential, so they
6 have increased the length of the bridge, so it
7 becomes a condition that really cannot be put on one
8 project and expected to make it complete.

9 COMMISSIONER OHIGASHI: And so with regard
10 to the other conditions that are making it difficult,
11 are you aware of any specific Land Use Commission
12 conditions that was placed upon the project?

13 MR. SMITH: There are a couple,
14 Commissioner. One of them has to do with a
15 development of a clubhouse; another one has do with
16 rectifying the intersection of Kahekili and Waiehu
17 Beach Road. They're rather vague.

18 We needed to perform a traffic study, or
19 you asked for a traffic study to determine what
20 needed to be done to help alleviate traffic in that
21 condition, but obviously that hasn't been done. That
22 would be performed by the purchaser.

23 I had a quote just for a TIAR study, and it
24 was a significant number, six figure number. So it
25 wouldn't be advisable for us to proceed with that.

1 But those two conditions, I note that
2 particularly -- not that they're not doable with the
3 right development.

4 COMMISSIONER OHIGASHI: So you are saying
5 that you're seeking a buyer that can pick up this
6 development and go forward with it?

7 MR. SMITH: That's correct. Those not in
8 the business of developing, and they just wish to get
9 rid of the asset and --

10 COMMISSIONER OHIGASHI: So I was just
11 following up on that question. How long has your
12 search been going?

13 MR. SMITH: Well, since I became involved,
14 only the last month.

15 COMMISSIONER OHIGASHI: Prior to that, how
16 long was their search?

17 THE WITNESS: They have been trying to sell
18 the property since 2012, but so many problems with
19 the title and lack of title insurance that it's
20 unsalable.

21 COMMISSIONER OHIGASHI: So is the lack of
22 title part of the Land Use Commission decision
23 problem, or is there a condition that relates to that
24 cause of lack of title?

25 MR. SMITH: No. This was an error

1 performed at the time the deed of trust was written.

2 COMMISSIONER OHIGASHI: Okay.

3 CHAIRPERSON WONG: Commissioner Chang.

4 COMMISSIONER CHANG: I have a question.

5 Mr. Smith, are you aware when the original
6 boundary amendment was made, was there an
7 environmental document prepared at that time?

8 MR. SMITH: Yes, there was a complete EA.
9 It was accepted, circulated and approved.

10 COMMISSIONER CHANG: And this is a followup
11 to the previous -- I think you sat here through the
12 previous docket on the landfill.

13 And the original approval was made in 2007,
14 original granting?

15 MR. SMITH: I think it was 2008.

16 COMMISSIONER CHANG: It was obviously at
17 least ten years ago?

18 MR. SMITH: Yes.

19 COMMISSIONER CHANG: So in this case an EIS
20 was done in 2008 based upon conditions at that time.
21 Ten years have past. So as a civil engineer, in your
22 opinion, would a new EIS have to be done, assuming a
23 developer is found to do this, in light of the
24 changed conditions, increased traffic, potential
25 increase -- do you think a new --

1 MR. SMITH: Yes, I do. I think an amended
2 EA would be performed, traffic study have to be done,
3 archaeological findings have to be remade. The
4 entire process would start from scratch except we
5 would utilize information provided in the past to
6 help us do that.

7 COMMISSIONER CHANG: Okay, thank you.

8 CHAIRPERSON WONG: Commissioner Mahi.

9 COMMISSIONER MAHI: More of a comment.
10 Mr. Smith, you're a brave man, to say the
11 least.

12 MR. SMITH: I'm old --

13 COMMISSIONER MAHI: Something I look
14 forward to.

15 MR. SMITH: -- not much to lose.

16 COMMISSIONER MAHI: That's a good attitude.
17 I'm curious to hear the reports coming up with
18 Department of Planning and the County. But thank you
19 -- well, I don't know thank you, the family thanks
20 you being the warrior in this case.

21 CHAIRPERSON WONG: I just wanted to make
22 sure I got this straight for myself.

23 So Southwest 7 is looking at a buyer for
24 the entire parcel; is that correct?

25 MR. SMITH: Yes, that is correct.

1 CHAIRPERSON WONG: But you were also
2 talking about a 201H project?

3 MR. SMITH: Well, I feel that the potential
4 buyer would be -- the most viable use for the project
5 would be 201H project, which was what was approved in
6 the past. And I would -- that, of course, would be
7 up to the purchaser, but I feel that because of the
8 situation and the conditions, that's more of a
9 partnership with the county. And to develop this, I
10 believe we would need the assistance of the county to
11 get the development completed.

12 CHAIRPERSON WONG: So, again, the buyer,
13 not Southwest 7, but the buyer would do the 201H
14 project. So you're just speculating that they will
15 do a 201H project, correct?

16 MR. SMITH: Yes. I think it would be most
17 appealable for someone looking to do some action for
18 this.

19 CHAIRPERSON WONG: Commissioner Cabral, do
20 you have a question?

21 VICE CHAIR CABRAL: Well, just to share
22 with you. Fairly recently our Land Use Commission
23 was part of a decision that allowed the County of
24 Kaua'i to take some property that they had previously
25 purchased somewhat at a discount, but obviously to

1 everyone's benefit, then it was converted over to
2 workforce housing and that.

3 So particularly in light of your bridge
4 problem, you might talk to the folks to your right or
5 someone in the county housing agencies and see if you
6 couldn't do something in regards to your property to
7 have the housing agency here do something. The
8 Kaua'i Housing Agency is very aggressive in putting
9 together low income housing and workforce housing.
10 So just trying --

11 MR. SMITH: That sounds very appealing to
12 me and I would certainly be willing to carry that to
13 the owner. I've thought of many things, even a
14 corporation with the county or something out there,
15 but anything that was viable that can work and we can
16 get it done.

17 And I think that's certainly part of the
18 solution is the county is in that position to do
19 that. We would certainly make room for them.

20 VICE CHAIR CABRAL: I think it's going to
21 be very successful on Kaua'i what has come together
22 there, hopefully. Housing is an urgency on all the
23 islands and maybe something could be worked out.
24 More headaches in planning there, sorry. Thank you.

25 CHAIRPERSON WONG: Commissioner Scheuer.

1 VICE CHAIR SCHEUER: I have a few very
2 specific questions for you.

3 In the Land Use Commission Decision and
4 Order regarding this property, Condition No. 14 was
5 regarding water resources allocation.

6 Are you representing right now that you
7 believe that you are able to obtain from the county
8 sufficient water credits to develop housing in this
9 area?

10 MR. SMITH: I believe that with the
11 county's past previous improvement to their source
12 facility, that water is available. However, under
13 the 201H, as you are aware, that is the county
14 responsibility to come up with the source.

15 And this is certainly one of the greatest
16 problems that we need to overcome is the water source
17 for the project.

18 VICE CHAIR SCHEUER: The property is not
19 currently a 201H project, correct?

20 MR. SMITH: It is not.

21 VICE CHAIR SCHEUER: Condition No. 20,
22 Petitioner shall give notice to the LUC if any intent
23 to sell, lease, assign, place in front or otherwise
24 voluntarily alter the ownership interest in the area.

25 When were we given that notice?

1 MR. SMITH: I believe in 2013 Mr. Cooper
2 notified the Commission that he obtained the title
3 from a commissioner's foreclosure.

4 VICE CHAIR SCHEUER: Condition No. 21
5 regards providing evidence to LUC of clear title.

6 You're indicating that there was something
7 in the trust transaction that prevented clear title
8 from being obtained?

9 MR. SMITH: Yes, that's correct.

10 VICE CHAIR SCHEUER: I noticed earlier that
11 there were notices to certain unidentified heirs and
12 assigns, Native Hawaiians -- are there other Native
13 Hawaiians or other claims to this property?

14 MR. SMITH: That was cleared up by quiet
15 title action by Mr. Kim. In 2006 he received
16 complete award of all the kuleana property at that
17 time after the successful quiet title action. There
18 was one claim that was paid off, and the rest were
19 unfounded according to the courts.

20 VICE CHAIR SCHEUER: There was a question
21 earlier. You discussed the county's requirements
22 that a bridge across Iao Stream, or rather the
23 Wailuku River, would be built, and that this makes
24 the project infeasible, that this is a county
25 requirement.

1 Was that county requirement in place when
2 the original Petitioner appeared before the Land Use
3 Commission? Are you aware?

4 MR. SMITH: It should have been, because he
5 received conditional approval in 2005.

6 VICE CHAIR SCHEUER: Which included the
7 bridge?

8 MR. SMITH: Yes.

9 VICE CHAIR SCHEUER: Are you aware that one
10 of the standard conditions in front of the LUC is
11 that we hold the petitioners to all representations?

12 MR. SMITH: Yes.

13 VICE CHAIR SCHEUER: So it can also be
14 interpreted that the bridge is not only a requirement
15 of the county, but since the Petitioner represented
16 to this Commission at the time that they were
17 building a bridge, that that is a binding condition
18 of this reclassification?

19 MR. SMITH: I believe that's true. It's
20 not to say we would not have to come back before your
21 Commission with a plan that would be subsequently
22 approved by the county, and we would ask for your
23 concurrence to modify certain conditions.

24 VICE CHAIR SCHEUER: Just to be clear,
25 you're not in compliance with that condition, and you

1 do not intend to comply with that condition?

2 MR. SMITH: Well, the map has been
3 withdrawn. The county has negated the approval, so
4 there is no condition other than as stated before
5 your Commission in order to obtain this land use --

6 VICE CHAIR SCHEUER: There was a
7 representation made by the Petitioner to this
8 Commission, so it's a condition; right?

9 MR. SMITH: All of the conditions that the
10 county required, none have been fulfilled -- I
11 shouldn't say none. One of the conditions was that
12 the quiet title action take place. That has
13 occurred. The current owner has done nothing to
14 comply with the conditions.

15 VICE CHAIR SCHEUER: Thank you, Mr. Smith.

16 CHAIRPERSON WONG: Any other questions for
17 Mr. Smith? If not, thank you, Mr. Smith.

18 County.

19 MR. HOPPER: The County of Maui doesn't
20 have much to add. We're finding this information out
21 along with you as far as the current status of the
22 project, and we weren't requested to provide any
23 particular update, but should you want information
24 from the county, we can talk to the relevant
25 departments and find out.

1 Obviously talking about a future buyer and
2 future 201H project where nothing exists at this
3 point, we don't really have comment or position on
4 any of those issues.

5 At this point I think we are in a similar
6 position as the Commission, hearing the information
7 given to you today by the status report.

8 CHAIRPERSON WONG: Commissioners, any
9 questions for the county?

10 OP.

11 MS. APUNA: OP doesn't have any comments on
12 this.

13 CHAIRPERSON WONG: Questions for OP?

14 VICE CHAIR SCHEUER: Really?

15 CHAIRPERSON WONG: Can we take a
16 five-minute recess, please?

17 (Recess taken.)

18 We're back in session.

19 Commissioner's do you have any final
20 questions or comments for the parties? Seeing none,
21 Commissioners, this is a status report. We are not
22 required to take any action at this time.

23 If no action is taken, the requirement of
24 continued annual status reports will remain and this
25 docket will remain open.

1 Is there any discussion on this?

2 Commissioner Ohigashi.

3 COMMISSIONER OHIGASHI: I like to make a
4 motion.

5 CHAIRPERSON WONG: Go ahead.

6 COMMISSIONER OHIGASHI: I like to move that
7 the status report given -- that because the status
8 report given by the Petitioner indicates that there
9 probably isn't compliance with a number of conditions
10 in the Decision and Order, and it appears that there
11 hasn't been any or hardly, I guess, no substantial
12 commencement of the use of the land, that the
13 Commission issue an order to show cause, schedule a
14 hearing and serve upon the petitioner notice of the
15 hearing to show cause why the property should not
16 revert to its former land use classification or
17 changed to appropriate classification.

