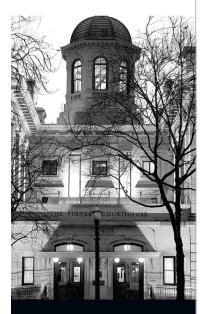


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## STATE OF HAWAII

## LAND USE COMMISSION

## STATE OF HAWAII

## LAND USE COMMISSION

Hearing held on Septemer 23, 2021 Commencing at 9:00 a.m.

Held via Zoom by Interactive Conference Technology

- I. CALL TO ORDER
- II. ADOPTION OF MINUTES Sept. 8-9, 2021 Minutes Sept. 17, 2021 Minutes
- **III. TENTATIVE MEETING SCHEDULE**
- IV. ACTION A15-798 WAIKAPU PROPERTIES, LLC (Maui) To Consider Motion for Modification of Condition 8(b) of Decision and Order filed on February 26, 2018 to be consistent with the condition in the County ordinance that changed the zoning of the subject property.
- V. EXECUTIVE SESSION Pursuant to HRS Section 92-5(a)(2) to consider personnel matters where considerations of matters affecting privacy will be involved.
- VI. ADJOURNMENT

**BEFORE:** 

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                  APPEARANCES BY VIDEOCONFERENCE:
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   Jonathan Scheuer, Chair (Oahu)
   Nancy Cabral, Vice Chair (Big Island)
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   Edmund Aczon (Oahu)
   Gary Okuda (Oahu)
 6
 7
   Lee Ohigashi (Maui)
 8
   Arnold Wong (Oahu)
 9
   Dawn N.S. Chang (Oahu)
10
   Daniel Giovanni (Kauai)
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12
   STAFF PRESENT BY VIDEOCONFERENCE:
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   Linda Chow, Esquire
14
   Deputy Attorney General
15
16
   Daniel Orodenker, Executive Officer
17
   Riley Hakoda, Chief Clerk/Staff Planner
18
   Scott Derrickson, Staff Planner
19
   Natasha Quinones, Program Specialist
20
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1	COMMISSIONER SCHEUER: Aloha mai kakou and
2	good morning. This is the September 23rd, 2021, Land
3	Use Commission meeting, which is being held using
4	interactive conference technology linking
5	videoconference participants and other interested
6	individuals of the public via the Zoom Internet
7	conferencing program. We're doing this, of course,
8	to comply with ongoing state and county official
9	operational directives during the ongoing COVID-19
10	pandemic.
11	Members of the public are able to view the
12	meeting via the Zoom webinar platform.
13	To all meeting participants, I would like
14	to stress the importance of speaking slowly,
15	clearly, and directly into your microphone.
16	Especially because we are now using transcriptions
17	based on this Zoom recording, please identify
18	yourselves for the record prior to speaking.
19	Please also be aware that all meeting
20	participants are being recorded on the digital
21	record of this Zoom meeting. Your continued
22	participation is your implied consent to be part of
23	the record of this event. If you do not wish to be
24	part of the record, you should exit the meeting now.
25	This technology allows the parties and

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each participating commissioner individual remote 1 2 access to the meeting via our own personal devices, 3 so also please note that due to matters entirely outside of our control, occasional disruptions to 4 5 connectivity may occur for one or more members in 6 the meeting at any given time. If these disruptions 7 occur, please let us know and please be patient as we try to restore audiovisual signals to conduct 8 business during the pandemic. 9

10 For any items in which public testimony 11 will be accepted, for any members of the public who wish to provide public testimony and who are 12 13 accessing this meeting via telephone rather than 14 software, please know that you can raise your hand 15 using the key sequence \*9 and lower your hand using 16 the same sequence. And you can ask to be unmuted 17 using the \*6 function.

Depending on how long this meeting goes, we will take breaks from time to time, approximately 10 minutes every hour.

