

## LAND USE COMMISSION

## STATE OF HAWAII

Hearing held on November 29, 2018

Commencing at 9:30 a.m.

Malcolm Center

1305 North Holopono Street, Suite 5

Kihei, Maui 96753

## AGENDA

VII CALL TO RECONVENE

VIII ADOPTION OF ORDER  
A05-755 Hale Mua Properties, LLC (Maui)

IX CONTINUED ACTION  
A07-773 Emmanuel Lutheran Church of Maui (Maui)  
- Consider Motion for Extension of Time to  
Complete Project  
- Consider Motion for Modification of Original  
Decision and Order dated March 7, 2008

X ACTION  
A07-773 Emmanuel Lutheran Church of Maui  
(Waikapu Development Venture, LLC (WDV) (Maui)  
- Consider WDV Motion to Approve Sale of a  
Portion of the Petition Area  
- Consider WDV Motion to Allow for Subdivision  
of Petition Area  
- Consider WDV Motion for Modification to allow  
for use of portion of the Petition Area  
acquired for a workforce housing project  
recently approved by the County of Maui  
- Consider WDV Motion to Bifurcate

XI Adjournment

1 APPEARANCES:

2 COMMISSIONERS:

3 JONATHAN SCHEUER, Chairperson

NANCY CABRAL, Vice Chair

4 AARON MAHI, Vice Chair

GARY OKUDA

5 EDMUND ACZON

LEE OHIGASHI

6 ARNOLD WONG

7 PATRICIA OHARA, ESQ.

Deputy Attorney General

8 STAFF:

9 DANIEL ORODENKER, Executive Officer

RILEY K. HAKODA, Chief Clerk/Planner

10 SCOTT A.K. DERRICKSON, AICP

11 RANDAL F. SAKUMOTO, ESQ.

McCorriston Miller Mukai MacKinnon

12 Attorney for Hale Mua Properties

13 JENNIFER A. LIM, ESQ.

Carlsmith Ball

14 Attorney for Emmanuel Lutheran Church

15 PETER A. HOROVITZ, ESQ.

Merchant Horovitz Tilley

16 Attorney for Waikapu Development Venture, LLC

17 Michael Hopper, Esq.

Deputy Corporation Counsel

18 JOSEPH ALUETA, Deputy Planner Director

RARA FURUKAWA, Planner

19 DAWN APUNA, ESQ.

20 Deputy Attorney General

LORENE MAKI, Planner

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1 CHAIRPERSON SCHEUER: Aloha, good morning.

2 This is the November 29th, 2018 portion of  
3 the November 28th through 29, 2018 Land Use  
4 Commission meeting.

5 First, our Commission will consider the  
6 adoption of the form of the order for Docket A05-755  
7 Hale Mua Properties, LLC an Order to Show Cause as to  
8 why approximately 240.087 acres of land at Waiehu,  
9 County of Maui, Hawai'i, should not revert to its  
10 former land use designation or be changed to a more  
11 appropriate classification.

12 Will the parties please identify themselves  
13 for the record?

14 MR. SAKUMOTO: Good morning, Mr. Chair,  
15 Commissioners, Randall Sakumoto on behalf of  
16 Successor Petitioner Southwest 7.

17 MR. HOPPER: Michael Hopper, Deputy  
18 Corporation Counsel for the Maui County Department of  
19 Planning. With me is Deputy Planning Director Joseph  
20 Alueta and Planner Tara Furukawa.

21 MS. APUNA: Good morning, Deputy Attorney  
22 General, Dawn Apuna on behalf of Office of Planning.  
23 Here with me today is Lorene Maki.

24 CHAIRPERSON SCHEUER: Let me first update  
25 the record.

1           On September 13, 2018, the Commission met  
2           on Maui and granted the Order to Show Cause as to why  
3           approximately 240.087 acres of land at Waiehu, County  
4           of Maui, Hawaii, should not revert to its former land  
5           use designation or be changed to a more appropriate  
6           classification.

7           Between October 1st and 3rd of this year,  
8           the Commission sent collection correspondence to  
9           Sterling Kim/Hale Mua regarding meeting venue use on  
10          September 13, 2018, and emails to Southwest 7 and  
11          Sterling Kim regarding reimbursement payments for  
12          Court Reporter and venue fees.

13          On November 19th, the Commission mailed the  
14          agenda notice for the November 28 through 29 meeting  
15          to the Parties and to the Statewide, Maui and Hawai'i  
16          mailing lists.

17          Is there anybody in the audience wishing to  
18          give testimony on this matter today?

19          Excuse me one moment. Just take a 30  
20          second recess.

21          (Recess taken.)

22          CHAIRPERSON SCHEUER: I apologize. Is  
23          there any member of the public wishing to provide  
24          testimony on this item today? Seeing none.

25          Commissioners, are there -- Commissioners,

1 before you is the form of the order in this Docket  
2 A05-755 Hale Mua. The form of the order is in the  
3 form submitted by the Petitioner with technical,  
4 non-substantive changes.

5 I'll entertain a motion to approve the form  
6 of the order in this matter.

7 COMMISSIONER OHIGASHI: Mr. Chairman, I  
8 move.

9 CHAIRPERSON SCHEUER: Motion to approve the  
10 form of the order in this matter by Commissioner  
11 Ohigashi. Is there a second?

12 VICE CHAIR CABRAL: I'll second that.

13 CHAIRPERSON SCHEUER: The motion has been  
14 seconded by Commissioner Cabral.

15 Petitioner, do you have something to --

16 MR. SAKUMOTO: Mr. Chair, we actually did  
17 not submit the form of the order. I just wanted to  
18 be clear on that for the record.

19 CHAIRPERSON SCHEUER: Thank you very much.

20 There is a motion on the floor. Is there  
21 any discussion on the motion? Hearing no further  
22 discussion, Mr. Orodenker, do we need to do a roll  
23 call on this? Please do roll call.

24 EXECUTIVE OFFICER: Thank you, Mr. Chair.

25 The motion is to approve the form of the

1 order.

2 Commissioner Ohigashi?

3 COMMISSIONER OHIGASHI: Aye.

4 EXECUTIVE OFFICER: Commissioner Cabral?

5 VICE CHAIR CABRAL: Aye.

6 EXECUTIVE OFFICER: Commissioner Mahi?

7 VICE CHAIR MAHI: Aye.

8 EXECUTIVE OFFICER: Commissioner Wong?

9 COMMISSIONER WONG: Aye.

10 EXECUTIVE OFFICER: Commissioner Okuda?

11 COMMISSIONER OKUDA: Yes.

12 EXECUTIVE OFFICER: Commissioner Aczon?

13 COMMISSIONER ACZON: Yes.

14 EXECUTIVE OFFICER: Chair Scheuer?

15 CHAIRPERSON SCHEUER: Aye.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair.

17 The motion passes unanimously.

18 MR. SAKUMOTO: Thank you very much.

19 CHAIRPERSON SCHEUER: We will now give a  
20 moment to the next group to come up Emmanuel.

21 (Recess taken.)

22 CHAIRPERSON SCHEUER: The next agenda item  
23 is an action meeting on A07-773 Emmanuel Lutheran  
24 Church of Maui to consider motions by Emmanuel  
25 Lutheran Church of Maui and by Waikapu Development

1 Venture LLC.

2 The motions include Motion for Extension of  
3 Time to Complete the Project, and Motion for  
4 Modification of Original Decision and Order dated  
5 March 7th, 2008.

6 And Motions by WDV to Approve the Sale of a  
7 Portion of the Petition Area; Motion to Allow for the  
8 Subdivision of the Petition Area; a Motion for  
9 Modification to allow for use of a portion of the  
10 Petition Area acquired for a workforce housing  
11 project recently approved by County of Maui; and  
12 Motion to Bifurcate.

13 Will the parties please identify themselves  
14 for the record?

15 MS. LIM: Good morning, Chair, members of  
16 the Commission, Jennifer Lim representing the  
17 Petitioner Emmanuel Lutheran Church of Maui. To my  
18 right is the President of Emmanuel Lutheran Church of  
19 Maui, Dr. Michael Reiley.

20 MR. HOROVITZ: Good morning, Chair, members  
21 of the Commission. My name is Peter Horovitz  
22 representing Waikapu Development Ventures.

23 MR. HOPPER: Michael Hopper, Deputy  
24 Corporation Counsel. With me is Planning Director  
25 Joseph Alueta and Planner Tara Furukawa.



1 MS. APUNA: Deputy Attorney General, Dawn  
2 Apuna, on behalf of State Office of Planning.

3 CHAIRPERSON SCHEUER: Let me update the  
4 record.

5 On May 9, 2018, the Commission met on Maui  
6 to consider Waikapu Development Venture LLC's Motion  
7 to be a Copetitioner, or in the Alternative to Become  
8 a Party, or in the Alternative to Intervene and to  
9 Consider Emmanuel Lutheran Church of Maui's Motion to  
10 Extend Time to Complete the Project.

11 The Commission decided to grant WDV's  
12 Motion to be Intervenor and issued its order on  
13 June 6th of this year.

14 The Commission decided "to defer or  
15 continue action on the Motion to Extend Time to  
16 Complete the Project for a period of six months and  
17 that the details of the next hearing would be worked  
18 out between the Parties and LUC staff.

19 Petitioner was to provide a detailed  
20 timetable of any and all State required, State and  
21 County required approvals and actions necessary to  
22 bring Petitioner into full compliance with this D&O  
23 to the Commission at least 60 days prior to the next  
24 hearing.

25 The Petitioner and Intervenor would also

1 submit all status reports and motions they wish to  
2 have considered at least 60 days prior to the next  
3 hearing. The Chair would have discretion to grant no  
4 more than an additional six months to defer or  
5 continue action on this matter. If a continuance of  
6 longer than six months was needed, it would have to  
7 be granted by the full Commission.

8 On October 12th of this year, the  
9 Commission received Emmanuel Lutheran Church's Motion  
10 for Modification and Exhibit 1; and Waikapu  
11 Development Venture LLC's Motion to Approve the Sale;  
12 Motion to Approve the Subdivision; and Motion to  
13 Bifurcate.

14 On October 15, the Commission received  
15 Emmanuel Lutheran Church's CD containing a digital  
16 file of its Motion filed on October 12.

17 On October 16th, the Commission Chair  
18 mailed correspondence to Intervenor WDV granting a  
19 time extension and a limited waiver to accommodate  
20 the November hearing date.

21 On October 19th, the Commission received  
22 the Office of Planning's Stipulated Request for  
23 Extension of Time for filing responses and the  
24 Petitioner's Request for Extension and Waiver.

25 On October 22nd, the Commission Chair

1 mailed correspondence to the Parties responding to  
2 the Office of Planning's Stipulated Request for an  
3 Extension of Time for filing responses and the  
4 Petitioner's Request for Extension and Waiver.

5 On October 26, the Commission received  
6 WDV's Motion for Modification along with Exhibits A  
7 through F.

8 On November 19th, the Commission mailed  
9 Agenda Notices to the Parties, Statewide, Hawai'i  
10 Island and Maui mailing lists for this November 28 to  
11 29 meeting.

12 On the same day, the Commission also  
13 received OP's Response to Emmanuel Lutheran Church of  
14 Maui' Motion for Modification.

15 Office of Planning's Response to WDV's  
16 Motion for Modification. And also Office of  
17 Planning's Response to WDV's Motion to Approve the  
18 Sale; the Motion to Allow the Subdivision; and the  
19 Motion to Bifurcate.

20 On November 21st, the Commission received  
21 the County of Maui's Response to WDV's Motion for  
22 Modification, as well as the County of Maui's  
23 Response to WDV's Motion to Approve the Sale; Motion  
24 to Allow for Subdivision and the Motion to Bifurcate.

25 So we have been busy.

1           For the members of the Public, I want you  
2 to be reminded that the Commission today will not be  
3 considering the merits of the A07-773 Petition; but  
4 rather only the Motions by Emmanuel Lutheran and  
5 Waikapu Development Ventures, LLC.

6           Let me briefly describe the procedure for  
7 today on this docket.

8           First, I will call for any individuals  
9 desiring to provide public testimony to identify  
10 themselves. All such individuals will be called in  
11 turn to our witness box where they will be sworn in  
12 prior to their testimony.

13           After the completion of any public  
14 testimony, the Commission will first address and  
15 decide on Petitioner Emmanuel Lutheran Church's  
16 Motion to Extend Time to Complete Project.

17           ELC will first make its presentation on its  
18 motion.

19           After the completion of this presentation,  
20 we will receive any comments from the Intervenor,  
21 Maui County and the State Office of Planning.

22           After we have received comments from them,  
23 we will conduct our deliberations on that motion.

24           After that motion is considered, Emmanuel  
25 Lutheran Church will make its presentation on it's

1 Motion for Modification.

2 After we have received the comments of the  
3 Intervenor, the County and the State, we will conduct  
4 our deliberations on that Motion for Modification.

5 Once we have addressed those motions, the  
6 Commission will then consider Waikapu Development  
7 Ventures LLC's Motion beginning with their Motion to  
8 approve the sale of a Portion of the Petition Area.

9 After the completion of their presentation  
10 on the Motion to Approve Sale, we will real receive  
11 any comments from the Petitioner, Maui County and the  
12 State Office of Planning.

13 There's a lot of motions, so appreciate  
14 everybody's patience.

15 After we receive the comments from the  
16 Petitioner, County and State, we will conduct  
17 deliberations on that WDV's Motion for Sale of a  
18 Portion of the Petition Area.

19 Then after that motion is considered, WDV  
20 will make its presentation on its Motion to allow for  
21 Subdivision.

22 We will receive comments from ELC, the  
23 County and State, and then conduct deliberations on  
24 that.

25 After that Motion to Subdivide is

1 considered, WDV will be allowed to make its  
2 presentation for Motion for Modification to Allow for  
3 Use of the Portion of the Petition Area acquired for  
4 workforce housing project recently approved by the  
5 County.

6 After Waikapu Development Venture LLC's  
7 motion is considered, WDV will make its Motion to  
8 Bifurcate.

9 After we have received comments from ELC,  
10 County and State, we will conduct our deliberations  
11 on that motion.

12 I will also note from time to time,  
13 including like I'm willing to take a break right now  
14 after reading all that, I will be calling for breaks.

15 Are there any questions or clarifications  
16 needed on our procedures this morning?

17 MS. LIM: No questions.

18 MR. HOROVITZ: No questions.

19 MR. HOPPER: No, Mr. Chair.

20 MS. APUNA: No, no questions.

21 CHAIRPERSON SCHEUER: Is there anyone in  
22 the audience who desires to provide testimony on this  
23 matter? Seeing none.

24 We can now begin with the motions.

25 We will now first address Emmanuel

1 Lutheran's motion.

2 Ms. Lim, can you make your presentation on  
3 the Motion to Extend Time to Complete Project?

4 MS. LIM: Thank you, Chair and members of  
5 the Commission.

6 To provide our presentation, what I would  
7 like to do is have Dr. Reiley take a seat in the  
8 witness chair, and we will go back and forth a little  
9 bit talking about what we actually spoke about when  
10 we were together last in May, but there has been some  
11 recent developments, very positive developments, from  
12 ELC that Dr. Reiley will be talking about.

13 CHAIRPERSON SCHEUER: Please proceed. I'll  
14 swear you in and ask you to state your name and  
15 address for the record, then proceed with counsel.

16 THE WITNESS: Good morning.

17 CHAIRPERSON SCHEUER: Do you swear or  
18 affirm that the testimony you're about to give is the  
19 truth?

20 THE WITNESS: I do.

21 CHAIRPERSON SCHEUER: Please proceed.

22 MICHAEL REILEY

23 Was called as a witness by and on behalf of the  
24 Petitioner, was sworn to tell the truth, was examined  
25 and testified as follows:

## DIRECT EXAMINATION

BY MS. LIM:

Q Good morning, Michael.

When we were last here in May we were asking the Commission to give us an extension of ten years to complete the ELC project; is that correct?

A That is correct.

Q And at that time I know we talked a bit about your background, so the Commissioners have heard that, but I would like to very, very briefly run through that to refresh the memory.

What is your current occupation?

A Well, I'm President of Emmanuel Lutheran Church Maui, an unpaid position. I'm also president of HNU, a family of companies. It's presently headquartered on Maui, but it's a diverse group, construction, renewable energy, optics. We build optics for NASA, platforms for the International Space Station, biotech. A number of different companies.

Q How long have you been president at ELC?

A That's a good question. I would say five years.

Q So you weren't involved when we went through the reclassification process a little over



1 ten years ago?

2 A That's correct. I believe at the time I  
3 was Chairman of the Board of Elders. I've been in  
4 Emmanuel for nearly 20 years -- 18 years now, but I  
5 was not in that capacity as president or involved  
6 with the Land Use Committee.

7 Q How long has ELC been active on Maui?

8 A Well, we just had our 50-year celebration  
9 last year, and so the church is 50 years, it's  
10 51 years now.

11 The preschool started in '72, so that's  
12 46 years. And the school, we have been offering  
13 school since '78, so 40 years now on Maui.

14 Q Now, I know you weren't involved ten years  
15 ago, but are you familiar with the project that ELC  
16 was proposing at that time?

17 A Yes, I am.

18 Q Can you describe it in just very general  
19 terms?

20 A Sure.

21 Well, it was to develop a portion of the  
22 25-acre property we had recently acquired. And so we  
23 did a lot on the regulatory side, project  
24 development. A lot of designs and plans and rezoning  
25 and things like that.

1           We did a round of fundraising, which  
2 covered the cost of those. We have been paying down  
3 the property. We still have a small debt on it, a  
4 little more than \$300,000 I think on the property.

5           Q       If I can, the scope of the property that  
6 was originally planned ten years ago was?

7           A       It was larger. Larger than what we  
8 envision now. It was a different economy, different  
9 situation there.

10           Our enrollment had been growing and we were  
11 kind of bursting at the seams of our  
12 one-and-a-quarter acre campus, and we were fortunate  
13 to be able to purchase the 25-acre campus. So we had  
14 plans to develop a much larger campus then.

15           Q       So there were plans, I understand you  
16 weren't involved in formulating those plans, but  
17 plans to do a pretty considerable project that ELC  
18 came before this Commission to get land use  
19 entitlements. You mentioned that then they went to  
20 County of Maui to get rezoning. So it seems like  
21 there was a lot of momentum.

22           And then here we are ten years later and  
23 the project didn't get built. Can you explain why  
24 the delay?

25           A       I think there's been a number of

1 considerations. A lot was the great recession  
2 happened. Our enrollment had been increasing up to  
3 that time. And then, like many other schools, it hit  
4 a lot of families, hit the economy here, and so  
5 enrollment did drop down. We were up at about 175 in  
6 our school, and up to about 40 in our preschool.

7 We dropped at our minimum to about 120, so  
8 pretty significant drop, about 30 percent.

9 We have since come up now in the mid 130s.  
10 So it's back recovering as the economy recovers. And  
11 I think the key thing for us, others may have  
12 struggled even more so, but being around for 40 years  
13 we have a large alumni base. We have a lot of  
14 history and relationship in the community.

15 So I think we weathered the storm better  
16 than others, but still it had an impact on our  
17 timeline on development, fundraising.

18 Q Anything, in addition to the great  
19 recession, which we recognize that was a pretty  
20 monumental event, were there other changes within ELC  
21 that may have also contributed to the delay in  
22 developing?

23 A There certainly has. Our former president  
24 passed away. It was unexpected. And we've had some  
25 turnover on the members of the Land Use Committee, so

1 I think those contributed.

2 There were other affects there, a couple  
3 new elementary schools opened right in the vicinity,  
4 from makai and was focused on ours. Another one on  
5 sciences and so on.

6 So don't think we really shrunk because of  
7 that, but I think it impacted our rate of growth back  
8 to where we had been.

9 Q So there was a reduction in demand, and at  
10 the same time the people who were leading the charge  
11 on the original entitlements and development, you  
12 lost some of the leadership people?

13 A Correct.

14 Q So then you said you became president about  
15 five years ago. So was it five years ago that ELC  
16 started to look at this property again and figure out  
17 what the next steps were going to be, or was there  
18 still a lag time?

19 A There was still some lag time. It's been a  
20 couple of years. We made a decision as a  
21 congregation to -- in order to pay off the debt, one  
22 of the things we ran into the first round of  
23 approaching some of the foundations is the grants are  
24 not accessible if you carry debt on the property. So  
25 our goal was to pay off the debt.

1           One of the ways we were considering was to  
2     sell a portion of it. And that's what we -- as a  
3     deliberate body ourselves, it took awhile to do. We  
4     got full approval. We did that. Put a portion up  
5     for sale, and we entered into a sales agreement  
6     nearly two years, I think, two years ago with Waikapu  
7     Development Venture. So probably three years of the  
8     five that the process has been underway.

9           Q       So at this point we're asking the  
10    Commission, or you're asking the Commission for an  
11    extension of time of ten years?

12          A       That's correct.

13          Q       And what do you envision, if the Commission  
14    were to grant that request, what do you think would  
15    be happening over the next ten years?

16          A       Well, we would -- in order of things, we  
17    would close this transaction. We would payoff the  
18    mortgage. We would have a balance of funds to begin  
19    that development.

20                 I think one of maybe the key differences  
21    between those involved at the church now and those  
22    back then is those now involved have more  
23    construction and development experience.

24                 In the audience one of our long-term  
25    members, Mr. Leif Sjostrand. Identify yourself,

1 please.

2 He's been with the church and school for  
3 21 years. Taught Sunday School most of that time.  
4 Three of his children, two have gone through the  
5 school, one is still there at the school. And he's a  
6 senior estimator with Goodfellow Bros., so he's  
7 involved, a construction professional.

8 Myself, I own a construction company as  
9 well. If you're driving down Waipoua, look up to the  
10 left there's a PGA training facility that we built  
11 this year, precast, completely off grid, which it's  
12 kind of cool. It's merging of our own battery that  
13 we make with our battery company. It's solar,  
14 completely off grid for that and it's  
15 state-of-the-art training facility for the PGA.

16 So that's a difference though, people that  
17 own construction companies that are senior in the  
18 business. He's been with Goodfellow Bros., I think  
19 as long as I've known him, couple decades.

20 So we have people that know what it takes  
21 to develop things. And we have in this case, I  
22 really feel a good partner, guys like Vince Bagoyo  
23 that's with us.

24 WDV, they have been very helpful through  
25 this process, and they're going to be developing the

1 other half of the property if we're successful with  
2 these motions.

3 And certain things like bringing in water.  
4 We won't need to bring in electricity if we develop  
5 this as an off-grid campus, one of the visions we  
6 have.

7 So I think that's going to play in very  
8 nicely with what differentiates you among other  
9 schools that are trying to tract. If you have a  
10 tract like you're off-grid and technology, it's green  
11 energy.

12 I think that's going to attract a lot of  
13 schools and families, as well as the economic  
14 benefits of not having your large Maui Electric  
15 bills.

16 We're pretty excited about it. I think we  
17 have a really good shot this time with the right  
18 people to make it happen.

19 Q Just a point of clarification. You  
20 mentioned a really good partner with Vince Bagoyo.  
21 Just to clarify, they're a joint development or some  
22 kind of a business, joint development between WDV  
23 and --

24 A There is not a joint venture, it's just  
25 they are -- they're the economy of -- when you're

1 mobilizing things to a site. There have been  
2 discussions about how we can make sure the entire  
3 project is successful.

4 Q Something cooperative rather than actual  
5 business?

6 A They're great partners. They're here  
7 supporting these things. We completely support 100  
8 percent affordable housing, what they're doing.  
9 They've been very supportive.

10 A long history here. Our original pastor,  
11 Pastor Fricke, 50 years he's been out here. And Bill  
12 Frampton, his whole family, he's the reason they're  
13 here. Big brothers/Big Sisters at the time they came  
14 out, and everybody knows the impact they have had on  
15 that community. But that's how the church and the  
16 school have touched many lives through the years.

17 Q So ten or so years ago before you were in  
18 this position, and the church was coming before the  
19 Commission, ELC was proposing a \$20 million project,  
20 and said it would be done within ten years.

21 Now, we are at the Commission a little over  
22 ten years later, and the \$20 million project hasn't  
23 been built.

24 In our second motion is when we will talk  
25 about the nature of the project we're proposing



1 really, but it's a much more modest scale project,  
2 but the Commission is going to, I think, have  
3 concerns that an extension of time may not actually  
4 result in anything getting built.

