

LAND USE COMMISSION
MEETING MINUTES

November 4, 2020 – 9:00 a.m.

Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.

PLACE: Zoom Webinar Virtual Meeting
Wednesday November 4, 2020
Meeting Link for Wednesday November 4, 2020

https://us02web.zoom.us/webinar/register/WN_j_UfIYGLRj-vT7hf6T3jAA

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Edmund Aczon
(Attending via ZOOM conference media) Nancy Cabral
Gary Okuda
Jonathan Scheuer
Arnold Wong
Dawn N. S. Chang
Dan Giovanni(excused at start and arrived at 9:30 a.m.)
Lee Ohigashi

COMMISSIONERS EXCUSED: None

(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Lauren Chun, Deputy Attorney General (DAG)
Bill Wynhoff, DAG
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus
(Attending via ZOOM conference media)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:00 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

Chair Scheuer stated that Commissioner Giovanni would be arriving at 9:30 a.m. and that the meeting would commence once all 8 Commissioners were in attendance and declared a recess till then.

The Commission went into recess at 9:04 a.m. and reconvened at 9:30 a.m.

APPROVAL OF MINUTES

Chair Scheuer stated that the first agenda item was the approval of the October 7-8, 2020 minutes and asked if there had been any public testimony submitted and if there were any corrections to be made. There was no public testimony and no corrections to be made. Commissioner Cabral moved to approve the minutes. Commissioner Ohigashi seconded the motion. There was no discussion. By a roll call vote, the October 7-8, 2020 minutes were approved unanimously (8-0)

Chair Scheuer called for Mr. Orodener to provide the Tentative Meeting Schedule.

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from November 2020 to February 2021 for the Commissioners and cautioned that it was subject to change based on the pandemic impacts. Commissioners were advised to contact LUC staff if there were any questions or conflicts.

There were no questions or comments regarding the tentative meeting schedule.

Chair Scheuer moved on to the next agenda item.

The next agenda item was **Status Report and Action (If Necessary) meeting on Docket No. A11-794 STATE OF HAWAII, DEPT. OF EDUCATION – (Kihei High School) (Maui)** to Consider Petitioner State of Hawaii, Dept. of Education’s Motion to Amend the Land Use Commission’s Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013

APPEARANCES

Randall Tanaka, State of Hawai`i Department of Education (“DOE”)
Stuart Fujioka, Esq., Deputy Attorney General, represented DOE
Robin Shishido, State of Hawai`i Department of Transportation (“DOT”)
Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (“County”)
Michele McClean, Director, County
Dawn Takeuchi-Apuna, Deputy Attorney General, represented State Office of Planning (“OP”)
Rodney Funakoshi, OP

Chair Scheuer updated the record and described the procedures for the hearing. There were no questions, objections or comments on the procedures.

Chair Scheuer asked if there were any registered public witnesses. LUC staff identified the public witnesses who had submitted written testimony for the record.

Chair Scheuer asked if there were any public witnesses in the audience who wished to testify.

PUBLIC WITNESSES

1. Andrew Beerer (no video)

Mr. Beerer summarized his submitted written testimony and confirmed his support for a traffic roundabout and the LUC condition for a Grade Separated Pedestrian Crossing (GSPC) for the high school.

There were no questions for Mr. Beerer.

2. Mike Moran, President, Kihei Community Association (“KCA”)

Mr. Moran summarized his written testimony stating the position of the KCA and described his experiences as an attendee at community meetings arranged by the DOE

Commissioners Okuda, Wong, Chang, Aczon and Giovanni requested clarification on who KCA had communicated with to arrange the meetings, what level of trust the KCA had with dealing with the DOE, what perspective and priorities KCA had on the available State funds for traffic infrastructure, the general KCA support for the proposed roundabout and alternative traffic controls and the KCA underpass proposal.

3. Representative Tina Wildberger

Rep. Wildberger stated that she supported the KCA position and described her constituents' concerns.

Commissioners Okuda and Cabral requested clarifications on what the DOE could do to demonstrate "good faith" and more clearly and effectively communicate with the community.

4. Patricia Stillwell

Ms. Stillwell summarized her written testimony that was against the removal of the LUC condition.

There were no questions for Ms. Stillwell and no further public witnesses.