My name is Jonathan Likeke Scheuer, and I have the honor and pleasure of serving as the Land Use Commission Chair. Along with me, Commissioners Edmund Aczon, Dawn Chang, Gary Okuda, and our visiting commissioner from Kaua'i, Daniel Giovanni,

DEPOSITION & TRIAL

	HI Commission Meeting September 23, 2021 NDT Assgn # 531
1	our Chief Executive Officer Daniel Orodeneker, our
2	Chief Planner Scott Derrickson, our Chief Clerk
3	Riley Hakoda, our Deputy Attorney General Linda
4	Chow, and our Program Specialist Natasha Quinones
5	are all on the island of O'ahu.
6	Commissioner Nancy Cabral is back on
7	Hawai'i island. Welcome home. Commissioner Lee
8	Ohigashi is on Maui. We currently have eight seated
9	commissioners of a possible nine.
10	As I mentioned, court reporting
11	transcriptions are being done from the Zoom
12	recording.
13	The only adjustment to our agenda that I
14	will note is that item V, roman numeral V on our
15	agenda, indicates we were going to conduct an
16	executive session meeting; however, during our last
17	meeting, we concluded all the business we needed to
18	do in executive session, so the only substantive
19	matter we have is the Waikapu Country Town matter.
20	With all that said, our first order of
21	business is adoption of the September 8th through
22	9th and September 17th, 2021, minutes. The minutes
23	from September 8th and 9th are not ready and will be
24	deferred. However, the minutes for September 17th

25 are ready for approval.

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Mr. Hakoda or Ms. Quinones, has any public 1 2 testimony been received on adoption of the minutes? 3 MS. QUINONES: Chair, this is Natasha. There has been no testimony received on the minutes. 4 5 **COMMISSIONER SCHEUER:** Okay. Thank you. 6 Are there any members of the public who 7 wish to testify on adoption of the minutes? If so, 8 please use the Raise Your Hand function. 9 I'm recognizing Ken Church, who is asking 10 to be recognized to testify on adoption of the 11 minutes. 12 Mr. Church, I will move you to promote you 13 to be a panelist. When you are promoted to be a 14 panelist, I ask you to enable your audio and video. You're admitted, Mr. Church. You may enable your 15 audio and video now, please, to testify on adoption 16 17 of the September 17th, 2021, minutes. 18 MR. CHURCH: Is my video off or only on 19 audio. The minutes of the September meeting --20 COMMISSIONER SCHEUER: Mr. Church, we can 21 barely hear you. 22 MR. CHURCH: When will the minutes of the 23 September 8th meeting be available? 24 COMMISSIONER SCHEUER: I do not exactly 25 know. However, I would expect by our next meeting.

DEPOSITION & TRIAL

1 MR. CHURCH: Thank you. 2 COMMISSIONER SCHEUER: Okay. So you were not actually testifying on this matter; is that 3 4 correct? 5 MR. CHURCH: No. Right. 6 COMMISSIONER SCHEUER: Okay. So the 7 directions from the chair were only for testimony on 8 this matter. I'm moving you back to being as you can 9 be. 10 Do any members of the public wish to 11 testify on adoption of the minutes from the 12 September 17th, 2021, meeting? If so, raise your 13 hand. 14 Seeing none, are there any comments or 15 questions or a motion to adopt? 16 COMMISSIONER WONG: Chair, this is 17 Commissioner Wong. COMMISSIONER SCHEUER: Commissioner Wong? 18 19 COMMISSIONER WONG: I move to adopt. COMMISSIONER SCHEUER: Is there a second? 20 21 COMMISSIONER OHIGASHI: Second. 22 COMMISSIONER SCHEUER: Seconded by 23 Commissioner Ohigashi. 24 It's like a game show. You got to get to 25 the mute button first. Sorry, Nancy.