18 VICE CHAIR SCHEUER: I like to second the
19 motion.

20 CHAIRPERSON WONG: Any discussion on this
21 motion, Commissioners? Commissioner Scheuer.

22 VICE CHAIR SCHEUER: I seconded the motion.
23 I'm going to speak in favor of it. I echo
24 Commissioner Mahi's comments on your bravery, Mr.
25 Smith, but it's very clear from what you have

1 presented, which we appreciate the clarity and
2 honesty of your testimony, that the land owner is not
3 in compliance with the Commission's orders in this
4 matter, and I believe that moving forward to a
5 hearing is most appropriate.

6 CHAIRPERSON WONG: Thank you.

7 Commissioners, anyone else?

8 Commissioner Chang.

9 COMMISSIONER CHANG: I too, because what I
10 am hearing -- I don't want to put words in your
11 mouth, Mr. Smith, but I believe even you have
12 admitted that there has been no substantial
13 compliance with the conditions. Thank you.

14 CHAIRPERSON WONG: Anyone else? If not,
15 Mr. Orodenger, if you please.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair.

17 The motion is for the Commission to issue a
18 Motion for Order to Show Cause and schedule the
19 matter for hearing.

20 Commissioner Ohigashi?

21 COMMISSIONER OHIGASHI: Aye.

22 EXECUTIVE OFFICER: Commissioner Scheuer?

23 VICE CHAIR SCHEUER: Aye.

24 EXECUTIVE OFFICER: Commissioner Okuda?

25 COMMISSIONER OKUDA: Yes.

1 EXECUTIVE OFFICER: Commissioner Mahi?
2 COMMISSIONER MAHI: Aye.
3 EXECUTIVE OFFICER: Commissioner Chang?
4 COMMISSIONER CHANG: Aye.
5 EXECUTIVE OFFICER: Commissioner Cabral?
6 VICE CHAIR CABRAL: Aye.
7 EXECUTIVE OFFICER: Chair Wong?
8 CHAIRPERSON WONG: Aye.
9 EXECUTIVE OFFICER: Thank you. Mr. Chair,
10 the motion passes unanimously.
11 CHAIRPERSON WONG: Thank you, Mr. Smith.
12 You wanted to say something?
13 MR. SMITH: Yes. Thank the Commission for
14 hearing me out today. If it's possible, could I have
15 some idea of when this hearing might occur?
16 CHAIRPERSON WONG: The LUC staff will be in
17 contact with you to work out the details and the date
18 of this next hearing. So they will contact you in
19 the future.
20 MR. SMITH: Thank you.
21 CHAIRPERSON WONG: Let's take a five-minute
22 recess.
23 (Recess taken.)
24 ACTION A07-773 EMMANUEL LUTHERAN CHURCH
25 CHAIRPERSON WONG: This is an action

1 meeting on A07-773 Emmanuel Lutheran Church OF Maui
2 to Consider a motion by Waikapu Development Venture
3 LLC's to be Co-Petitioner, or in the Alternative to
4 Become a Party, or in the Alternative to Intervene; a
5 and a motion by Emmanuel Lutheran Church of Maui to
6 Extend Time to Complete Project.

7 Will the parties please identify themselves
8 for the record?

9 MR. HOROVITZ: Good morning, Peter Horovitz
10 on behalf of Waikapu Development.

11 MS. LIM: Good morning, Commissioners.
12 Jennifer Lim and Derek Simon on behalf of Petitioner
13 Emmanuel Church of Maui.

14 MR. HOPPER: Michael Hopper, Deputy
15 Corporation Counsel for the Maui County Department of
16 Planning, with me is planner Tara Furukawa.

17 MS. APUNA: Good morning, Deputy Attorney
18 General Dawn Apuna on behalf of Office of Planning.
19 With me is Tomas Oberding.

20 CHAIRPERSON WONG: Let me update the record
21 in this matter.

22 On April 9th, 2018, the Commission received
23 Petitioner Emmanuel Lutheran Church of Maui's Motion
24 to Extend Time to Complete Project.

25 On April 10th, 2018, the Commission

1 received additional digital copy of Petitioner's
2 Motion.

3 On April 12th, 2018, the Commission
4 received Waikapu Development Venture LLC's Motion to
5 Co-petitioner, or in the Alternative to Become a
6 Party, or in the Alternative to Intervene.

7 Also in the same day, Commission received
8 OP's request for extension of deadline to respond to
9 Petitioner's Motion to May 1st, 2018.

10 On April 13, 2018, the Commission provided
11 notice that OP's deadline request would only be
12 extended to April 27, 2018.

13 On April 19, 2018, the Commission received
14 the Petitioner Emmanuel Lutheran's Memorandum in
15 Support of Waikapu Development Venture LLC's Motion,
16 and OP's letter of No Opposition of Waikapu
17 Development Venture LLC's Motion.

18 On April 26, 2018, the Commission received
19 County of Maui-Department of Planning's Statement of
20 No Objection to the Emmanuel Lutheran Church of Maui
21 Motion for Extension of Time to Complete Project and
22 Waikapu Development Venture LLC's Motion to be
23 Co-Petitioner, or in the Alternative to Become a
24 Party, or in the Alternative to Intervene.

25 On April 27, 2018, the Commission received

1 OP's Response to Petitioner Emmanuel Lutheran's
2 Motion for Extension of Time to Complete Project.

3 On May 1, 2018, the Commissioner mailed
4 Agenda Notices to the Parties, the Statewide and Maui
5 mailing lists for the May 9, 2018 meeting.

6 On May 7, the Commissioner received
7 correspondence from County of Maui Department of
8 Housing and Human Concerns.

9 For the members of the public, please be
10 reminded that the Commission will not be considering
11 the merits of the A07-773 Petition, rather only these
12 motions by Waikapu Development Ventures LLC to be
13 Co-Petitioner, or in the Alternative to Become the
14 Party, or in the Alternative to Intervene and to
15 extend time to complete the project for Emmanuel
16 Lutheran.

17 Let me briefly describe our procedure for
18 today on this docket.

19 First I will call for those individuals
20 desiring to provide public testimony to identify
21 themselves. All such individuals will be called in
22 turn to our witness box where they will be sworn in
23 prior to their testimony.

24 After completion of the public testimony
25 portion of the proceedings, the Commission will

1 address and first decide on Waikapu Development
2 Venture LLC's motion to be Co-Petitioner, or in the
3 Alternative to Become a Party, or in the Alternative
4 to Intervene.

5 And secondly, Petitioner Emmanuel Lutheran
6 Church Maui's Motion to Extend Time to Complete
7 Project.

8 Waikapu Development Venture LLC will make
9 its presentation on its motion. After completion of
10 this presentation, we will receive any comments from
11 Petitioner Emmanuel Lutheran Church, Maui County and
12 the State Office of Planning.

13 After we have received comments of the
14 Petitioner, the County and the State, we will conduct
15 our deliberation of Waikapu Development Venture LLC's
16 Motion. After Waikapu Development's motion is
17 decided, Emmanuel Lutheran Church Maui will make its
18 presentation on its Motion to Extend time to Complete
19 Project.

20 After we have received the comments of the
21 Petitioner, the Waikapu Development Venture LLC, the
22 county and the state, we will conduct our
23 deliberation on Emmanuel Lutheran's Motion.

24 Are there any questions on today's
25 procedures?

1 MS. LIM: No questions.

2 MR. HOROVITZ: No questions.

3 MR. HOPPER: No, Mr. Chair.

4 MS. APUNA: No questions.

5 COMMISSIONER OHIGASHI: Mr. Chair, I've
6 done it in the past, so I have to indicate that I
7 know Jennifer Lim and her husband, my classmate in
8 law school and social basis, but I don't believe it
9 would affect my decision-making in this.

10 CHAIRPERSON WONG: Any comments or
11 opposition?

12 MR. HOROVITZ: No opposition.

13 MR. HOPPER: No, Mr. Chair.

14 CHAIRPERSON WONG: OP?

15 MS. APUNA: No.

16 CHAIRPERSON WONG: Anyone else? Okay.
17 Let's get started.

18 Is there anyone in the audience who desires
19 to provide public testimony on this matter?

20 EXECUTIVE OFFICER: Mr. Chair, Steven
21 Kealoha signed up to testify, followed by Thelma
22 Kealoha.

23 CHAIRPERSON WONG: May I please swear you
24 in?

25 Do you promise to say that everything you

1 say will be the truth?

2 THE WITNESS: I do.

3 CHAIRPERSON WONG: Please state your name
4 for the record.

5 THE WITNESS: Steven Kealoha.

6 CHAIRPERSON WONG: Please proceed.

7 STEVEN KEALOHA

8 Was called as a public witness, was sworn to tell the
9 truth, was examined and testified as follows:

10 DIRECT EXAMINATION

11 THE WITNESS: Good morning, Commissioners.

12 Thank you for this opportunity to testify on this
13 particular item.

14 I'm a retired volunteer who serves on the
15 Board of Catholic Charities Hawaii, and also our Maui
16 Advisory Board here on Maui. I have no connection
17 with Emmanuel Lutheran at all, so the question is why
18 am I here to testify?

19 Very simple. It is my understanding that
20 by extending the time for Emmanuel Lutheran to
21 complete its project, it will lead to the potential
22 of having affordable housing development down the
23 road.

24 I've been involved with issues regarding
25 affordable housing over a period of time. I've

1 testified on its behalf for many times over the
2 years.

3 I am not representing any particular agency
4 or the Catholic Charities itself, I'm speaking as an
5 individual because I'm very interested in this
6 particular area of affordable housing.

7 Recently the County of Maui, knowing that
8 there is a need for affordable housing, they passed a
9 bill to allow for housing credits for rental
10 development, affordable rental development. So that
11 shows you and shows everybody that there is a huge
12 need.

13 All of the studies that have been conducted
14 over time will indicate that there is no way that our
15 county nor the State of Hawaii can fulfill the needs
16 of our community in making enough affordable housing.
17 So this is my whole purpose for testifying on behalf
18 of Emmanuel Lutheran's item here today. And I ask
19 for your support and approval of their request.
20 Mahalo.

21 CHAIRPERSON WONG: Thank you.

22 Mr. Horovitz, do you have any questions?

23 MR. HOROVITZ: No questions.

24 CHAIRPERSON WONG: Ms. Lim?

25 MS. LIM: No questions.

1 MR. HOPPER: No questions.

2 MS. APUNA: No questions.

3 CHAIRPERSON WONG: Commissioners, any
4 questions? Thank you, sir, for your time.

5 Next witness, please.

6 May I swear you in, please?

7 THE WITNESS: Sure.

8 CHAIRPERSON WONG: Do you swear or affirm
9 that the testimony you're about to give is the truth?

10 THE WITNESS: I do.

11 THELMA KEALOHA

12 Was called as a public witness, was sworn to tell the
13 truth, was examined and testified as follows:

14 DIRECT EXAMINATION

15 THE WITNESS: My name is Thelma Kealoha, no
16 relation to Steven Kealoha, although he is my
17 neighbor.

18 I work for Catholic Charities Hawai'i, and
19 I'm Maui Community Director at Catholic Charities
20 Hawai'i. We do have a few priorities.

21 One of them is homelessness, getting people
22 into housing. The other one is affordable housing.

23 I also am very active on a social justice
24 organization, and their top priority is affordable
25 housing.

1 So I am here today raising that flag. We
2 see people every day -- I have staff here as well
3 from Catholic Charities Hawai'i. They're not
4 testifying, but they know that we see people every
5 day that come into our office, and they're always in
6 need.

7 There's never housing. There is no
8 affordable housing, much less rental housing, and
9 none of it is affordable.

10 I am here in support of Emmanuel Lutheran
11 because I know the bottom line is they're going to be
12 working towards affordable housing and work --
13 workforce housing, excuse me.

14 This workforce housing typically is usually
15 80 percent to 140 percent. They're trying to lower
16 that median income to 70 percent. That's a group
17 that we're all interested in.