5 When we were altogether in May we  
6 acknowledged that there was going to be fundraising  
7 and grants that could maybe be sought once the  
8 property was no longer encumbered by a mortgage, but  
9 those ideas hadn't really jelled very well.

10 Can you please update the Commission on  
11 your vision, or new developments in terms of raising  
12 the funds necessary to pursue the project?

13 A Sure.

14 So fundraising is a key element of that.  
15 There are some very positive developments. The first  
16 time ten years ago we did use the services of Mr.  
17 Macklemore from Oahu, and he did helped us raise some  
18 funds.

19 This time around we actually have some very  
20 positive things that we are excited about. One of  
21 the people we have been in contact with, we have met  
22 with her, her name is Jocelyn Demirbag, and she was  
23 the Head Mistress at Haleakala Waldorf School for a  
24 number of years. Head Mistress of the Waldorf School  
25 on Oahu for the last three-and-a-half years. And

1 she's recently joined the college there with grants  
2 and development and so on.

3 I just met with her on Monday for a couple  
4 reasons. This was one, and another one she actually  
5 reached out to me separately. I'm on the  
6 Chancellor's Council at the college on how to guide  
7 the college, which happens to be right across the  
8 street from Emmanuel Lutheran Church and Schools.

9 So I don't know why I'm telling you this.  
10 Too much free thought here.

11 But the point is we met with her. She was  
12 recommended to us by Bill Frampton who had that  
13 connection also, and has done this type of thing. So  
14 that's local fundraising, grant writing connections.

15 The other one we are really excited about  
16 is our denomination has a long history of Lutheran  
17 Christian education all along, and they're very  
18 supportive of this. And one of -- so we have a whole  
19 gift planning office.

20 And the head of that office back in  
21 California is a gentleman named Michael Fisher. He  
22 actually used to be affiliated with one of the  
23 churches on Oahu. And he has gotten approved through  
24 the denomination that for the next 18 months at no  
25 cost to the church he will be leading an entire

1 visioning gift planning development, which is a  
2 perfect timeline for what we need here to put these  
3 things in place, the fundraising.

4 This is what he does for a living at the  
5 national scale. Again, no cost. He's going to be  
6 here for six different sessions during that period.  
7 The first one is on December 20th. Flying in  
8 special, meeting with all the church leaders, and  
9 we're going to be developing this in earnest.

10 So I think between the local help with  
11 Jocelyn, then at the national level somebody that  
12 does that for our entire denomination, Lutheran  
13 Church Synog, we are very excited about this time.  
14 We will not be in this kind of situation ten years  
15 from now. We are very confident of that.

16 Q I guess there's a couple of barriers to  
17 engaging in that fundraising, and one is the  
18 mortgage; and the second is right now we are out of  
19 compliance with the Commission's original order.

20 A That's correct.

21 Q So how will the mortgage be taken care of?

22 A Out of proceeds of the sale.

23 Q And then -- and that will clear --

24 A Yes.

25 Q No debt on the property whatsoever?

1           A       Correct, no debt on our current property,  
2           and no debt on the new property either.

3           Q       And then will there be excess funds to  
4           begin to sort of kick-off the fundraising efforts?

5           A       There will.

6           Q       If the Commission were to grant a time  
7           extension, is it your representation that ELC will  
8           begin its fundraising efforts in earnest and pursue  
9           the development of this -- describe it again. That's  
10          a matter for the second motion, but it's relevant to  
11          the time extension.

12          A       Definitely. We already have begun that in  
13          engaging these parties, and again this process we  
14          will formally be kicking off in about three weeks.

15          Q       Assuming the Commission approves the time  
16          extension?

17          A       I am assuming that.

18          Q       I think this will be my last question.

19                  In our motion we requested a ten-year time  
20          extension. And what I want to know from you is, is  
21          ten years absolutely the bare minimum that you think  
22          ELC needs, or if maybe in this Commission's  
23          discretion, in light of the history and the facts  
24          that through no fault of ELC, but there just wasn't  
25          really progress on development, if in the

1 Commission's discretion they think a shorter  
2 timeframe is more appropriate so they know the  
3 property isn't languishing. I would like the  
4 Commissioners to hear your thoughts.

5 A Sure, yeah.

6 We actually have laid it out this time as a  
7 phased project. There's development, fundraising.  
8 There's multipurpose building and buildout of the  
9 campus further. So there is certainly progress along  
10 there.

11 While we are requesting a ten-year  
12 extension, which I am confident is sufficient for  
13 what we need, a shorter extension I think would be  
14 fine to show the progress if that gave better  
15 confidence to the Commission.

16 Q I don't have any further questions. Thank  
17 you, Dr. Reiley.

18 CHAIRPERSON SCHEUER: Ms. Lim, is this the  
19 entirety of your work on this motion for the time  
20 extension?

21 MS. LIM: It is, Mr. Chair.

22 CHAIRPERSON SCHEUER: Are there questions  
23 for the witness from County of Maui?

24 MR. HOPPER: For the initial matter I'm not  
25 sure if we would go next or --

1 CHAIRPERSON SCHEUER: Sorry, I think you're  
2 correct.

3 MR. HOPPER: If that's --

4 CHAIRPERSON SCHEUER: I apologize. I  
5 really should ask you guys to switch seats. Mr.  
6 Horovitz.

7 MR. HOROVITZ: Thank you, I will sit  
8 wherever I'm told. No questions, but we obviously  
9 support the motion of Emmanuel Lutheran.

10 MR. HOPPER: Did you want us to direct our  
11 questions to the witness, as well as our position on  
12 the motion? We don't have any questions to the  
13 witness.

14 The County of Maui, I think, sort of in  
15 conjunction with the modification motion, because  
16 that deals with breaking the project into phases as  
17 well as amending a condition to specify the new  
18 timeframe. We don't object to the time extension.  
19 We're supportive of it, based on also the change in  
20 conditions in the modification motion.

21 The County believes that there can be an  
22 opportunity given here, and that that would be  
23 preferable to reverting the property or some other  
24 method.

25 So at this time the County does support the

1 Motion for Extension. Understanding that it does go  
2 hand and in hand with the next motion that we're  
3 going to discuss as that outlines the conditions  
4 under which the extension would be granted.

5 CHAIRPERSON SCHEUER: Thank you. Office of  
6 Planning?

7 MS. APUNA: We don't have any questions for  
8 the witness. Like the County, we addressed most of  
9 the concerns in the second motion. And we would also  
10 just note that we do have concerns as far as whether  
11 the property, or whether the Ka Pa'akai analysis has  
12 been fulfilled for the property, that we just leave  
13 that as a concern.

14 CHAIRPERSON SCHEUER: I believe that issue  
15 will come up in the second motion.

16 MS. APUNA: Thank you.

17 CHAIRPERSON SCHEUER: Commissioners, are  
18 there questions for the witness or for the  
19 Petitioner? Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you, Mr. Chair.

21 If the Ka Pa'akai issue is going to be  
22 raised on the second motion, I'll reserve my  
23 questions to that point.

24 I would just like to -- I don't think this  
25 is required disclosure, but I'll state it anyway just

1 for full transparency.

2 Even though I was raised in a Buddhist  
3 household, our children went to a Lutheran school in  
4 Kaneohe, and I do not find the witness' testimony  
5 inconsistent with my own personal experiences of a  
6 community-based Lutheran education.

7 THE WITNESS: Thank you very much.

8 CHAIRPERSON SCHEUER: Commissioner Aczon,  
9 questions for the witness or Petitioner?

10 COMMISSIONER ACZON: Good morning, Mr.  
11 Reiley. Just addressing the first motion. Because  
12 of what we went through yesterday, kind of  
13 compelled -- for the past ten years any improvements  
14 on the Petition Area? Or what is the use of the  
15 Petition Area for the past ten years? You mentioned  
16 some, but just to clarify.

17 THE WITNESS: That's a great question. I  
18 would say we have not done any improvements on there.  
19 There was a period of time that we were holding  
20 monthly services on the property, but the property,  
21 there is a lot of growth and it became a problem for  
22 the more elderly members of the church to access that  
23 property.

24 We did do that for a number of years, but  
25 we haven't done it for the last couple of years. So



1 the property is old canefield. So, no, there has not  
2 been any development.

3 COMMISSIONER ACZON: So you are not holding  
4 any services right now?

5 THE WITNESS: We are not.

6 COMMISSIONER ACZON: Thank you.

7 CHAIRPERSON SCHEUER: Commissioners?  
8 Commissioner Ohigashi.

9 COMMISSIONER OHIGASHI: I really have a  
10 question of procedure. The two motions appear to  
11 have the same issue with regard to an extension of  
12 time. So my question would be -- is that, would we  
13 be able to consolidate that issue and start hearing  
14 on the other motion?

15 CHAIRPERSON SCHEUER: I'm going to --  
16 there's numerous motions presented. We had to spend  
17 a bunch of time thinking about how to properly  
18 agendize.

19 I'm going to ask for sharing a little bit  
20 of thoughts from the Executive Officer, and why we  
21 structured the discussion this way.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
23 Nice punt.

24 This was set up this way in part because  
25 there are some slightly different issues between the

1 two motions. The extension of time is one that's a  
2 little bit more of a pro forma motion, extension --  
3 although there is a request for extension of time  
4 with regard to -- with regard to Condition No. 2,  
5 it's also a more encompassing motion, because it's  
6 asking for modification of the project.

7 Theoretically, these could have all been  
8 done in a block. But given that some of them -- the  
9 issues are different than the other ones, that's why  
10 we separated them.

11 CHAIRPERSON SCHEUER: So Commissioner  
12 Ohigashi.

13 COMMISSIONER OHIGASHI: So if we rule on  
14 the extension, and hypothetically, if we say no  
15 extension, then does that affect the considerations  
16 of the second motion?

17 EXECUTIVE OFFICER: Yes, it does. They're  
18 designed to go in sequence. If you deny any one of  
19 the motions along the way, the other ones fall out.

20 COMMISSIONER OHIGASHI: I just -- thank  
21 you.

22 CHAIRPERSON SCHEUER: Commissioner Aczon.

23 COMMISSIONER ACZON: This is -- I don't  
24 know if this is proper, but would the Petitioner  
25 consider withdrawing one of the motions, the first

1 motion in favor of the next motion?

2 CHAIRPERSON SCHEUER: This is a question  
3 from the Commissioner to the Petitioner Emmanuel.

4 MS. LIM: The Petitioner wants to do  
5 whatever is going to facilitate a successful outcome  
6 today. Analytically, to me -- so that is my answer,  
7 if that would facilitate the Commission's  
8 deliberation, then that's probably an acceptable  
9 thing for us to do. But analytically, the time  
10 extension goes to all 25 acres, and that just brings  
11 us current.

12 That doesn't mean that on our request for  
13 modification, or on WDV's request for modification,  
14 that doesn't in any way prevent the Commission from  
15 making, what we consider an unfortunate decision, you  
16 know, should they choose to deny it, what we want to  
17 do is try to get to a clean slate.

18 And the other reason why we filed the time  
19 extension motion when we did, and this may ring some  
20 memory bells, is the original plan was to file  
21 everything all at one time, I mean both parties, but  
22 it's sort of a big omnibus package of motions, and  
23 have that done when the County had already approved  
24 the 201H resolution for the WDV project, thinking  
25 that the Commission would want to know that there

1 were two real projects going before it.

2 But due to some time constraints on the  
3 County side, that 201H resolution did not get  
4 approved within the time frame that we had originally  
5 hoped. So that's why when we filed in April, it was  
6 really an effort. This, as I said, the original plan  
7 was, let's make the County make the decision on the  
8 201H, then ELC come in and request for motion for  
9 time extension, request modification, et cetera.

10 But because of delays on the County side in  
11 approving the 201H, and it wasn't due to issues with  
12 the 201H, it really was just a scheduling thing.

13 On the ELC side, we started to get very  
14 concerned that the Commission would think these guys  
15 have just run out of their ten-year timeframe,  
16 they're not even requesting an extension, they're not  
17 adhering to the Commission's rules.

18 And, frankly, there had a been a history  
19 for reasons that Dr. Reiley explained where there was  
20 a change in leadership, where ELC hadn't been timely  
21 with annual reports.

22 So we were very concerned that the  
23 Commission would think the ELC was just thumbing its  
24 nose at the Commission and not trying to adhere to  
25 timeframes, not trying to be respectful of the

1 process.

2 So that's why we filed that motion. It  
3 could almost be perceived as premature because,  
4 again, the ideal track was that everything be done  
5 all at once.

6 I just wanted to give that background  
7 discussion we had in May, and many things have  
8 happened between now and then. So now if the request  
9 is that we withdraw the motion for time extension,  
10 that means that then the subsequent decisions are  
11 decisions that are being made on a docket that's out  
12 of compliance. And that seems to raise a concern to  
13 Petitioner, and possibly to the Intervenor.

14 I'm giving you a very wishy-washy answer,  
15 because on the one hand we don't want to overly --

16 CHAIRPERSON SCHEUER: This has been very  
17 helpful, Ms. Lim. I think -- do you have anything to  
18 wrap up?

19 MS. LIM: No, I'm happy to stop there. I  
20 don't know if maybe the Intervenor --

21 CHAIRPERSON SCHEUER: I would say to my  
22 fellow Commissioners, there is a lot of different  
23 motions, a lot of complexities presented to us  
24 because of the particular history of this project.

25 We have set out the agenda in this way

1 really to take a methodical series of steps, and  
2 frankly, I think they're probably close to ready to  
3 report on this first motion, and if we do that  
4 successfully, that would render the discussion of  
5 whether we should combine them with the second  
6 motion.

7 Are we good to move forward? I'm looking  
8 toward the Maui Commissioner.

9 So are there further questions for either  
10 the witness, who's still on the stand patiently, or  
11 for the Petitioner on the motion to extend time?

12 I would ask the witness if -- you mentioned  
13 a number of plans for fundraising and other things.  
14 Are those substantiated in written financial  
15 documents yet?

16 THE WITNESS: That's a great question. Not  
17 with Jocelyn Demirbag, but we do have a signed and  
18 counter-signed fully executed Memorandum of  
19 Understanding with Michael Fisher. I signed it and  
20 he signed it, so that could be provided.

21 CHAIRPERSON SCHEUER: Thank you.

22 Commissioners, if there are no further  
23 questions for the witness, you're excused.

24 THE WITNESS: Thank you.

25 CHAIRPERSON SCHEUER: And no further

1 questions. I would entertain a motion on the Motion  
2 to Extend.

3 COMMISSIONER OHIGASHI: Mr. Chair, I'm  
4 going to move to grant extension. However, I would  
5 want to place the ten-year as a placeholder in there,  
6 because we are taking up a second motion on that  
7 issue. We may be able to determine a different time  
8 at that time, but I don't want -- in other words, I  
9 move to extend for ten years.

10 CHAIRPERSON SCHEUER: You're making a  
11 motion to grant the request for a full ten-year  
12 extension?

13 COMMISSIONER OHIGASHI: That's right.

14 CHAIRPERSON SCHEUER: Is there a second to  
15 that motion from Commissioner Ohigashi?

16 COMMISSIONER WONG: Second.

17 CHAIRPERSON SCHEUER: There is a second  
18 from Commissioner Wong.

19 Discussion on the motion to grant the full  
20 ten-year?

21 COMMISSIONER OHIGASHI: The part that I  
22 raised was --

23 CHAIRPERSON SCHEUER: Discussion on the  
24 motion first.

25 COMMISSIONER OHIGASHI: I guess I put my

1 discussion, expressed my thoughts in my previous  
2 statement. But because we are issuing this, we are  
3 considering a second motion to which includes a  
4 motion, because we are considering a Motion to  
5 Modify, and included in the modification is the  
6 request for Extension of Time. I think that there is  
7 basis at that time to address the length of time,  
8 whether or not the ten years is appropriate or  
9 whether it should be shorter or longer. And that's  
10 the purpose of my motion.

11 CHAIRPERSON SCHEUER: Commissioner Okuda.

12 COMMISSIONER OKUDA: Thank you, Mr. Chair.  
13 I would like to speak in favor of the motion. This  
14 is the reason why.

15 Under Bridge Aina Le'a, even though there  
16 is no substantial commencement or use of the  
17 property, that element in Bridge Aina Le'a only goes,  
18 in my view, to determining what is the process or  
19 procedure the Commission needs to follow in  
20 determining what the remedy should be.

21 I believe the record in this case, not only  
22 the testimony of the witness in observing his  
23 demeanor, which gives us an idea of judging his  
24 credibility, but not only witness demeanor, but the  
25 document supported in the record shows good cause to



1 grant the motion.

2 I do agree with Commissioner Ohigashi that  
3 the ten years should be a placeholder, but on the  
4 issue of extension, I would urge a vote in favor of  
5 the motion. Thank you.

6 CHAIRPERSON SCHEUER: Further discussion?  
7 Commissioner Aczon.

8 COMMISSIONER ACZON: I kind of reluctant to  
9 go along with the motion without hearing the second  
10 motion. I think the two motions kind of intersected.

11 The first motion locks us in at ten years  
12 without hearing the second motion. There might be  
13 some leeway on that. That's why I asked -- so that's  
14 my feeling.

15 CHAIRPERSON SCHEUER: Commissioners, I have  
16 a question for the Petitioner. Since there is some  
17 deliberation among the Commissioners right now over  
18 whether essentially if we pass the motion right now,  
19 grant the ten-year extension, can we, based on the  
20 next discussion on your subsequent motion where  
21 there's been arguments put before us that it should  
22 be perhaps only six years, and your witness has  
23 discussed willingness to accept a smaller amount of  
24 time, would you be objecting during our next  
25 deliberation to say, oh, no, you can't do that? You

1 already passed the ten-year motion, you can't change  
2 it.

3 MS. LIM: We absolutely would not be  
4 objecting to that. The Commission has the authority  
5 to set whatever timeframe they think is appropriate.  
6 So, no.

7 CHAIRPERSON SCHEUER: Commissioner Aczon,  
8 does that address --

9 COMMISSIONER ACZON: Satisfies my concern.

10 CHAIRPERSON SCHEUER: Commissioner Cabral?

11 VICE CHAIR CABRAL: I share in those  
12 concerns. It's been ten years, and we're finding  
13 that there is -- again, I won't be here, but I don't  
14 want any of my fellow future Commissioners sitting  
15 here ten years from now and nothing has happened.

16 We want to make sure we push along, and  
17 maybe our tighter timeline might help push the  
18 Petitioner and community to come together in order to  
19 be successful at this wonderful endeavor and a faster  
20 timeframe.

21 So I too would support a little tighter  
22 timeframe, or some kind of condition, or some kind of  
23 something to not have anyone sitting here from now in  
24 ten years in the same position.

25 I don't know how to formulate that, but I

1 would be in favor of working that out.

2 CHAIRPERSON SCHEUER: Thank you,  
3 Commissioner Cabral. Commissioner Ohigashi.

4 COMMISSIONER OHIGASHI: The only reason why  
5 I asked for ten years, that's the only thing before  
6 us at this point in time. I believe OP's memorandum  
7 addressed the modification. And the timeframe  
8 outlined in that memorandum seemed to address the  
9 modification where there was substantive steps being  
10 considered for the purposes of determining whether or  
11 not we should modify some of the terms.

12 So I'm only making a motion, because I  
13 don't think we can leave it without a date, and the  
14 only date before us in this particular motion is the  
15 ten years.

16 CHAIRPERSON SCHEUER: Understood.

17 Because of the nature of this, can I ask  
18 the Intervenor whether you would have any concerns  
19 with the manner in which we appear to be proceeding  
20 of a ten-year motion for now, with the understanding  
21 when we take up the next motion, the actual timeframe  
22 might be reconsidered?

23 MR. HOROVITZ: We have no issue with that.

24 CHAIRPERSON SCHEUER: Commissioner Mahi.

25 VICE CHAIR MAHI: I'm simple. You know,

1 half now, half later; give five years. After five  
2 years, see what happens. I'm for the project.

3 CHAIRPERSON SCHEUER: So there is a motion  
4 before us right now from Commissioner Ohigashi,  
5 seconded by Commissioner Wong, to grant the  
6 Petitioner's motion for ten-year time extension, and  
7 discussion has reflected that we might, in the  
8 substantive next motion, reconsider that amount of  
9 time.

10 COMMISSIONER ACZON: Is that part of the  
11 motion?

12 CHAIRPERSON SCHEUER: That's not part of  
13 the motion, it's part of the discussion and  
14 understanding. The motion in front of us is for a  
15 ten-year time extension.

16 Is there further discussion on the motion?  
17 If not, Mr. Orodenger, please do roll call of the  
18 Commission.

19 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
20 The motion is to grant the Motion to Extend Time for  
21 a period of ten years.

22 Commissioner Ohigashi?

23 COMMISSIONER OHIGASHI: Aye.

24 EXECUTIVE OFFICER: Commissioner Wong?

25 COMMISSIONER WONG: Aye.

1 EXECUTIVE OFFICER: Commissioner Aczon?

2 COMMISSIONER ACZON: Aye.

3 EXECUTIVE OFFICER: Commissioner Okuda?

4 COMMISSIONER OKUDA: Yes.

5 EXECUTIVE OFFICER: Commissioner Mahi?

6 VICE CHAIR MAHI: Aye.

7 EXECUTIVE OFFICER: Commissioner Cabral?

8 VICE CHAIR CABRAL: No.

9 EXECUTIVE OFFICER: Chair Scheuer?

10 CHAIRPERSON SCHEUER: Aye.

11 EXECUTIVE OFFICER: Mr. Chair, the motion  
12 passes six to one.

13 CHAIRPERSON SCHEUER: Thank you very much.

14 It is 10:25. We will take a ten-minute  
15 break, then resume.

16 (Recess taken.)

17 CHAIRPERSON SCHEUER: We're back on the  
18 record.

19 For the parties and my fellow  
20 Commissioners, before we move on to the next motion,  
21 I was approached during the break by a member of the  
22 public who just narrowly missed the opportunity when  
23 I closed public testimony. He drove here and came to  
24 offer, I am assured, one minute of testimony.

25 If there is no objection from the

1 Petitioner, the Intervenor and County, Office of  
2 Planning or any of my fellow Commissioners, I would  
3 like to reopen testimony for that expressed purpose.

4 Hearing none, would you please quickly  
5 approach the witness stand. I will swear you in,  
6 followed by your name and address for the record, and  
7 your testimony.

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

10 THE WITNESS: I do.

11 CHAIRPERSON SCHEUER: State your name and  
12 address.

13 THE WITNESS: My name is Tom Blackburn  
14 Rodriguez. I live at 85 Manino Circle, apartment  
15 202, Kihei 96753.

16 TOM BLACKBURN RODRIGUEZ  
17 Was called as a public witness, was sworn to tell the  
18 truth, was examined and testified as follows:

19 DIRECT EXAMINATION

20 THE WITNESS: Mr. Chairman, thank very  
21 much. I appreciate your indulgence of yourself and  
22 the other Commissioners.

23 I will limit myself to one minute.

24 I am representing Go Maui, Incorporated,  
25 which is a nonprofit community-based organization

1 focusing on housing, jobs and a healthy environment.

2 We are testifying officially in support in  
3 of the Waikapu Development Venture. We appreciate  
4 it's 100 percent affordable 201H with 80 units  
5 between 70 and 140 percent of median income will be  
6 available to local residents.

7 Mr. Chairman, the forecast for additional  
8 housing needs by 2025 is more than we will probably  
9 be able to meet according to DBED, it is 13,949  
10 units, housing units are needed for Maui by 2025.

11 So in conclusion, we think this is an  
12 excellent project. We appreciate it coming forward,  
13 and we believe increasingly that affordable housing,  
14 workforce housing, and housing for our local people  
15 is no longer just a housing issue, it is an issue of  
16 justice itself.

17 We urge you to act positively on the  
18 motion. And, again, thank you very much for your  
19 consideration.

20 CHAIRPERSON SCHEUER: Thank you very much.

21 Are there questions for the witness from  
22 the Petitioner?

23 MS. LIM: No questions.

24 MR. HOROVITZ: No.

25 MR. HOPPER: No.

1 MS. APUNA: No.

2 CHAIRPERSON SCHEUER: Commissioners?

3 Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you very much  
5 for coming here to testify.