Chair Scheuer stated that the public testimony portion of the hearing was closed and declared a recess.

The Commission went into recess at 10:39 a.m. and reconvened at 10:52 a.m.

Petitioner DOE Presentation

Mr. Fujioka summarized how Petitioner DOE considered that a roundabout was the best traffic control measure for the area and described how the priorities of the DOE were to build the roundabout, open the school, re-evaluate the GSPC needs with supplemental traffic area impact studies (TAISs); and argued why the Commission should grant his Motion.

Commissioner Chang requested clarification on the traffic infrastructure funding. Mr. Fujioka deferred the question to Mr. Tanaka to respond to. Commissioner

Giovanni requested that the acronyms being used be defined to enable the audience and the Commission to better grasp the discussions underway.

Commissioners Wong, Chang, Okuda, Ohigashi, Giovanni, Cabral, Aczon, and Chair Scheuer extensively questioned Mr. Tanaka on available funding for the roundabout and its sources, the dollar amounts being requested, how the granted funding was planned to be distributed, which phases of development it would be applied to, and the design basis that could be used when evaluating the feasibility of an underpass. During the discussion, Commissioner Wong raised a point of order regarding the meeting agenda's mention of "ACTION IF NECESSARY" for this docket. Chair Scheuer noted that the Petitioner's status report's lack of substantive information disinclined him to seek action from the Commission at this meeting. Commission Okuda agreed with the Chair and sought additional information on the requirements for officially opening a school, what had been included in the proposed budget for traffic infrastructure, and other financial line items.

Mr. Fujioka offered DOT-Ed Sniffen to assist in responding to the questions being posed to Mr. Tanaka. Mr. Sniffen shared his estimates for what an over/underpass would cost to construct and how much a feasibility study for an underpass would be. Commissioner Giovanni sought additional clarification on which department would be responsible for what parts of the proposed traffic infrastructure improvements. Mr. Sniffer stated that he had funds to construct the roundabout.

Additional discussion ensued with Commissioner Cabral and Chair Scheuer seeking to clarify why the Commission's requirement for its GSPC Decision and Order Condition was being ignored.

To facilitate the discussion, Chair Scheuer displayed a collection of the questions via a "zoom shared screen" that the Commission had asked for the DOE/DOT to answer and asked the Commissioners for their review and final inputs.

Listed below is the final set of questions.

1. Did the DOE object to or otherwise comment on the form of the order (specifically this condition) when the order was originally passed?
2. Why did the DOE seek an LUC site visit in June 2018 on this matter? Was it not the intent at that time to seek a changed condition? Why was that matter not pursued then?
3. The LUC order of July 29, 2013 included condition 1.b. that required what is now referred to as a Grade Separated Pedestrian Crossing (GSPC) prior to the opening of Phase I. Subsequently, the DOE developed a preliminary design and budget, and requested funding for detailed design and construction of the school.

- a. Did the preliminary design and budget include any consideration or funding for the GSPC?
 - b. Did the original budget request for the Kihei HS to the Legislature, by the DOE, specify whether or not the funds for the GSPC were requested?
 - c. If the answer to either 3a or 3 b is yes, how was the amount determined?
 - d. If the answer to either 3a or 3 b is no, how did this oversight or DOE decision making to explicitly not include the GSPC in the design and budget request occur? What was DOE's rationale to proceed with the budget request that did not include any funds for the GSPC?
4. Please provide the scope of contract for all of the studies that concluded that there was no warrant for the crossing.
 5. Should the LUC issue one or more subpoenas for documents related to #s 2, 3, and 4?
 6. Will the new school facilities organization be in charge of the construction? If so, can Mr. Tanaka bind them? Will Mr. Fujioka continue represent on this issue?
 7. Please specify who will be in charge of community outreach, and how such outreach will be conducted, and an agenda for the first meeting to be conducted.
 8. Please provide a copy of this year's budget requests from DOE or DOT, if any, related to funding for a roundabout.

Commissioners Okuda, Giovanni, Ohigashi, Chang, and Aczon opined on the additional details that needed to be included in the DOE/DOT responses and how a good administrative record might be helpful when approaching the Legislature for funding, how Representative Wildberger could assist in this matter, and to confirm that funding for the construction of the roundabout was possible with DOT funds.