DEPOSITION & TRIAL

1	A motion has been made by Commissioner
2	Wong and seconded by Commissioner Ohigashi. Is there
3	any discussion? If there is none, Mr. Orodenker,
4	would you please poll the commission?
5	MR. ORODENKER: Thank you, Mr. Chair. The
6	motion is to adopt the minutes.
7	Commissioner Wong?
8	COMMISSIONER WONG: Aye.
9	MR. ORODENKER: Commissioner Ohigashi?
10	COMMISSIONER OHIGASHI: Yes.
11	MR. ORODENKER: Commissioner Aczon?
12	COMMISSIONER ACZON: Yes.
13	MR. ORODENKER: Commissioner Cabral?
14	COMMISSIONER CABRAL: Yes.
15	MR. ORODENKER: Commissioner Chang?
16	COMMISSIONER CHANG: Aye.
17	MR. ORODENKER: Commissioner Giovanni?
18	COMMISSIONER GIOVANNI: Aye.
19	MR. ORODENKER: Commissioner Okuda?
20	COMMISSIONER OKUDA: Yes.
21	MR. ORODENKER: Chair Scheuer?
22	COMMISSIONER SCHEUER: Aye.
23	MR. ORODENKER: Thank you, Mr. Chair. The
24	motion passes unanimously.
25	COMMISSIONER SCHEUER: Okay. Our next

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1	agenda item is the tentative meeting schedule.
2	Mr. Orodenker, please continue.
3	MR. ORODENKER: Thank you, Mr. Chair. As
4	already noted, our meetings are via Zoom. On October
5	13th, we will be hopefully hearing the IAL matter.
6	Same for October 14th. On October 27th, we will be
7	hearing the Kihei High School matter. On October
8	28th, we will we also have set aside for the IAL
9	matter. Those IAL matters are the O'ahu
10	recommendations.
11	On November 10th, we will be hearing A21-
12	810, which is Hokuao 201H Project. On November 24th,
13	we will again be hearing Hokuao 201H Project.
14	On December 8th, we will be hearing the
15	windward airport hotel matter. That's A03-739.
16	October (sic) 9th, we will also be hearing the
17	windward airport hotel matter. On December 22nd, we
18	will be hearing DR21-73, which is Honoipu Highway.
19	That matter is also scheduled for December 23rd. And
20	that takes us to the end of the year.
21	COMMISSIONER SCHEUER: Thank you, Dan.
22	Are there any questions from the
23	commissioners on our schedule?
24	Seeing none, our next agenda item is an
25	action item regarding Docket No. A15-798 Waikapu
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1	Properties LLC Maui to consider a Motion for
2	Modification of Condition 8(b) of the Decision and
3	Order filed on February 26, 2018, to be consistent
4	with the condition in the county ordinance that
5	changed the zoning of the subject property.
6	Will the parties please identify
7	themselves for the record, beginning with the
8	petitioner?
9	MR. UEOKA: Good morning, Chair. Jeff
10	Ueoka, counsel for petitioner. I'm here with Mr.
11	Mike Atherton, petitioner's authorized
12	representative. And also present is Mr. Paul
13	Mancini, also petitioner's counsel. Thank you,
14	Chair.
15	COMMISSIONER SCHEUER: Good morning.
16	Maui County?
17	MR. HOPPER: Thank you, Chair. Michael
18	Hopper, deputy corporation counsel representing the
19	Maui County Department of Planning. And Kurt
20	Wollenhaupt, planner, is here with us as well. Thank
21	you.
22	COMMISSIONER SCHEUER: Thank you very
23	much.
24	Office of Planning and Sustainable
25	Development?

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1	MS. KATO: Good morning. Alison Kato,
2	deputy attorney general for the Office of Planning
3	and Sustainable Development. Also Rodney Funakoshi
4	and Lorraine Maki from OPSD. Thank you.
5	COMMISSIONER SCHEUER: Before we proceed
6	further, let me update the record.
7	On July 2nd, 2021, the commission received
8	the petitioner's Motion for Modification of
9	Condition 8(b) of the Decision and Order filed on
10	February 26, 2018, a Memorandum in Support of the
11	Motion, Appendices 1 and 2, and a Declaration of
12	Michael Atherton as well as the Certificate of
13	Service.
14	On July 7th, the Office of Planning and
15	Sustainable Development filed its request for an
16	extension of time to respond to the petitioner's
17	motion.
18	On July 9th, we received the petitioner's
19	check for the \$1,000 filing fee. On July 10th, we
20	received the OPSD's response to the petitioner's
21	motion. On July 13th, the petitioner filed a
22	Stipulation of the Parties on the petitioner's
23	motion dated July 2nd, 2021.
24	On July 15th, the LUC mailed the meeting
25	agenda sorry. This must be factually incorrect,
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NAEGELI (800)528-3335 DEPOSITION & TRIAL 1 and I need to check with the staff.