18 We all have families. I've heard many
19 testimonies and have testified myself several times
20 that our families cannot qualify for these housing
21 packages because it's way beyond their reach,
22 especially the local folks.

23 Many of my relatives, many of my friends
24 and their relatives, and lots of Hawaiians have moved
25 away from Hawai'i, because -- why? Because they

1 can't afford to live here. They make so much more on
2 the mainland, and their housing is so much cheaper.
3 They can afford to buy houses elsewhere.

4 And what Steven had mentioned was true. We
5 are not building anywhere near the affordable housing
6 that we need to build, and you guys all know that. I
7 don't have to give statistics for that.

8 So I am fully in support, and I hope that
9 you support Emmanuel Lutheran's request, because we
10 really do need housing.

11 And I thank you for allowing me to come
12 forward and testify.

13 CHAIRPERSON WONG: Mr. Horovitz?

14 MR. HOROVITZ: No questions.

15 MS. LIM: No questions.

16 MR. HOPPER: No questions.

17 MS. APUNA: No questions.

18 CHAIRPERSON WONG: Commissioners?

19 COMMISSIONER CHANG: I would just really
20 like to thank Mr. Kealoha and Mrs. Kealoha for taking
21 the time to come today and providing testimony.

22 VICE CHAIR CABRAL: I wanted to say the
23 same, and I should have after Mr. Kealoha, but I
24 thank both of you for coming forward.

25 This is a topic and a statement we have

1 been hearing over and over again, and I actually -- I
2 am a property manager in Hilo, which is the most
3 affordable place in the state, but right now I do
4 need about 150 brand new homes for people that just
5 got covered with lava.

6 So housing is a huge crisis, and when
7 you're on the edge all the time, any kind of problem
8 on top of that, God forbid you have something here,
9 you're just so far down the road.

10 And then the homelessness I see it every
11 single day. I do HUD housing management. I have 650
12 rental housing I manage and 33 condo associations, so
13 it is a large problem.

14 And I don't know the big solution for it,
15 but it's unfortunate that somehow we have to get more
16 not just government, but private housing financing
17 into this. So I commend all of you for your efforts
18 in this regard. Thank you.

19 CHAIRPERSON WONG: Commissioner Ohigashi.

20 COMMISSIONER OHIGASHI: Thank you, Thelma.
21 She's my classmate.

22 CHAIRPERSON WONG: You look younger.

23 THE WITNESS: I pride myself on that.

24 CHAIRPERSON WONG: Thank you for your time.
25 Is there any other public testimony?

1 Seeing none, public testimony is closed.

2 Mr. Horovitz, will you please make your
3 presentation?

4 MR. HOROVITZ: Thank you, Mr. Chair and
5 Commissioners. Peter Horovitz on behalf of Waikapu
6 Development Ventures.

7 I'll be brief on our motion because I think
8 most of the substance of the project is really
9 supportive of Emmanuel Lutheran's request for
10 extension of time which is coming up next.

11 I think we will probably get into it more
12 there.

13 The basic point of our motion, which has
14 not received any opposition that we have seen, is
15 that we are in contract to purchase a portion of the
16 property once it goes through the county subdivision
17 process and subject to further approvals of Land Use
18 Commission.

19 As noted in our motion and in the Emmanuel
20 Lutheran's motion, the process to get to where we
21 want to be involves not only this hearing today, but
22 then working with the county departments and county
23 council to get a 201H project approved, and then
24 coming back to the Land Use Commission for certain
25 modifications to the existing findings and order.

1 So we will be back before the Land Use
2 Commission hopefully at a point where we actually
3 have already closed on the property, have a second
4 subdivided lot.

5 So I think our involvement is beneficial to
6 the process. And I think we would either be asking
7 in a few months to be a Party, or a Co-Petitioner or
8 now, and so I think it would be a benefit to the
9 process and to the Commission to make us a party at
10 this time.

11 I'm happy to answer any questions that the
12 Chair or Commission might have.

13 Again, we will probably get more into the
14 specifics of the project, or our portion of the
15 project as part of the Emmanuel Lutheran's motion.

16 CHAIRPERSON WONG: Ms. Lim, any comments or
17 questions about the motion?

18 MS. LIM: Just very briefly, Chair. I'm
19 sure the Commissioners are aware that Emmanuel
20 Lutheran did file a motion in full support of what
21 the Waikapu Development Venture requested, whether
22 they participate in this proceeding as Co-Petitioner
23 because they are intending to purchase half of the
24 property, and have been under contract to purchase
25 half of the property since I believe November 2016,

1 so whether as a Co-Petitioner or as a Party or as
2 Intervenor, and intervenor sometimes has a little bit
3 of a sensational and negative tone to it, but in this
4 case whatever the capacity that the Commission feels
5 is most appropriate, we are in support of their
6 participation for a few reasons.

7 One, I think that the LUC rules are clear
8 that purchase and sale agreement is certainly akin to
9 whether it's a development agreement or option
10 agreement, a source of agreement that gives
11 individual standing to file petitions for district
12 boundary amendments, and this is a petition for
13 district boundary amendment, a motion that's being
14 filed by the owner of the property, and the owner of
15 the property is supporting this request for
16 Co-Petitioner status.

17 So I believe that the rules -- in fact, I
18 believe the rules clearly allow for WDV's
19 participation in whatever capacity, Party,
20 Co-Petitioner, Intervenor.

21 We also believe that it would be extremely
22 beneficial to the process that the Commission have
23 the ability to both hear from Mr. Horovitz and his
24 clients about the Waikapu Development Venture's
25 project, because it is so much a part of Emmanuel

1 Lutheran's ultimate request to the Commission.

2 So even though today at this point we are
3 simply asking for the time extension, as you read in
4 our motion for time extension, it describes that
5 we're coming back to this Commission with a Motion to
6 Request Amendment to the representations that have
7 been made to the Commission.

8 So to delay WDV's involvement doesn't seem
9 prudent, because of WDV's involvement is necessarily
10 going to be part of Act 2 of this proceeding.

11 So with that, I'll reiterate our full
12 support. I'm here if there are any questions; if
13 not, I'll turn it back to you.

14 CHAIRPERSON WONG: Thank you. County?

15 MR. HOPPER: Thank you, Mr. Chair.

16 County of Maui, Department of Planning has
17 filed Statement of No Opposition to the
18 Intervention/Co-Petitioner request, and agrees
19 that -- does not oppose that request. So the
20 Commission I think can grant that request if they see
21 fit.

22 CHAIRPERSON WONG: OP?

23 MS. APUNA: OP also has no opposition to
24 the motion by WDV.

25 CHAIRPERSON WONG: Commissioners, any

1 questions? Commissioner Okuda.

2 COMMISSIONER OKUDA: Mr. Horovitz, in what
3 capacity would you like to be involved in this
4 proceeding? And can you also explain why you think
5 that capacity is better than any other capacity?

6 MR. HOROVITZ: We gave you a lot of
7 choices. We didn't know what the Commission's
8 pleasure would be. I tend to agree with Ms. Lim,
9 intervenor might get us involved, but just the
10 connotation of it isn't quite as favorable. And not
11 that we're expecting any opposition to this project.

12 I think, ideally I think we would like to
13 be a party. You know we are intending in Act 2 of
14 the proceedings to come back to request that approval
15 of our 201H project on the portion of land we intend
16 to purchase.

17 I would anticipate at that point that the
18 Commission -- that we would also be asking the
19 Commission to somehow bifurcate the project so that
20 our project is sustainable, and Emmanuel Lutheran is
21 a stand-alone. At that point, since we would be --
22 party would be my preference.

23 COMMISSIONER OKUDA: And so it's probably
24 more appropriate in your view than being intervenor
25 if there is a bifurcation?

1 MR. HOROVITZ: I agree. Thank you.

2 CHAIRPERSON WONG: Commissioner Ohigashi.

3 COMMISSIONER OHIGASHI: Does being an
4 intervenor prevent you from filing for bifurcation?

5 MR. HOROVITZ: I would have to double check
6 my rule book. I don't believe it would, but again, I
7 think to Commissioner Okuda's point, being a party
8 would clearly give us that standing to do so without
9 further change in status I would say.

10 COMMISSIONER OHIGASHI: I may be missing
11 it. In the pleadings that you -- I was wondering who
12 is Waikapu Development Venture.

13 MR. HOROVITZ: Waikapu Development Venture
14 is a Hawai'i limited liability company. I am
15 actually a member of that, Bill Frampton, and there's
16 an investor group as well.

17 COMMISSIONER OHIGASHI: You guys make up
18 the members -- three of you make up the members?

19 MR. HOROVITZ: We have a sub-entity for the
20 three of us that is a member of the LLC, and we're
21 the managers of it as well.

22 COMMISSIONER OHIGASHI: Of the LLC?

23 MR. HOROVITZ: Yes.

24 COMMISSIONER OHIGASHI: You said that
25 you're intending to purchase the property. You've

1 signed, I guess -- what have you signed so far?

2 MR. HOROVITZ: We have a purchase contract
3 in place. One of the conditions from ten years ago
4 that will come up at some point is the Commission
5 placed in its findings an order, the Land Use
6 Commission needed to approve the sale of the
7 property.

8 So that's one condition that ultimately
9 would need to be addressed at the second hearing.

10 The second point is right now this is a
11 25-acre piece. Even absent the Land Use Commission
12 condition of sale, they don't have anything
13 independent to sell to us. We would have to go on as
14 co-tenants, which is generally not favorable. We
15 don't have a subdivided lot yet.

16 The first part of our process is actually
17 getting the large lot subdivided, so a 12-and-a-half
18 acre piece that Emmanuel Lutheran intends to retain,
19 and 12-and-a-half acre piece they intend to convey to
20 us.

21 At this point they will have something to
22 sell. And then subject to Commission approval, or
23 removal of that condition of sale or the condition
24 that the LUC approve the sale, we would then purchase
25 the property.

1 COMMISSIONER OHIGASHI: The successful
2 subdivision of the property is a term of the sale?

3 MR. HOROVITZ: Yes. They have to have
4 something to sell us, yes.

5 COMMISSIONER OHIGASHI: So the sale is
6 contingent on a of successful subdivision?

7 MR. HOROVITZ: Of the large lot, not of the
8 approval of the 201H project.

9 COMMISSIONER OHIGASHI: If you don't mind
10 me asking the county, what stage is the subdivision?

11 MR. HOPPER: I don't have that information
12 right now. Perhaps the Petitioner -- oh, I'm sorry,
13 not the Petitioner, the Movant could provide that
14 information.

15 MR. HOROVITZ: The application has been
16 prepared. We actually got an update yesterday. We
17 were waiting for one update on the title report, and
18 then it can be accepted by the county for initial
19 processing.

20 COMMISSIONER OHIGASHI: Would you wait for
21 final subdivision approval before the sale is
22 consummated?

23 MR. HOROVITZ: We would have to, yes.
24 Until there's final subdivision of the large lot.

25 COMMISSIONER OHIGASHI: My experience has

1 been that, or my view is that those subdivisions may
2 take quite some time.

3 MR. HOROVITZ: I think --

4 COMMISSIONER OHIGASHI: I'm just wondering
5 at what point -- are we preparing for six months
6 ahead, 12 months ahead before the Motion to Bifurcate
7 takes place or two years ahead? I'm not sure what
8 the general subdivision requirements term takes.

9 MR. HOROVITZ: And I think Mr. Frampton
10 might be testifying on the next motion, give further
11 detail on exact time of that.

12 COMMISSIONER OHIGASHI: That doesn't help
13 me.

14 MR. HOROVITZ: The thing to keep in mind,
15 what we are dealing with is a large -- is Emmanuel
16 Lutheran's subdivision. We're processing it for
17 them. At this point it's their property and
18 subdivision under their name. It's a large lot
19 subdivision that doesn't trigger many of the
20 development requirements that will ultimately --

21 COMMISSIONER OHIGASHI: I'm assuming Mr.
22 Frampton could tell you the answer because he's a
23 member of the LLC, right?