6 Can you tell us approximately how many  
7 members are involved in your organization?

8 THE WITNESS: We are not a membership  
9 organization. It is organized as a nonprofit with  
10 board of directors that are all volunteers. And then  
11 we try and receive funding from the community to do  
12 fundraising events, that kind of thing. But if  
13 you're thinking about like are you a member of? No,  
14 there's no membership.

15 COMMISSIONER OKUDA: Let me make it more  
16 clear.

17 When your organization gets together,  
18 generally how many people get together?

19 THE WITNESS: At our last board meeting, we  
20 had 15 people. A bunch of folks ranging from  
21 environmentalists to developers to health  
22 practitioners. A pretty diverse people.

23 COMMISSIONER OKUDA: Thank you very much.

24 CHAIRPERSON SCHEUER: Any other  
25 Commissioner questions? Thank you very much.



1 THE WITNESS: Thank you again.

2 CHAIRPERSON SCHEUER: So I'm closing the  
3 public testimony portion, moving back to the second  
4 motion of the day.

5 The Commission will now address the  
6 Emmanuel Lutheran's Motion for Modification of the  
7 Original Decision and Order dated March 7th, 2008.

8 Ms. Lim, how are you going to present?

9 MS. LIM: Thank you, Chair. Initially I'll  
10 give a brief overview of the motion and ask  
11 Dr. Reiley to come back onto the witness stand to  
12 describe his understanding of what the modified  
13 updated ELC project consists of.

14 We will then ask that Mr. Leif Sjostrand to  
15 come up to discuss the construction cost estimates  
16 for the updated project. And then -- this is a  
17 little bit of an unusual procedure -- but based upon  
18 both the filings of the Office of Planning, and also  
19 frankly, some of the questions that were coming from  
20 the Commission during the deliberations on the first  
21 motion, I would ask the Commission's indulgence that  
22 we allow the Intervenor's counsel to present a couple  
23 of the witnesses to address some of the concerns  
24 about Ka Pa'akai o ka aina and cultural assessments,  
25 because although certainly the ELC witness, meaning

1 Dr. Reiley, is competent to describe about what he  
2 knows about going on the property, when it comes to  
3 actually getting into the more detailed nuances, it's  
4 really more appropriate that the Intervenor's counsel  
5 do that in light of the fact that they have been  
6 working with the professionals who have assessed the  
7 property most recently.

8 Is the Commission willing to allow that?

9 CHAIRPERSON SCHEUER: Just to clarify for  
10 myself and the Commission, your plan is to briefly  
11 review the motion, then call two witnesses. And your  
12 desire is that the Intervenor then be allowed to call  
13 witnesses who are going to address issues that are  
14 germane to your case as well?

15 MS. LIM: Correct, limited to questions  
16 about the cultural assessments of the property.

17 CHAIRPERSON SCHEUER: May I ask counsel for  
18 Intervenor to comment on this?

19 MR. HOROVITZ: We will be happy to put  
20 those witnesses on if the Commission will allow.

21 CHAIRPERSON SCHEUER: Who are those  
22 witnesses?

23 MR. HOROVITZ: Two witnesses. First is  
24 Lisa Rotunno-Hazuka. She prepared, or her firm  
25 prepared the archaeological study for entire property

1 back in '04, updated 2016. They also, the firm  
2 prepared the exhibit that was attached to our errata  
3 filing, which analyzed the cultural assessments,  
4 impact assessment, first round of the properties.

5 Then the second witness was going to be  
6 Kimokeo Kapahulehua, who is a local cultural  
7 practitioner and has prepared a cultural impact  
8 assessment and can testify more fully to practices in  
9 this area and on this property.

10 We were also intending to call Randy Peltz.  
11 He contacted us this morning and was unable to  
12 attend, he had some personal issues. Those would be  
13 the two witnesses on the cultural side.

14 CHAIRPERSON SCHEUER: And those witnesses  
15 may still be available when we consider later in our  
16 proceedings your Motion to Modify?

17 MR. HOROVITZ: Yes, if the Commission  
18 requires they stay around, we will ask them to be  
19 available.

20 CHAIRPERSON SCHEUER: Are there any  
21 concerns with following this procedure from the  
22 County and Office of Planning or my fellow  
23 Commissioners in that order?

24 MR. HOPPER: We don't object, Mr. Chair.

25 MS. APUNA: No objection.

1                   CHAIRPERSON SCHEUER: Commissioners?  
2 Commissioner Okuda.

3                   COMMISSIONER OKUDA: Thank you. Maybe  
4 counsel can comment on this.

5                   Is a determination whether or not the Ka  
6 Pa'akai standards have been met or not a condition  
7 precedent to move forward with these motions, number  
8 one?

9                   And number two, even if it's not strictly a  
10 condition precedent, is it more useful for the  
11 Commission to consider the Ka Pa'akai analysis first,  
12 because if the Ka Pa'akai standards are not met, does  
13 it mean that we cannot really proceed with the  
14 remainder of what is on the calendar today?

15                  CHAIRPERSON SCHEUER: This is a question  
16 for the Petitioner.

17                  COMMISSIONER OKUDA: Or anyone else who can  
18 answer it.

19                  CHAIRPERSON SCHEUER: I'll limit it right  
20 now to the Petitioner.

21                  MS. LIM: So from the Petitioner's  
22 perspective, it's not essential that the Commission  
23 reconsider the Ka Pa'akai o ka aina analysis, because  
24 ten years ago the Commission made a Conclusion of  
25 Law, the Conclusion of Law on Page 39 of the original

1 Decision & Order. Conclusion of Law No. 4, the base  
2 of the cultural impact analysis, which included  
3 consideration of the history of the Petition Area,  
4 which has been in agricultural operations for the  
5 past century, research on nearby parcels in the  
6 vicinity of the Petition Area, and review of  
7 informant interviews and archival research conducted  
8 for several projects in the vicinity of the Petition  
9 Area, there appear to be no special amenities to the  
10 Petition Area for Native Hawaiians or any other  
11 ethnic group in the use of the Petition Area for  
12 customary and traditional subsistence, cultural or  
13 religious activity.

14 So that was an unchallenged Conclusion of  
15 Law from ten years ago. And I believe as an  
16 unchallenged Conclusion of Law, it is unnecessary for  
17 the Commission to revisit that in response to  
18 particularly ELC's request to modify their project.

19 That was a Conclusion of Law that was made  
20 at that time. Nevertheless -- so that is my response  
21 to the question.

22 I don't believe that the Commission needs  
23 to engage in a full Ka Pa'akai o ka aina analysis  
24 before taking another step forward.

25 Nevertheless, we fully understand the

1 Commission's mandate and interest in understanding,  
2 and these Commissioners, particularly who weren't  
3 present ten years ago, more about cultural activities  
4 on the property of which there are none.

5 So that is why I suggested, or I requested  
6 to have the opportunity to allow Intervenor to --  
7 counsel bring up the two cultural witnesses who they  
8 have identified.

9 But I do not believe that the Commission  
10 needs to make, as an initial decision, a  
11 determination on whether or not the Ka Pa'akai  
12 analysis needs to be completed.

13 CHAIRPERSON SCHEUER: Commissioner Okuda.

14 COMMISSIONER OKUDA: As a follow-up  
15 question, Mr. Chair, to Petitioner's counsel.

16 How do you respond to the footnote that was  
17 in the Office of Planning's filing which seems to  
18 indicate that the witness' testimony was that there  
19 was no specific assessment made with respect to the  
20 specific parcel?

21 CHAIRPERSON SCHEUER: If I may,  
22 Commissioner Okuda, I'm trying to understand.

23 So we are trying to get into the second  
24 motion, and you're really raising a procedural issue,  
25 would we dive in rather than as proposed by the

1     Petitioner to first hear presentation to the motion,  
2     followed by two witnesses, and then followed by the  
3     experts?

4                 COMMISSIONER OKUDA:   I'll withdraw the  
5     question.

6                 Maybe I can just follow-up this way.   Does  
7     it make more sense to, just for a clear record, to  
8     determine whether or not Ka Pa'akai and the record of  
9     this proceeding -- when I say the record, the record  
10    going back to the very beginning, requires -- whether  
11    it's better to make a determination whether the Ka  
12    Pa'akai standards have to be met first before  
13    proceeding to the rest of the calendar today?

14                Does it make more practical sense to do it  
15    that way?

16                CHAIRPERSON SCHEUER:   I believe,  
17    Commissioner Okuda, that we are going to address the  
18    Ka Pa'akai issues and deliberate them in the context  
19    of this motion.

20                COMMISSIONER OKUDA:    Okay, that's fine.

21                CHAIRPERSON SCHEUER:   Are we clear on where  
22    we are procedurally?   We are on the second motion of  
23    the day, and the procedure that we are going to  
24    follow is that Ms. Lim will first give an oral review  
25    of the motion, followed by her bringing two witnesses

1 forward, one of whom we have already sworn in.

2 Followed by that, the Intervenor will bring  
3 forward two witnesses.

4 Understood? Let's proceed.

5 MS. LIM: Thank you, Chair and  
6 Commissioners. Jennifer Lim representing the  
7 Petitioner.

8 As a brief overview, what I wanted to give  
9 is to mention what the original ELC project was all  
10 about, because the request that we are presenting to  
11 you right now is that this Commission authorize us to  
12 modify that ELC project, what was originally approved  
13 ten years ago, we are now requesting a modification.

14 And in many respects it's not -- although  
15 it's extremely important to us -- not a significant  
16 modification in that what was approved ten years ago  
17 was a church and school for Emmanuel Lutheran Church.

18 And what we are now presenting as the --  
19 what we call in our motion, the updated ELC project,  
20 is really the same thing but shrunk down. A much  
21 more modest project.

22 Just with that context, the original  
23 project was going to be a preschool building upwards  
24 of 18 classrooms for grades K through 8, multipurpose  
25 complex, other accessory buildings, and a 450-seat



1 sanctuary for religious and school-related functions  
2 intended to accommodate 450 students, and the  
3 development cost at that time were estimated at about  
4 \$20 million.

5           So it was a big substantial project.  
6 Physically, the footprint of that project, as you  
7 know from the exhibits, our exhibits I believe A and  
8 D of our motion, which -- our first motion, which are  
9 also attached to the second motion, although that was  
10 a substantial project, the actual footprint was only  
11 going to be on about half of the Petition Area.

12           So with that as background, I would now  
13 like to ask Dr. Reiley to come back to the stand to  
14 describe what we call the updated ELC project, which  
15 could also be seen as the reduced or more modest ELC  
16 project.

17           CHAIRPERSON SCHEUER: I said earlier on the  
18 record that you were dismissed. Can we consider that  
19 you are still under oath to tell the truth?

20           THE WITNESS: Yes.

21           CHAIRPERSON SCHEUER: Please proceed. I  
22 did not realize you were coming back.

23           THE WITNESS: Nor did I.

24           CHAIRPERSON SCHEUER: Apparently you  
25 weren't telling the truth.

1 MS. LIM: We won't review Dr. Reiley's  
2 background because that is all part of the record  
3 already.

4 MICHAEL REILEY

5 Was recalled to the witness stand by and on behalf of  
6 the Petitioner, was previously sworn to tell the  
7 truth, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. LIM:

10 Q Really I just want you right now to be able  
11 to explain to the Commission, in your own words --  
12 they have read the motion -- explain in your own  
13 words what is the updated ELC project. What does it  
14 consist of? What are the plans?

15 A We already discussed that. It was a much  
16 more modest phased approach. But, again, we will  
17 start with the development of fundraising, but the  
18 first phase, which we have laid out we believe  
19 reasonably for completion by 2024. Maybe six years  
20 from now would be this multipurpose building to be  
21 able to house preschool, worship services and so on.  
22 That would be sort of the hub of any further  
23 development on there.

24 Q Now, that multipurpose building, it will  
25 also have how many classrooms? Is it three

1 classrooms?

2 A I believe it's three classrooms.

3 Q For --

4 A That would be the upper grades 6th, 7th and  
5 8th, currently.

6 Q Middle school grades. And then also would  
7 be office space?

8 A Correct.

9 Q And for the Pastor Schneider?

10 A Yes. He's our senior pastor. Pastor  
11 Schneider is also a military chaplain. He was here  
12 at the hearing in May, but unfortunately he's on  
13 military training this weekend, starting today.

14 Q So the multipurpose building, I know we  
15 spoke about fundraising during the first motion, so I  
16 don't want to have you repeat a lot of that,  
17 although, of course, the Commissioners are free to  
18 ask you questions about it.

19 But for the multipurpose building  
20 construction, assuming that the fundraising -- it  
21 sounds like it's already off to a great start -- goes  
22 forward, when would you anticipate beginning work on  
23 doing the plans for the multipurpose building, and  
24 then actually break ground on that?

25 A We have slotted about two years for

1 development of fundraising and so on to get going, so  
2 we are anticipating 2021 moving forward in earnest.

3 Q Start doing the site plans, and actually  
4 doing the construction, infrastructure kind of plans?

5 A (Witness nods head up and down.)

6 Q You're familiar that one of the conditions  
7 that's on -- that this Commission imposed on the  
8 property ten years ago was a requirement to do an  
9 archaeological monitoring plan?

10 Have you done an archaeological monitoring  
11 plan for this half of the property?

12 A Have I?

13 Q Well, has one been done?

14 A Not to my knowledge.

15 Q So do you recognize though that  
16 archaeological monitoring will be required before you  
17 can actually break ground?

18 A Yes.

19 Q Another condition that the Commission put  
20 on the Petitioner Area was to prepare soil analysis  
21 in consultation with the State Department of Health.  
22 That's Commission's Condition No. 10.

23 Do you recognize that that's a requirement  
24 that will need to be satisfied?

25 A Yes, I do.

1           Q       Now, the schedule that we submitted, which  
2 I believe is Exhibit 1 to our Motion for  
3 Modification, anticipates that infrastructure and  
4 site work plans would be submitted to the County  
5 around 2022/2023; and the completion of that work,  
6 the infrastructure and related site work, we have  
7 projected between 2023 and 2024.

8           A       Yes.

9           Q       So then once the infrastructure is done, is  
10 that when the multipurpose building, the construction  
11 on that would start going forward?

12          A       Well, hoping to accelerate beyond that,  
13 but, yes. It would be in that timeframe, material  
14 progress, yes. That would roll right into, as  
15 quickly as we could complete that, would roll right  
16 into construction of --

17               CHAIRPERSON SCHEUER: Please speak into the  
18 microphone.

19               THE WITNESS: Yes, I'm sorry. Do you need  
20 me to repeat any of that?

21               CHAIRPERSON SCHEUER: The last sentence.

22               THE WITNESS: We would roll -- the plan  
23 would be as soon as the regulatory portion and site  
24 work was completed, we would roll into construction  
25 of that building.

1           Q        (By Ms. Lim): So, again, that's in the  
2 2023/2024 timeframe?

3           A        That's correct.

4           Q        So that's about six years from now, give or  
5 take?

6           A        Yes.

7           Q        Now, we also talked about a Phase 3 for the  
8 updated ELC project, which is three middle school  
9 classrooms and the office space.

10                    When do you anticipate when that work would  
11 start?

12           A        I guess in year seven.

13           Q        About 2025?

14           A        Yes.

15           Q        And just continue to move forward with a  
16 similar timeframe?

17           A        There are advantages to the phased  
18 approach, but ultimately our goal would not be to  
19 continue to have two campuses. The campus that we  
20 have now, the one-quarter acre, does have value.  
21 It's paid for, and the goal would be how to  
22 transition into that.

23                    So it does not benefit us to have an  
24 extended period of time where we have split up our  
25 good church family community into two different

1 campuses, even though they're only a couple miles  
2 apart. There would definitely be a lot of incentive  
3 to expedite that, once we are under construction, to  
4 move through to buildout.

5 Q Again, what we provided as Exhibit 1 to the  
6 Motion for Modification describes four phases. Phase  
7 1 is fundraising?

8 A Yes.

9 Q Phase 2 is construction of a multipurpose  
10 building.

11 Now, Phase 3 is the three middle school  
12 classrooms and office space?

13 A Yes.

14 Q And then there is a Phase 4.

15 Can you describe to the Commission what  
16 Phase 4 is?

17 A It's grander than the other three, but much  
18 less so than the original plan. It would be building  
19 out the remainder of the campus there, the rest of  
20 the elementary school, fields and facilities.

21 Q Is it your representation that ELC is  
22 certain to go forward with Phase 4, or might Phase 1,  
23 2 and 3 really be the sum total of the development?

24 A Well, I don't have a crystal ball.  
25 Obviously, things do change, economies, but that's

1 part of the phased approach that Phase 4 wouldn't be  
2 absolutely necessary if we're not achieving the  
3 growth expectations and plans. So, yes, that is  
4 possible.

5 Q Is that Phase 4 -- we have it marked in our  
6 exhibit as a tentative phase.

7 A That's correct.

8 Q And one of the fundamental starting points  
9 for Phase 4 is that it would involve looking at  
10 marketing the existing Kahului campus?

11 A That's right.

12 I think a lesson we learned last go-round  
13 is don't be too ambitious. Be more realistic. And  
14 that's what this phased approach is meant to convey.  
15 It's a different set of expectations of what makes  
16 sense for the community and the timeline.

17 Q So, again, your projection is definitely  
18 the fundraising phase; definitely the second phase,  
19 which is actual construction phase. Very likely the  
20 third phase.

21 But as far as the fourth phase, which is  
22 the sanctuary and construction of elementary school  
23 classrooms, that may or may not go forward.

24 We want to make clear to the Commission  
25 what the Petitioner's representations are so there is



1 no confusion as the years go by whether or not the  
2 development has really been performed consistent with  
3 representations.

4 A Yes.

5 Q Who is going to be leading the charge -- if  
6 that's the appropriate way to phrase it -- on  
7 pursuing the actual construction?

8 And I don't mean who is your contractor.  
9 Who within the ELC organization is going to be making  
10 the decisions, looking at the plans, pursuing that  
11 kind of work?

12 A There will be a committee for that. There  
13 is a committee at this stage. It has been the  
14 principal of the school, the senior pastor and  
15 myself, and then church members like Mr. Sjostrand  
16 and so on.

17 The construction time, or the estimation  
18 what will be needed here for this development, we  
19 pull in the resources of church members, school  
20 families. A number of them are in construction as  
21 well. So we have a pretty broad-reaching community,  
22 and that's how it's going to be done.

23 A lot of people have expressed a lot of  
24 interest in being involved in this, and bringing  
25 their gifts and talents and expertise to the process.

1           Q       Now, you had mentioned earlier too that  
2 there are people who have construction background  
3 experience who will be working on this development.

4           A       That's correct.

5           Q       The estimated cost, and I know Mr.  
6 Sjostrand will help us on this too, but I just wanted  
7 to make sure that you're familiar with the estimated  
8 cost that we have.

9                   So for the Phase 2, which is the  
10 multipurpose building, the total estimated cost  
11 including the infrastructure, as well as vertical  
12 construction, is just shy of \$4 million, 3,850,000,  
13 and to that, of course, we would have to add the cost  
14 for the archaeological monitoring and whatever soil  
15 analysis the Department of Health requires.

16                   Do you feel that ELC has a reasonable  
17 expectation of being able to raise the funds  
18 necessary an almost \$4 million Phase 2?

19           A       I do. We will have a goodly percentage of  
20 that just from the proceeds of the sale afterwards.  
21 We will probably have between three-quarter and a  
22 quarter-million clear beyond that, the sale.

23                   We did the first phase successfully raise a  
24 million dollars there for development. So we have a  
25 track record of being able to do that.

1           There's just -- in meeting with Jocelyn  
2   Demirbag, there's an expectation that we may be able  
3   to get on the order of half-a-million dollars of  
4   grant foundation money for a project like this.

5           Again, the denomination has a strong  
6   history of supporting these kind of projects. Our  
7   first mortgage was from them for the property to do  
8   it, so there are programs.

9           Again, Mr. Fisher would be very in-tune  
10   with what those are to be able to have the capital to  
11   do a project like this.

12          Q     And, again, Mr. Fisher is basically a  
13   professional fundraiser for ELC nationally?

14          A     That's correct.

15          Q     With a track record of how many years?

16          A     In that role, I'm not certain.

17          Q     Excuse me.

18                I recall that you indicated he had been  
19   doing that work for several years. Strike that,  
20   excuse me.

21                Another source of funding would come  
22   possibly from an increase in enrollment, is that  
23   correct?

24          A     Yes, that is true. And that's a very good  
25   point.

1           To date we are not an accredited school.  
2       Not that that's actually fairly common, but we have  
3       been under the process of gaining accreditation  
4       during the last couple years and making very good  
5       progress this spring is the major visit from the  
6       accreditors.

7           So that's going to open up things like the  
8       Kamehameha funding that they make scholarships  
9       available to other Hawai'i-based private schools, but  
10      accreditation is a requirement for that.

11          Our preschool just recently was notified we  
12      are qualified for Kamehameha preschool help. So  
13      that's terrific news. That just helps grow the  
14      enrollment. More families can afford it. And there  
15      is an economy of scale. So, yes, the tuition, all of  
16      that is going to help.

17          Q      So provides tuition assistance, as well as  
18      increasing the church and student community for  
19      possible additional fundraising?

20          A      Yes. A lot of our church membership growth  
21      comes from school families that start attending the  
22      church.

23          Q      And I just want to go over the cost  
24      estimates for Phase 3, which is the three middle  
25      school classrooms and office space. Again, in our

1 Exhibit 1, the total estimate for Phase 3 is  
2 \$2,200,000.

3 A That's correct.

4 Q So we're looking at about \$6 million  
5 project, compared to the \$20 million project that was  
6 originally proposed?

7 A Yes.

8 Q And how much money did you say the church  
9 had raised just to pursue that original project?

10 A I believe it was about 1 million.

11 Q And that was really used for entitlements  
12 and planning at that time?

13 A A good portion of it was for that. We also  
14 had an account for making mortgage payments on the  
15 property, which we have done through those ten years.  
16 Those were the two primary uses of the funds we  
17 raised.

18 Q And how much debt is on the property right  
19 now, approximately?

20 A A little more than 300,000, between 3 and  
21 400,000. I don't know the exact amount.

22 Q So should the sale go forward, the church  
23 will receive a significant cash injection?

24 A Yes. I would expect three-quarter to a  
25 million dollars net proceeds from the transaction.

1           Q       Do you have any concerns about having this  
2 modified project on 12-and-a-half or a little more  
3 than 12-and-a-half acres of the property?

4                   Right now you own 25 acres of the property,  
5 and that was planned for the ELC project. Now we're  
6 scaling it down to half that size.

7           A       If you look at even for the \$20 million  
8 project, the footprint of the developed area we were  
9 looking at was still less than the 12-and-a-half  
10 acres that we would now be confined to.

11          Q       So even with the original project, putting  
12 450 students on about 12-and-a-half acres was  
13 something that had been assessed and approved of  
14 internally?

15          A       Yes.

16          Q       And now we are looking at a much more  
17 modest project?

18          A       Yes.

19          Q       That would be maybe 120 students, 170  
20 students?

21          A       Yes. Certainly more than 120, hopefully  
22 growing up to 200 or more.

23          Q       To 200 or more?

24          A       Our peak has been 175. And with the new  
25 campus and all of the things we have been discussing,

1 that would be our target.

2 Q Do you have any concerns about having the  
3 church and school immediately adjacent to the  
4 affordable housing project that Waikapu Development  
5 Ventures has proposed?

6 A Concerns, no. That would be wonderful.  
7 Probably a number of our teachers there could qualify  
8 and that would be great for them.

9 Q I don't have any further questions for you,  
10 Dr. Reiley.

11 A Thank you.

12 CHAIRPERSON SCHEUER: Intervenor.

13 MR. HOROVITZ: No questions.

14 CHAIRPERSON SCHEUER: County of Maui.

15 MR. HOPPER: No questions, Mr. Chair.

16 MS. APUNA: No questions.

17 CHAIRPERSON SCHEUER: No questions from OP.  
18 Commissioners? Commissioner Wong.

19 COMMISSIONER WONG: Just one question on  
20 the affordable housing.

21 So if the Intervenor does build affordable  
22 housing next to your property, was there any contract  
23 to say that they must provide affordable housing to  
24 your teachers?

25 THE WITNESS: No, sir.

1 COMMISSIONER WONG: That's all. I just  
2 wanted to know. Thank you.

3 CHAIRPERSON SCHEUER: Commissioner Aczon.

4 COMMISSIONER ACZON: You're doing  
5 fundraising right now?

6 THE WITNESS: We have begun that process by  
7 engaging a fundraiser and the other meetings I've  
8 described.

9 COMMISSIONER ACZON: So the next phase of  
10 the construction, do you have enough money to fund  
11 the first phase of the second phase of construction?