There were no further questions and Chair Scheuer stated that County would make its presentation after recess.

The Commission went into recess at 12:04 p.m. and reconvened at 12:51 p.m.

Mr. Fujioka questioned how deferring this matter might be possible. Chair Scheuer responded that the Commission would first hear from the County and OP before discussing anything.

COUNTY

Mr. Hopper stated that Ms. McLean would summarize County's position. Ms. McLean stated that there was no change to the County's initial position and it still supported the roundabout and wanted to see the construction of the high school remain

on schedule and for the DOE/DOT to continue working on a GSPC with an underpass being a viable option.

Commissioners Okuda, Wong, Ohigashi, and Giovanni requested clarification on County's position. Ms. McLean described how the State could exempt itself from certain County requirements and that County was open to working with DOE/DOT on proposed language to address the LUC condition requirement.

There were no further questions for County.

Chair Scheuer called for OP to make its presentation.

OP

Ms. Apuna stated the OP was supportive of DOE/DOT working together.

There were no questions for OP.

FINAL COMMENTS

Mr. Fujioka offered Mr. Tanaka to provide DOE's comments. Mr. Tanaka provided his perspective on how funding for a roundabout and underpass would be difficult and could negatively impact the opening of the high school on schedule. Discussion ensued to determine that the opening of the school was not connected to the construction of a roundabout. Mr. Fujioka argued that the school could not open with a GSPC.

Commissioner Chang inquired when the school was set to open and what needed to be done. Chair Scheuer requested clarification on the term "Phase II". Mr. Tanaka clarified how "Phase II" applied to the first phase of the school opening in the 2023 school year.

Chair Scheuer displayed a summary of all the questions that had been accumulated during the discussions and remained unanswered by DOE/DOT and posted them on a shared screen for the Commission to consider (posted earlier).

Commissioner Wong expressed his appreciation for the display of questions and moved to transmit the question list to DOE for their response and to defer decision-making on the docket. Commissioner Okuda seconded the motion and affirmed that his understanding of the Motion was that no decision-making action was going to be taken. Commissioner Ohigashi also sought confirmation that no action would be taken till answers to the Commission's questions had been received. Commissioner Wong

acknowledged that his motion included that no action would be taken till the answers had been reviewed by the Commission.

Chair Scheuer directed Mr. Orodenker to poll the Commission by roll call and the Commission voted unanimously in favor of the Motion (8-0).

Commissioner Ohigashi noted County had offered to assist DOE/DOT in crafting the language to address the Commission's GSPC condition and Commissioner Giovanni stated his expectation that the language be specific on the timing for the GSPC.

Chair Scheuer called for the next agenda item – Discussion on LUC Commissioner -Cultural Specialist Designation and had Mr. Orodenker present the reason why it had been placed on the agenda for the Commission.

Mr. Orodenker stated that the Cultural Specialist Commissioner position had been vacant for over a year and shared LUC staff concerns about the situation.

Commissioner Okuda stated that he would like to move for LUC staff and the Chair to take action to resolve the vacancy situation and shared his reasons why. Commissioner Cabral shared why she felt it was important to staff the position and questioned whether the Commission could designate a standing member to assume the designation.

Commissioner Aczon moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities in relation to the legal issues involved with the Cultural Specialist designated Commissioner. Commissioner Cabral seconded the Motion. By a roll call vote, the Commission elected to enter Executive Session.