24 MR. HOROVITZ: Certainly.

25 COMMISSIONER OHIGASHI: Why don't we have

1 him answer.

2 MR. HOROVITZ: Six to nine months after
3 filing.

4 COMMISSIONER OHIGASHI: Thank you.

5 CHAIRPERSON WONG: Commissioner Ohigashi,
6 anything else?

7 COMMISSIONER OHIGASHI: I'm okay. Move on.

8 CHAIRPERSON WONG: Commissioner Chang.

9 COMMISSIONER CHANG: I have a procedural
10 question.

11 If you are admitted as a party now, and
12 then there is a bifurcation, are you going to be
13 withdrawn as a party to the Emmanuel Lutheran?

14 MR. HOROVITZ: Yes. I think as part of the
15 request to bifurcate, if that's the way it goes, we
16 would request to be in charge of our own docket, and
17 Emmanuel Lutheran will be in charge of their own
18 docket.

19 COMMISSIONER CHANG: If there was
20 intervention, would there still have to be removal of
21 the party? I'm just thinking about facilitating what
22 is the most expeditious way.

23 MR. HOROVITZ: I understand. I still think
24 having us as a party gives us better standing to
25 participate as not co-equal, but given our

1 contractual interest in the property.

2 MS. LIM: May I try to supplement Mr.
3 Horovitz' response, because in conceptualizing what
4 was really the most efficient and appropriate path
5 forward, when there's a bifurcation there will be two
6 separate parties -- assuming the Commission grants
7 the bifurcation, there will be two separate decisions
8 and orders, two separate sets of conditions that
9 would be recorded against the property.

10 So intervenor status somehow doesn't seem
11 quite appropriate for a party who would be ultimately
12 the party named in that decision and order.

13 Right now there is one Decision and Order
14 but we know there will be two decisions and orders,
15 at least that's the intent, and WDV will be filing a
16 request that that happen, and ELC will be filing a
17 similar request, but we'll be filing on our own
18 behalf, and there will be two separate landowners
19 with two separate LUC decisions.

20 So for that reason the party status seems
21 superior than intervenor status. I just cannot
22 think -- and I don't have a history with the
23 Commission that some of you do, of course, of an
24 intervenor who in fact owned a piece of the property,
25 was developing a piece of the property, was obligated

1 to go record conditions against the property, that's
2 not the role of the intervenor.

3 COMMISSIONER CHANG: But in this case would
4 WDV, would they be -- for purposes -- maybe it
5 doesn't make a difference, but -- this is currently a
6 motion to have WDV participate in this current -- in
7 your docket, in Emmanuel.

8 Would they be bound by any of the
9 conditions? Once there is a bifurcation, would they
10 be bound by any of the conditions in your separate
11 docket?

12 MS. LIM: The intent of the bifurcation
13 would be that there be separate conditions applicable
14 to each of the two separate lots.

15 COMMISSIONER CHANG: So they wouldn't be a
16 party to Emmanuel -- once there is a bifurcation,
17 there wouldn't be --

18 MS. LIM: That's correct. That's why the
19 desire would be WDV, should this Commission elect to
20 grant the request and allow them to participate as a
21 party, they will be filing a motion as a party saying
22 we hereby request a bifurcation of this, and ELC will
23 be filing one too, but clearly we have different
24 interests, compatible but different interest and --

25 COMMISSIONER CHANG: I understand.

1 CHAIRPERSON WONG: Commissioner Scheuer.

2 VICE CHAIR SCHEUER: I'll go after the
3 Hawai'i Island Commissioner.

4 VICE CHAIR CABRAL: This is common sense
5 here. I don't know all those fancy words, but I kind
6 of have a concern.

7 First off, let me say this. We're very
8 friendly. Intervenors are not necessarily all evil.
9 We have had some nice ones before us before. We
10 handle it.

11 I guess my concern would be as somebody who
12 does sell real estate and done some development,
13 right now it's kind of like you are not quite married
14 yet, so to have all this obligation of the marriage
15 without the legal status of it is a little
16 concerning.

17 I would think that -- maybe I don't know --
18 this is for all you smart lawyer types -- is that it
19 seems like you would want to be an intervenor for
20 now, and then when the actual purchase agreement
21 and/or separation of the property, I assume would
22 have to come before us at some point in time.

23 At that point in time we would be able to
24 change the status from intervenor to petitioner,
25 whatever the other title is, and then at that point

1 we would be recognizing the two properties.

2 Because I assume from what you said, is
3 that we may in fact -- your two separate properties
4 may be looking at some alterations as to what the
5 conditions are going to be moving forward because you
6 have in a sense potentially two different directions
7 that the property would be going in.

8 So that's just sort of my layman opinion of
9 that. I don't know if you want to respond to that.

10 MR. HOROVITZ: I appreciate your comments.
11 We did give three options out there, and happy with
12 any of them. We think it's the most advantageous
13 would be party, but we are perfectly happy with any
14 of them.

15 Our main goal is to get a seat at the
16 table. We think we are important to the process. We
17 have an interest in the property, and we are going to
18 be back before this Commission. So we wanted to get
19 in front of the Commission to be helpful to that
20 process, not only deliberations of Emmanuel
21 Lutheran's motion today, but the future motions that
22 would come later this summer or fall, I would assume.

23 So again, we're happy with all three of the
24 statuses. We think we can work with them. I think,
25 yes, when we do come in for bifurcation if that

1 occurs, we would be asking to change to a party, if
2 that's not our designation at that point in time, but
3 we are happy with any of the designations.

4 VICE CHAIR CABRAL: Back to what if you get
5 a divorce before you're married, it can get really
6 complicated. Thank you.

7 CHAIRPERSON WONG: Commissioner Scheuer.

8 VICE CHAIR SCHEUER: I am ready for a
9 motion.

10 CHAIRPERSON WONG: Let me check.

11 Commissioner Ohigashi, did you have a
12 question to ask?

13 COMMISSIONER OHIGASHI: No.

14 CHAIRPERSON WONG: We are good?

15 COMMISSIONER OHIGASHI: We're good.

16 CHAIRPERSON WONG: Commissioners, what is
17 your pleasure on this motion?

18 COMMISSIONER OHIGASHI: I'm going to move
19 to grant the Movant Intervenor status, and the reason
20 for that, I agree with the practical Nancy Cabral. I
21 see no difference in this status as Intervenor. They
22 can file for bifurcation. Upon bifurcation, they
23 automatically would have party status if granted. So
24 I don't really see any difference. They're allowed
25 to introduce evidence, file motions, do all the

1 things a party can do.

2 In fact, "intervenor" is another word for
3 "party", technically you become a party.

4 So given that they're interested as a
5 potential purchaser and as a supporter of the
6 project, and given their members who are supporters
7 of the Emmanuel Lutheran Church project, I think that
8 the status is Intervenor.

9 Once they acquire an interest in the
10 property, they should be either Co-Petitioner or
11 Co-Party.

12 CHAIRPERSON WONG: Commissioner Scheuer.

13 VICE CHAIR SCHEUER: I'll second the
14 motion.

15 And I'll just add in comments right now. I
16 don't have any -- I'm not aware of any connotation to
17 "intervenor" that is negative or limiting that I am
18 aware of, so I don't see that as an issue, but the
19 converse, which Commissioner Cabral alluded if you
20 were made Co-Petitioner or Party at this time, and
21 something happens between then and now, it becomes a
22 bit awkward to remove you from the proceedings,
23 particularly given -- which we'll get into in the
24 next docket.

25 The history of this proceeding is long and

1 there has been some commitments made that haven't
2 been fully met at this point, so I'd hate to make
3 further reliances at this time on something that they
4 hope to happen but not assured will occur.

5 CHAIRPERSON WONG: Thank you. Any other
6 comments or discussion on the motion? If not, Mr.
7 Orodenker.

8 EXECUTIVE OFFICER: Thank you, Mr. Chair.

9 The motion was made by Commissioner
10 Ohigashi to grant the motion to give Intervenor
11 status.

12 Commissioner Ohigashi?

13 COMMISSIONER OHIGASHI: Aye.

14 EXECUTIVE OFFICER: Commissioner Scheuer?

15 VICE CHAIR SCHEUER: Aye.

16 EXECUTIVE OFFICER: Commissioner Okuda?

17 COMMISSIONER OKUDA: Yes.

18 EXECUTIVE OFFICER: Commissioner Mahi?

19 COMMISSIONER MAHI: Yes.

20 EXECUTIVE OFFICER: Commissioner Chang?

21 COMMISSIONER CHANG: Aye.

22 EXECUTIVE OFFICER: Commissioner Cabral?

23 VICE CHAIR CABRAL: Aye.

24 EXECUTIVE OFFICER: Chair Wong?

25 CHAIRPERSON WONG: Aye.

1 EXECUTIVE OFFICER: Mr. Chair, the motion
2 passes unanimously.

3 CHAIRPERSON WONG: I'll call you Intervenor
4 now instead of Movant.

5 I'm kind of hungry right now, so let's take
6 a lunch break until 1:00 o'clock.

7 Let me change that to 12:30.

8 (Noon recess taken.)

9 A07-773 Emmanuel Lutheran Church of Maui -
10 Motion to Extend Time

11 CHAIRPERSON WONG: Let's get this session
12 started.

13 Ms. Lim, are you ready for your
14 presentation?

15 MS. LIM: Yes, Chair.

16 CHAIRPERSON WONG: Please proceed.

17 MS. LIM: Good afternoon, Commissioners,
18 Jennifer Lim representing Emmanuel Lutheran Church of
19 Maui. We filed with you a Motion to Request a
20 Ten-Year Time Extension for the Emmanuel Lutheran
21 project that the Commission approved ten years ago,
22 it was March of 2008.

23 Today I have one, or perhaps two witnesses,
24 that I would like to present to the Commission, and
25 will help describe what's happening with the Emmanuel

1 Lutheran project.

2 But before we even get there, I would like
3 to, if I could, just give a brief introduction, sort
4 of an opening statement on this motion, because it's
5 not just a simple -- it's a simple request for time
6 extension, but there is a whole lot more packed into
7 this motion, and that refers to the second motion
8 that we anticipate filing at a point in the future
9 that I'll try to talk about.

10 Right now Emmanuel Lutheran Church was
11 approved Urban District reclassification ten years
12 ago for about a 25-acre piece property, and the plan
13 that Emmanuel Lutheran had at that time was to
14 develop a larger school, a church facility.
15 Basically an enhanced campus for their existing
16 church and school that's in Kahului.

17 And Michael Reiley from Emmanuel Lutheran
18 Church will be able to talk more about that.

19 Over the course of time, sort of shortly
20 after that reclassification, they got the property
21 rezoned. And then sort of the perfect storm of the
22 great recession occurred. Several of the individuals
23 who were the driving force in the Emmanuel Lutheran
24 development process either passed away, retired. All
25 of a sudden the committee that was within the

1 Emmanuel Lutheran Church, which happened to be called
2 the Land Use Committee, was in the position of having
3 gotten a reclassification, and all of a sudden having
4 nobody with the experience or health or ability to
5 pursue the development that was planned at that time.

6 Layering on top that were the problems with
7 the great recession that obviously made financing
8 very difficult. It also makes fundraising very
9 difficult, and Emmanuel Lutheran Church, as you know
10 from the pleading, is a non-profit corporation. So
11 fundraising is how they will be financing their
12 project.

13 So the great recession depressed their
14 ability to do fundraising, and then there was
15 somewhat later a decrease in student enrollment. So
16 all of this is going on within the ten-year time
17 frame.

18 Starting around 2016 Emmanuel Lutheran
19 Church began speaking with WDV about the possibility
20 of WDV pursuing an affordable housing project on half
21 of the Emmanuel property. Emmanuel property is
22 Urban, and that could facilitate an affordable
23 housing project that they had planned. But the
24 Emmanuel project is also subject to the LUC Decision
25 and Order.

