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BEFORE THE LAND USE COMMISSION OF THE
STATE OF HAWAII

In the Matter of the Petition of:)	DOCKET NO. A11-791
)	
HG KAUAI JOINT VENTURE, LLC)	INTERVENOR'S MOTION TO CONFIRM
To Amend the Land Use District Boundary of)	DEADLINES FOR COMMISSION
Certain Lands Situated at Kapa'a, Island of)	DECISION-MAKING SHALL BE
Kauai, State of Hawai'i, consisting of)	EXTENDED; DECLARATION OF
approximately 96 Acres, from the Agricultural)	COUNSEL; CERTIFICATE OF SERVICE
Land Use District to the Urban Land Use)	
District, Kauai Tax Map Key 4-3-03: por 01.)	NON-HEARING MOTION

INTERVENOR'S MOTION TO CONFIRM DEADLINES FOR COMMISSION DECISION-
MAKING SHALL BE EXTENDED

Intervenor LIKO MARTIN (Intervenor) respectfully submits this motion to confirm the deadlines for Commission decisionmaking on the subject petition in the above-captioned case filed by Petitioner HG KAUAI JOINT VENTURE, LLC's (Petitioner) shall be extended and otherwise do not apply to the subject petition due to the state of emergency declared for periods applicable to this Commission's procedures for Petitioner's Amended District Boundary Amendment (DBA) petition (petition). This motion is filed pursuant to Hawai'i Revised Statutes (HRS) §91-13.5 and Hawai'i Administrative Rules (HAR) §15-15-70.

I. BACKGROUND

On August 20, 2020, the Governor issued the 12th Proclamation Related to the COVID-19 Emergency, which suspended laws related to government, business, and property, and imposed new

laws relating to travel and movement of people.¹

On August 28, 2020, Petitioner filed its petition on August 20, 2020. HG Exh. 1.

On September 23, 2020, the Governor issued the 13th Proclamation Related to the COVID-19 Emergency, which extended suspension of laws and imposition of laws governing movement.²

On October 13, 2020, the Governor issued the 14th Proclamation Related to the COVID-19 Emergency, which extended suspension of laws and imposition of laws governing movement.³

On November 6, 2020, the Commission entered its Prehearing Order in this case.

On November 16, 2020, the Governor issued the 15th Proclamation Related to the COVID-19 Emergency, which extended suspension of laws and imposition of laws governing movement.⁴

On November 23, 2020, the Governor issued the 16th Proclamation Related to the COVID-19 Emergency, which extended suspension of laws and imposition of laws governing movement.⁵

On December 16, 2020, the Governor issued the 17th Proclamation Related to the COVID-19 Emergency, which extended suspension of laws and imposition of laws governing movement.⁶

On December 20, 2020, the Commission entered its order granting Intervenor's motion to intervene.

¹ Intervenor requests judicial notice of laws pursuant to the Hawai'i Rules of Evidence, Rule 201. Governor David Ige, State of Hawai'i, Twelfth Proclamation Related to the COVID-19 Emergency (Aug. 20, 2020) *available at*: https://governor.hawaii.gov/wp-content/uploads/2020/08/2008089-ATG_Twelfth-Proclamation-COVID-19-distribution-signed.pdf.

² Governor David Ige, State of Hawai'i, Thirteenth Proclamation Related to the COVID-19 Emergency (Sep. 23, 2020) *available at*: https://governor.hawaii.gov/wp-content/uploads/2020/09/2009139-ATG_Thirteenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf

³ Governor David Ige, Fourteenth Proclamation Related to the COVID-19 Emergency (Oct. 13, 2020) *available at*: https://governor.hawaii.gov/wp-content/uploads/2020/10/2010095-ATG_Fourteenth-Proclamation-for-COVID-19-distribution-signed.pdf.

⁴ Governor David Ige, State of Hawai'i, Fifteenth Proclamation Related to the COVID-19 Emergency (Nov. 16, 2020) *available at*: https://governor.hawaii.gov/wp-content/uploads/2020/11/2011051-ATG_Fifteenth-Proclamation-Related-to-the-COVID-19-Emergency-distribution-signed.pdf.

⁵ Governor David Ige, State of Hawai'i, Sixteenth Proclamation Related to the COVID-19 Emergency (Nov. 23, 2020) *available at*: https://governor.hawaii.gov/wp-content/uploads/2020/11/2011098-ATG_Sixteenth-Proclamation-Related-to-the-COVID-19-Emergency-distribution-signed.pdf.