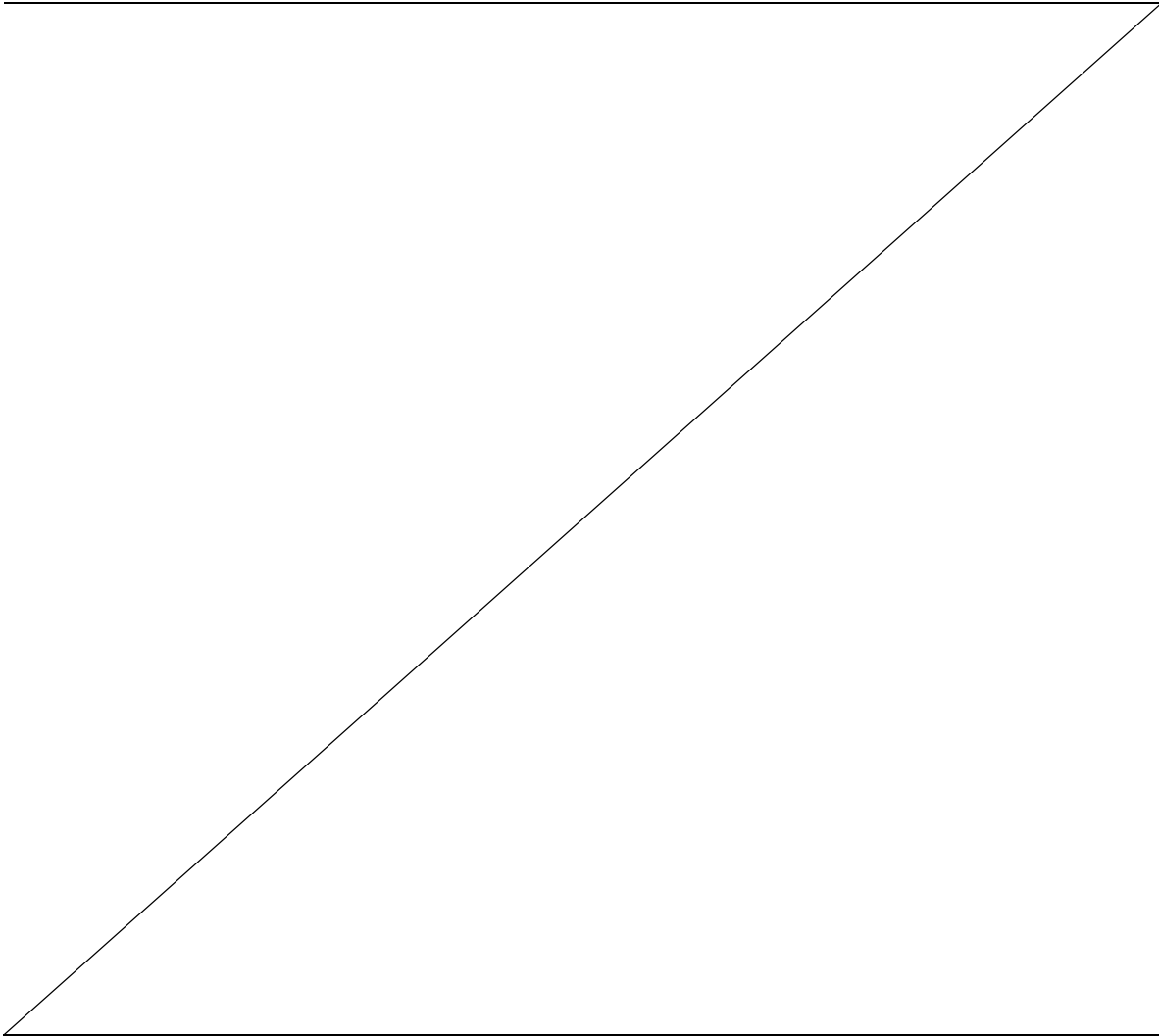
The Commission went into Executive Session at 1:42 p.m. and reconvened at 2:04 p.m.

Commissioner Okuda suggested that rather than make a Motion, that the Chair and/or LUC staff take action to resolve the Commissioner vacancy. Commissioners Aczon and Giovanni stated their agreement with Commissioner Okuda's statement; and Chair Scheuer acknowledged that efforts to urge the Governor to fill the vacant seat would be made.

Chair Scheuer stated that the Commission would reconvene via the ZOOM virtual platform at 9:00 a.m. November 5, 2020 and that he would be recusing himself

from the hearing on A99-729 Newton Family Limited Partnership (aka Hawaiian Islands Land Trust) and that Vice Chair Cabral would be presiding over the meeting.

Chair Scheuer declared a recess of the proceedings at 2:06 p.m.



LAND USE COMMISSION

MEETING MINUTES

November 5, 2020 – 9:00 a.m.

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Meeting Link for Thursday November 5, 2020

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COMMISSIONERS PRESENT: Edmund Aczon
(Attending via ZOOM conference media) Nancy Cabral
Gary Okuda
Arnold Wong
Dawn N. S. Chang
Lee Ohigashi
Dan Giovanni

COMMISSIONERS EXCUSED: Jonathan Scheuer

(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Lauren Chun, Deputy Attorney General
(DAG)
Bill Wynhoff, DAG
Scott Derrickson, Staff Planner
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus
(Attending via ZOOM conference media)

CALL TO ORDER

Vice Chair Cabral called the meeting to order at 9:00 a.m. All Commissioners present acknowledged that they were able to communicate via the ZOOM program.