1 The representations that were made ten
2 years ago, the time condition that was made ten years
3 ago, and then an unusual condition that required
4 Commission approval before any sale.

5 So these discussions began around 2016.
6 The parties signed the Purchase and Sale Agreement.
7 Emmanuel Lutheran has communicated through annual
8 reports which, acknowledgedly, were somewhat late in
9 getting filed. There was, again, a period of several
10 years where there just wasn't lot of communications
11 from Emmanuel Lutheran to the Commission.

12 And I believe annual reports started
13 getting filed again in 2016 as the Emmanuel Lutheran
14 Group reformed and realized that they had this piece
15 of property that they needed to start moving on,
16 today's request for the ten-year time extension.

17 Like I said, the request, it is just a
18 simple request for a ten-year time extension. But
19 part of the underlying purpose for getting that
20 ten-year time extension is not solely to facilitate
21 Emmanuel Lutheran's proposed development, but it is
22 also to enable the Waikapu Development Ventures'
23 affordable housing project to go forward.

24 Right now we are technically out of
25 compliance with the ten-year time condition that the

1 Commission imposed on the property, because Emmanuel
2 Lutheran was to have substantially completed
3 development of their property by this time. That
4 hasn't happened.

5 We intended that Emmanuel Lutheran and
6 Waikapu Development Ventures would come forward after
7 the 201H approval had been granted by the County
8 Council. Again, the 201H approval is the Waikapu
9 Development project. Once that has been granted, we
10 would come forward with sort of a master motion to
11 amend.

12 It would be a master motion to amend to
13 deal with the fact that the Waikapu project is not
14 consistent with representations that have been made
15 to the Commission. So that needs to be pursued.

16 Also the adjustments, meaning the reduction
17 in size and scale of the Emmanuel Lutheran project,
18 would be addressed in that motion.

19 A request for time extension and a request
20 for what we hope the Commission will just discharge
21 as a matter of law, the condition that prohibits the
22 sale of the property.

23 Again, the intention was that this would be
24 one master motion that we would file after the 201H
25 was approved. Unfortunately, the 201H process got

1 somewhat delayed through the County Council, and Mr.
2 Frampton from Waikapu Development Ventures will be
3 able to talk about that briefly.

4 But because of that delay, and in light of
5 the ticking ten-year time frame that the property has
6 for Urban development, we thought it was most
7 transparent. Most, not even differential, most
8 respecting the Commission's rules and process to come
9 in and make sort of this Act 1 motion, with Act 2
10 anticipated to take place probably early next year.

11 The Act 1 motion is to say, may we have the
12 additional ten years? And by the way, while we're
13 asking for this, we're letting you know that there
14 are these plans for subsequent motion, and this
15 additional ten years we didn't want to make a request
16 in a very narrow way and then come back, let's say,
17 four or five months from now with motions to amend
18 and have the Commissioners say, why didn't you tell
19 us all this before.

20 So it's an awkward process that we're going
21 through, because normally we would have wanted to
22 file just one motion and everything before the
23 Commission at one time, but the County Council
24 process didn't allow that.

25 We didn't want to give the appearance that

1 we were thumbing our nose toward the Commission's
2 ten-year time condition. So we figured we better at
3 least get information before the Commission so you
4 could be aware of what is happening, allow us to
5 present our arguments for why we believe there is
6 good cause to grant the ten-year time extension; but
7 also in the interest of full transparency, let you
8 know this is Act 1, and Act 2 will be after the 201H
9 is approved when both parties will come back to the
10 Commission with a Motion to Amend.

11 I know that was a very long opening
12 statement, but I wanted to make sure the Commission
13 understood that we do anticipate these two pieces.

14 With that I would like to ask Mr. Michael
15 Reiley from Emmanuel Lutheran to come and answer some
16 questions.

17 CHAIRPERSON WONG: May I swear you in,
18 please?

19 Do you swear or affirm that the testimony
20 your about to give is the truth?

21 THE WITNESS: I do.

22 CHAIRPERSON WONG: Please state your name.

23 THE WITNESS: Michael Reiley.

24 CHAIRPERSON WONG: Please proceed.

25 -o0o-

1 MICHAEL REILEY

2 Was called as a witness by and on behalf of the
3 Petitioner, was sworn to tell the truth, was examined
4 and testified as follows:

5 THE WITNESS: Thank you for the opportunity
6 to be here to testify.

7 DIRECT EXAMINATION

8 BY MS. LIM:

9 Q Why don't you tell the Commissioners what
10 your current occupation is?

11 A I work for a local company called HNU
12 Energy. We are a renewable energy company, and we do
13 work throughout the island, construction, electrical
14 construction and license engineering.

15 Q What is your role with respect to Emmanuel
16 Lutheran Church?

17 A I've been a member of Emmanuel since the
18 year 2000, and I'm the current president of the
19 congregation, in charge of the church and schools.

20 Q And for about how long have you been with
21 Emmanuel Lutheran Church?

22 A Been with the church since 2000.

23 Q And president of the congregation?

24 A Tomorrow I'm up for reelection. They're
25 three-year terms, so three years.

1 And, depends on how it goes, I guess.

2 Q Could you let the Commissioners know just
3 briefly what Emmanuel Lutheran Church and School is
4 about? What happens at the existing Kahului --

5 A Sure, yeah. Well, just last October we
6 celebrated both the 500 year of Lutheranism, and the
7 and 50th year of Emmanuel Lutheran Church here on
8 Maui. So a big celebration. 50 years is a long time
9 for any entity to be there. We started preschool
10 five years later, so that would be 1972.

11 And we have been running K through 8 school
12 for many years. So that's kind of -- we have three
13 worship services every Sunday, two in Kahului and one
14 over in Lahaina.

15 And our original pastor, Pastor Fricke is
16 now retired for about ten years, was the original
17 pastor for 40 years. And now Pastor Joshua Schneider
18 is our Senior Pastor.

19 Q Were you involved when Emmanuel Lutheran
20 came before the Commission ten years ago to request
21 District Boundary Amendment?

22 A I was not. I have served in various
23 positions of leadership in the years I've been there.
24 I was an elder for a number of years, Chair of Board
25 of Elders for a number of years.

1 But prior to tenure at HNU, I ran Hawai'i
2 operations for Textron. So all the optics over at
3 Pacific Missile Range facility, and a lot of laser
4 programs here on Maui up at Science City.

5 So I was transferred back to corporate in
6 Massachusetts in 2007 and was there until 2009 for
7 two years.

8 So when this all happened in 2008 I was six
9 time zones and 5,000 miles away. No, I was not
10 directly involved.

11 Q Now, in your capacity -- well, at least
12 through the rest of today -- but president of the
13 congregation, are you intimately involved with the
14 development plans going forward?

15 A Yes, yes. Going forward I certainly will
16 be and have been now, along with the major players
17 there, Pastor Schneider, Senior Pastor, and David
18 Hobus is the principal of the school.

19 Q Were Pastor Schneider and David Hobus
20 involved with the proceeding ten years ago?

21 A Pastor Schneider was new to the church at
22 the time. He started as a teacher at the school,
23 then associate pastor, and then when Pastor Fricke
24 retired, he became senior pastor.

25 So I believe he came into the process as

1 part of it, and has been familiar with the process
2 since.

3 Q The group within the Emmanuel Lutheran,
4 what you call the Land Use Committee, are there many
5 members of the Land Use Committee still active?

6 A There are not. A number of -- three of the
7 members have passed away, including the former
8 president and the head of the Land Use Commission,
9 Richard Sutheimer (phonetic). He passed away in
10 2014. Corley Anderson (phonetic) also passed away,
11 but there were other members, people involved that
12 have retired. So there is still some residual
13 knowledge of what was there, but the main players
14 have shifted.

15 A lot of changes in ten years as we were
16 discussing before. So there's been a changing of the
17 guard, some new leadership, and -- does that answer
18 your question?

19 Q It does, thanks.

20 Do you feel that the loss within the Land
21 Use Committee was part of the reason why the church
22 project hasn't been developed within the ten-year
23 time frame originally proposed?

24 A I think that was a contributing factor. I
25 do think the primary thing, as you pointed out, the

1 great recession happened. Again, ten years changes a
2 lot. Ten years ago our enrollment was 175, which was
3 our maximum capacity at the time. We were turning
4 students away, and there was a big need and drive to
5 expand our campus and do this project. And we had --
6 you know, large enrollment means more financial
7 ability.

8 And what happened then, through the great
9 recession, and people can't send their kids to
10 private school, and a lot changes. Our enrollment
11 went all the way down to 120 at its low. We are back
12 up to 137, so recovering, as a lot of companies and
13 entities have, but that's the really the biggest
14 thing that changed it.

15 I think the fact that a number of members
16 retired, passed away and so on, certainly has made
17 new leadership have to step up and there's been some
18 resetting there. But I think the key elements were
19 it was a very different world at the time, and the
20 need was very different.

21 Even the lot itself at the time it was
22 agriculture from historical, but if you go out there
23 now, it's one of the fastest growing thriving areas
24 on the island, and anything but agriculture at this
25 point in time. So that's a very different change

1 from -- ten years ago agriculture it was more on the
2 border, now it's just right in the center of a lot of
3 development.

4 Q Is Emmanuel Lutheran planning on building
5 exactly the same project that Mr. Sutheimer
6 (phonetic) and others presented to the Commission ten
7 years ago?

8 A I would say substantially the same. It's
9 certainly lower in scope, more modest, if you will.
10 At the time there was 25 acres, and the plan was
11 really the development was going to be on about half
12 the size of the property. But in terms of having a
13 church, school, preschool, multiple classrooms, all
14 of those, the needs are still there, and
15 substantially the same.

16 We actually, we were on -- one half of the
17 campus was there, but again, the desire of Waikapu
18 Development Venture was for that, because it's next
19 to another affordable housing development that
20 they're doing, so we were able to work that. So it's
21 really taking and shifting over the development.

22 So it was only taking half of the property,
23 it still is our plans, but there have been some
24 changes. But I would say it's substantially the same
25 in terms of the scope and needs, it's just probably a

1 little bit more modest on a smaller property.

2 Q Like the original project was going to have
3 a preschool?

4 A Yep.

5 Q And classrooms for grades K through 8. Is
6 that still Emmanuel Lutheran's intention?

7 A Yes.

8 Q And the original project also described a
9 multipurpose complex?

10 A Yes.

11 Q And that's still part of Emmanuel's plan?

12 A Yes.

13 Q The original project also described a
14 450-foot sanctuary. Is that part of Emmanuel
15 Lutheran's project?

16 A We still hope so. That's going -- that
17 wouldn't be the first phase. Let's do that -- again,
18 that was ambitious. So I would say we certainly
19 still want to develop a sanctuary. The final
20 decisions on size and capacity and so on could be
21 downsized a bit.

22 Q But the basics of having classroom,
23 multipurpose center and the preschool facility is all
24 still part of Emmanuel Lutheran project that you plan
25 on presenting to the Commission for a motion?

1 A Yes.

2 Q Are you aware that the Commission imposed a
3 ten-year completion deadline upon Emmanuel Lutheran?

4 A I am.

5 Q And what is it that we're asking the
6 Commission for today?

7 A We're asking for an extension to that
8 original timeline for the reasons we just presented.

9 Q A ten-year extension?

10 A Yes.

11 Q Now, I know that the fine details on the
12 development of Emmanuel Lutheran plan haven't been
13 fully vetted.

14 Why do you anticipate that ten years is a
15 sufficient period of time, not too much, not too
16 little, to develop the project that you're describing
17 is going to be somewhat more modest than what was
18 proposed ten years ago?

19 A I think the scope and what we're trying to
20 accomplish is substantially the same, and ten years
21 was the appropriate timeline at that point. We're
22 already now two months into another ten years, and as
23 we discussed, one of the key elements we need to be
24 able to do is divide and sell off a portion of that
25 land.