12 THE WITNESS: On hand, or after the  
13 proceeds of the sale and first fundraising round.

14 COMMISSIONER ACZON: My question also,  
15 where the proceeds going to go for the sale, is it  
16 for construction or for operation?

17 THE WITNESS: For construction. We do not  
18 need those funds for operation.

19 COMMISSIONER ACZON: So in other words,  
20 after the sale, you have enough funds to do the  
21 construction, 4 million?

22 THE WITNESS: We do not have that amount  
23 funds currently.

24 COMMISSIONER ACZON: No, no, after the  
25 sale?



1           THE WITNESS: No, we still would not have  
2 the funds to do a \$4 million construction. We would  
3 need fundraising.

4           COMMISSIONER ACZON: When do you expect to  
5 start those construction? Are you going to be  
6 waiting for the fundraising to finish, or  
7 concurrently?

8           THE WITNESS: We would be doing the  
9 development phase of the project as funds are  
10 available. The initial funds, then we would engage  
11 that phase of the project to get it teed up. And we  
12 would be doing the construction and development  
13 timeline as the funds are available.

14           So I think your question is would we wait  
15 until we have \$4 million in hand before we started  
16 any of that? No.

17           COMMISSIONER ACZON: Do you have a timeline  
18 on when the construction is going to start, finish?  
19 Just approximate timelines.

20           THE WITNESS: Yes, that's one of the  
21 exhibits in what we have submitted.

22           COMMISSIONER ACZON: And can you answer  
23 (indecipherable) --

24           THE WITNESS: I can, but, again, I've been  
25 recognized as being a very credible witness, and I

1 would prefer if I can defer that to the estimator  
2 from Goodfellow Bros., I don't know if I can answer  
3 that, not my area of expertise as much. I can tell  
4 you the information --

5 CHAIRPERSON SCHEUER: It's fine. He's  
6 deferred to the subsequent witness.

7 COMMISSIONER ACZON: Thank you.

8 CHAIRPERSON SCHEUER: Commissioners, any  
9 further questions for this witness? Commissioner  
10 Cabral.

11 VICE CHAIR CABRAL: Clarification on the  
12 housing, and this may be, again, a more credible  
13 witness may be available.

14 I recall reading that you were looking at  
15 affordable housing being in what they call a  
16 workforce level of requirements as opposed to --  
17 there are multiple levels of low-income housing that  
18 you can get funding for. And I thought I read that  
19 there was something about workforce level of limits.

20 MS. LIM: If I may, Commissioner, I know  
21 you directed the question to Dr. Reiley, but your  
22 question actually is more appropriately directed to  
23 the developer of the affordable housing project,  
24 which is Waikapu Development Ventures.

25 I just know Dr. Reiley wouldn't be in a

1 position to answer about affordable housing.

2 CHAIRPERSON SCHEUER: Okay, thank you.

3 Are there further questions for this  
4 witness? Commissioner Wong.

5 COMMISSIONER WONG: So I already heard  
6 about the funding stream. If the sale of property  
7 goes through, you'll have some funds. Also you are  
8 doing some fundraising.

9 Do you already have a construction loan  
10 committed by the funder, such as bank or --

11 THE WITNESS: No, we do not. We have not  
12 approached the banks or the denomination, which also  
13 extends loans. We are not at that phase. We need to  
14 execute this transaction, get those funds, and then  
15 that would be part of the development.

16 COMMISSIONER WONG: For your property?

17 THE WITNESS: Correct.

18 CHAIRPERSON SCHEUER: Commissioner  
19 Ohigashi.

20 COMMISSIONER OHIGASHI: Just want  
21 clarification.

22 Your timeline indicated a Phase 1, Phase 2.  
23 Phase 1 appears to be the fundraising. Phase 2 would  
24 be the actual construction?

25 THE WITNESS: Phase 2 and 3 are

1 construction.

2 COMMISSIONER OHIGASHI: Phase 2 would be  
3 the construction, completion of the multipurpose --

4 THE WITNESS: That's correct.

5 CHAIRPERSON SCHEUER: Other questions for  
6 this witness from my fellow Commissioners?

7 If I may ask you a couple questions.

8 To be very, very clear, I understand that  
9 you're amenable to a six-year extension of time as  
10 opposed to a ten-year extension of time.

11 THE WITNESS: Not preferred, but amenable,  
12 yes. I think that's fair. Six years is what we are  
13 showing as a point where the Commission certainly  
14 could make a reevaluation.

15 CHAIRPERSON SCHEUER: Are you just -- I  
16 want to understand your sort of understanding of our  
17 process.

18 Do you understand why the Commission sets  
19 timeframes for projects?

20 THE WITNESS: Yes, sir.

21 CHAIRPERSON SCHEUER: What is your  
22 understanding of that?

23 THE WITNESS: Land in Hawai'i is very  
24 important, and it needs to be developed responsibly,  
25 and there is oversight for this, all the different

1 cultural issues and concerns. So that's -- it is,  
2 for Maui it's a fairly large parcel of land. That's  
3 my understanding of why timelines are important,  
4 because if it is not developed along the lines of how  
5 it was represented, or not developed at all, then  
6 that's not -- we need to look at what the use of that  
7 land is, especially as things change.

8 Ten years ago that was almost all  
9 agriculture. Now, it is built-out all around there.  
10 It is definitely much more urban for the use of that  
11 area.

12 CHAIRPERSON SCHEUER: And my second  
13 question, forgive me if this has already been  
14 discussed, or you can point me to -- how much revenue  
15 are you going to receive as result of the sale,  
16 should this process move forward successfully? How  
17 much money will you receive for that?

18 THE WITNESS: I believe the gross sale is  
19 on the order of 1.3 million. So after the -- that's  
20 why we owe about 300,000 in gross revenue, might be a  
21 million in revenue after the other cost would be, say  
22 somewhere between three-quarter and a million.

23 CHAIRPERSON SCHEUER: But the mortgage  
24 pertains to the entire property?

25 THE WITNESS: That is correct.

1 CHAIRPERSON SCHEUER: Anything further?  
2 Are you done with the witness for the day?

3 MS. LIM: Just a quick redirect.

4 REDIRECT EXAMINATION

5 BY MS. LIM:

6 Q I want to make sure everybody is familiar  
7 with the timeline, especially in light of the fact of  
8 the ten-year time extension, and then the  
9 Commission's very fair deliberations on whether ten  
10 years should actually be modified.

11 So that we are very clear, Phase 1 is the  
12 fundraising phase; correct?

13 A Yes.

14 Q And Phase 2 is the multipurpose building  
15 that is anticipated to be completed by 2024, which is  
16 six years, give or take, from here?

17 A Yes.

18 Q But does ELC also intend to do Phase 3,  
19 which is the three middle school classrooms and  
20 office space?

21 A Yes.

22 Q Would that be done within six years?

23 A That would be my hope.

24 Q That's not what is on the development  
25 schedule though?

1           A       That's right. Is that a problem if we  
2 develop that faster than --

3           CHAIRPERSON SCHEUER: I would appreciate  
4 everything about this, a hearing moving faster.

5           THE WITNESS: It's also our intent to  
6 develop Phase 4. I know I'm not supposed to say  
7 that, but that is our intent. We are just not  
8 representing that that is a certainty at this point.

9           MS. LIM: I have no further questions.  
10 Thank you.

11          CHAIRPERSON SCHEUER: Ms. Lim, are you done  
12 with this witness for the day?

13          MS. LIM: I am.

14          CHAIRPERSON SCHEUER: Thank you. You may  
15 call your second witness. How long do you think?

16          MS. LIM: Five minutes at the most. Mr.  
17 Leif Sjostrand.

18          CHAIRPERSON SCHEUER: Do you swear or  
19 affirm that the testimony you're about to give is the  
20 truth?

21          THE WITNESS: Yes.

22          CHAIRPERSON SCHEUER: Please proceed.

23                       LEIF SJOSTRAND

24 Was called as a witness by and on behalf of the  
25 Petitioner, was sworn to tell the truth, was examined

1 and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. LIM:

4 Q Would you please state your name for the  
5 record?

6 A My name is Leif Sjostrand.

7 Q What is it that you do for a living?

8 A I work for Goodfellow Bros. I've worked  
9 there 24 years. I'm a senior estimator. I try to  
10 find work for our guys.

11 Q As senior estimator, what does that mean?  
12 I've never been in construction.

13 A We do heavy civil construction. So whether  
14 it's public bids or private request for proposal type  
15 of thing. Meet with clients. Try to figure out what  
16 they're looking for, trying to get done.

17 And I put together from budgets to actual  
18 cost estimates, and just try to gather up work for  
19 our guys. You know, we got a large crew, and we just  
20 got to keep everyone working. So I'm on the  
21 front-end trying to get projects for our guys.

22 Q And cost estimates?

23 A Absolutely, yes.

24 Q What is your relationship with Emmanuel  
25 Lutheran Church of Maui?



1           A       Like your children, I'm a product of  
2 Lutheran education. I went to kindergarten through  
3 high school, Lutheran School in Denver. And gone to  
4 Lutheran Church my entire life.

5                   Anyway, so I came to Hawai'i 24 years ago  
6 and attended Emmanuel Lutheran for 21 years. I've  
7 been on Maui 21 years. Taught Sunday school there  
8 for 21 years. My wife is a first grade teacher. Our  
9 three children went through the school. My daughters  
10 through 8th grade, my son through 6th grade.

11                   So we have been pretty involved. I was on  
12 the Board of Education quite a long time.

13                   And so since this property has been  
14 acquired, they have asked me for estimates on, you  
15 know, construction cost. So that's kind of my  
16 involvement.

17                   The one other thing I get to do frequently,  
18 because I'm in the construction profession, is when  
19 things come up on campus and they have got to get  
20 things done, I'm kind of the middle man to make  
21 things happen there.

22           Q       Now, this -- I don't believe you've ever  
23 seen this Petitioner's Exhibit 1, which is attached  
24 to ELC's Motion for Modification. However, I do  
25 believe that you're familiar with the cost estimates

1 that are provided in this.

2 A I provided them. Yes, I'm familiar.

3 Q So if you would please -- I've got  
4 Petitioner's Exhibit 1 in front of you. So you've  
5 got the numbers in front of you. But for the  
6 multipurpose building, as we just heard, the  
7 estimated construction cost total, including  
8 planning, doing the infrastructure, and doing the  
9 actual vertical construction was about 3.8, 3.85.

10 Can you very briefly explain to the  
11 Commission what you think those costs are comprised  
12 of, so they can know that these are costs that are  
13 genuine and reflect a fair estimation.

14 A I'm familiar with the property, so there  
15 are certain things we have to do. We have to bring a  
16 waterline to the site. There is sewer close by, so  
17 that's relatively inexpensive.

18 We have to do some frontage treatments, so  
19 that's part of the civil construction cost. And then  
20 the building is basically a large gymnasium-type of  
21 structure, so put together an estimate on that.

22 I came up with these estimates, and I did  
23 come across Peter's needs with Maui Architectural  
24 Group. Shortly after I put them together and kind of  
25 ran them by them. They had done the multipurpose

1 facility recently at Maui Preparatory Academy, and he  
2 was like, that's right in line with what we did that  
3 project for.

4 Q How recently did you come up with these  
5 estimates? Was it within the last six months or are  
6 these five years old?

7 A No, less than six months.

8 Q So would you have done the same analysis  
9 for the estimated construction cost for Phase 3,  
10 which is 2.2 for the three middle school classrooms  
11 and the office space?

12 A Yes.

13 Q Thank you. I don't have any further  
14 questions for this witness.

15 CHAIRPERSON SCHEUER: Intervenor.

16 MR. HOROVITZ: No questions.

17 MR. HOPPER: No questions.

18 MS. APUNA: No questions.

19 CHAIRPERSON SCHEUER: Commissioners?  
20 Commissioner Wong.

21 COMMISSIONER WONG: So since you're in  
22 construction, as you know sometimes there's things  
23 that goes off schedule, so you need some sort of  
24 bridge loan or something just to carry the cost.

25 Do you foresee how they're going to pay, or

1       how they're going to get that type of loan?

2               THE WITNESS:   You know, I'm not an expert,  
3       but the Lutheran Church has Lutheran Church Extension  
4       Funds, so Lutheran Church kind of governing body also  
5       has a financial side.   And I'm sure any kind of  
6       financing we do would come through that.   It's super  
7       favorable terms.

8               Working for Goodfellow, I mean, there's  
9       alternate delivery methods.   To get a fancy set of  
10      plans drawn, and then go ask contractors, hey, build  
11      this.   It's pretty old school.

12              I mean, I think we signed Goodfellow up to  
13      do a design build; we want a school.   We want this  
14      many classrooms.   And that handles what you're  
15      talking about, because Goodfellow can wait six months  
16      if our money isn't on hand right now for a payment  
17      type of thing.

18              So when the time comes, I fully believe we  
19      will just be doing a design build-type of project  
20      with Goodfellow.

21              COMMISSIONER WONG:   So you don't see them  
22      selling any other properties or anything else to  
23      assess any gap for this project?

24              THE WITNESS:   I think the long-term plan at  
25      Emmanuel is when we get over there to sell the

1 existing property on Kaahumanu, and that would -- you  
2 know, that is an asset that I think at some date  
3 Emmanuel sees selling.

4 But, yeah, I mean, I think the financing  
5 for the project would be Lutheran Church Extension  
6 Funds, and I think the kind of short-term interval  
7 financing would be, hey, we sign up like a  
8 design-build contract with Goodfellow, they could  
9 take the -- yeah.

10 COMMISSIONER WONG: The other question I  
11 have is in terms of just, you know, the grubbing  
12 portion, going to get permit for the grubbing  
13 portion, then the construction itself. So it should  
14 be all smoothed out, just keep on going, you foresee  
15 that?

16 THE WITNESS: Yeah, right.

17 COMMISSIONER WONG: Permits and all that,  
18 because you need usually get two permits for that.

19 THE WITNESS: We definitely have a grading  
20 permit. And we have a right-of-way permit, because  
21 we got to do frontage. We have a building permit --  
22 yeah.

23 COMMISSIONER WONG: Thank you. No further  
24 questions.

25 CHAIRPERSON SCHEUER: Commissioner Okuda.

1 COMMISSIONER OKUDA: Thank you, Mr. Chair.

2 Just following up on what Commissioner Wong  
3 asked. Just so we can see the structure. ELC is  
4 affiliated with -- is that the Missouri Synog?

5 THE WITNESS: Yes.

6 COMMISSIONER OKUDA: What is the Missouri  
7 Synog?

8 THE WITNESS: So you're going to test my  
9 knowledge. Back in the day, the Lutheran Church has  
10 synog instead of, you know. So they broke away  
11 500 years ago from the Catholic Church. And the  
12 Catholic Church has a world governing body. The  
13 Lutheran Church said, we're not doing that. There  
14 were reasons why we are not going to. So they have  
15 synog.

16 You know, when people from Europe were  
17 immigrating in the early -- in the 1800's, whatever,  
18 synog were formed. Missouri Synog was kind of the  
19 German Lutheran Church, where like the Wisconsin was  
20 kind of more the Scandinavian --

21 COMMISSIONER OKUDA: I don't mean to be  
22 interrupting you. I apologize for not focusing my  
23 question.

24 The Missouri Synog is, for lack of a better  
25 term, it's not a manini or small organization,

1 correct?

2 THE WITNESS: It's not. It's a governing  
3 body. So their one mission that sets them apart from  
4 other Lutheran Churches is education.

5 So how, like, the Jesuits, the Catholics  
6 have a lot of schools, Lutheran Church Missouri Synog  
7 has a lot of schools.

8 COMMISSIONER OKUDA: And they provide  
9 funding and financing as part of their mission, or  
10 it's not unusual for them to provide funding and  
11 financing as part of their mission?

12 THE WITNESS: Yes, for projects,  
13 absolutely. For building churches, building schools,  
14 yes.

15 COMMISSIONER OKUDA: Based on your personal  
16 knowledge, they are not a small or insubstantial or  
17 manini group when it comes to assets, correct?

18 THE WITNESS: Based on my understanding,  
19 no.

20 COMMISSIONER OKUDA: Not asking you to  
21 testify about net worth or anything like that, but a  
22 pretty substantial group, to use a common term,  
23 correct?

24 THE WITNESS: Yes.

25 COMMISSIONER OKUDA: Thank you. No further

1 questions.

2 CHAIRPERSON SCHEUER: Commissioners, are  
3 there further questions? Commissioner Aczon.

4 COMMISSIONER ACZON: Good morning. Just  
5 followup on Commissioner Wong's question.

6 Let's focus just the multipurpose. When  
7 you estimate this project, or a project, besides  
8 doing the material takeoff, you come up with a  
9 timeline to come out with your cost, right, how long  
10 is it going to take you for certain phase.

11 So can you give us just a rough estimate on  
12 how long it's going to take for the design,  
13 permitting and construction itself?

14 THE WITNESS: Construction should be a year  
15 maximum. The permitting could be --

16 COMMISSIONER ACZON: Depends on the County.

17 THE WITNESS: Well, permitting, four to six  
18 months, I would say. Design should be relatively  
19 quick. Again, I would propose -- and this would be  
20 the governing body of Emmanuel Lutheran, would have  
21 to agree to just making a design build delivery with  
22 Goodfellow so that Goodfellow handles all of that.

23 And Goodfellow has a development side and a  
24 construction side. So they can take on permitting  
25 and design. And we would just say, this is what we



1 want, and let them handle all that.

2 COMMISSIONER ACZON: Take say, two years,  
3 three years?

4 THE WITNESS: Two years.

5 COMMISSIONER ACZON: From design to  
6 completion of construction?

7 THE WITNESS: Yes.

8 COMMISSIONER ACZON: Two years?

9 THE WITNESS: Two years.

10 CHAIRPERSON SCHEUER: Are there any further  
11 questions for this witness? Ms. Lim, anything on  
12 redirect?

13 REDIRECT EXAMINATION

14 BY MS. LIM:

15 Q Before you provided these construction cost  
16 estimates, had you been on the property?

17 A I've been on the property.

18 Q More than once?

19 A Many times.

20 Q So the estimates were based on your  
21 knowledge of the property, as well as your experience  
22 in the construction industry?

23 A Yeah.

24 Q As an aside, are you familiar with anybody  
25 ever seeking to access the property for any reason

1       whatsoever?

2               A       Other than dumping rubbish, no.  Nobody  
3 goes there.

4               Q       Nobody's ever approached the church to  
5 access the property?

6               A       No.

7               Q       Thank you.  No further questions.

8               CHAIRPERSON SCHEUER:  Thank you very much.

9               I'm going to do a time check.  We are going  
10 to lose Commissioner Ohigashi at 12:15.  We can still  
11 proceed with business, but I would like to cut  
12 through as much as possible while Commissioner  
13 Ohigashi is still here.

14              How long -- Jennifer, you're done?

15              MS. LIM:  That's correct.

16              CHAIRPERSON SCHEUER:  How long do you  
17 expect you need for your two witnesses?

18              MR. HOROVITZ:  My questions to them will be  
19 relatively brief.  I would say five to ten minutes a  
20 piece.  How many questions the Commissioners have for  
21 them.

22              CHAIRPERSON SCHEUER:  Even I as Chair  
23 cannot estimate that reliably.  And I'm very, very  
24 fond of my fellow Commissioners.

25              We need to take a five-minute break.  We

1 will resume and try to get through as much as we can  
2 before 12:15.

3 (Recess taken.)

4 CHAIRPERSON SCHEUER: We are back on the  
5 record. We will go until 12:15 when we lose  
6 Commissioner Ohigashi. We will see how much we get  
7 through. At 12:15 we will take a lunch break for  
8 45 minutes and resume.

9 Mr. Horovitz.

10 MR. HOROVITZ: During the break we handed  
11 out an exhibit, which is another view of maps that  
12 were already in evidence. So if there is no  
13 objection, I would like you to be able to consider  
14 them.

15 CHAIRPERSON SCHEUER: Sure. Where in the  
16 already submitted documents?

17 MR. HOROVITZ: It was attached or within  
18 the body of the Exhibit A to our errata that was  
19 filed, which is the report prepared by our next  
20 witness.

21 CHAIRPERSON SCHEUER: So it will be  
22 understood for anybody reading the transcript, if  
23 there's references to these diagrams, they're in  
24 Exhibit A to your errata.

25 MR. HOROVITZ: This is another view, easier

1 to read. I thought it would be a better overview of  
2 the project. And where the four cultural impact  
3 assessments that were analyzed in the report are  
4 located.

5 CHAIRPERSON SCHEUER: Please proceed.

6 MR. HOROVITZ: I would like to ask Lisa  
7 Rotunno-Hazuka to come up, and I'll keep my questions  
8 brief to get to your questions.

9 CHAIRPERSON SCHEUER: Thank you. Good  
10 morning.

11 Do you swear or affirm that the testimony  
12 you're about to give is the truth?

13 THE WITNESS: Yes.

14 LISA ROTUNNO-HAZUKA

15 Was called as a witness by and on behalf of the  
16 Intervenor, was sworn to tell the truth, was examined  
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HOROVITZ:

20 Q Can you state your name?

21 A Lisa Rotunno-Hazuka.

22 Q Where do you work?

23 A Archaeological Services Hawai'i.

24 Q About how long have you been there?

25 A 28 -- 25 years.

1           Q       What kind of services does your firm  
2 provide?

3           A       We provided archaeological services, so  
4 inventory surveys, monitoring, basically relates to  
5 archaeological issues.

6           Q       And you and your firm have specialized  
7 expertise and training in this?

8           A       Yes.

9           Q       Can you describe that a little bit for us?

10          A       Well, for inventory surveys we go out to  
11 the property, walk out on the property to see if  
12 there is any historic properties.

13                   And then we assess document historic  
14 properties, put that into a report.

15                   During monitoring we would watch  
16 construction to see if any historic properties are  
17 unearthed.

18          Q       You're familiar with the broader Petition  
19 Area? By that, I mean the 25 acres, the subject of  
20 this Petition?

21          A       Yes.

22          Q       What kind of services has your firm  
23 provided for this particular property?

24          A       On the 25 acres we did the initial  
25 inventory survey in 2004. And it was updated again

1 in 2016. And then we've also submitted a monitoring  
2 plan for the affordable component.

3 Q Your firm would be doing the monitoring for  
4 Waikapu Development Ventures development?

5 A Yes.

6 Q And then more recently you were asked to  
7 review existing cultural impact assessments for  
8 surrounding properties, is that correct?

9 A Yes.

10 Q On what was handed out, there is a map.  
11 The second page identifies -- could you tell me what  
12 the property in blue is?

13 A Yes. The property in blue is the ELC and  
14 Waikapu Development. And the properties in orange  
15 are the properties that contain the CIAs that we  
16 reviewed.

17 Q So the report that was submitted as Exhibit  
18 A to our errata for cultural impact assessment that  
19 your firm and you assisted in reviewing are the ones  
20 represented in orange?

21 A Correct.

22 Q What did you find in reviewing those  
23 cultural impact assessments?

24 A Basically of the three that are in close  
25 proximity to the Project Area, there was no

1 traditional cultural practices occurring on the  
2 Project Area.

3 For the Waikapu Country Town, they did show  
4 up in the valley, closer to the valley, that there  
5 was a cultural practice for agricultural activities  
6 that was ongoing, and as well as most of the CIAs  
7 mentioned.

8 Waikapu Stream is a natural resource and a  
9 cultural resource and it should be considered.

10 Q So in your experience and expertise, where  
11 would you typically find cultural practices to be  
12 occurring?

13 A Along the stream, as well as if the area  
14 had not been so radically modified, you know,  
15 150 years ago from agriculture, a lot of the CIAs  
16 also came to the same conclusion that there could  
17 have been traditional practices in this area, but due  
18 to all the disturbances there were none.

19 Q Waikapu Stream, just for reference, is  
20 about how far away?

21 A I think it's about a half a mile. Right  
22 close to Waiko Road on the second page of that  
23 exhibit.

24 Q So in your work on the archaeological  
25 survey for the property that you did: One, did you

1 find anything of concern from an archaeological  
2 standpoint?