2 What is the date on which we mailed the 3 meeting agenda for today's meeting?

4 MS. QUINONES: Chair, this is Natasha. The 5 date as September 15th.

6 COMMISSIONER SCHEUER: On September 15th, 7 the LUC mailed the meeting agenda for the September 8 23rd to the parties on the docket and the statewide 9 and county mailing lists. And then we modified it 10 and sent a modified agenda on the following day, 11 September 16th, to the same parties.

12 If there's anyone who wishes to testify on 13 this matter, here's our order for proceedings for 14 today. First, I'll recognize any written public 15 testimony. Then I will ask any members of the public 16 who wish to testify on today's matter to raise their 17 hands.

There's no one coming into this meeting by phone that I can see, so use the Raise Your Hand function. I will bring you in, swear you in, ask you to state your name and address for the record, and give you three minutes to testify. After any testimony, be available for questions by the parties and the commissioners.

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Following any public testimony, if there



1	is any, we will then begin proceedings on the
2	petitioner's motion, starting with the same order of
3	the parties, each party presenting, followed by
4	questions from the commissioners. So first,
5	petitioner's presentation followed by questions from
6	the commissioners; then County of Maui,
7	commissioners' questions; and then OPSD.
8	The commission the chair will allow the
9	petitioner to provide any final rebuttal to any of
10	the comments from any of the other parties.
11	And finally, after all parties have
12	presented their arguments for the petitioner's
13	motion, we'll conduct deliberations and issue a
14	decision.
15	If we happen to go over an hour, I will
16	ask for a break at around 9:50 a.m.
17	Do any of the parties have any questions
18	about procedures for today, starting with the
19	petitioner?
20	MR. UEOKA: No, thank you, Chair.
21	COMMISSIONER SCHEUER: County?
22	MR. HOPPER: No, Chair.
23	COMMISSIONER SCHEUER: OP?
24	MS. KATO: No questions. Thank you.
25	COMMISSIONER SCHEUER: Okay.

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1	Mr. Hakoda, has there been any written
2	testimony submitted on this matter?
3	MR. HAKODA: Chair, this is Riley. No
4	written testimony has been received.
5	COMMISSIONER SCHEUER: Okay. Are there any
6	members of the public who wish to testify on this
7	matter? If so, use the Raise Your Hand function.
8	Seeing none, Mr. Ueoka, you may begin your
9	presentation.
10	MR. UEOKA: Jeff Ueoka, petitioner's
11	counsel. Thank you, Chair.
12	Good morning, commission members.
13	As we were working through starting the
14	Waikapu Country Town Project, we began working with
15	the state and the county regarding a Memorandum of
16	Agreement for project-generated traffic impacts.
17	And we discovered or I guess we knew
18	that there was a requirement that from the state
19	Decision and Order Condition 8(b) that the MOAs be
20	executed prior to submittal of a subdivision
21	application to the County of Maui.
22	Normally, I think it would have worked out
23	a little easier for this MOA to be executed;
24	however, the condition of zoning from the Maui of
25	County, one of them requires the petitioner to pay
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1 its pro rata share of the Waiale Road extension.

2 As that is a major public works improvement project, it's been difficult for the 3 county to estimate what Waikapu Country Town's pro 4 5 rata share would be. And rather than enter into an 6 open-ended agreement, we've been working towards 7 that with state DOT and the county. There's a lot of 8 support for the Waiale Road extension, so we're moving towards that. 9

However, at this time, we are prepared to submit a subdivision application, so we're here to request that Condition 8(b) be amended to fall in line with Condition 1(a) of the county condition of zoning requiring that the agreements be executed prior to the approval of the first subdivision application for the project.