1 There is a number of reasons for that, not
2 the least of which is financial, the ability -- when
3 we were doing be fundraising originally, we were able
4 to raise funds and accomplish a lot with
5 architectural and regulatory processes and so on, but
6 what we found is that a number of the large granting
7 entities had a condition where you can't have debt on
8 the property. And we still had mortgages, so we
9 didn't qualify for those.

10 So by dividing and selling it off, we will
11 be able to completely pay off the mortgage and have
12 some initial funds to get going, and then we can do
13 the fundraising and develop that.

14 Q So the sale will actually facilitate your
15 ability to obtain grants and do the other fundraising
16 that was always contemplated for the financing of the
17 project?

18 A Correct.

19 Q So although the Commission heard me say it,
20 I want to hear you say it.

21 We are here today requesting a ten-year
22 time extension. Do you anticipate that you'll be
23 returning to the Commission for any additional
24 request for approval should the Commission grant the
25 ten-year time extension?

1 A For additional extensions, you say?

2 Q No, other approvals.

3 A Yes, yes. This is just for that extension.
4 We need approval to sell -- any sale of the property,
5 and we're going to need -- I don't think there's any
6 -- the other things in the Decision and Order I don't
7 think we are taking any contention with.

8 Q The other conditions, you mean?

9 A Correct.

10 Q The other conditions at this point,
11 Emmanuel Lutheran is fairly comfortable with those
12 conditions, but for the timeframe and the sale
13 condition, and then, of course, the representations,
14 they're a little bit different?

15 A Yes.

16 Q I'll ask you, although it's really maybe a
17 question for Mr. Frampton would be more ready to
18 answer, but when do you anticipate that the sell
19 would be ready to close, setting aside any concerns
20 about the Commissioner's condition of requiring the
21 sell?

22 A The question probably is better for Mr.
23 Frampton, but from what I understand of the process,
24 I believe roughly a year from now.

25 Q You know, with that, is there anything else

1 you would like to say to the Commission before I turn
2 you over for additional questions?

3 A Just like to thank you for your time and
4 for your consideration.

5 This is -- well, it's really two much
6 needed things here: Good quality education for
7 families from an institution that's been here more
8 than 50 years. Excellent reputation. We do a lot in
9 the community, at the county fair, we run a pumpkin
10 festival every year with huge turnout.

11 You go around the community, and a lot of
12 people have children and grandchildren that have come
13 through our preschool and our school programs. It's
14 a real ministry to that, and it's a real service to
15 the community.

16 We're just thrilled to have this
17 opportunity to actually sell a portion for another
18 real need here is affordable housing, and to start at
19 70 percent and go up. I really admire what these
20 gentlemen and this venture is doing to offer that.
21 That's why I asked for your consideration. This is
22 something that is really needed. It is in a key part
23 of where development is happening. And we just think
24 the Island of Maui is going to be much better for
25 being able to bring these projects forward.

1 CHAIRPERSON WONG: Thank you.

2 Mr. Horvitz, any questions?

3 MR. HOROVITZ: No questions for the
4 witness.

5 MR. HOPPER: Mr. Chair, just a clarifying
6 question.

7 CROSS-EXAMINATION

8 BY MR. HOPPER:

9 Q You had stated that you believe the
10 Emmanuel Lutheran project to be consistent with the
11 Decision and Order and the conditions.

12 You're not commenting though on a proposed
13 201H project or anything Waikapu Development Venture
14 would be needing?

15 A That is correct. That would not be
16 consistent with the original Decision and Order.

17 CHAIRPERSON WONG: OP.

18 MS. APUNA: I have one question.

19 CROSS-EXAMINATION

20 BY MS. APUNA:

21 Q In the Petition on page 13 it says that:
22 Conceptual planning for the original project was
23 undertaken in 2007, 2008.

24 Does there need to be a new conceptual
25 planning for the project that needs to be done in the

1 next ten years?

2 A There will need to be some modifications to
3 that, but we use Maui Architectural Group and Potomac
4 Engineering and a number of groups to come up with
5 plans for that campus is where a lot of the
6 development and the original funding went, but now
7 things have changed some.

8 But it's not just going back to square one.
9 It's a completely different element. There will be
10 some of this.

11 I think before investing too much in the
12 rest here, we really need to see what's going to be
13 able to happen with dividing and selling a portion,
14 then being able to take care of those things so we
15 can fundraise and reengage in the development.

16 Q So there was talk of conceptual planning
17 and then there was fundraising campaign and a
18 rezoning under "PROGRESS" of the Petition since the
19 original D and O.

20 Are you saying everything is pretty much
21 starting at square one, these things that have been
22 considered progress? It wouldn't really have -- I
23 mean you would have to start over for the ten years
24 as far as what has been accomplished, you have to
25 redo these things or have to somehow reset; is that

1 correct?

2 A Well, there is an element of a reset, but I
3 would not say we're back at square one. Certainly
4 the zoning was a big thing and that's what started
5 the ten years, and we hope that doesn't have to
6 revert or be a problem.

7 Part of the fundraising, there will be
8 excess proceeds from the sell that is going to help a
9 lot, and we feel we will be able to leverage that
10 into -- we have -- the economy is a lot better, so a
11 lot of the school families are very excited to help
12 us with a capital campaign, and a lot of the entities
13 that provide grants for these kinds of things, once
14 we have removed the debt from the property, that
15 would also be able to help us reach the financial
16 goals.

17 Q I think you testified that the actual sale
18 adds more time to the ten years in order to -- the
19 sale and the actual subdivision of the property, that
20 that kind of adds to the original ten years, or adds
21 to the amount of time within the ten years that you
22 did?

23 A I think it contributes to the ten years
24 that we are requesting because we really can get
25 started -- we're two months into the ten years,

1 probably be another year into the ten years before we
2 can actually sell and be doing some of these things.
3 So the actual time we are going to have to develop it
4 is going to be less than ten years remaining before
5 we get to that point. Sorry if I wasn't clear.

6 Q No, that's clear. Thank you.

7 CHAIRPERSON WONG: Commissioners, any
8 questions? Commissioner Chang.

9 COMMISSIONER CHANG: Thank you for being
10 here and for your testimony.

11 And I am not making a judgment about the
12 merits of either the school or the housing project.
13 But is it your testimony that the school cannot be
14 developed without the financing, the sale of the
15 property for the 201H project?

16 THE WITNESS: That is correct. And it's
17 because we can't access some of the grants there and
18 also the proceeds of selling. That was a decision we
19 made as a congregation a couple of years ago that
20 we -- that would be the way to get back on track with
21 development.

22 COMMISSIONER CHANG: My understanding that
23 the LUC approved just the school, and it was based
24 upon all of the information that was provided to LUC
25 in 2008. And now we're looking at that same parcel

1 of land not only the school, but now having a housing
2 component on the same parcel of land that was subject
3 to the rezoning?

4 THE WITNESS: Yes.

5 COMMISSIONER CHANG: I suspect my questions
6 will be more relevant to the housing, but it is your
7 testimony if you are not able to sell the property,
8 and they are not for the housing, you would not be
9 able to proceed forward with the development of the
10 school?

11 THE WITNESS: Never say never, especially
12 if they're Christian. But, you know, there have been
13 many cases of wealthy individuals donating things.
14 So I would not say no. I would say the current plan,
15 if you need a plan, would be to develop and do that.

16 There's a need. We certainly will look at
17 other options, but this was to us the clearest one.
18 There were some things we didn't know back at that
19 time, like if you still have debt on the property you
20 really can't access a lot.

21 We hired someone to come in and help
22 fundraise and all that. We learned a lot the first
23 go-around, we hope to apply to success this time.

24 COMMISSIONER CHANG: And I appreciate that.
25 I know you cannot predict the future.

1 But at least based upon the information
2 that you know today, based upon the exhaustion of the
3 options that you've gone through, you will not be
4 able to build the school and comply with the
5 conditions of the rezoning without the sale of the
6 property to Waikapu Development for their housing?

7 THE WITNESS: That's correct at this point
8 in time.

9 COMMISSIONER CHANG: Okay, thank you.

10 CHAIRPERSON WONG: Commissioner Cabral.

11 VICE CHAIR CABRAL: I think I need to have
12 a disclosure. I don't know this gentleman directly,
13 I don't think I remember him, but HNU did two
14 photovoltaic projects at two of my condominiums
15 successfully about five or six ago. I know the
16 company he works for, I don't know him, So I wanted
17 to disclose that.

18 In terms of the housing project -- and I
19 don't recall how many units they're looking at
20 putting on there, or you may not know until you find
21 out. Do you know about --

22 THE WITNESS: Conceptual plan is for 80.

23 VICE CHAIR CABRAL: Was that a mix of one,
24 two and three bedroom?

25 THE WITNESS: Two and three.

1 VICE CHAIR CABRAL: So a couple hundred
2 people will probably live on that property. I'm not
3 familiar with your neighborhood, the subject
4 neighborhood, so can you tell me a little bit about
5 what is going on in terms of traffic, neighbors, all
6 the rest of it, since this was ag, is ag, or what's
7 going on around you?

8 Do you have a \$50 million bridge you need
9 to build in order to get in the place? You know, can
10 you tell me a little bit about the impact that this
11 combined effort now is going to have at school coming
12 and going kind of a time?

13 THE WITNESS: I will take a crack, but if
14 you ask Mr. Frampton that separately, he would be
15 more knowledgeable.

16 It's an area nestled up against the West
17 Maui mountains there, right below Wailuku Heights.
18 Originally it was 50 acres, and it was sold to two
19 different churches, Valley Isle Fellowship has about
20 25 and Emmanuel Lutheran Church bought 25.

21 Valley Isle Fellowship has done exactly
22 what we're looking and doing now. They split it.
23 They sold half for 100 percent affordable housing,
24 and that's successful and we are looking to do the
25 same.

1 A lot has popped up in that area,
2 McDonald's, Longs and Walgreens all in that area. So
3 it's very far from ag at this point and housing all
4 around. Again, we're one of the fastest growing
5 areas of Maui.

6 VICE CHAIR CABRAL: Thank you.

7 CHAIRPERSON WONG: Anyone else?
8 Commissioner Ohigashi.

9 COMMISSIONER OHIGASHI: The first thing you
10 mentioned that part of the development encroached in
11 the area that you intend to sell or part of it was
12 planned for and it was encroached in that area you
13 plan to sell?

14 THE WITNESS: The original plans for the 25
15 acres was to put most of the campus, of the
16 development is what that area we are selling to
17 Waikapu Development Venture.

18 COMMISSIONER OHIGASHI: So the area that
19 your -- so you're transferring it to the other area;
20 is that correct?

21 THE WITNESS: Correct.

22 COMMISSIONER OHIGASHI: And that complex
23 will fit in that other area?

24 THE WITNESS: Yes.

25 COMMISSIONER OHIGASHI: I don't know how to

1 do this. I'm not sure where the dividing line will
2 be. So the plans that was approved, I guess at that
3 time, show that this was one portion of the lot moved
4 to the other, right?

5 THE WITNESS: Yes.

6 COMMISSIONER OHIGASHI: You mentioned there
7 was like a 400 --

8 THE WITNESS: 450 feet.

9 COMMISSIONER OHIGASHI: What kind of area?

10 THE WITNESS: That would be basically a
11 church area.

12 COMMISSIONER OHIGASHI: You are not sure if
13 that will be completed, but it may have to be scaled
14 back. Would you be able to develop that, or
15 scaled-back version within the ten-year period?

16 THE WITNESS: Yes.

17 CHAIRPERSON WONG: Commissioner Scheuer.

18 VICE CHAIR SCHEUER: Are you able to
19 explain why the church missed so many annual reports?

20 THE WITNESS: I can try. I think it was
21 this -- there's no good excuse, so I can't excuse it.
22 But the explanation, I think, would be there was a
23 big push to get this going, and then, you know, this
24 combination of the perfect storm of the project kind
25 of getting cut off at the knees.