3 And also, did you hear of any stories or  
4 get any evidence of any cultural practices on the  
5 property?

6 A No. During the survey we did not find any  
7 historic properties. We did document again much of  
8 the disturbances that had been across the parcel, and  
9 we did not hear of any traditional or customary  
10 rights of access for the property.

11 Q For the record, the archaeological survey  
12 is attached as an addendum to our 201H Application,  
13 which is in the record already.

14 I have no further questions at this point,  
15 and I would defer to the Commission or parties.

16 CHAIRPERSON SCHEUER: Petitioner?

17 MS. LIM: No questions.

18 CHAIRPERSON SCHEUER: County?

19 MR. HOPPER: No questions, Mr. Chair.

20 CHAIRPERSON SCHEUER: Office of Planning?

21 MS. APUNA: I do have a few questions.

22 CROSS-EXAMINATION

23 BY MS. APUNA:

24 Q Was there a CIA, cultural impact analysis  
25 done for the parcel for the Petition Area at any



1 time?

2 A Not that we did, no.

3 Q And you found no record of cultural impact  
4 analysis?

5 A For the Project Area?

6 Q Yes.

7 A No. We just reviewed ones that were done  
8 in close proximity to the Project Area.

9 Q Is that generally accepted as equivalent to  
10 an actual cultural impact analysis for the Petition  
11 Area looking at surrounding CIAs?

12 A Well, first of all, we don't generally do  
13 CIAs, but I do know that that is part of the  
14 practice, even in archaeology, you want to look at  
15 the area as a whole.

16 So it is good to start off your research on  
17 looking at the exterior to see what they have found.  
18 And then that will help guide you when you do,  
19 whether it's cultural or archaeological work.

20 Q Did you interview any people with regard to  
21 cultural practices within the Petition Area?

22 A No, we did not. We just reviewed the  
23 existing CIAs.

24 Q Thank you.

25 CHAIRPERSON SCHEUER: Commissioners?

1 Commissioner Okuda?

2 COMMISSIONER OKUDA: Thank you, Mr. Chair.

3 Do you consider yourself an expert in the  
4 area of identifying the scope of valued cultural,  
5 historical, or natural resources with respect to this  
6 parcel?

7 And let me not play hide the ball here.  
8 I'm reading from the most recent Mauna Kea decision,  
9 which starts -- which spells out some of the elements  
10 of doing a proper Ka Pa'akai analysis.

11 Do you consider yourself basically an  
12 expert to render an opinion about whether or not that  
13 part of the Ka Pa'akai standard has been met?

14 THE WITNESS: No, I don't think that I  
15 would be an expert.

16 COMMISSIONER OKUDA: So your testimony here  
17 today is not intended to give an expert opinion with  
18 respect to that prong of the Ka Pa'akai analysis,  
19 assuming I read the prong correctly?

20 THE WITNESS: I can tell you that my  
21 testimony today was just to provide the information  
22 that we gathered from the CIAs in the surrounding  
23 area. That's what my testimony is for. And the  
24 people that conducted those CIAs are experts.

25 COMMISSIONER OKUDA: But, again, in

1 response to the Office of Planning's question, you  
2 did not see a specific cultural impact analysis or  
3 CIA study for the parcel that we're dealing with here  
4 today, correct?

5 THE WITNESS: No, I did not.

6 COMMISSIONER OKUDA: Thank you. No further  
7 questions, Mr. Chair.

8 CHAIRPERSON SCHEUER: Commissioners?  
9 Commissioner Mahi.

10 VICE CHAIR MAHI: I guess my question is  
11 probably for the attorney of the Petitioner. Will  
12 there be a CIA prepared, hearing that's not been  
13 fulfilled yet on the particular parcel in question?

14 MS. LIM: On the 25-acre, the entire  
15 property?

16 VICE CHAIR MAHI: Right.

17 MS. LIM: Well, I suppose that has to be  
18 determined, because as I mentioned earlier in  
19 response to a question that Commission Okuda raised,  
20 the Commission made a Conclusion of Law that was  
21 never challenged by anybody that an analysis had been  
22 done.

23 Now, it's what it says, and I won't read it  
24 again, because you all heard me, Conclusion of Law 4  
25 does say that based on the information that the

1 Commission had before it at that time after a  
2 contested case hearing -- I mean, after evidentiary  
3 determinations and hearing from witnesses, that no  
4 use of the Petition Area for customary and  
5 traditional subsistence, cultural or religious  
6 activity. That was the unchallenged Conclusion of  
7 Law at that point in time, based on the information  
8 that was provided to the Commission.

9           So it's a little confounding to go back in  
10 time when the Commission already made that  
11 determination, and in fact --

12           VICE CHAIR MAHI: When was that? That was  
13 back in what?

14           MS. LIM: It was in 2007. So it was  
15 several years after the Ka Pa'akai decision came out,  
16 and the Commission was well familiar with its  
17 constitutional obligations.

18           VICE CHAIR MAHI: But they didn't know  
19 about the fact that it's going to be a housing  
20 development now, right?

21           MS. LIM: That is correct.

22           VICE CHAIR MAHI: So with that alteration,  
23 I believe that -- and I wasn't there in 2007.

24           MS. LIM: Nor was I.

25           VICE CHAIR MAHI: And had I -- I'm here

1 now. You're here now. And we're going to do  
2 something else to this aina. So would not we  
3 consider the importance -- we're going to be digging,  
4 right? I mean there is a little bit of profit during  
5 the time when they had that for sugarcane, I would  
6 assume, but I think now it's a different picture,  
7 right? Don't you think so?

8 MS. LIM: And I see your eyes going to the  
9 Intervenor, because, again, Emmanuel Lutheran's  
10 project is the same, just smaller within the same  
11 footprint.

12 MR. HOROVITZ: I'm happy to respond, if you  
13 like.

14 VICE CHAIR MAHI: Please.

15 MR. HOROVITZ: I agree. I think the  
16 Commission back in 2007 made its ruling. I wasn't  
17 there for that, but they made the ruling, and it  
18 hasn't been challenged. We briefed that.

19 I think there is a difference between the  
20 archaeological monitoring, which we are committed to,  
21 we're obligated to. In our 201H project, the County  
22 requires it. It's going to be a requirement. That's  
23 separate and apart from the cultural practices  
24 aspect.

25 Our stated position is we don't think a new

1 CIA, cultural impact assessment is required because  
2 of what the Commission did in 2007.

3 We do recognize that looking at cultural  
4 issues are important regardless. And, you know,  
5 that's why we have witnesses here today to address  
6 that.

7 But, again, as going back to Mr. Okuda's  
8 comments, we don't think it's a condition precedent,  
9 something you have to decide before you rule on the  
10 motion, because it was decided in 2007. The  
11 archaeological, as I mentioned, is ongoing. We are  
12 going to be doing that at every phase of the  
13 construction.

14 VICE CHAIR MAHI: Thank you. Mahalo.

15 CHAIRPERSON SCHEUER: Further questions,  
16 Commissioners, for this witness? Commissioner  
17 Cabral.

18 VICE CHAIR CABRAL: Just a clarification,  
19 because of the usage will be so different when it was  
20 a church with a smaller imprint on the property than  
21 what the housing looks like from the drawing  
22 available here, build up the area quite a bit more  
23 than the church and school would have built it up.

24 So at that time, and probably Attorney Lim  
25 would be the one to answer or whoever has that study.

1 At that time the entire parcel ten years ago was  
2 examined for any cultural impact and any usage by  
3 cultural practitioners that were analyzed for the  
4 entire property ten years ago, not just for the area  
5 that the church and the school was going to locate?

6 MS. LIM: That is my understanding based  
7 upon two Findings of Fact that are within the  
8 Commission's Decision & Order, and the Conclusion of  
9 Law that I mentioned. That covered all  
10 25-point-something acres, the entire Petition Area.

11 VICE CHAIR CABRAL: Thank you for the  
12 clarification.

13 CHAIRPERSON SCHEUER: Commissioners,  
14 further questions? Commissioner Okuda.

15 COMMISSIONER OKUDA: Just to follow up, Ms.  
16 Lim, not trying to put words in your mouth, but is  
17 the argument you're making basically that even if we  
18 might today have questions, maybe serious questions  
19 about the adequacy of complying with Ka Pa'akai, that  
20 once certain Findings of Fact and Conclusions of Law  
21 are made, it amounts to what we in the trial industry  
22 call "law of the case", and if it hasn't been  
23 appealed within a timely appeal period, even if we  
24 the present Commission disagree with those, we are  
25 bound to follow them?

1 MS. LIM: Thank you for the question,  
2 Commissioner.

3 Yes, but with the caveat, if there was  
4 evidence showing that perhaps practices had been  
5 initiated, and recall I asked Mr. Sjostrand if he was  
6 familiar, and although I did not ask Dr. Reiley on  
7 the record, expect that we have had that discussion  
8 as well, are they familiar with anybody ever  
9 approaching them, since then they have had ownership  
10 of the property. I think they acquired it in 2004,  
11 and before the Commission in 2007. Nobody has ever  
12 been seen on the property except to do unfortunate  
13 dumping, and nobody approached them to access the  
14 property for any reason whatsoever.

15 However under a different set of  
16 circumstances, if there were concerns raised  
17 whatsoever, then I think the Commission has an  
18 obligation, notwithstanding conclusions and findings  
19 that were made in the past. New information requires  
20 new analysis.

21 But, again, from the Petitioner's  
22 perspective, these uncontroverted facts and  
23 conclusions for essentially the same project but  
24 smaller footprint, we would think really ends the  
25 discussion to the Emmanuel Lutheran Church project.



1 COMMISSIONER OKUDA: So in other words, the  
2 absence of any new evidence means that the prior  
3 findings and conclusions should remain undisturbed,  
4 is that what you're basically saying?

5 MS. LIM: That's correct.

6 COMMISSIONER OKUDA: Thank you. No further  
7 questions.

8 CHAIRPERSON SCHEUER: Commissioners, other  
9 questions? I have a couple, or perhaps more.

10 You prepared the AIS?

11 THE WITNESS: Yes.

12 CHAIRPERSON SCHEUER: Did you do additional  
13 trenching in 2016?

14 THE WITNESS: No. We just updated the  
15 report according to the standards in 2016.

16 CHAIRPERSON SCHEUER: What is the  
17 relationship between an archaeological inventory  
18 survey and cultural impact assessment?

19 THE WITNESS: Well, oftentimes when we're  
20 out doing our work during an inventory survey,  
21 individuals that are from the adjoining area will  
22 come out and talk to us about the property. And we  
23 will ask them, you know, do you know of any sites  
24 that are on the property? What do you know has been  
25 going on in the area?

1           So there's maybe a relationship where we  
2 find things out during our inventory survey about  
3 possible cultural practices, but that's not the  
4 intent of the archaeological inventory survey.

5           CHAIRPERSON SCHEUER: Do you believe that  
6 burials known or unknown might be a valued natural or  
7 cultural resource --

8           THE WITNESS: Absolutely, yes.

9           CHAIRPERSON SCHEUER: -- that should be  
10 protected under Ka Pa'akai?

11          THE WITNESS: To quite honest, I'm not  
12 familiar with Ka Pa'akai, so I can't speak to that,  
13 but they should be protected, yes.

14          CHAIRPERSON SCHEUER: I want to also follow  
15 up on one of the questions from Office of Planning,  
16 because I think your answer, if I understood the  
17 question and the answer correctly, I think it  
18 diverged a little bit from what was being intended.

19          The additional information that was  
20 provided to us, including the diagrams that were  
21 handed out today, you reviewed the CIAs prepared for  
22 surrounding areas?

23          THE WITNESS: Yes, my partner I and  
24 reviewed.

25          CHAIRPERSON SCHEUER: But no CIA, to your

1 knowledge, was ever done for this particular parcel?

2 THE WITNESS: None that I know of.

3 CHAIRPERSON SCHEUER: I believe Office of  
4 Planning's question was: Is it common practice that  
5 in the process of where a CIA is required, one could  
6 only look at CIAs prepared for surrounding parcels  
7 but not have a CIA for that actual parcel?

8 THE WITNESS: Again, since we don't prepare  
9 CIAs, I cannot speak to that. I believe that, even  
10 similar like archaeology, if the CIAs had findings of  
11 traditional, cultural practices in close proximity to  
12 this parcel, then there could be a chance that those  
13 were ongoing on this parcel.

14 I think with the negative findings of these  
15 other CIAs, excluding the Waikapu Town one up in the  
16 valley, I think that you can make some conclusions  
17 that this parcel is in the same condition as the  
18 others, traditional and cultural practices are  
19 probably not occurring.

20 CHAIRPERSON SCHEUER: Are there -- to your  
21 knowledge, have there been recent discoveries of  
22 burials in the surrounding Waikapu area?

23 THE WITNESS: Yes, on the east side of  
24 Waiale Road there have been burials discovered.

25 CHAIRPERSON SCHEUER: In the course of

1 development?

2 THE WITNESS: Yes.

3 CHAIRPERSON SCHEUER: Despite this whole  
4 area having been under agricultural production?

5 THE WITNESS: Well, to the east, portions  
6 of it were not developed. So some of that was  
7 original remnant sand dunes. It's a little bit  
8 different situation when you go the west of Waiale  
9 where these affordable housing projects are proposed.

10 That area has been more disturbed from the  
11 agriculture, as well as you have different soils in  
12 the area. From the mountains you have more like  
13 silty clay soil eroding down over the years. And  
14 closer to Waiale Road you have the remnant sand  
15 dunes.

16 CHAIRPERSON SCHEUER: Is the point that  
17 you're trying to make that burials have been  
18 primarily discovered in sandy areas?

19 THE WITNESS: In this location, I believe  
20 most of them have been in the remnant sand dunes.  
21 Not to say they can't be discovered in other types of  
22 soils.

23 CHAIRPERSON SCHEUER: My last question.  
24 Are you familiar with instances, at least on the  
25 Island of Oahu, where burials have been discovered in

1 fully urbanized areas?

2 THE WITNESS: Yes. We have had that over  
3 here as well, but, yes, I am familiar with that.

4 CHAIRPERSON SCHEUER: I have nothing else.  
5 Anything else from the Commissioners? Thank you very  
6 much.

7 MR. HOROVITZ: No further questions for  
8 this witness. Ask for Kimokeo Kapahulehua.

9 CHAIRPERSON SCHEUER: Aloha.

10 THE WITNESS: Aloha.

11 CHAIRPERSON SCHEUER: Do you swear or  
12 affirm that the testimony you're about to give is the  
13 truth?

14 THE WITNESS: Yes. I do.

15 CHAIRPERSON SCHEUER: Please state your  
16 name and address.

17 THE WITNESS: My name is Kimokeo  
18 Kapahulehua, 1011A South Kihei Road, Kihei, Hawai'i  
19 96753.

20 KIMOKEO KAPAHULEHUA  
21 Was called as a witness by and on behalf of the  
22 Intervenor, was sworn to tell the truth, was examined  
23 and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. HOROVITZ:

1           Q       Tell me where you grew up and a little bit  
2 about yourself.

3           A       I grew up, born and raised on the Island of  
4 Kauai. I moved to this island in 1970.

5           Q       Can you tell me a little bit about your  
6 background, ethnicity and cultural background?

7           A       I'm Hawaiian/Portuguese. My dad is from  
8 the Island of Ni'ihau. My mom is from Kaua'i. My  
9 grandmother is from Portugal, and my grandfather  
10 Kimokeo is from Kaua'i, being a pure Hawaiian.

11          Q       You're fairly well-known in our community,  
12 but for the benefit of the Commissioners who may not  
13 know you, tell us a little bit about your cultural  
14 background. What you do with the various  
15 organizations you're involved with on this island?

16          A       I'm the president of 'Ao 'ao O Na Loko I'a  
17 O Maui, which is the Maui Fishpond Association,  
18 established in 1996. And our vision and mission is  
19 to preserve, perpetuate, revitalize the wall, the  
20 Ko'ie'ie, to revitalize the culture.

21                I'm also the president of Mo'okiha O Hui  
22 Wa'a Kaulua. That's a double-hull voyaging canoe  
23 from Maui. It's been in the establishment for  
24 20 years. Now, we are the children of Hokule'a,  
25 which is Polynesian Voyage Society, the main voyage.

1 My uncle is the captain of the first maiden sail from  
2 Maui to Tahiti 35 days in 1976.

3 Since this development, we have had  
4 everyone of the crew come back and make their own  
5 canoes.

6 On the Island of Hawai'i, we have the  
7 Makali'i. On Maui we have Mo'okiha O Pi'ilani, which  
8 is founded by the Lindsey family out of Lahaina. And  
9 Oahu, Hokule'a, Hawai'i Loa. And now we have  
10 Hikianalia, which is a fairly new technical canoe  
11 that we have that escorts the Hokule'a pretty much  
12 around the worldwide voyage.

13 And then on the Island of Kauai, which was  
14 the last established canoe, it's called Namahoe.

15 So with that, we have more than 20 years of  
16 preserving, perpetuating, educating Hawaiian culture  
17 with Polynesian Voyaging, Hokule'a. We now have our  
18 own canoe in Ma'alaea and instituting with nine high  
19 schools, including Island of Lanai and Molokai,  
20 teaching all the students in high school and  
21 University of Hawaii teaching celestial navigation.

22 Q Have you been involved in preparing or  
23 assisting in preparing cultural impact assessments?

24 A Yes. I have been doing that with Hana  
25 Pono, LLC, and we have been doing it, I would say,

1 over 18 years now.

2 Q Approximately how many have you either  
3 prepared on your own or been involved with?

4 A I would think I couldn't give you a good  
5 handle, but I know that we done more than 20 cultural  
6 impact assessment here on Maui.

7 Q Have you done a fair number in the  
8 Kahului/Wailuku area, or where approximately where  
9 would they have been?

10 A Yeah. We were involved, I think it's on  
11 the map here, you can see that we were doing that  
12 with A&B.

13 Also was involved with some work with  
14 Waikapu Country Town, and we also involved with the  
15 Safeway development. So we have three, and maybe  
16 four that's familiar with this area.

17 Q Just the reference to Waikapu Country Town  
18 one is the one shown in orange on the map, and the  
19 A&B one is down below Waiale Road, under Waiale  
20 Master Plan on the map?

21 A Right.

22 Q What is your -- where have you -- looking  
23 at our particular property, are you familiar with  
24 that location?

25 A I definitely am.



1           Q       And what is your knowledge as to cultural  
2 practices that are in the area or specifically on  
3 this property?

4           A       You know, we never did a cultural impact  
5 assessment on this particular area. But I should say  
6 that, first of all, cultural people like myself, we  
7 have what you call introduction of the project. With  
8 the introduction of methodology. Methodology is  
9 taking a kupuna, mo'olelo about what was and what is  
10 and what kind of impact does it do with that area.

11                   After we done a methodology, you know, we  
12 also take in consideration the flora and fauna,  
13 endangered plants, endangered animal, endangered  
14 insects, and what impact if someone does to that.

15                   So in our CIA we do introduction, we do  
16 methodology, and then we do an assessment. And the  
17 assessment would be what kind of impact has it done  
18 within the cultural practices on the property.

19                   So that's kind of -- I think you haven't  
20 asked me about your particular property. I couldn't  
21 give you what we have done in our reports, taken  
22 someone's translation of what was and what is, you  
23 know.

24                   But on that particular area we have not,  
25 but I can just say what was done around the area.

1           Q       In the surrounding area, where would you  
2       tend to find cultural practices occurring?

3           A       I think immediately we see a lot of  
4       agriculture, because of the streams. And because of  
5       this area, geologically, it allows the enrichment of  
6       the volcanic soil that we have on the side of the  
7       hill, mauna ka hale wai, that's described as house of  
8       the water. So just with the water, it means life.  
9       So we can say that this area was really active with  
10      agriculture right off the bat.

11                 As to where they reside, would reside in as  
12      close as possible to walk to work. So they wouldn't  
13      be resided in so much far away, you know.

14           Q       When you say so much far away, trying to  
15      place where my understanding is. The stream is about  
16      half a mile away. Would that be more of a  
17      concentration for people living, farming practices?

18           A       Of course. You know, they would be living  
19      close to the stream and using the stream. They call  
20      that appurtenant water rights. Appurtenant water  
21      rights is you're part owner of the stream. Today  
22      it's called diversion of appurtenant water rights.  
23      In 1900 taking the water going away for agriculture,  
24      so we would question that.

25                 The question from you that our agriculture

1 be as close as possible to the stream.

2 Q Thank you.

3 And would you have expected to find  
4 anything, any ongoing, especially in the last ten  
5 years, cultural practices in this particular area of  
6 our particular project?

7 A No. We would not consider anything in the  
8 last ten years. The last ten years this property has  
9 been, I wouldn't say fallow, but not vacant. It  
10 might be owned by someone, but there was no cultural  
11 practices or cultural things that we have seen there  
12 that's been done.

13 Q What do you think in general a use of a  
14 portion of this property for housing?

15 A You mean --

16 Q Housing for the proposed affordable housing  
17 project. Do you think the use of this property for  
18 an affordable housing project is appropriate or  
19 inappropriate?

20 A I think it's appropriate.

21 Q Why is that?

22 A If you go back to the guiding principles of  
23 what you talk about in your project, it's called  
24 respect for host culture and natural resources. And  
25 if you go to that page, this has been taken out of

1 context of our lifestyle of living called the  
2 ahupua'a, learning from the past to plan the future,  
3 it's used by your company or your representative  
4 cultural overlay. The ahupua'a of Maui, and it talks  
5 about the overlay malama aina, pono, kuleana and  
6 community.

7 And you go back to the next page and you  
8 see a gentleman by the name of John Kahilikawa  
9 (phonetic) and eight principles. So he's a really  
10 good friend of mine, well-established person,  
11 scholar. And he was responsible to establish what we  
12 call today the 'aha moku, where the State of Hawaii  
13 recognized this 'aha moku as like a commission,  
14 advising DLNR the use of the land for mauka/makai.

15 So now we have 'aha moku on Maui and 'aha  
16 moku on Lanai and elsewhere. They're responsible to  
17 go back to the Commission and say that when you have  
18 a development, this would be the recommendation of  
19 that.

20 So if you came -- not to the 'aha moku, to  
21 me, I would say that that would be part of the ali'i  
22 or kuleana to have houses for his people in this time  
23 and age, new era, but having houses for your people  
24 would be the thing to do.

25 Q Let me ask you, in preparation of cultural

1 impact assessments that you've done, if other  
2 cultural impact assessments have been done for other  
3 properties, and then they contain interviews with  
4 people, would you consider those as good resources,  
5 the interviews that have already been conducted when  
6 you were doing your research?

7 A Yeah. I think that the individuals that we  
8 have talked to, one of them was supposed to be here  
9 this morning, his name is Randy Peltz, one of our  
10 elders, and he would be included.

11 But all the CIAs, we have other individuals  
12 that we have talked to within the area of the elders  
13 in giving, I would say, a few they're not here now,  
14 they've passed away. You know, Kaneko (phonetic) was  
15 one of them. Yes, we have talked to people who lived  
16 within the area and share some resources.

17 MR. HOROVITZ: Thank you. No other  
18 questions at this time.

19 CHAIRPERSON SCHEUER: Thank you.

20 COMMISSIONER OHIGASHI: Chair, I won't be  
21 here. I'm not going to ask questions, just a  
22 comment.

23 I believe that the issue before the  
24 Commission on this particular motion is a  
25 modification of the original decision. It would

1 appear that some of the issues of whether or not a  
2 cultural assessment should be updated or prepared,  
3 seems to be something that we may want to consider in  
4 the modification portion, or in the other motions  
5 that have been filed by the developer.

6 So what I'm trying to say is I believe that  
7 the last two testimonies related to supporting the  
8 questions of whether or not we were going to move  
9 forward with modification of the original order and  
10 consider those particular issues in the subsequent  
11 motion. And that's all I've got to say. I have to  
12 be excused.

13 CHAIRPERSON SCHEUER: You're excused,  
14 Commissioner. Thank you.

15 I apologize, we're going to have to take a  
16 break and come back to you after lunch for further  
17 questions.

18 THE WITNESS: That's fine.

19 CHAIRPERSON SCHEUER: We're going to take a  
20 45-minute break for lunch. We will resume at  
21 1:02 p.m.

22 (Noon recess taken.)

23 CHAIRPERSON SCHEUER: We are back on the  
24 record, and we were on the testimony of Mr.  
25 Kapahulehua. I believe we were with Commissioner

1 questions.