⁶ Governor David Ige, State of Hawai'i, Seventeenth Proclamation Related to the COVID-19 Emergency (Dec. 16, 2020) *available at*: https://governor.hawaii.gov/wp-content/uploads/2020/12/2012088-ATG_Seventeenth-Proclamation-Related-to-the-COVID-19-Emergency-distribution-signed.pdf.

On January 6, 2021, the Commission deliberated on the parties' motions at its regular meeting.

On February 12, 2021, the Governor issued the 18th Proclamation Related to the COVID-19 Emergency, which extended suspension of laws and imposition of laws governing movement.⁷

On March 10, 2021, the Commission began holding its contested case hearing on the petition.

II. ARGUMENT

Deadlines for Commission decisionmaking on the petition are extended consequent to the ongoing state of emergency. A state of emergency has existed and continues to exist during times relevant to the Commission's processing of and deliberations on the petition from at least August 2020 to date. The Commission's rules governing development-related approvals, automatic approvals, and extensions, provide this Commission must make a decision to approve, approve with conditions, or deny the petition within a year from the date the petition was deemed a proper filing, or at most another ninety days after that year is up. HAR §15-15-74(b). If the Commission fails to act, the petition is deemed approved with mandatory conditions. *Id.*; HAR §15-15-90(e); *see also* HAR §15-15-51(e) (providing hearings "shall not extend beyond three hundred sixty-five days from the date the petition is deemed properly filed, unless an extension of time [not exceeding 90 days] is requested by motion by any party"). The Commission's rules are authorized by HRS §91-13.5,⁸ which provides in relevant part:

⁷ Governor David Ige, State of Hawai'i, Eighteenth Proclamation Related to the COVID-19 Emergency (Feb. 12, 2021) *available at*: https://governor.hawaii.gov/wp-content/uploads/2021/02/2102078-ATG_Eighteenth-Proclamation-Related-to-the-COVID-19-Emergency-distribution-signed.pdf.

⁸ HRS §91-13.5, titled "Maximum time period for business or development-related permits, licenses, or approvals; automatic approval; extensions" provides in relevant part:

- (a) Unless otherwise provided by law, an agency shall adopt rules that specify a maximum time period to grant or deny a business or development-related permit, license, or approval; provided that the application is not subject to state administered permit programs delegated, authorized, or approved under federal law.
- (b) All such issuing agencies shall clearly articulate informational requirements for applications and review applications for completeness in a timely manner.
- (c) All such issuing agencies shall take action to grant or deny any application for a business or development-related permit, license, or approval within the established maximum period of time, or the application shall be deemed approved; provided that a delay in granting or denying an application caused by the lack of quorum at a regular meeting of the issuing

(e) The maximum period of time established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements.

Id.(e). Pursuant to the Governor's Emergency Proclamations, the Commission and its staff have been prohibited from free and ordinary movement and have had to operate in various states of restricted movement and have been subjected to new requirements never assumed or contemplated by the administrative rules on review deadlines, the cumulative effect of which prevents fulfillment of review requirements in the ordinary course of time.

III. CONCLUSION

For the foregoing reasons, Intervenor LIKO MARTIN (Intervenor) respectfully requests this Commission confirm deadlines for Commission decisionmaking on the petition are extended and do not apply under operation of HRS §91-13.5(e) due to the current state of emergency.

DATED: Honolulu, Hawai'i

April 1, 2021



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agency shall not result in approval under this subsection; provided further that any subsequent lack of quorum at a regular meeting of the issuing agency that delays the same matter shall not give cause for further extension, unless an extension is agreed to by all parties.

[. . .]

(e) The maximum period of time established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements.

[. . .]

(g) For purposes of this section, "application for a business or development-related permit, license, or approval" means any state or county application, petition, permit, license, certificate, or any other form of a request for approval required by law to be obtained prior to the formation, operation, or expansion of a commercial or industrial enterprise, or for any permit, license, certificate, or any form of approval required under sections 46-4, 46-4.2, 46-4.5, 46-5, and chapters 183C, 205, 205A, 340A, 340B, 340E, 340F, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P.

BEFORE THE LAND USE COMMISSION OF THE
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In the Matter of the Petition of:) DOCKET NO. A11-791
HG KAUAI JOINT VENTURE, LLC) CERTIFICATE OF SERVICE
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was served on the following via email pursuant to the Executive Director's email dated December 15, 2020:

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DATED: Honolulu, Hawaii

April 1, 2021



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