1 I think the Land Use Commission at that
2 point -- not Commission, Committee, you guys are the
3 Commission -- I wouldn't say disbanded, but a lot of
4 the organization, the thrust for that, once we
5 couldn't get the grants and we had enrollment go down
6 and all that, there were other challenges with the
7 school shrinking and all of that.

8 So, no, that was a changing of the guard a
9 little bit, and those reports lapsed. And I think
10 since that, over the past few years, we've gone back
11 on track.

12 VICE CHAIR SCHEUER: I have a couple of
13 questions regarding the relationship of the church to
14 the larger organizations and how that may or may not
15 relate to this project.

16 Is the church part of like the Missouri
17 Synd or Wisconsin -- (inaudible).

18 THE WITNESS: Missouri Synd.

19 VICE CHAIR SCHEUER: Is there like a
20 financial or other relationship there related that --
21 that would get to the ability of this congregation to
22 actually undertake the project?

23 THE WITNESS: Yes, there are some meetings.
24 In fact, our current mortgage is through the Church
25 Extension Fund Missouri Synd, so we are able to

1 secure funds through that, and there are grant and
2 other financing abilities through that.

3 VICE CHAIR SCHEUER: But they have a
4 mortgage, but they're not otherwise an owner in the
5 property?

6 THE WITNESS: Correct.

7 VICE CHAIR SCHEUER: I'm also -- well, I'm
8 interested in some of these -- when you subdivide
9 property, if you're successful in subdividing the
10 property, each half of the property suddenly becomes
11 less than 15 acres of land and could be presumably
12 handled purely at the county level.

13 Is there still an intention to move these
14 proceedings through this body, or to try and have
15 this only handled at county level?

16 THE WITNESS: I don't think there is an
17 intention either way. I think that that is what it
18 is. That did not weigh in the decision of how much
19 to sell to make both parcels less than 15-acres. I
20 think we realized at the time that it wasn't a
21 consideration. If it no longer falls under the
22 jurisdiction of this, that's -- I mean no
23 expectation.

24 VICE CHAIR SCHEUER: So you considered it?

25 THE WITNESS: I'm aware of that condition,

1 but it was not -- it didn't play into any of the
2 decision so far.

3 VICE CHAIR SCHEUER: Presumably you were
4 here earlier regarding the Hana Landfill, we had a
5 discussion about how long an EIS stayed fresh, if you
6 will; How long it can be used as good basis for
7 decision-making.

8 Given both the ten-year time frame since
9 you originally received approval from us, as well as
10 the changing circumstances on the totality of the
11 property, I assume you're intending to go through a
12 brand new 343 process as part of this development,
13 your development, not affordable housing, your school
14 development?

15 THE WITNESS: I expect that may be a
16 requirement.

17 MS. LIM: If I may, I have to step in
18 because in fairness, Dr. Reiley is not a land use
19 lawyer or particularly familiar with the land
20 development process. And this is actually going into
21 a legal direction that he is just not equipped to
22 respond to.

23 VICE CHAIR SCHEUER: Thank you, Ms. Lim.
24 I'm just trying to get -- just trying to understand.

25 There's this commitment in good faith by

1 the Petitioner that says ten years is sufficient.
2 Presumably that's based on some sort of set of steps
3 that the Petitioner has some independence of their
4 counsel concept of what is involved to successfully
5 see this project through.

6 MS. LIM: Well, to clarify, in terms of
7 intention and why requesting another ten years,
8 certainly Dr. Reiley is capable of responding to
9 those questions. But in terms of discussing EA's, I
10 just have to make a correction. There was no 343
11 trigger for this project ever. So we are not in a
12 position where 343 would need to be refreshed.

13 And I'm not conceding when or if projects
14 ever need to be refreshed in 343. But in this
15 instance, there was never a 343 trigger, so there is
16 no EA or EIS to be updated, and the extension itself
17 obviously doesn't constitute a 343 trigger. It's
18 merely time tension, it's not any of the enumerated
19 343 items under 343.

20 VICE CHAIR SCHEUER: I wasn't suggesting
21 time extension would somehow trigger 343 in this
22 instance.

23 I just wanted to get something else. Under
24 your testimony you talked about already two months
25 into the new ten-year period.

1 The old ten-year period has expired,
2 correct?

3 THE WITNESS: Correct.

4 VICE CHAIR SCHEUER: And there's no
5 ten-year period yet?

6 THE WITNESS: Right, if that was granted,
7 there would be a start point. My assumption was the
8 start point would be when the last -- since it's an
9 extension, it would continue from when the last one
10 ended.

11 It may have been a false assumption. I
12 apologize.

13 CHAIRPERSON WONG: One thing for everyone
14 here, I just want to remind the Commissioners and to
15 all the parties, that the Commissioners have a plane
16 to catch at 3:30, so just be aware of the time.

17 Commissioner Ohigashi.

18 COMMISSIONER OHIGASHI: My question first
19 is Ms. Lim, who is your other witness?

20 MS. LIM: Bill Frampton.

21 COMMISSIONER OHIGASHI: Second question,
22 more like a question to the parties, is that the
23 ten-year requested extension would apply to the
24 property as a whole rather than the specific project,
25 that's my understanding. And the specific project

1 promises to build -- if you modify the project, the
2 question that I would have is that would the ten-year
3 requirement also apply to the new project?

4 And the second question is: Is that the
5 reason we are -- you're asking for a ten-year
6 requirement essentially for the purposes of having
7 the options available to you to develop the church;
8 is that right?

9 THE WITNESS: I would say it's clearing the
10 major obstacle which is encumbrance on the property.

11 COMMISSIONER OHIGASHI: Technically if you
12 don't have the ten-year, you can't develop the
13 property, you can't develop the church, that's the
14 reason why you're transparent about the whole process
15 you're trying to get through, right?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER OHIGASHI: So knowing that,
18 and knowing that there's additional steps forward, it
19 would seem like the issues that the Commission has to
20 wrestle with is whether or not a time extension can
21 be given on the property, and the property as a whole
22 right now.

23 And even if -- the other question, even if
24 you don't bifurcate it, because -- and it becomes
25 part of your project, will that -- won't you have to

1 file a Petition to Amend to allow the housing
2 component to become part of the project as a whole?

3 I think that that's what we're developing,
4 so --

5 THE WITNESS: I think it's kind of been
6 characterized as Act 1 and Act 2. We are out of
7 compliance. The time has lapsed. And we thought it
8 was important to get in front of the Commission and
9 ask for an extension, but the next Act 2 would be
10 addressing these things.

11 COMMISSIONER SCHEUER: Unlike Mr.
12 Scheuer -- I'm not saying it's unlike him.

13 I'm not that much concerned about the fact
14 that a church has missed deadlines in a land use
15 matter that it got permission for and a time when we
16 had a great recession. I can understand I think, as
17 a human being and as I guess a practicing lawyer, I
18 can understand that. You're all volunteers and you
19 guys are out there trying to do your best.

20 So I'm more concerned about what the future
21 is in terms of how that this type of housing that
22 they are proposing can come into fruition, given the
23 fact that you're -- it hinges upon a ten-year
24 extension, that's my concern.

25 CHAIRPERSON WONG: Commissioner Chang.

1 COMMISSIONER CHANG: One final question.

2 I just want to confirm for the record that
3 for purposes of Emmanuel Church, and you representing
4 Emmanuel Church, and you're familiar with all of the
5 conditions, that it is your representation that the
6 church acknowledges that you are not in substantial
7 compliance with the Land Use Commission conditions
8 for granting the boundary amendment?

9 THE WITNESS: Yes.

10 COMMISSIONER CHANG: Thank you.

11 CHAIRPERSON WONG: Commissioner Okuda.

12 COMMISSIONER OKUDA: May I ask Commissioner
13 Ohigashi a question? Are you suggesting that this
14 petition is premature?

15 COMMISSIONER OHIGASHI: I'm thinking about
16 that. I don't know. But the motion before us is for
17 time extension and I think that is not premature.

18 COMMISSIONER OKUDA: If I may, Mr. Chair.

19 COMMISSIONER OHIGASHI: But the Petition
20 that they're talking about obviously hasn't been
21 filed.

22 COMMISSIONER OKUDA: Mr. Chair, if I can
23 ask Commissioner Ohigashi one more question?

24 Are you suggesting then that maybe all of
25 these should be combined in a single petition so we

1 can see the entire picture at one time?

2 COMMISSIONER OHIGASHI: Maybe I'm speaking
3 too much by recapping in my mind. I was trying to
4 confirm where the status of it is.

5 My understanding is they wanted to file it
6 altogether, but circumstances dictated, because they
7 weren't able to get county approval of their project,
8 they couldn't file omnibus, I guess, kind of motion
9 for petition before us, so they have to go -- because
10 of the time limitation, they have to file the time
11 limitation first.

12 I'm willing to review that, but I'm trying
13 to get the reason why they're being so transparent.

14 COMMISSIONER CHANG: Your motion for
15 extension is somewhat of a preemption to our Order to
16 Show Cause why you're not in compliance.

17 MS. LIM: The motion for extension, for the
18 time extension is to hopefully avoid any notion
19 within the Commission that it's appropriate to issue
20 Order to Show Cause.

21 Right now this project fell out of
22 technical compliance. I think it was March 7th of
23 2018. It's not been terribly long. And both in the
24 filings, included in are Exhibit C is a letter that
25 we wrote -- that I wrote on behalf of Emmanuel

1 Lutheran Church to the Executive Officer of the Land
2 Use Commission, notifying him officially. This was
3 after a meeting, and it wasn't the first time the
4 project was discussed, but notifying the Commission,
5 director and staff of the intention to pursue the
6 omnibus motion.

7 But then as Commissioner Ohigashi noted,
8 the ability to get the 201H application -- which has
9 nothing to do with Emmanuel Lutheran Church -- that
10 is a wholly separate independent matter being pursued
11 by WDV, but the ability to get that 201H approval
12 schedule on the council calendar just became too
13 difficult, because as you probably know, 201H
14 approval from the moment they get officially
15 submitted, what you have here is our Exhibit B to the
16 motion, is a draft to the 201H application.

17 We assumed that -- first of all it's
18 available, because WDV prepared it, but we assumed
19 the Commission would want as much information in
20 front of them, but it is just a draft application.

21 From the moment that that application gets
22 formally submitted by the Department of Housing
23 concerns to the County Council, they have got to take
24 action in 45 days for it to be deemed approval, for
25 201H approval.

1 So there is a coordination effort that has
2 to happen anytime somebody is submitting a 201H
3 application. When the window shuts for the 201H to
4 be approved before our March 7, 2018 deadline -- and
5 frankly we were aware that that window was going to
6 shut probably February/March time, because, again,
7 the scheduling with the council had not happened, we
8 said okay, what are we going do? Are we just going
9 to sit back and hope the Commission doesn't feel
10 compelled to issue an Order to Show Cause, even
11 though we are in technically noncompliance, sit back,
12 hope that that doesn't happen, hope that the County
13 Council isn't concerned about the risk of an Order to
14 Show Cause because of the deadline, because at that
15 point it would have clearly passed, or do we come to
16 the Commission and request the extra timeframe.

17 COMMISSIONER CHANG: And I greatly
18 appreciate the transparency.

19 Based upon what I hear today, the housing
20 project is critical to Emmanuel's ability to build.
21 It is connected. In the absence of the financing of
22 the sale, they cannot build. So they are connected.

23 And I do appreciate the transparency. We
24 are probably getting far beyond testimony of your
25 witness, so maybe we will just go on, but I would

1 like to hear from your planner, but in my view it is
2 tied, and that was the testimony. Without the sale,
3 they cannot build.

4 MS. LIM: Acknowledged, Commissioner Chang.
5 I also never say never. There are always abilities
6 to pursue additional funding, but you are correct.

7 MR. HOROVITZ: If I may make one quick
8 comment, Chair, on the timing with the Council, just
9 to clarify.

10 The issue of timing with getting before the
11 Council, for those who don't practice before it, when
12 they go into budget season, it's almost impossible to
13 get anything but budget stuff scheduled.