2 MR. HOROVITZ: That's correct. If the  
3 Commission have questions, obviously.

4 CHAIRPERSON SCHEUER: Commissioners?

5 Staff reminds me and corrects me where we  
6 were procedurally. We hadn't actually gotten to  
7 Commissioner questions. Commissioner Ohigashi wanted  
8 to make a statement, so we're at the point where it's  
9 Maui County.

10 MR. HOPPER: County doesn't have questions  
11 for this witness.

12 MS. APUNA: We have a few questions.

13 CHAIRPERSON SCHEUER: Please proceed.

14 CROSS-EXAMINATION

15 BY MS. APUNA:

16 Q Thank you for your testimony.

17 My first question is, what is your focus as  
18 a cultural practitioner? Do you have a focus in a  
19 certain area? I think you mentioned ocean navigation  
20 and some agriculture.

21 Do you have a specific focus or focuses?

22 A You know, as an ocean guy, my focus has  
23 always been there, but recently because of the needs  
24 of mauka-makai in the last, I would say, 15 years has  
25 been on the land to bring back canoe, food

1 development. So besides canoe, food, there are more  
2 recently caretaker of Lo'alo'a, which is a heiau out  
3 at Kaupo and has to do with celestial navigation.  
4 Working with Dr. Kirschbaum for the last 15 years  
5 about, educating me more about archaeological  
6 findings of the way the navigators had used the land  
7 versus the heavens versus what I do on the ocean, and  
8 related to me what was before and how they did that.

9 So I would say that my focus is either been  
10 in the land, in the ocean of relationship of not only  
11 navigation, but I mentioned before in 1976 my Uncle  
12 Kawika Ku'ualoha Kapahulehua was the first captain  
13 for Hokule'a. And he had gotten most of the food  
14 from Honokohau.

15 So I've been the owner of Honokohau since  
16 2005 making -- what was missing from the property was  
17 the ahupua'a. So a lot of that made focus on the  
18 land in the recent years.

19 Q How about other more land-based cultural  
20 practices, like gathering? Do you consider yourself  
21 having a lot of experience or study in Native  
22 Hawaiian gathering practices?

23 A Yeah. So I mentioned to you before that I  
24 was born on the Island of Kauai, so our gathering has  
25 always been ocean and the streams, the streams are



1 rivers. We have five main rivers on Kauai. So my  
2 gathering of hihiwai, opae, and also the ocean shore  
3 dive and deep has been my gathering on that, you  
4 know.

5 But with the gathering come the pu'ole and  
6 a lot of other stuff that come with that, the ulu.  
7 So that would not have been something that I would  
8 consider recent, because I brought up with that in  
9 the Island of Kauai being that we have Mount  
10 Waialeale and five main rivers, versus Island of  
11 Maui, we just have streams.

12 So I do know the gathering on this island  
13 here, but not in abundance as we would consider on  
14 the Island of Kauai, o'opu and hihiwai, and limu  
15 ele'ele and other things we would gather on Kauai.  
16 So I would consider gathering here is really, really  
17 minimum compared to where I came from.

18 Q Have you testified as a cultural expert at  
19 any other hearings?

20 A Yes, I have. I couldn't give dates, but,  
21 yes, I have.

22 Q For instance, before what body, before what  
23 agency?

24 A I think came before the Land Use Commission  
25 before in testifying. Again, couldn't give you

1 dates. I know several projects that came before you  
2 that I have testified on behalf of the developer and  
3 on behalf of Hana Pono LLC.

4 Q And so your understanding, as far as  
5 cultural practices in the Petition Area, it's based  
6 solely on the cultural impact analysis that were done  
7 for the surrounding property.

8 Is that the way your resource for making a  
9 determination for the Petition Area is based on the  
10 surrounding CIAs?

11 A Correct.

12 Q Thank you very much.

13 A You're so welcome.

14 CHAIRPERSON SCHEUER: Commissioners?  
15 Commissioner Mahi.

16 VICE CHAIR MAHI: Aloha.

17 I know when talking about the criteria you  
18 use when you're searching information. And it's  
19 totally understood, because we have the same -- as  
20 the Commission, we have had the same issues about  
21 losing history through mo'olelo, because of the fact  
22 over 100 years now they been doing sugarcane. And  
23 because of that, you know, about three generations  
24 passes by, and the practices of what used to take  
25 place, there are no longer.

1           So in this case, I remember you had  
2 mentioned, what is it, mythology? You use mythology  
3 as one of the ways to research whether something  
4 culturally was practiced in the area; is that right?

5           THE WITNESS: I'm just saying the method  
6 that's used, method, not mythology. The mythology  
7 would be different perspective. That would be like,  
8 you know and I know what's in songs and what's in  
9 chants and from there. That's mythology.

10           Methodology was -- they require in the CIA,  
11 or part of the CIA to go out and seek out kupunas in  
12 the vicinity. And then also in the system also  
13 reflect back on the flora and fauna report that we  
14 receive. And look and make sure that if there is any  
15 lifestyle of, such as pueo or anything else that  
16 around the area, you know.

17           And then, again, would be -- we've had  
18 areas where we have insects. Our own Hawaiian  
19 dragonfly. And besides that black moth sphinx, so  
20 methodology, not mythology.

21           VICE CHAIR MAHI: I was wondering because  
22 we lost so much history as our people. And then, of  
23 course, the acculturation, another culture came in  
24 and started practicing.

25           Has it ever been the practice for you to go

1 back to mo'olelo, ka'o, which means legends, and  
2 then -- or oli, stories of the past. Has that ever  
3 been relative to, you know, say pana, you can tell  
4 the names of different areas, and then from the name  
5 you can tell whether there was a practice over there  
6 or not? Has that ever been a part of that practice?

7 THE WITNESS: Yeah, part of that is our  
8 practice going back to Samuel Ka'au, and all the  
9 other records that written to the area. Part of that  
10 go to Bishop Museum, Hawaiian Missionary. We have  
11 gone back as far as up in the main Smithsonian  
12 Institute in Maryland.

13 So it is part of the practice to reference,  
14 if information you have in the report, we have  
15 reference where we got it from.

16 VICE CHAIR MAHI: From Waikapu, what was  
17 research for that ahupua'a of Waikapu? I always  
18 wondered how much is revealed through the name  
19 already, just the no' a of the aina, and then we can  
20 try to figure out, and then you got to search, yeah?  
21 Is that also a method that you use?

22 THE WITNESS: That's part of it. Part of  
23 our kauna is to understand wai, and understand wai  
24 ola o kane, water of life given by God Kane. Also  
25 understand just with that would tell you that

1 Waikapu, Wailuku, Waiehu was a wealthy place.

2 VICE CHAIR MAHI: (Indecipherable) those  
3 are the traditional names for the waterways that come  
4 under and feed that area?

5 THE WITNESS: Exactly. So in that also say  
6 to you that, you know, we understand auwai, the  
7 pulima (phonetic) and all the small ways of  
8 irrigation from top to the bottom, how they spread  
9 the water. And also with that, lo'is on the side  
10 takes the larger portion of the water as it comes  
11 down to lessen the pressure of the water so it  
12 doesn't destroy the smaller lo'is down there.

13 That's all considered in going back and  
14 study a time. Truly you can say that we will  
15 research as far as back as we can bring history to  
16 the present time.

17 And, of course, you know that a lot of that  
18 has been lost, even written. So we have people, you  
19 know, would say some things and we will go back and  
20 look at what the saying is. And many of the times,  
21 even at this time, is difficult to understand, but if  
22 you keep on going and using the words, whether  
23 statement or whether it's a mele or chant, and then  
24 you kind of can understand that.

25 But, yes, we have lost a lot. It's a

1 challenge for us, because as you state, we have no  
2 kupuna that's 200 years old, we have no kupuna.

3 VICE CHAIR MAHI: Pule, we can only pray to  
4 them.

5 THE WITNESS: We always pule to na pule  
6 kalani, na pule kawana, na pule kualua and hope that  
7 the Hawai'i luna come upon us. And that would  
8 motivate us to continue to overcome the challenges  
9 and with their 'ike and their knowledge.

10 VICE CHAIR MAHI: Mahalo.

11 THE WITNESS: Mahalo.

12 CHAIRPERSON SCHEUER: Commissioners.  
13 Aloha?

14 THE WITNESS: Aloha.

15 CHAIRPERSON SCHEUER: I have a few  
16 questions.

17 I want to first begin with saying that I  
18 haven't actually interacted in any meaningful way  
19 with you over the years. Your cultural mission on  
20 Maui is well known to me and for many people, so  
21 mahalo for that.

22 And I did have the opportunity a little  
23 over year a ago to go to Willy Woods' lo'i in  
24 Honokohau, which I understand you taught him how to  
25 grow kalo.

1           THE WITNESS: You know, Willy is a natural  
2 of kalo, but, yes, he's one of my alaka'is. And a  
3 graduate from Lahaina Luna. So I have several  
4 graduates from Lahaina Luna up there now. That was  
5 part of the development, developing the ahupua'a, and  
6 bringing the kalo back in Honokohau.

7           My uncle first went there in 1976. There  
8 was an abundance of kalo. Since then, short time, we  
9 lost a few patches, so with his help and other  
10 people's help, we brought back the kalo in a way that  
11 we can say that Honokohau truly raise kalo.

12          CHAIRPERSON SCHEUER: And water is an  
13 important issue in that valley.

14          But to come back to around this side of the  
15 island, even though you're from Kaua'i originally,  
16 you do appreciate that this whole Na Wai 'Eha area  
17 was historically very heavily used and heavily  
18 populated, correct?

19          THE WITNESS: Correct.

20          CHAIRPERSON SCHEUER: So that it is likely  
21 that whole areas, even areas now that are really in  
22 the midst of urban areas, were once areas of very  
23 heavy use and cultivation?

24          THE WITNESS: Definitely.

25          CHAIRPERSON SCHEUER: I just want to go

1 to -- you expressed, in response to a question from  
2 the Intervenor, your support for housing. And that  
3 this is actually something that a chief would provide  
4 housing for his people, and that there is a need for  
5 housing on this island?

6 THE WITNESS: Yes.

7 CHAIRPERSON SCHEUER: I think it's a  
8 sentiment of this Commission by and large that holds  
9 true as well that we want to see housing for people.

10 But I want to talk about or get your  
11 thoughts on the relationship between housing and any  
12 cultural resources that might exist on a property.

13 So like two sort of lines. One is, since  
14 you've prepared, helped to prepare cultural impact  
15 assessments before, how might those assessments be  
16 used to guide development?

17 When you've done an assessment for an area  
18 and found some of the cultural history and resources  
19 in the area, how might that guide developers, be they  
20 a church or affordable housing developer, as they  
21 learn to use the property in a new way?

22 THE WITNESS: I think what was made back  
23 for CIA is very important, and the guide should be  
24 followed as it presents a value as to why it was  
25 made, you know.



1           What was before was not done, and what it  
2           is today since 1997, OEQC allowed us to have this  
3           local practitioners come in and do such a report  
4           called CIA. I think it's a great guide.

5           CHAIRPERSON SCHEUER: So how might it in  
6           this situation, hypothetically, how might it guide  
7           how this particular property could be used?

8           Or if you have an example of another CIA  
9           you've found, where like you found this and then you  
10          told that to the landowner. The landowner says, oh,  
11          we're going to do something differently that we  
12          thought about before the CIA was done.

13          THE WITNESS: Could you reframe that  
14          question?

15          CHAIRPERSON SCHEUER: Okay, I'll try again.

16          So CIAs, ideally in my mind at least, when  
17          you learn more about a property, maybe what we first  
18          thought we were going to do changes a little bit in  
19          response to what we learned. I don't know if you  
20          have an example of that.

21          THE WITNESS: One of the examples is in the  
22          CIA report that we did for a property 18670 we found  
23          the black moth sphinx. So that owner bought  
24          400 acres to take that population in his own, or  
25          where the other population was growing nearby. So

1 the owners did comply.

2 And there were other areas that we found  
3 burials that had to be left for the families who had  
4 a genetic, and are still being working with the  
5 landowners and the new landowners on visitation  
6 rights.

7 So that tells you that our report, our  
8 findings are somewhat very significant.

9 CHAIRPERSON SCHEUER: Just for the record,  
10 respectfully, I think you're referring to the  
11 Blackburn Sphinx moth.

12 THE WITNESS: Correct.

13 CHAIRPERSON SCHEUER: On burials, is it  
14 generally your recommendation as a cultural  
15 practitioner that burials be preserved in place?

16 THE WITNESS: We would prefer that it would  
17 be stayed in place.

18 CHAIRPERSON SCHEUER: I have nothing  
19 further. Thank you very much.

20 THE WITNESS: You're welcome.

21 CHAIRPERSON SCHEUER: Any further questions  
22 from the Commissioners? Any redirect?

23 MR. HOROVITZ: No redirect.

24 CHAIRPERSON SCHEUER: I think we're done.  
25 Thank you.

1           THE WITNESS: Thank you, Mr. Chairman and  
2 Commissioners.

3           CHAIRPERSON SCHEUER: I believe, and I will  
4 turn to the counsel for the Petitioner and Intervenor  
5 to understand if I'm relating this correctly. I  
6 believe this concludes the process that you outlined,  
7 Ms. Lim.

8           MS. LIM: It does except for some closing  
9 statements which I would like to make.

10          CHAIRPERSON SCHEUER: You could make them  
11 now, but we also have the chance for County and  
12 Office of Planning.

13                 Please go ahead.

14          MS. LIM: Thank you. I'll try to make my  
15 remarks short and I'll try to really dive into the  
16 issue that seems to be really of the most concern to  
17 the Commission, which is whether or not the cultural  
18 work that was done ten years ago is sufficient for  
19 this Commission to take action on the request before  
20 you today.

21                 And I've already stated my opinion on the  
22 unchallenged findings and conclusions that are in  
23 that Decision and Order from 2007.

24                 But notwithstanding that, and  
25 notwithstanding the fact that there is no evidence of

1 anything new happening over the last ten years.

2 I mean, over the lunch break, both  
3 Petitioner and Intervenor conferred. I think it  
4 should be, and it will be very evident, if it's not  
5 already, that these are very credible local entities  
6 that want to do the right thing. And if doing the  
7 right thing in this instance involves additional or  
8 refreshed cultural work to ensure that findings that  
9 were made ten years ago are still valid -- and,  
10 again, the archaeological monitoring that's required  
11 by law, that's done. There's no questions of  
12 notification on that.

13 If additional -- if a refreshed review of  
14 cultural issues related specifically to this 25 acres  
15 is something, it seems very apparent that the  
16 Commission and also the Office of Planning is  
17 interested in, both Petitioner -- and not to put  
18 words in your mouth -- Petitioner and Intervenor are  
19 very happy to have that additional work prepared.  
20 We're just very eager to get started on these, for my  
21 clients on our project, but obviously I can't speak  
22 for WDV on their project as well.

23 I did want to put that out there before you  
24 turned to the other people on the side of the room to  
25 see if they had comments.

1           MR. HOROVITZ: On behalf of the Intervenor,  
2 I echo Ms. Lim's comments that the Commission did  
3 make findings back in 2007 which I think we could  
4 rely upon, but irrespective of that, we went into  
5 this project wanting to do it correctly, and go  
6 beyond requirements if it was appropriate.

7           And we are more than happy to update, and  
8 do an additional cultural impact assessment for the  
9 full 25 acres, taking into account our development  
10 project, as well as ELC's project, assuming we get  
11 through with approvals today.

12           If the projects aren't approved, then  
13 they're not approved. But if we get through  
14 approvals, then we're more than happy to begin  
15 immediately on a cultural impact assessment for the  
16 full 25 acres, taking into account both our project  
17 and ELC's project.

18           CHAIRPERSON SCHEUER: I want to allow the  
19 chance for the Commissioners to ask any questions on  
20 this point before we move onto County of Maui and  
21 Office of Planning.

22           Do I understand -- I'll at least say  
23 something. Do I understand that there's more than  
24 the commitment to undertake a CIA, but should there  
25 be some valued resource found, and in particular,

1 what I am thinking of burials as the most likely  
2 valued resource that could be found in the course of  
3 this project, there is a commitment not to just to  
4 identify, but to work to design the project in a way  
5 to achieve its goal, but still protect those in  
6 culturally appropriate ways that our witness just  
7 referred to?

8 MR. HOROVITZ: Absolutely, the only caveat  
9 is, one -- well, the only caveat would be when we  
10 see, if something does occur or is found that makes  
11 the entire project unviable, well, then, preserved  
12 because we can't do the project.

13 But we've worked with, and both -- testify  
14 later -- we've worked with all the relevant County  
15 and State departments through the design of the  
16 project and modified it significantly based on those  
17 comments. I've seen nothing different with regard to  
18 cultural impact assessment. If it comes back and  
19 says here's something you didn't know, you should  
20 make this modification or that, we will definitely  
21 work to accommodate that.

22 CHAIRPERSON SCHEUER: Are there other  
23 comments from the Commissioners? Commissioner Wong.

24 COMMISSIONER WONG: So if I get this  
25 straight, you're willing to do a cultural impact

1 assessment? Will this be done prior to Phase 2 for  
2 the Petitioner?

3 MS. LIM: So actually this is a question  
4 better addressed to Mr. Horovitz, but the answer is  
5 yes, and that is because the intent is to do it  
6 immediately as soon as possible. And, of course, as  
7 you'll find out through Mr. Horovitz' motion next,  
8 they're under an extremely tight timeframe to start  
9 building as well. So with that I'll turn it over to  
10 him.

11 MR. HOROVITZ: I would agree with that. If  
12 we came out of here today saying, yes, proceed, or  
13 you have the authority to proceed, our next phone  
14 call is to start that process.

15 We will get into it later, but the County  
16 did give us a two-year deadline to commence  
17 construction, and a four-year deadline to complete  
18 construction.

19 I would expect this to be done well before  
20 any of that to occur, and it should be.

21 CHAIRPERSON SCHEUER: Further questions  
22 from the Commission?

23 I'll just say, at the risk of sounding like  
24 I'm moving forward to deliberation, my concern is we  
25 make decisions now, and then later on, oftentimes our

1 communities -- and I'm not just referring to Hawaiian  
2 community, but our whole community gets thrusts into  
3 situations because of incompletely thought out  
4 decisions earlier on where we suddenly seem to be  
5 facing decisions between housing versus cultural  
6 protection.

7 I want to avoid a situation with that as  
8 the last choices that we are left with. Hopefully  
9 this will be a process that can avoid that kind of  
10 false dichotomy.

11 Commissioner Cabral.

12 VICE CHAIR CABRAL: I would like to express  
13 that I have -- part of me has this feeling that since  
14 so much research has been done in the past, and  
15 there's clearly not come up any evidence that would  
16 lead one to think you need to do it again, and it was  
17 approved ten years ago, I have to echo the thought  
18 that I would prefer to err on the side of being too  
19 cautious, as opposed to not being cautious enough.

20 So I appreciate the offer of the Petitioner  
21 and Intervenor to step in and make sure this is taken  
22 care of properly with maybe some overkill. Thank  
23 you.

24 CHAIRPERSON SCHEUER: I think we are now  
25 ready to move on to County of Maui.



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

2 The County of Maui, this was -- the  
3 modification motion from ELC was one of the motions  
4 the County did address in its response.

5 The County supports the motion. The County  
6 found that the project does have a similar footprint  
7 as far as the development, even though it's only on  
8 half the project.

9 There will be the same conditions for the  
10 most part with some exceptions, and so those  
11 conditions will remain except as altered in the  
12 request, or if there are additional conditions the  
13 Commission want to impose, such as the issue with the  
14 cultural impact statement. I don't know if that's  
15 something the Commission will be considering.

16 This would -- granting this motion, we do  
17 think, like the previous motion, is a bit dependent  
18 on the future motions on the agenda. It does appear  
19 that without the approval of a sale and affordable  
20 housing project that there may be financing issues  
21 with this.

22 So County does keep that in mind, and as  
23 stated in support for those motions as well, but  
24 recognizes with the phasing issues and financing  
25 issues, that that project would be required for the

1 financing as represented by the Applicants in this  
2 case.

3 The County does note that a 201H approval  
4 was granted for affordable housing component which,  
5 as we said, is sort of tangentially related to this  
6 motion, but it's still, I think, significant with  
7 respect to this motion.

8 With respect to the cultural issues  
9 discussed today, the County generally refers to the  
10 State where SHPD and other entities are available and  
11 have that level of expertise. We are not certain, at  
12 this level of discussion, sounds like there may be  
13 other either new requirements or assurances granted  
14 with respect to those items, and I think that's  
15 significant to discuss and we would want to be aware  
16 of those discussions.

17 Finally, if the Office of Planning has  
18 raised some compliance issues, with respect to the  
19 issues with compliance with the conditions as far as  
20 annual reports and other issues, which, of course,  
21 they can address, but the County recognizes that  
22 those are important issues.

23 If a six-year timeframe is more preferable  
24 to the Commission, I don't think the County would  
25 object to that. But that's something that's within

1 the Commission's discretion.

2 As far as overall granting the request for  
3 modification, I don't think this is a case where a  
4 developer has just done -- is not making any further  
5 efforts toward development. We do think, obviously,  
6 as evidenced before you, the application is filed,  
7 the approval of the 201H with County Council, that  
8 there are efforts to move forward with development of  
9 this project, and it's not a case where there's been,  
10 basically the Commission's order, and the development  
11 has been ignored.

12 So we do think that it would be worth it to  
13 grant this motion in order to give this developer, as  
14 well as the new affordable housing developer the  
15 opportunity to develop the projects in compliance  
16 with the conditions on the property.

17 That's all we have for you. Thank you.

18 CHAIRPERSON SCHEUER: Thank you.

19 Commissioners, questions for the County?

20 Commissioner Okuda.

21 COMMISSIONER OKUDA: Thank you, Mr. Chair.

22 I understand that the doctrine of law of a  
23 case may or may not apply to administrative agency  
24 and the scope of the application, as far as I can  
25 tell, has not really been decided by the Hawai'i

1 Appellate Courts.

2 But do you see a good reason why this  
3 Commission should not be bound by the earlier  
4 Findings of Fact, specifically, Findings of Fact 75  
5 through 80 of the initial Decision & Order with  
6 respect to the cultural practices issue, or better  
7 yet, the Ka Pa'akai issues?

8 MR. HOPPER: There would appear -- based on  
9 the information before the Commission at that time  
10 and the scope of that project, I think, yes, with  
11 respect to that, that's a binding Finding of Fact and  
12 Conclusion of Law.

13 If there is a different project, the  
14 affordable housing project that, if the Commission  
15 has additional cultural concerns, you could perhaps  
16 look at that to the extent that additional  
17 discretionary approvals are being sought.

18 But based on this record, however, I don't  
19 really see -- and, again, I think State Historic  
20 Preservation, with their archaeologists who are  
21 qualified to look into those issues, I think those  
22 are key, but I think based on this record, we have no  
23 knowledge, or at least County has no knowledge of any  
24 additional facts that have arisen since that Decision  
25 & Order that would give rise to a concern that there

1 may be cultural practices on the property, or  
2 other -- anything that was overlooked and not  
3 considered in the existing, for example, the AIS that  
4 we have.

5 COMMISSIONER OKUDA: So is it the County's  
6 position then that even if a further CIA, either in  
7 full or in part is not done, it's not done, there is  
8 still sufficient oversight by other government  
9 agencies to protect cultural practices or cultural  
10 resources?

11 MR. HOPPER: Again, the County has a bit of  
12 a limited expertise. We do not have archaeologists  
13 on staff that have that degree of review.

14 What we have seen in this case was the  
15 application did have approved AIS that has been  
16 updated. There is an existing Decision & Order. It  
17 also has conditions related to cultural practices as  
18 well as archaeological issues.

19 The affordable housing application, as I  
20 understand it -- not as I understand it -- based on  
21 the record, was sent to SHPD, as well as various  
22 other State agencies that have expertise over that  
23 area, so I do believe that, based on the record, and  
24 that was in part based on the County's -- formed the  
25 basis for the County's recommendation for approval,

1 that there has been a significant amount of  
2 information provided with respect to cultural and  
3 archaeological practices on the property.

4 That being said, I do think the Land Use  
5 Commission, you have a duty under State law and under  
6 the constitution to review those issues, and can  
7 discuss with your counsel your options with respect  
8 to the binding effect of that order.