STATUS REPORT

A99-729 Newton Family Limited Partnership (Hawaiian Islands Land Trust)

Consider Petitioner Hawaiian Islands Land Trust's Motion for Order Amending the Findings of Fact, Conclusions of Law and Decision and Order dated November 16, 2001

APPEARANCES (Attending via ZOOM conference media)

Laura Kaakua, CEO- represented Hawaiian Islands Land Trust, ("HILT")

Ron Kim, Esq., HILT

April Surprenant, Deputy Director, County of Hawaii Planning Department (County)

Diane Mellon-Lacey, Esq. Deputy Corporation Counsel, represented County

Dawn Apuna, Esq., Deputy Attorney General represented OP

Rodney Funakoshi, OP

Vice Chair Cabral updated the record and asked if there were any registered public witnesses. LUC staff advised her that there were no registered public witnesses.

Commissioner Okuda noted that the formal appearance of the County and OP needed to be made for the record. Ms. Mellon-Lacey and Ms. Apuna declared their representation for County and OP respectively and identified the County and OP personnel who were in virtual attendance.

Vice Chair Cabral asked if there were any public witnesses in the audience who wished to testify.

PUBLIC WITNESSES

None

There were no other individuals who indicated that they wanted to testify. Vice Chair Cabral declared that the Public Testimony portion of the proceedings on Docket No. A99-729 was closed and called for Commissioner disclosures.

DISCLOSURES

Vice Chair Cabral disclosed that she was the landlord for Mr. Kim's office but felt that she could remain fair and impartial during the proceedings. There were no objections to Vice Chair Cabral's continued participation.

Vice Chair Cabral asked if the Parties any further documents they wished to submit for the record and called for Petitioner's presentation. None of the Parties had further documents.

Vice Chair Cabral called for Petitioner's presentation.

PETITIONER

Mr. Kim stated that Ms. Kaakua would be making the presentation for HILT.

Ms. Kaakua shared her background with HILT and described how HILT had assumed ownership of the Petition Area and prepared plans for taking stewardship of the property. Ms. Kaakua provided insight on why her organization had filed its motion to amend the Decision and Order dated November 16, 2001 with the Commission and how it would help HILT combat invasive species, achieve its conservation goals and actively manage the Petition Area while retaining the urban land use designation that the Commission had granted in the past.

Vice Chair Cabral asked if there were any questions on Ms. Kaakua's presentation.

Ms. Apuna requested clarification on HILT's efforts to obtain conservation easements for its property, why it was seeking a conservation designation, its long-term ownership plans for the property, and koa harvesting efforts. Ms. Kaakua described how HILT planned to move forward on using portions of the Petition Area to perform activities which would be prohibited or restricted by a conservation designation and reviewed the conditions that HILT was seeking to delete, modify and retain.

Commissioner Okuda requested clarification on Ms. Kaakua's background and the HILT organization and on the final position on the Conditions that were being asked to be modified and retained. Ms. Kaakua provided her educational and professional background and described the HILT organization and its mission objectives. Mr. Kim

described the various Conditions that HILT was seeking to delete, modify and retain and shared the reasoning behind the Petition's requesting the actions.

The Commission went into recess at 10:05 a.m. and reconvened at 10:15 a.m.

Questioning of Petitioner continued and Commissioners Aczon, Giovanni, and Chang requested clarification from Ms. Kaakua on HILT governance and decision-making policies, additional historical background on how HILT acquired the Newton property, HILT funding sources, rapid ohia death (ROD) infestation in the Petition Area, HILT community outreach efforts, possible restrictions or covenants affecting the Petition Area, and the surrounding landowners neighboring the Petition Area.

There were no further questions for Ms. Kaakua. Vice Chair Cabral called for County to make its presentation.

COUNTY

Ms. Mellon-Lacy stated that County supported the HILT efforts and argued why County's response to HILT's amended Motion should be adopted.