14 So we circulated the Draft Petition to 29
15 or so state and county agencies, and haven't received
16 any negative comments back. But we just lost a
17 window of opportunity to actually get a hearing.

18 So that's a shutdown until the budget gets
19 done. We are still working with the County Council
20 members, and after today, hopefully, we will go back
21 and say, okay, now let's get an actual date.

22 It wasn't because of any opposition to the
23 project or what we're trying to do, just simply a
24 matter that there is no time on the calendar, given
25 how much time it needs to do the budget.

1 COMMISSIONER CHANG: And I'm not making a
2 judgment on the merits of the project, but you are
3 putting the cart before the horse. You are presuming
4 that the Land Use Commission --

5 MR. HOROVITZ: We are, and we knew going in
6 that that's our risk, and we were comfortable to take
7 it, because we believe -- from our perspective, WDV's
8 perspective, we support the extension request
9 regardless of what happens with our project. That's
10 unequivocal. There is a need for housing and
11 schools. They're independent.

12 COMMISSIONER CHANG: Thank you.

13 CHAIRPERSON WONG: Commissioner Ohigashi.

14 COMMISSIONER OHIGASHI: I want to move for
15 executive session for the purposes of discussion with
16 our attorney on legal issues concerning the ability,
17 our duties and responsibilities as Commissioners.

18 CHAIRPERSON WONG: Do I have a second?

19 COMMISSIONER CHANG: Second.

20 CHAIRPERSON WONG: All in favor say "aye".
21 Any opposition? Let's move to executive session,
22 please.

23 (Executive session.)

24 CHAIRPERSON WONG: Reconvene to call for a
25 recess.)

1 (Recess called.)

2 CHAIRPERSON WONG: Commissioner Ohigashi,
3 do you have --

4 COMMISSIONER OHIGASHI: I have a motion to
5 make.

6 I'm going to move that we defer or continue
7 this matter for a period of six months, next hearing
8 to be worked out between the parties and our staff,
9 and that as a condition of this continuance or
10 deferment, that the Petitioner will provide to the
11 Commission a detailed timetable of any and all State
12 -- required all State and County approvals and
13 actions necessary for the current proposal to move
14 forward, and to bring the Petitioner into full
15 compliance with the D and O, and that such be
16 provided at least 60 days before the next hearing.

17 Also that the Petitioner -- and if the
18 Intervenor wants to help them -- provide written
19 status report and submit motions that they may want
20 to have considered at the next hearing.

21 Is six months too short?

22 MR. HOROVITZ: Thank you. I appreciate the
23 motion.

24 Yeah, I think -- I think it might be a
25 little bit too short. I'll tell you timeline-wise,

1 we anticipate, if all goes well, that we would go
2 before getting County Council meetings in
3 September/October timeframe, that they would then
4 decide by let's say end of November or so. Then we
5 go through the county resolution process probably by
6 January or so.

7 That's the time line we're working on right
8 now. I would prefer to come back with a motion
9 saying we have a fully approved project, so you can
10 see that it's done.

11 So my preference would be for nine months
12 or so, but if the Commission is really comfortable
13 with six, I'll take what we can get.

14 COMMISSIONER OHIGASHI: I'll propose six
15 months, and if you want continuance, that we would
16 authorize the Chairman to grant any continuances,
17 based upon your ability to convince him.

18 MR. HOROVITZ: I'll do my best.

19 CHAIRPERSON WONG: Is there a second?

20 COMMISSIONER MAHI: I'll second.

21 CHAIRPERSON WONG: We're in discussion.
22 Commissioner Scheuer.

23 VICE CHAIR SCHEUER: A couple things.
24 First is that last bit about deferring continuances
25 to the Chair. I would like to have it a little

1 clearer before we vote on it. I don't have my head
2 entirely wrapped around it.

3 Second thing, and, you know, forgive me,
4 I'll make this brief. I think it's important for
5 everybody who comes before us, whether they're public
6 testifier, Petitioners, Intervenor, Parties, that
7 they feel very welcome and comfortable.

8 I just want to address one thing on the
9 record. When I question a witness, I don't question
10 them any differently whether they're a member of a
11 church or private developer or anything. It's our
12 duty to treat everybody who comes before us fairly.
13 I actually, for many years, was a member of the
14 Lutheran Church of Honolulu. I don't have anything
15 for or against Lutherans or any other denominations
16 because of that.

17 CHAIRPERSON WONG: Any other discussion?

18 COMMISSIONER OHIGASHI: My only concern is
19 that we need -- my six months is -- we need a time to
20 resolve this. If we say until moved on, it would be
21 taking forever. So I like to keep the six months,
22 but allow the Chair some discretion in determining
23 whether a continuance is necessary or not, unless it
24 has to be brought before the Commission.

25 CHAIRPERSON WONG: This is just myself.

1 I would feel comfortable if you give me six
2 months more for the extension -- not more than six
3 months, anything else would have to come back.

4 COMMISSIONER OHIGASHI: So would I have to
5 amend my motion to include that language?

6 CHAIRPERSON WONG: Yes, please.

7 COMMISSIONER OHIGASHI: If I can restate my
8 motion by adding that the Chair has discretion up to
9 six additional months, other than that it would have
10 to come back.

11 CHAIRPERSON WONG: Commissioner Mahi, there
12 was an addition.

13 COMMISSIONER MAHI: Yeah.

14 CHAIRPERSON WONG: You have no problem?

15 COMMISSIONER MAHI: Move along.

16 CHAIRPERSON WONG: Any other discussion?
17 Commissioner Scheuer first.

18 VICE CHAIR SCHEUER: Could you read the
19 motion back?

20 EXECUTIVE OFFICER: The motion was to
21 continue or defer this matter for six months with
22 condition that timeline be filed within 60 days
23 before the hearing, and that the Petitioner submit
24 any additional motions, with an authorization for the
25 Chair to grant a continuance for up to six additional

1 months.

2 COMMISSIONER OHIGASHI: Maybe I can restate
3 it.

4 First I move to defer or continue this
5 motion for a period of six months. The Petitioner
6 shall provide a detailed timetable of any and all
7 required state and county approvals and actions
8 necessary for the current proposal to move forward
9 and to bring the Petitioner into full compliance with
10 the present D and O.

11 And we want to have that filed 60 days
12 before our next hearing. So if you are going to ask
13 for a continuance, you're going to have to ask it
14 60 days before.

15 The Petitioner also shall provide a written
16 status report. That's where I introduced the
17 Intervenor may submit motions for approval to the LUC
18 regarding the actions that they have detailed today.
19 And that should be filed 60 days before the next
20 hearing.

21 I ask that the Chairman has an
22 additional -- have the ability to authorize a
23 continuance for an additional six months, up to an
24 additional six months, and if they are requesting
25 longer period than that, that it should be brought

1 before the Commission.

2 The last thing -- that's all I can
3 remember. But that's pretty clear.

4 CHAIRPERSON WONG: Commissioner Okuda, you
5 had a question?

6 COMMISSIONER OKUDA: No, no. Commissioner
7 Ohigashi has answered all my questions.

8 CHAIRPERSON WONG: Any other discussion on
9 this motion?

10 COMMISSIONER CHANG: Mr. Chair, is it
11 appropriate for me to ask in particular Waikapu
12 Development -- I mean what are we going to expect --
13 what is going to happen within six months? Is that
14 fair to ask? I want to know what I'm voting on.
15 What's going to happen?

16 MR. HOROVITZ: I think it will be a few
17 more months than six months. We have our 201H draft
18 that's been circulated and already received comments.
19 We're going to be going before the County Council to
20 get their approval on the process. We then need them
21 to move, approve the resolution, fully authorize it.
22 So at that point we would have a county approved 201H
23 project.

24 The subdivision itself will be nearly
25 complete, we would hope. So we would then be asking

1 the Commission, at least our portion of it, to the
2 piece of land that we intend to purchase, to amend
3 the Decision and Order to allow the 201H project. We
4 will know exactly what it's looking like on our
5 portion of the property.

6 I expect there might be some other request
7 at that time, but that's it in a nutshell.

8 COMMISSIONER CHANG: Is your sale
9 conditioned upon the 201H approval?

10 MR. HOROVITZ: No. Our sale is conditioned
11 upon the large two lot subdivision. The 201H
12 approval, whether by the county, that's entirely our
13 risk. The sale of the property, and Emmanuel
14 Lutheran's ability to get our funds to do what they
15 need to do has nothing to do with whether county
16 approves the 201H.

17 COMMISSIONER CHANG: When will the sale be
18 consummated and the subdivision be filed and
19 approved?

20 MR. HOROVITZ: The large lot subdivision is
21 ready to go. We are simply waiting -- literally
22 waiting on an updated title report. And this person
23 who is processing the subdivision has gotten all the
24 other OK's to get that.

25 We hoped to have it all already; we did

1 not. Hopefully within the next week or so that will
2 go on in. Estimate for large lot subdivision like
3 this, six to nine months to go. We need that to
4 occur, and then the Decision and Order from ten years
5 ago requires LUC approval for them to sell it to us.

6 So assuming we had the subdivision done
7 when we came back here the next time, as soon as you
8 guys say, okay, we will allow Emmanuel Lutheran to
9 sell the property, we're ready to close.

10 COMMISSIONER CHANG: That helps me
11 understand.

12 I am at this point not prejudging the
13 merits of your 201 application.

14 I would urge you to review the 201
15 application that was filed by the County of Kaua'i
16 and the series of questions and considerations by the
17 Commission, as I think that will give you a good
18 indication of what the Commission is looking for. So
19 notwithstanding what may have gone before the county,
20 but what the Commission is looking for, because it
21 does appear as if your sale to the church is
22 independent of whether you're going get the 201H
23 approval, but I suspect the 201H approval is critical
24 to your -- I mean that's what you're looking for. So
25 there's no necessarily guarantee that the county may

1 approve it, that the LUC -- I'm not going to
2 prejudge. But just it might just be helpful for you
3 to review the record on that County of Kaua'i as it
4 may help you prepare for your presentation both to
5 the county as well as to LUC.

6 MR. HOROVITZ: Appreciate that. Thank you.

7 CHAIRPERSON WONG: Any other questions
8 about this motion or discussions?

9 If not, Mr. Orodener, please poll the
10 Commission.

11 EXECUTIVE OFFICER: Thank you, Mr. Chair.

12 A motion was made by Commissioner Ohigashi,
13 much more eloquently than I have written down,
14 seconded by Commissioner Mahi. I think everyone
15 heard it. The motion is to continue or defer this
16 matter under certain conditions and certain
17 requirements.

18 Commissioner Ohigashi?

19 COMMISSIONER OHIGASHI: Aye.

20 EXECUTIVE OFFICER: Commissioner Mahi?

21 COMMISSIONER MAHI: Aye.

22 EXECUTIVE OFFICER: Commissioner Okuda?

23 COMMISSIONER OKUDA: Yes.

24 EXECUTIVE OFFICER: Commissioner Scheuer?

25 VICE CHAIR SCHEUER: Aye.

1 EXECUTIVE OFFICER: Commissioner Chang?
2 COMMISSIONER CHANG: Aye.
3 EXECUTIVE OFFICER: Commissioner Cabral?
4 VICE CHAIR CABRAL: No.
5 EXECUTIVE OFFICER: Chair Wong?
6 CHAIRPERSON WONG: Aye.
7 EXECUTIVE OFFICER: Thank you.
8 Mr. Chair, the motion passes with six "aye"
9 votes and one "no" vote.
10 CHAIRPERSON WONG: Thank you.
11 If there's no other business to attend to,
12 we are adjourned.
13 (The proceedings adjourn at 2:13 p.m.)
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CERTIFICATE
STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on May 9, 2018, at 9:00 a.m., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 9th day of May, 2018, in Honolulu,
Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156