9 But the County, in making its  
10 recommendation, that is what we had in the record to  
11 review before us.

12 COMMISSIONER OKUDA: Thank you very much,  
13 Mr. Chair.

14 CHAIRPERSON SCHEUER: Thank you. Any other  
15 questions for the County? Hearing none, Office of  
16 Planning.

17 MS. APUNA: Thank you, Chair.

18 OP has reviewed Petitioner's motion and has  
19 a few comments.

20 First, regarding Condition No. 2, OP  
21 recommends that Petitioner will be held accountable  
22 at least for the initial two phases, which  
23 encompasses six years as reflected in Petitioner's  
24 timetable. So we would ask that the newly extended  
25 ten-year deadline be reduced to six years to ensure

1 the use of the property as envisioned.

2 And, secondly, OP has no objections to the  
3 proposed deletion of Condition No. 20 that eliminates  
4 Commission approval of any sale of the Petition Area.  
5 And OP would like assurances that Petitioner and  
6 Intervenor will provide timely submittals of annual  
7 reports.

8 Finally, OP was concerned that CIA and Ka  
9 Pa'akai analysis were not performed for the area, and  
10 this is based on -- we understand that the Finding of  
11 Facts and Conclusions of Law as stated -- as Ms. Lim  
12 stated that there was some cultural review, but our  
13 issue is that the Finding of Fact and the Conclusion  
14 of Law is a cultural impact analysis was performed,  
15 which we, based on the record, and I think based on  
16 some of the testimony today, there was no cultural  
17 impact analysis for the Petition Area.

18 So that's where this has all come from, and  
19 if the Finding of Fact says there was a cultural  
20 impact analysis, and that they made conclusions based  
21 on that analysis, and yet there is no record of  
22 analysis, and there seems to be a hole there that we  
23 were concerned about, but the fact that Intervenor  
24 and Petitioner commitment today to perform a CIA and  
25 to protect cultural resources, accordingly, this

1       should -- so based on the foregoing, OP does not  
2       object to the Motion for Modification.

3               CHAIRPERSON SCHEUER:  Commissioners,  
4       questions for OP?

5               Commissioner Okuda.

6               COMMISSIONER OKUDA:  Thank you, Mr. Chair.

7               Is it untimely to bring up the fact that  
8       the Commission might have made a Finding of Fact  
9       which was not supported by the record, which when I  
10      asked untimely, untimely because no one filed  
11      objections as far as we could tell to the Decision &  
12      Order or the form of the Decision & Order, and no one  
13      took an appeal from the Decision & Order.

14              So is it untimely now for us to bring up  
15      that issue?

16              MS. APUNA:  I think we weren't there, or I  
17      wasn't there, but this is new information as far as  
18      trying to find that record that would reference in  
19      the Decision & Order, and if it's not there, we -- OP  
20      wasn't able to review that information.

21              I don't think it's untimely.  I think, if  
22      there is a puka there, we want to look at it.

23              COMMISSIONER OKUDA:  Thank you.

24              CHAIRPERSON SCHEUER:  Any other questions  
25      for OP?  Commissioners?  Ms. Lim.



1 MS. LIM: Thank you, Chair. Just quick  
2 closing remarks.

3 Thank you for your patience and attention  
4 today. I do want to clarify a couple items if I may.

5 We requested the ten-year extension. When  
6 the Commission approved the ten-year extension under  
7 the first motion today, we acknowledged that this  
8 Commission has full authority to modify that ten-year  
9 extension, period, end of discussion.

10 However, I do want to point out, I'm a  
11 little confused by what Office of Planning just said  
12 about that we have to be complete within six years,  
13 because that does run contrary to what is in our  
14 development schedule.

15 Our development schedule is Phase 1 is the  
16 fundraising; Phase 2 is multipurpose building, and  
17 that is projected to be completed in 2024. But that  
18 is not complete buildout of the project, as you heard  
19 from Dr. Reiley.

20 Phase 3 is the construction of middle  
21 school classrooms and office space which is projected  
22 to start 2025 and be completed 2028.

23 So Petitioner is completely ready to stand  
24 by its representations that the fundraising and first  
25 phase of the construction will be done. And perhaps

1 as Dr. Reiley said, perhaps the second phase of the  
2 construction will be done within six years, but  
3 perhaps it won't be. And we would hope that this  
4 Commission would understand that if we're talking  
5 about Condition 2, where it will be language that we  
6 will complete the construction of the project no  
7 later than, if the Commission is going to make that  
8 six years, then we would hope that the Commission  
9 recognizes that completion of construction of the  
10 project involves just Phase 2, multipurpose building.

11 CHAIRPERSON SCHEUER: I know you said you  
12 had a couple things in your closing. I want to give  
13 a chance to OP to clarify.

14 MS. APUNA: We would clarify. We mean  
15 Phase 1 and Phase 2, according to your timetable. So  
16 Phase 1 and 2 would be completed within the six  
17 years. That would be the fundraising of Phase 1, and  
18 then the construction of the multipurpose complex of  
19 Phase 2 within six years.

20 MS. LIM: Thank you very much for the  
21 clarification.

22 CHAIRPERSON SCHEUER: Is there anything  
23 further in your closing, keeping in mind we have  
24 other motions?

25 MS. LIM: Thank you for your time. We

1 truly appreciate the attention, and we very much hope  
2 this Commission will give us another chance, give us  
3 another breath of life here.

4           You've heard from Dr. Reiley, you've heard  
5 from Mr. Sjostrand. We want to get going, but we do  
6 need your approval and permission to let us do that.

7           With that, I'll stop and I'll close and  
8 thank you very much.

9           CHAIRPERSON SCHEUER: Commission, what's  
10 your pleasure?

11           COMMISSIONER WONG: Okay, I want to move to  
12 grant the motion to amend Condition 2 to allow for  
13 ten years to complete the project provided that the  
14 initial two phases will be completed within six years  
15 as represented.

16           To also delete Condition 20 and that  
17 Petitioner and Intervenor provide regular timely  
18 annual reports, including status of development and  
19 compliance with condition of approval, and provided  
20 that -- and conditioned upon Petitioner and  
21 Intervenor completing a cultural impact assessment  
22 prior to completing Phase 1 for the Petitioner. And  
23 adhering to the recommendation of the CIS, cultural  
24 impact study.

25           CHAIRPERSON SCHEUER: CIA?

1 COMMISSIONER WONG: CIA.

2 CHAIRPERSON SCHEUER: There has been a  
3 motion by Commissioner Wong. Is there a second?

4 VICE CHAIR MAHI: I'll second.

5 CHAIRPERSON SCHEUER: The motion has been  
6 seconded by Commissioner Mahi.

7 Is there discussion on the motion?

8 COMMISSIONER WONG: Just wanted to say that  
9 I would like to thank the Petitioner and Intervenor  
10 for coming up with the new terms of the CIA. That  
11 really satisfied my concerns. And that also the last  
12 statement of the Phase 1, Phase 1 done within six  
13 years, that's why I did that motion.

14 CHAIRPERSON SCHEUER: Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you, Mr. Chair.

16 I would -- I'm inclined and would urge  
17 voting in favor of the motion, but I would like to  
18 say one thing.

19 I don't believe at this point in time on  
20 the record, even though I'm going to vote in favor of  
21 the motion, that a cultural impact analysis,  
22 additional study, or study should be required at this  
23 point in time.

24 I do agree, and I thank the Office of  
25 Planning for raising the point that a proper CIA was

1 probably missing in the earlier proceeding. But we  
2 as the Commission, we're stuck and bound with what  
3 prior Commissions have done, bodies might change, but  
4 the Commission is the Commission, and frankly,  
5 earlier Decisions & Orders, Findings and Conclusions,  
6 unless they're modified, I believe are the law of the  
7 case.

8 But in any event, I will vote and urge  
9 voting in favor of the motion. I think this is a  
10 very good plan. There's no guarantees in life, but I  
11 think the evidence and the demeanor of the witnesses  
12 demonstrate people with commitment to the community  
13 indicate that they not only have, but they will  
14 continue to do their best. And I think that's all we  
15 can expect from a lot of people. Thank you.

16 CHAIRPERSON SCHEUER: Is there other  
17 discussion on the motion? Seeing none, Mr.  
18 Orodenker, please poll the Commission.

19 EXECUTIVE OFFICER: Thank you, Mr. Chair.

20 The motion is to grant the motion to amend  
21 with conditions.

22 Commissioner Wong?

23 COMMISSIONER WONG: Aye.

24 EXECUTIVE OFFICER: Commissioner Mahi?

25 VICE CHAIR MAHI: Aye.

1 EXECUTIVE OFFICER: Commissioner Aczon?

2 COMMISSIONER ACZON: Aye.

3 EXECUTIVE OFFICER: Commissioner Okuda?

4 COMMISSIONER OKUDA: Yes.

5 EXECUTIVE OFFICER: Commissioner Ohigashi  
6 is absent.

7 Commissioner Cabral?

8 VICE CHAIR CABRAL: Yes.

9 EXECUTIVE OFFICER: Chair Scheuer?

10 CHAIRPERSON SCHEUER: Aye.

11 EXECUTIVE OFFICER: Thank you. Mr. Chair,  
12 the motion passes with six affirmative votes.

13 CHAIRPERSON SCHEUER: Thank you very much,  
14 and congratulations on this motion on the agenda. I  
15 am hoping this agenda might go more quickly based on  
16 the decisions made today.

17 Are we ready to move forward, at least  
18 through the next one?

19 Mr. Horovitz, are you going to make a  
20 presentation on your client's Motion to Approve a  
21 Sale for the Portion of the Petition Area?

22 MR. HOROVITZ: Certainly I can take it in  
23 that order, if you like. We only have one further  
24 witness, that would be Bill Frampton who will present  
25 an overview of the project and where we are on the

1 approval. And you can take questions, and then all  
2 the motions kind of flow from that.

3 If you prefer we bring him up now, happy  
4 to, otherwise on the Motion for Approval of Portion  
5 of the Sale, I think that really flows along with the  
6 funding request or needs of Emmanuel Lutheran, and I  
7 think that, in our view, stands independent of our  
8 development.

9 Certainly our purchase of the property is  
10 not dependent on the 201H approval. If the  
11 Commission would prefer simply to take that motion  
12 and ask questions of me on that, it's fairly straight  
13 forward.

14 CHAIRPERSON SCHEUER: Let's do that. Do  
15 you have anything further to say other than what you  
16 submitted in your written motion?

17 MR. HOROVITZ: Nothing further.

18 MS. LIM: I believe that the motion that  
19 the Commission just passed deleted Condition 20,  
20 which was the prohibition of sale of the property.

21 CHAIRPERSON SCHEUER: That is correct.

22 MS. LIM: So that moots WDV's motion on  
23 that point.

24 CHAIRPERSON SCHEUER: Let me turn to my  
25 attorney general. Two-minute recess.

1 (Recess taken.)

2 CHAIRPERSON SCHEUER: We're back on the  
3 record.

4 While I appreciate the observation by the  
5 Petitioner's counsel that our last motion might have,  
6 from the LUC's perspective, obviated the need to  
7 approve the sale, I'm also under the understanding  
8 that under County approval, one of the County's  
9 requirements was that the LUC approve the sale of the  
10 property. So let's make our way through this motion.

11 MR. HOROVITZ: I rest on my submissions,  
12 unless there are further questions.

13 CHAIRPERSON SCHEUER: Thank you, counsel.

14 MR. HOPPER: We obviously support the sale,  
15 in fact, there was a condition to the 201H approval  
16 that said that that approval from the Land Use  
17 Commission, which was required at the time, but seems  
18 no longer to be required, be obtained within six  
19 months of that date of approval of the 201H, which  
20 would fall in March.

21 I think it would be easier for everyone if  
22 there was on the record an approval of that sale  
23 notwithstanding the previous deletion of the  
24 condition. That's still our position.

25 CHAIRPERSON SCHEUER: Thank you very much.



1 Commissioner Cabral.

2 VICE CHAIR CABRAL: I will make a motion.

3 CHAIRPERSON SCHEUER: Hold on. We still  
4 have to have Office of Planning, and still some  
5 questions from the Commissioners. We'll get there  
6 soon.

7 MS. APUNA: We have no objection to the  
8 motion.

9 CHAIRPERSON SCHEUER: Petitioner.

10 MS. LIM: No questions or comments from  
11 Petitioner.

12 CHAIRPERSON SCHEUER: Commissioners,  
13 questions on this motion which is approval of the  
14 sale?

15 Commissioner Cabral, you may now make a  
16 motion.

17 VICE CHAIR CABRAL: Thank you, Mr.  
18 Chairman.

19 I would like to make a motion that we will  
20 approve the sale for the Petitioner in order to have  
21 it transferred for the affordable housing program.

22 CHAIRPERSON SCHEUER: There's been a motion  
23 made for approval of the sale of the portion of the  
24 Petition Area by Commissioner Cabral.

25 Is there a second.

1 COMMISSIONER ACZON: Second.

2 CHAIRPERSON SCHEUER: Seconded by  
3 Commissioner Aczon. Is any discussion on this  
4 motion? Hearing none, Mr. Orodenger, please poll the  
5 Commission.

6 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
7 The motion is to approve the sale of the property --  
8 subdivision of the property -- excuse me -- the  
9 sale --

10 CHAIRPERSON SCHEUER: The motion is to  
11 approve the sale of a portion of the Petition Area.

12 EXECUTIVE OFFICER: -- a portion of the  
13 Petition Area.

14 Commissioner Cabral?

15 VICE CHAIR CABRAL: Yes.

16 EXECUTIVE OFFICER: Commissioner Aczon?

17 COMMISSIONER ACZON: Aye.

18 EXECUTIVE OFFICER: Commissioner Okuda?

19 COMMISSIONER OKUDA: Yes.

20 EXECUTIVE OFFICER: Commissioner Ohigashi  
21 is absent.

22 Commissioner Wong?

23 COMMISSIONER WONG: Aye.

24 EXECUTIVE OFFICER: Commissioner Mahi?

25 VICE CHAIR MAHI: Aye.

1 EXECUTIVE OFFICER: Chair Scheuer?

2 CHAIRPERSON SCHEUER: Aye.

3 EXECUTIVE OFFICER: The motion passes  
4 unanimously.

5 CHAIRPERSON SCHEUER: We will now move on  
6 to consider WDV's Motion to Allow for Subdivision of  
7 the Petition Area. Mr. Horovitz.

8 MR. HOROVITZ: Thank you, Mr. Chair. I  
9 don't know that this was entirely necessary, but it  
10 is a belt and suspenders, so we are in the process of  
11 subdividing the property. That should occur in a  
12 month or so. And so we would ask the Commission's  
13 approval of that authority to subdivide. The County  
14 obviously will process the subdivision itself.

15 CHAIRPERSON SCHEUER: Petitioner?

16 MS. LIM: Petitioner is in full support.

17 CHAIRPERSON SCHEUER: County?

18 MR. HOPPER: County is supportive of the  
19 motion.

20 MS. APUNA: No objection to the motion.

21 CHAIRPERSON SCHEUER: Commissioners,  
22 questions for the Intervenor on this motion?

23 I believe I'll just state for the record I  
24 believe it would be more awkward if we didn't take  
25 this motion and then we move to bifurcate. So it's

1 one of part of the suspenders, I would suppose.

2 MR. HOROVITZ: Absolutely.

3 CHAIRPERSON SCHEUER: Any other questions  
4 or comments from the Commission? Hearing none, does  
5 somebody care to make a motion?

6 VICE CHAIR MAHI: I'll move that we allow  
7 for the subdivision of the Petition Area.

8 CHAIRPERSON SCHEUER: Commissioner Mahi has  
9 moved. Is there a second?

10 COMMISSIONER WONG: Second.

11 CHAIRPERSON SCHEUER: Seconded by  
12 Commissioner Wong. Any discussion on the motion?

13 Hearing none, Mr. Orodenker, please poll  
14 the Commission.

15 EXECUTIVE OFFICER: The motion is to allow  
16 for subdivision of the Petition Area.

17 Commissioner Mahi?

18 VICE CHAIR MAHI: Aye.

19 EXECUTIVE OFFICER: Commissioner Wong?

20 COMMISSIONER WONG: Aye.

21 EXECUTIVE OFFICER: Commissioner Okuda?

22 COMMISSIONER OKUDA: Yes.

23 EXECUTIVE OFFICER: Commissioner Aczon?

24 COMMISSIONER ACZON: Aye.

25 EXECUTIVE OFFICER: Commissioner Cabral.

1 VICE CHAIR CABRAL: Aye.

2 EXECUTIVE OFFICER: Chair Scheuer?

3 CHAIRPERSON SCHEUER: Aye.

4 EXECUTIVE OFFICER: Mr. Chair, the motion  
5 passes unanimously.

6 CHAIRPERSON SCHEUER: We are now moving on  
7 to WDV's Motion for Modification to allow for use of  
8 a portion of the Petition Area acquired for a  
9 workforce housing project recently approved by the  
10 County of Maui.

11 MR. HOROVITZ: I think our submissions are  
12 straight forward. We would like to call Bill  
13 Frampton to the witness stand just to present the  
14 project again, and also be available to answer  
15 questions that the Commissioners may have.

16 CHAIRPERSON SCHEUER: Please proceed.

17 MR. HOROVITZ: With the Chair's indulgence,  
18 we have a blowup of the approved plan of the project.  
19 It actually is one of the pages in the exhibits to  
20 our motion for the 201H Application. It's already in  
21 the record, but just so you don't have to search  
22 through 500 pages to find it.

23 CHAIRPERSON SCHEUER: Do you have a  
24 specific page number, or some referencing in the  
25 application just for the benefit of anybody reading

1 this transcript in the future?

2 Mr. Frampton, do you swear or affirm that  
3 the testimony you are about to give is the truth?

4 THE WITNESS: Yes, I do.

5 CHAIRPERSON SCHEUER: Please state your  
6 name and address.

7 THE WITNESS: My name is William Charles  
8 Frampton. I live at 56 Alicui Place in Kula, Maui,  
9 Hawai'i.

10 WILLIAM CHARLES FRAMPTON  
11 Called as a witness by and on behalf of the  
12 Intervenor, was sworn to tell the truth, was examined  
13 and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HOROVITZ:

16 Q Can you tell me your position with the  
17 developing -- Waikapu Development Ventures?

18 A Yes. I am one of three partners. I'm the  
19 project manager for the project, for the proposed  
20 affordable housing project. So I was in charge of  
21 helping to hire, retain the team, select the team,  
22 help even with the steps before that was to come up  
23 with the project vision with the team and the members  
24 and eventually come up with design.

25 Q Tell me your development background.

1           A       Yeah. From a background, I would note I've  
2       been blessed to be raised on Maui my whole life.  
3       Mentioned earlier by Mr. Reiley that my father came  
4       to Maui 1970 to start Big Brothers/Big Sisters, and  
5       he did so, was executive director for many decades.  
6       And it gave us, myself and my siblings -- there are  
7       five of us -- an incredible opportunity to grow up in  
8       respect and love and care for this island.

9                   Ironically, myself and my two brothers were  
10      all in the field of land use planning and consulting.  
11      So I've been doing land use planning and consulting  
12      for over 27 years. I've worked for land use planning  
13      firms, private firms. I've worked for development  
14      companies. I've worked for the Kaho'olawe Reserve  
15      Commission. And now I have my own consulting  
16      company, William Frampton Consulting.

17           Q       Is this the first affordable housing  
18      project you've done?

19           A       No. We actually had one immediately  
20      contiguous to this property. It was one we had done  
21      previously, 70-unit project. Similar in nature. And  
22      the idea of it being 100 percent affordable housing.  
23      No market housing. I've been involved in market  
24      housing projects, commercial projects, residential,  
25      industrial.

1           But we've really focused in lately on  
2       coming back more towards the roots of my father,  
3       focusing on affordable housing. And we believe it's  
4       desperately needed on this island.

5           Q       That was my next question. Why affordable  
6       housing at this point if time versus --

7           A       It has a lot, I think, to do with, again, I  
8       was blessed to be raised here. And I have a ton of  
9       grade school friends who are up in the mainland now,  
10      high school friends in the mainland now, and other  
11      friends that we have known that can't afford to live  
12      here just from the lack of supply of housing.

13                 It's very difficult to develop housing on  
14      the island. And it's something I've been lucky  
15      enough to have been around, and I believe the  
16      partnership that we have assembled brings a great  
17      wide experience of the ability to develop housing.

18           Q       Just for the record, this is the colorized  
19      version of what appears, it's Exhibit B to our 201H  
20      Application, and our 201H Application is attached as  
21      Exhibit E to our Motion for Modification.

22                 CHAIRPERSON SCHEUER: Thank you very much.

23           Q       (By Mr. Horovitz): Bill, tell me about the  
24      genesis of this particular project. How did this  
25      particular project come about?



1           A       Like we mentioned previously, the project  
2 next door, which would be to the south, was a  
3 ten-acre, almost 11-acre parcel of land that we did  
4 100 percent affordable housing project on. It's  
5 actually under construction right now.

6                   When we went out to the community to talk  
7 about that previous project at one of our community  
8 association meetings at the Waikapu Community, I was  
9 talking story outside afterwards with some of my  
10 friends that were there, and that project was going  
11 to provide housing for the range beginning with 80  
12 percent of to 140 of the median income. So the  
13 target zone was 80 to 140 percent.

14                  And my friends outside were noting that  
15 that's great, but even 80 percent, three bedroom, two  
16 bath at 80 percent level was still unattainable for  
17 them.

18                  So eventually we found out, I think we  
19 happened to know some of the folks at Emmanuel  
20 Lutheran, but we talked to some people and got  
21 through word of mouth that the property next door,  
22 there was an opportunity maybe to do something  
23 similar, where we could come in, work in partnership,  
24 work with the owner, with the church, Emmanuel  
25 Lutheran, which I'm very familiar with. And I think

1 they do represent an incredible entity on this  
2 island. And the idea that we could possibly work  
3 with them and help them and still provide housing and  
4 help them go forward is how that came about.

5 And so we sat with them early on, ending of  
6 maybe 2016, and came with a solution that maybe if we  
7 took half the property. We tried to figure out -- we  
8 did not want to in any way impede with ELC's ability  
9 to do their vision. They had a vision that we  
10 thought was great, but by coming in to say, hey, we  
11 will buy half your land, I didn't want to say by  
12 going in and buying half your land, you know what,  
13 now you have to cut half your dreams in half, or  
14 sever your vision in half, just because -- we realize  
15 that 25 acres is a large piece of land. Therefore,  
16 we thought if we did 12 acres, could it work?

17 We worked with the architects and engineers  
18 and did several designs, and we came up with  
19 something we thought was very compatible, but still  
20 lingering with what were the price range going to be.

21 Our architect was able to come up with an  
22 idea that by producing some duplex units, we got to  
23 go down to 70 percent. And we're the first 100  
24 percent affordable housing project, I think, on Maui  
25 to go down to the 70 percent level. All the other

1 ones originally started at the 80 percent and up.

2 Q 80 percent is the minimum requirement?

3 A It's the minimum requirement. We had to  
4 get permission actually. To go below 80 required  
5 permission from the council.

6 Q What is the current status of the  
7 entitlement? Has it gone before the County?

8 A Yeah. In order to do the 201H, as was  
9 mentioned by the Petitioner's attorney earlier, in  
10 the background there was debate as to whether or not  
11 maybe we could go to them last year sometime. They  
12 can only work so fast, and they had a big backlog of  
13 projects, and we just flat out could not get in front  
14 of them.

15 When we finally were able to work with  
16 them, council staff, and we were scheduled last year  
17 in summertime for the beginning of the hearing 201H.  
18 And it resulted in September 2000 -- this year in  
19 September we got the full approval by the County  
20 Council, the resolution approved the 201H project.

21 Q And there is some time deadlines attached  
22 to that. What are they?

23 A Yeah. As should be, I think it's fair to  
24 ask, the County wanted to make sure that if we're  
25 coming forward saying we wanted to fast track this

1 project, we go before the Council and ask them to  
2 approve it in 45 days. We also asked for a fair  
3 amount of exceptions.

4 Q I meant the time deadlines that the  
5 development team is under to --

6 A Yes. So what I was going to say is that  
7 given the fact that we asked the County to expedite  
8 everything, I think it's fair for them to want us to  
9 perform as well. They can't just push people out of  
10 line and shove us through and have us sit there and  
11 do nothing, it's not right.