Thank you, Chair.

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18 COMMISSIONER SCHEUER: Thank you very19 much, Mr. Ueoka.

20 Commissioners, are there any questions for
21 petitioner's counsel or petitioner? Commissioners?
22 Commissioner Okuda?
23 COMMISSIONER OKUDA: Thank you, Mr. Chair.
24 Good morning, Mr. Atherton, Mr. Ueoka. Can

25 you confirm that all parties have signed a

DEPOSITION & TRIAL

1	stipulation to grant you the relief that you are
2	seeking?
3	MR. UEOKA: This is Jeff Ueoka. Yes,
4	Commissioner Okuda. All parties have signed a
5	stipulation.
6	COMMISSIONER OKUDA: And are you aware of
7	any community opposition to your stipulation or
8	request relief?
9	MR. UEOKA: Again, Jeff Ueoka.
10	Commissioner Okuda, we are not aware of any
11	opposition.
12	COMMISSIONER OKUDA: Thank you very much.
13	And thank you very much for your presentation.
14	Thank you, Mr. Chair. No further
15	questions.
16	COMMISSIONER SCHEUER: Thank you,
17	Commissioner Okuda.
18	Any further questions for the petitioner
19	at this time, commissioners?
20	Seeing none, let's hear from Maui County.
21	Mr. Hopper?
22	MR. HOPPER: Thank you, Chair. The Maui
23	County Department of Planning is supportive of this
24	amendment. And as has been discussed, it signed a
25	stipulation agreeing to to the modification. The

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condition of change does not actually change the 1 2 obligation; it's simply the timing. And so the 3 county is supportive of the change for the reasons set forth in the -- in the motion. 4 5 I can be available for questions if -- if 6 you would like. Thank you. 7 COMMISSIONER SCHEUER: I would like you to be available for questions. Thank you. 8 9 Commissioner Ohigashi? 10 **COMMISSIONER OHIGASHI:** My question is 11 that I know our condition is a standard condition, 12 and, Mr. Hopper, your condition appears to be a 13 standard condition. Is it a -- does it benefit both parties, or the applicant at least, that we modify 14 15 our standard condition to align with yours? 16 MR. HOPPER: Mr. Chair, I don't -- I think 17 that there are different sort of timing depending on the nature of the condition. I've seen either TIARs 18 19 or MOUs due at various times, so I don't know if the 20 zoning conditions in this case are standard. 21 But you may have a very good point, that 22 it would maybe make more sense to have these MOAs or 23 TIARs and MOAs based on them due prior to the 24 approval of subdivision rather than submittal in the 25 case the submittal is too early.



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1 I don't know if you as the LUC generally	
2 have a prior to submittal condition, but if you want	
3 to standardize that, certainly, yes, that's	
4 something to take a look at. I do think the county	
5 counsel, though, doesn't necessarily have a standard	b
6 for all of these. I think it sort of depends on the	
7 project and the nature of the improvements to be	
8 done. So I don't know if there's a standard or the	
9 LUC has this as a standard, but I think you make a	
10 good point that that rather than prior to	
11 submittal, prior to approval would be a better time	
12 to allow these to be negotiated pending subdivision	
13 approval.	
14 COMMISSIONER OHIGASHI: I don't have any	
15 other questions.	
16 COMMISSIONER SCHEUER: Thank you very	
17 much, Commissioner Ohigashi.	
18 Any further questions for the county at	
19 this time?	
20 Seeing none, can we hear from the Office	
21 of Planning and Sustainable Development, please?	
22 MS. KATO: Thank you, Chair. Office of	
23 Planning and Sustainable Development recommends	
24 approval of petitioner's motion to modify condition	
25 number 8(b). The modification would change the	



required timing of execution of the Memorandum of
 Agreement with state DOT and the County of Maui in
 relation to petitioner's subdivision application. It
 does not change the substantive requirement.