Petitioner requested clarification on what Conditions County was asking to be deleted, modified or retained. Mr. Kim argued that it appeared that County shared the same positions on Conditions 1 and 10 and was agreeable to the stewardship plan mentioned in Condition 5.

Ms. Apuna had no questions.

Commissioners Ohigashi and Okuda requested clarification on how Condition 10 would be applied. Ms. Surprenant shared why County had concerns about the 80 foot right-of-way mentioned in the Condition. Commissioner Okuda questioned the language of Condition 10 and its need to be retained.

The Commission went into recess at 10:52 a.m. and reconvened at 11:00 a.m.

Ms. Mellon-Lacey summarized her presentation and stated that County was content to leave Condition 10 "as is". Commissioner Okuda requested clarification on County's position on Condition 1. Ms. Mellon-Lacy responded that County was satisfied with Condition 1 as it read.

There were no further questions. Vice Chair Cabral called for OP's Presentation.

OP

Ms. Apuna stated that OP supported the Petition subject to conditions and summarized OP's position on the proposed Motion. Ms. Apuna suggested the use of "Petitioner" rather than "HILT" or "Petitioner HILT" in the crafting of the Motion to be specific about Petitioner's role since HILT might be too specific and limiting on who the Condition(s) applied to or confusing in the event of an ownership change.

There were no questions for Ms. Apuna.

FINAL COMMENTS

Mr. Kim summarized his argument to have the Commission grant Petitioner's Motion and clarified his understanding of how "if necessary" applied to Condition 10.

County and OP had no final comments.

DELIBERATION

Commissioner Okuda made a motion to grant Petitioner's Motion and described the conditions that were to be deleted, modified or retained. Commissioner Ohigashi seconded the Motion and provided his reasons for supporting the Motion and why he felt that Condition 10 was superfluous.

Ms. Apuna was granted permission to remind the Commission about OP's concern about naming "HILT" or "Petitioner HILT" instead using the more general term "Petitioner" when crafting the Motion. Commissioner Okuda acknowledged Ms. Apuna's remarks and stated that it was his intention that Petitioner and HILT to be considered the same entity and adjusted his references to use "Petitioner" in his Motion.

Commissioner Ohigashi, as the second to the Motion, agreed to the change and use of the term "Petitioner" in the Motion.

Commissioner Aczon requested clarification on whether Condition 10 had been adequately addressed. Commissioner Okuda replied that it was to be retained.

Commissioners Aczon and Giovanni stated their support of the Motion and expressed their appreciation of the efforts put forth by the Parties.

DAG Chun questioned if Commissioner Okuda's Motion included LUC staff making non-substantive editorial changes and for the Chair to sign the Decision and Order. Commissioner Okuda acknowledged that he would include mention of the LUC staff editorial changes and Chair's signature as part of the Motion. Commissioner Ohigashi agreed to the modification of the Motion.

Vice Chair Cabral asked for Mr. Orodener to poll the Commission.

Mr. Orodener stated that the Motion was that:

The LUC recognizes HILT's standing to seek and obtain the relief requested in its Amended Motion.

- **The Decision and Order filed November 16, 2001, be amended to reflect appropriate findings of fact, conclusions of law, and conditions that are applicable to HILT's Kūkūau Forest Management Project.**
- **Condition No. 1 be modified as agreed to by HILT and OP and as modified by the Planning Department to read as follows:**

The Petition Area shall not be subdivided. Any structures that HILT erects or constructs in the Petition Area must be permitted under HRS 205-2(d), or HILT shall seek appropriate permits and/or Special Permit(s) to erect or construct such structures(s). Petitioner shall work cooperatively with the County Planning Department to rezone the Petition Area to a zoning density that would prevent subdivision.

- **Condition Nos. 2 and 7 be modified as agreed to by HILT and OP.**
- **Condition Nos. 4, 5, 8, and 9 be modified as agreed to by the parties.**

- **Condition Nos. 3, 12 through 15, 17, and 20 be deleted.**
- **Condition Nos. 6, 10, 11, 16, 18, 19, 21, 22, and 23 be retained in their original form.**

The Commission voted unanimously (7-0) to grant the Motion.

Vice Chair Cabral asked if there was any further business to discuss. There was none. Vice Chair Cabral adjourned the meeting at 11:28 a.m.