12 So the timeline that you're referring to,  
13 I'm saying I believe it's tight. We have four years  
14 to complete the project. I believe we have to be  
15 under construction in two. And that started the day  
16 we got the approval back in September.

17 So part of this process was hoping we could  
18 work with State LUC, that it would line-up  
19 appropriately, and it seems like it's going good so  
20 far. But there is a tight timeline that he have to  
21 adhere to.

22 But that being said, the project  
23 immediately next door was under a very similar  
24 timeline, similar in size and scale. And they're  
25 under construction and they're going to meet their

1 deadlines.

2 Q As part of the conceptualization and design  
3 of the project, you did a fair bit of meetings with  
4 the community as well as County departments.  
5 Describe those a little bit for me.

6 A Yeah. One of the things that's really  
7 important, I think we've just learned, we just know  
8 from being from here, also is the making sure there  
9 is a fair amount of community outreach, and there's  
10 no surprises or shocks. And after assembling our  
11 team, and after assembling the preliminary plans, we  
12 scheduled to go -- the first meeting we had I believe  
13 was the Waikapu Community Association, their annual  
14 membership meeting was held. And there was probably  
15 100 people there that night. And in attendance were  
16 many long time residents of Waikapu including the  
17 Pelegrino family. They were all there to review the  
18 ideas of what we were talking about.

19 And it was our goal to go to them and share  
20 our design, our idea; is something that would be  
21 compatible in their area? Are they open to it? It  
22 was actually a very good meeting. A lot of  
23 discussion.

24 And it resulted in the revisions of our  
25 plans. We increased the size of our community park,

1 retention basin areas. And we were able to commit to  
2 the 70 percent idea that night at that meeting.

3 Subsequent meetings, we met with Face Maui,  
4 they're a group that's been formed on the island.  
5 The acronym of faith is face -- I don't remember the  
6 acronym, but multiple religious groups on the island  
7 get together and have been focused on the affordable  
8 housing.

9 And they review projects. You can go  
10 before them, and there is a bunch of folks that will  
11 sit there, critique it, give you good comments,  
12 feedback.

13 We had a meet with them. And we didn't do  
14 any changes because they liked everything that they  
15 saw. They were in support of everything the Waikapu  
16 Community had asked for.

17 We also met with Catholic Charities. Those  
18 are the outside nongovernment entities. The next  
19 entities we met with was of course the County of  
20 Maui. We met with the Department of Housing Human  
21 Concerns to make sure they could support our idea of  
22 a housing project. They supported it.

23 And one of the biggest things they did,  
24 they helped arrange for a meeting in June, with what  
25 I call it "the all county heads meeting". We went

1 and they arranged for having all of the heads of the  
2 various departments, planning department, water,  
3 Public Works, police, fire, wastewater, every agency  
4 that's normally involved in reviewing of our  
5 projects, came to one room and we sat down and we had  
6 a meeting sort of similar to this where we presented  
7 everything, including the talk about some of the  
8 exemptions, design parameters.

9 And the idea was -- we had just gotten word  
10 we could be scheduled with the County Council within  
11 two months. So in order to try to make sure that  
12 that Council meeting ran smoother, instead of  
13 debating projects on the floor at the Council with  
14 your agencies, we met in advance to try to do as much  
15 early consultation as possible.

16 And that actual meeting was in June. Over  
17 the next six weeks we had several detailed meetings  
18 with just one on one with each agency that might have  
19 had comments or concerns. And we did so. And it was  
20 very helpful, and again, a lot of it had to do with  
21 roadway design, width of roadways, on-street parking  
22 or no parking. Sidewalks or no sidewalks. The  
23 greenways.

24 All of that was refined during those  
25 meetings. By the time we got to the County Council,

1 we had gone through a pretty exhaustive assessment.  
2 And it paid off in that I think the review went  
3 really well with the County and we got approved.

4 Q So the project has changed its character  
5 based upon the interaction with both community groups  
6 and government groups, and the developer has been  
7 willing to modify accordingly?

8 A Yeah. And you can see on the site design,  
9 if you look on the right-hand side, there is those  
10 boxes in sort of tannish/yellow color. That purpose  
11 of that description there is to talk about some of  
12 the issues that came out of these meetings, but  
13 especially having a lot to do with the pedestrian  
14 connectivity of this community, making sure that the  
15 greenways reconnect to the regional greenway system,  
16 and that we incorporate a plan that is functional,  
17 and that you can get around safely to some of these  
18 park areas without having to use your car and can be  
19 safely done.

20 But the plan did go through an evolution,  
21 if you will, based on good feedback from the various  
22 departments that didn't want to not just -- you know,  
23 they weren't trying to throw any wet blankets on it,  
24 they were just trying to help troubleshoot, make sure  
25 we weren't going to create something that provided



1 affordable housing, but then left us with unsafe  
2 roadway systems or unsafe access.

3 That was all flushed out, and it's a really  
4 nice plan where it sits now.

5 MR. HOROVITZ: I've not got no other  
6 questions at this time.

7 CHAIRPERSON SCHEUER: Ms. Lim.

8 MS. LIM: Thank you, Chair.

9 CROSS-EXAMINATION

10 BY MS. LIM:

11 Q Hi, Bill. I'm so glad we are here together  
12 today.

13 A Yeah, little different. (Laughter.)

14 Q I have two quick questions.

15 I believe it's Exhibit 2 to the Motion to  
16 Approve the Sale, the Motion for Subdivision, the  
17 Motion for Bifurcation, but your Exhibit 2 is WDV's  
18 detailed timeline for completion of the WDV project.

19 A Yes.

20 Q Items 31 and 32 in that schedule is what I  
21 want to bring your attention to. Item 31 is public  
22 works is anticipated to issue final subdivision  
23 approval to create the two lots --

24 A Correct.

25 Q -- in December 2018. Is that still

1 accurate?

2 A That's the goal. If anything, we would  
3 like to -- I think Mike Reiley mentioned earlier, if  
4 it could be done sooner, we hope we won't be  
5 penalized, but that's our target date right now.

6 Q It's November 29th, so probably won't be  
7 done much sooner than that?

8 A Yes. Our goal is by the end of the year  
9 we're hoping to have complete subdivision. But this  
10 step today is something that obviously is required  
11 before we can get that.

12 Q And then item 32 indicates that the closing  
13 will happen -- really, it's the very next step after  
14 the final subdivision approval?

15 A Yes. That's an action-base sort of closing  
16 where the idea was, as soon as we can get final  
17 subdivision, and then we can assemble up the deed,  
18 the title, and we will close. And no more than  
19 30 days after is the way the contract is written,  
20 within 30 days of receiving final subdivision  
21 approval, we will close.

22 Q Terrific.

23 A Yeah.

24 Q So even today's discussion, and our  
25 agreement to pursue the cultural impact assessment

1 would in no way delay the closing as stated in the  
2 timeline?

3 A That's correct. SHPD, as noted earlier,  
4 has already commented on everything, so they're okay  
5 with where we're at. So that would be a supplemental  
6 step we would take. And I think it's pretty clear  
7 and I appreciate how it was discussed today, and I  
8 appreciate the recognition that the body knows that  
9 that is something that is very, very important to us,  
10 and in no way looking for any kind of -- we weren't  
11 looking to do one less study, or one less shortcut,  
12 that we need it so we can make a profit or something,  
13 it was just trying to do what we needed to do and get  
14 done as quickly as we can.

15 And I would note to the Chair earlier that  
16 his concern about the potential for burials in this  
17 vicinity of the island, and this region is extremely  
18 keen and important and a good assessment. I've sat  
19 on the Burial Council, Maui Burial Council for eight  
20 years, and I got too serve, and it was eight great  
21 years of extremely difficult issues and challenging  
22 issues, but for the protection of the iwi kupuna, it  
23 was a very great ability to have an impact on knowing  
24 that what can happen when something like that does  
25 come up.

1           Some of the questions you have, were asking  
2 earlier, I wanted to expand to say plans can be  
3 changed. Nothing is ever final, especially when it  
4 comes to something as important as the iwi kupuna,  
5 and protecting our culture.

6           We have flexibility in this design, enough  
7 large green spaces, and the talent of our architects  
8 and engineers, I know preservation in place, God  
9 forbid if we do find precontact, there's ways to make  
10 sure we do it right. And we would be very proud to  
11 show that it can be done. I know it can be done.

12           Q     Thank you, Bill.

13           I don't have any further questions.

14                   CROSS-EXAMINATION

15 BY MR. HOOPER:

16           Q     Could you go over the income ranges once  
17 again for affordable units?

18           A     Income ranges that were approved via 201H,  
19 we call it the proposed allocation of affordable  
20 housing units by income range starting off between 70  
21 and 80 percent.

22           Q     If you are referencing an exhibit, could  
23 you let the Commission know --

24           A     It's definitely the second page of the  
25 handout of the plans, that includes site plan and a

1 table of information, just reading from that. I  
2 don't know where it would be in the filings.

3 Q I'm sure that can be found just for the  
4 transcript.

5 A Thank you for doing that. I'll just read  
6 between the 70 to 80 percent range, 15 percent of our  
7 units will sold in that range, that equals 12.  
8 15 percent of the 80.

9 The next bracket range is 81 to 100, 12  
10 units again, or 15 percent.

11 The next income range is 101 to 120, those  
12 are 40 units will be sold at that range, 50 percent.

13 And then the last one is the 121 to 140, 16  
14 units or 20 percent of the total project unit count.

15 Q Do you know off-hand what those numbers are  
16 at this point?

17 A No. I would love to be able to know  
18 exactly what it is. I have a lot of families calling  
19 me every day wanting to know those numbers. It's a  
20 difficult -- the only reason -- I'm not wanting to  
21 dodge anything, is that number will be set as soon as  
22 we get this approved, if this can be approved, we go  
23 right back to County of Maui, Department of Housing,  
24 Human Concerns, and we will record with them a  
25 development agreement. In that development agreement

1 it will be called out, and the prices will be  
2 determined upon -- it's a formula that is very public  
3 and transparent based on your mortgage rates, average  
4 median income level, and the size of the house.

5 CHAIRPERSON SCHEUER: Mr. Horovitz?

6 MR. HOROVITZ: Just to reference the  
7 numbers, the range of percentages would come from at  
8 the end of Exhibit F to our Motion for Modification,  
9 which is the affordable housing application, the  
10 project summary pages Roman numeral III, Exhibit F.

11 Q (By Mr. Hopper): I think the Commission is  
12 generally familiar with the 201H process before the  
13 County Council. As they probably know the County  
14 Council can grant exemptions from certain county  
15 requirements for affordable housing projects.

16 Could you briefly summarize -- now, again,  
17 this is part of the record, so this is in the  
18 County's Response to the Motion as well as the  
19 Application, but could you briefly go over any of the  
20 exemptions that you think -- that were obtained, that  
21 you think are of note for the Commission here?

22 A Sure. I know offhand, I think, one of the  
23 first ones you would see would be your lot sizes.  
24 Lot sizes are subject of your zoning, Title 19 of  
25 zoning, as well as the subdivision Title 18.

1           In order to increase the density and  
2 provide a certain number of units, we needed to have  
3 permission to have smaller than what's normally  
4 allowed lot sizes, that's a big one.

5           Another one relates to roadway types,  
6 sidewalks. But we actually ended up skipping that.  
7 At one point, one of the original designs had  
8 sidewalks only on one side of the roadway around the  
9 perimeter, it was something we thought we could --  
10 any money we saved in construction gets passed  
11 directly to the buyers.

12           So we were trying to find a way if that is  
13 something we could possibly cut from the financial  
14 feasibility assessment. Turns out after talking with  
15 Public Works and enough of the community folks, it  
16 was something the community wanted to see sidewalks  
17 on both sides, so we have them on both sides. The  
18 rest of the other exemptions -- give me one second.

19           Q     You don't have to go over them. For the  
20 Commission's benefit, this is in the County's  
21 Responsive Motion. It goes over in Exhibit A there's  
22 the resolution as well as the exemptions listed, so  
23 if Commissioners have questions, I just wanted them  
24 to know that that was in the record to see what  
25 exemptions were granted by the County Council.

1           And then last, the timeline stated, I  
2 believe the resolution states that the start of  
3 grading should be considered the commencement of  
4 construction within two years from the date of  
5 approval, and that you believe is a timeframe that  
6 you can meet?

7           A       Yes, I believe we can. We have to. We  
8 committed to the County that we would, and that's  
9 just based on experience. I believe we can.

10          Q       And it's I believe best efforts to complete  
11 construction within four years?

12          A       That's correct. And we really -- I mean  
13 this is to provide housing, affordable housing that's  
14 so desperately needed. The list of members of people  
15 that have contacted us demands that we move fast and  
16 expeditiously, but we will meet those timelines.

17          Q       Thank you. I have no further questions.

18               CHAIRPERSON SCHEUER: Thank you. Office of  
19 Planning?

20               MS. APUNA: No questions.

21               CHAIRPERSON SCHEUER: Commissioners,  
22 questions? Commissioner Cabral.

23               I'll advise -- I'm not wanting to dampen  
24 discussion among our members, full and free  
25 discussion, but we are getting later on time as the



1 day goes on.

2 VICE CHAIR CABRAL: That cuts into several  
3 of them.

4 So this -- the church then, after this goes  
5 through, the church will be sandwiched between Legacy  
6 affordable housing that you've been the planner?

7 THE WITNESS: The other side. There is  
8 one -- you are correct, Legacy does have a project on  
9 one side. The project I was involved was near Valley  
10 Isle Fellowship Church.

11 VICE CHAIR CABRAL: So the church will  
12 be -- it's the blue on this map here?

13 THE WITNESS: Yes.

14 MR. HOROVITZ: To clarify, the blue is the  
15 entire 25-acre parcel. The half of the blue is  
16 closer to Kahului Town, so that the right side of the  
17 map, that is what Emmanuel Lutheran church will be  
18 retaining, the half that is towards the left of the  
19 map is what Waikapu Development Ventures is  
20 purchasing and in developing.

21 VICE CHAIR CABRAL: The church and school  
22 will be between two different affordable housing  
23 projects?

24 MR. HOROVITZ: I prefer "well positioned".  
25 Lots of students in those units.

1           VICE CHAIR CABRAL:  Lots and lots of future  
2 school and church attendees.

3           And then I see that you have a drainage  
4 basin designed in that, and I know your engineers are  
5 going to think about it, but I'm from Hilo.  We are  
6 starting to see an increase in flooding, so you might  
7 want to make sure your houses are slab on grade  
8 construction, that we make sure we don't have future  
9 flooding homes where you clearly -- I live in a water  
10 situation.  So that was something else.  Then when  
11 you a talk about --

12           THE WITNESS:  Just good to note.  
13 Absolutely, that's an important -- and, in fact, when  
14 we had our first hearing at County Council was when  
15 the hurricane was approaching Maui.  I forget which  
16 one it was.  We were very aware of water.

17           This project is oversized.  We are going  
18 above and beyond standard requirements.  And I  
19 believe strongly in that, and that not only do we  
20 wait -- the one that's highlighted, that's one of the  
21 bigger ones, but there's a lot of green strips  
22 throughout the project that we want to capture much  
23 closer to the source instead of waiting to the  
24 bottom.

25           So that the quicker you can catch it the

1 cleaner it can be, and we have an opportunity to  
2 treat it through low impact development measures.

3 VICE CHAIR CABRAL: When you have your  
4 duplexes, because you're selling -- 201H is a sales  
5 project, lower income sales project, and when you  
6 have the duplex, what does that allow for you to sell  
7 someone? If they buy that, can they rent out the  
8 other half, or is it a condo unit?

9 THE WITNESS: It will be a two-story, one  
10 single unit of a building, two stories separated by a  
11 CPR unit. It will be considered a duplex, one  
12 ownership down below, one ownership above.

13 VICE CHAIR CABRAL: Thank you. That  
14 answers my primary questions.

15 CHAIRPERSON SCHEUER: Further questions  
16 from the Commission?

17 Hearing no further questions,  
18 Commissioners, does somebody wish to make a motion?

19 VICE CHAIR MAHI: I'll make a motion.

20 I move to allow for modification of the  
21 Decision & Order to allow for the use of a portion of  
22 the Petition Area acquired for workforce housing  
23 project approved by the County of Maui, provided that  
24 the 201H housing project is developed within four  
25 years.

1 COMMISSIONER ACZON: Second the motion.

2 CHAIRPERSON SCHEUER: Motion made by  
3 Commissioner Mahi and seconded by Commissioner Aczon.

4 Is there any discussion on the motion,  
5 further discussion? Hearing none, Mr. Orodenker,  
6 please poll the Commission.

7 EXECUTIVE OFFICER: The motion is to allow  
8 for modification for use of a portion of the Petition  
9 Area acquired for workforce housing project approved  
10 by the County of Maui with conditions.

11 Commissioner Mahi?

12 VICE CHAIR MAHI: Aye.

13 EXECUTIVE OFFICER: Commissioner Aczon?

14 COMMISSIONER ACZON: Yes.

15 EXECUTIVE OFFICER: Commissioner Okuda?

16 COMMISSIONER OKUDA: Yes.

17 EXECUTIVE OFFICER: Commissioner Wong?

18 COMMISSIONER WONG: Aye.

19 EXECUTIVE OFFICER: Commissioner Cabral?

20 VICE CHAIR CABRAL: Aye.

21 EXECUTIVE OFFICER: Chair Scheuer?

22 CHAIRPERSON SCHEUER: Aye.

23 EXECUTIVE OFFICER: Motion passes  
24 unanimously.

25 CHAIRPERSON SCHEUER: We are near the

1 finish line.

2 Mr. Horovitz, will you lead us through the  
3 Motion for Bifurcation?

4 MR. HOROVITZ: I'll keep this very brief.

5 We're simply asking at this stage that we  
6 be afforded our own docket so that Emmanuel Lutheran  
7 will have their docket, and there will be a separated  
8 docket purely for Waikapu Development Ventures. I  
9 think that's appropriate for a few reasons:

10 One, we are going to have separate  
11 ownership of the property very soon.

12 Two, we are on separate development  
13 timelines. If things go as we expect, within four  
14 years we are going to have families in those units.

15 Emmanuel Lutheran may still be developing  
16 their property subject to further action or reporting  
17 requirements.

18 We don't want to saddle our homeowners with  
19 having further LUC work, that's our kuleana. So I  
20 think at this stage --

21 CHAIRPERSON SCHEUER: You objected to our  
22 use of the word "sandwiched", I'll object to the use  
23 of the word "saddle", please.

24 MR. HOROVITZ: Please, place appropriate  
25 conditions. I think it's appropriate if there is

1 something in the future where we need to -- Waikapu  
2 Development Venture needs to come back and ask for  
3 some clarification, modification or whatnot, we  
4 shouldn't have to drag Emmanuel Lutheran, and I don't  
5 think the Commission wants to as well, and I think  
6 vice versa, with no issue remaining under LUC's  
7 jurisdiction, so I would think it's appropriate we  
8 have our own docket.

9 CHAIRPERSON SCHEUER: Thank you.  
10 Petitioner.

11 MS. LIM: Petitioner supports Intervenor's  
12 request, and we also note there is precedent where  
13 the Commission has bifurcated when there were  
14 separate development projects proposed after an  
15 initial dba is issued, so we hope the Commission will  
16 grant the request.

17 CHAIRPERSON SCHEUER: County of Maui?

18 MR. HOPPER: County supports bifurcation.  
19 We do recognize it won't be release of all of the  
20 conditions of the project, but to bifurcate for the  
21 different ownership issues, we do support as stated  
22 in our documentation.

23 MS. APUNA: OP supports bifurcation. I  
24 think there is some reference to Amendment of  
25 Condition 10 on page 14 of Petitioner's Motion, but I

1 think that's a typo. I don't think you need to amend  
2 specifically 10, sorry, Intervenor.

3 And then OP has no objection to the four  
4 year timeframe proposed to develop the workforce  
5 housing project, and notably, yes, Intervenor is not  
6 seeking release for any condition of the original  
7 Decision & Order and hope that the bifurcated docket  
8 includes the CIA condition.

9 CHAIRPERSON SCHEUER: Commissioners, are  
10 there questions? I will note that it is my  
11 understanding that -- Commissioner Aczon.

12 COMMISSIONER ACZON: I just want to clarify  
13 conditions where mentioned, just want to know who's  
14 responsible for those conditions, still the  
15 Petitioner or --

16 MR. HOROVITZ: Our request was that we  
17 simply bifurcate the docket. The conditions with the  
18 exception of the ones that purely related to Emmanuel  
19 doing a church and school would carry over onto ours.  
20 In fact, I think in our motion I prepared a table  
21 showing the existing conditions on the project.

22 The conditions that the County imposed upon  
23 us for the 201H, they all kind of match us of up.

24 We have no objection to the existing  
25 conditions including the CIA that we committed to

1 carrying over. The only ones we're asking for  
2 deleting is conditions purely relating to the church  
3 and school, and I believe there was one condition  
4 about fencing the lower portion of the property which  
5 is on Emmanuel Lutheran's piece, not ours. Other  
6 than that, we're not asking for deletion of any  
7 conditions.

8 CHAIRPERSON SCHEUER: Any further  
9 questions? Commissioner Cabral.

10 VICE CHAIR CABRAL: I would like to make a  
11 motion, move to grant the Motion to Bifurcate into  
12 two portions approximately 12.5 acres of which will  
13 be used for workforce development housing in  
14 compliance with the conditions of the 201H approval  
15 with the understanding that both bifurcated  
16 properties will be subject to the conditions imposed  
17 today with regards to the completion of the cultural  
18 impact assessment, and being completed and adhered to  
19 prior to commencement of construction on both  
20 properties -- actually, on either property.

21 CHAIRPERSON SCHEUER: Motion is made by  
22 Commissioner Cabral.

23 COMMISSIONER WONG: Second.

24 CHAIRPERSON SCHEUER: Second to the motion  
25 by Commissioner Wong. Any discussion of the motion?



1 Commissioner Okuda.

2 COMMISSIONER OKUDA: I'm inclined to vote  
3 for the motion. This is the reason why retaining  
4 jurisdiction probably does not add any enforcement to  
5 the conditions because I anticipate, based on the  
6 testimony here, that there probably would be  
7 substantial commencement of the use of the property  
8 based on the representations.

9 So even if some condition is not met, LUC  
10 probably is not going to have much ability to enforce  
11 the conditions, and so retaining jurisdiction by  
12 denying this motion is probably not going to be in  
13 anyone's best interest.

14 I think the evidence has shown, without any  
15 100 percent guarantees, but I think we can be  
16 satisfied that the parties here are acting in good  
17 faith, and in the best interest of the community.

18 So based on that, I would vote in favor of  
19 the motion.

20 CHAIRPERSON SCHEUER: Thank you,  
21 Commissioner Okuda. Any further comments on the  
22 motion? Hearing none, Mr. Orodenker, would you  
23 please poll the Commission?

24 EXECUTIVE OFFICER: Thank you, Mr.  
25 Chairman.

1           The motion is to allow bifurcation of the  
2 property with conditions.

3           Commissioner Cabral?

4           VICE CHAIR CABRAL:   Aye.

5           EXECUTIVE OFFICER:   Commissioner Wong?

6           COMMISSIONER WONG:   Aye.

7           EXECUTIVE OFFICER:   Commissioner Mahi?

8           VICE CHAIR MAHI:    Aye.

9           EXECUTIVE OFFICER:   Commissioner Okuda?

10          COMMISSIONER OKUDA:   Yes.

11          EXECUTIVE OFFICER:   Commissioner Aczon?

12          COMMISSIONER ACZON:   Yes.

13          EXECUTIVE OFFICER:   Chair Scheuer?

14          CHAIRPERSON SCHEUER:   Aye.

15          EXECUTIVE OFFICER:   Thank you.   Mr. Chair,  
16 the motion passes unanimously.

17          CHAIRPERSON SCHEUER:   Thank you very much  
18 to the Petitioner, to the Intervenor, to those who  
19 have attended today, to the fairly incredible LUC  
20 staff who make our work possible.   I appreciate it.

21          This meeting began yesterday morning at  
22 9:30 in Kona and is now adjourned.

23          (The proceedings adjourned at 2:48 p.m.)  
24  
25

## CERTIFICATE

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HONOLULU            )

I, JEAN MARIE McMANUS, do hereby certify:

That on November 29, 2018, at 9:30 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 29th day of November, 2018, in Honolulu, Hawaii.

/s/Jean Marie McManus  
JEAN MARIE McMANUS, CSR #156