5 The DOT commented that after speaking with 6 petitioner, the department supports the revision in 7 order to avoid construction delays to the proposed 8 project. Based on DOT's support of the proposed 9 revision of the transportation condition, OPSD 10 recommends approval of petitioner's motion in the 11 form proposed by petitioner.

12 And as mentioned by the other parties, 13 OPSD also entered into a stipulation with petitioner 14 and the county to that extent. Thank you.

15 COMMISSIONER SCHEUER: Thank you very
 16 much, Ms. Kato.

17Commissioners, questions for Office of18Planning and Sustainable Development?

Seeing none, not that there's much to
rebut, but, Mr. Ueoka, do you have anything you wish
to rebut or make any final statements?

MR. UEOKA: Jeff Ueoka. I'll stay silent.
 Thank you, Chair.
 COMMISSIONER SCHEUER: Okay.

25

Any final questions for the petitioner



1 from the commissioners?

I will ask, and I'm going to say you may 2 3 feel free entirely to decline to say anything, Mr. Atherton, but this is certainly a project that this 4 5 commission has frequently turned back to to refer to 6 as a success, so I know that you turn in all your 7 annual reports on time, but do you want to give us any general appraisal of how things are proceeding 8 beyond what you're asking for us today? 9

MR. ATHERTON: Well, no. I have my maps ready, both my makai and my mauka maps, and I have my water system designed and ready to submit to the county. If I can get approval today, then I'll submit those maps next week, so they'll start processing them for -- for review.

And we hope to start. The schedule starts -- in January of next year would start the water system and the sewer infrastructure backbone system. And we're currently working with Maui County on the wastewater treatment plant and on Waiale Road.

21 COMMISSIONER SCHEUER: Thank you, Mr.
 22 Atherton.

23 MR. ATHERTON: We're hoping we can get
24 going next January, January and February.

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COMMISSIONER SCHEUER: Yeah. I mean, I



HI Commission Meeting September 23, 2021 NDT Assgn # 53150 Page 21
will say that I believe that this commission wants
to see you succeed, and succeed well. We frequently
refer back to the proceedings that you had before us
as an example of a really great way to proceed in
front of this commission in the proposal that you
have.
Anything further, commissioners?
Commissioner Aczon?
COMMISSIONER ACZON: Mr. Chair, I just
want to confirm if that was a sworn testimony.
COMMISSIONER SCHEUER: I did not swear in
the petitioner. I can retroactively do so, though it
was at the direction of the chair.
Would you affirm that the testimony you
just gave is the truth, Mr. Atherton?
MR. ATHERTON: Yes.
COMMISSIONER SCHEUER: Thank you.
Thank you, Commissioner Aczon.
Anything further, commissioners?
Okay. Seeing none, we can move on to
formal deliberations. I will note for the parties
and for the public that during the commission's
deliberations, I will not entertain any additional
input from the parties or the public unless those
individuals or entities are specifically requested



1	to do so by the chair. If called upon, any comments
2	must be limited to the question at hand.
3	Commissioners, let me confirm that each of
4	you have reviewed the record and are prepared to
5	deliberate on the subject docket. After I call your
6	name, please signify with either an aye or a nay
7	that you are prepared to deliberate on this matter.
8	Commissioner Aczon?
9	COMMISSIONER ACZON: Aye, Mr. Chair.
10	<b>COMMISSIONER SCHEUER:</b> Commissioner Chang?
11	COMMISSIONER CHANG: Aye.
12	COMMISSIONER SCHEUER: Commissioner
13	Cabral?
14	COMMISSIONER CABRAL: Yes.
15	COMMISSIONER SCHEUER: Commissioner
16	Giovanni?
17	COMMISSIONER GIOVANNI: Aye.
18	COMMISSIONER SCHEUER: Commissioner
19	Ohigashi?
20	COMMISSIONER OHIGASHI: Yes.
21	<b>COMMISSIONER SCHEUER:</b> Commissioner Okuda?
22	COMMISSIONER OKUDA: Yes.
23	<b>COMMISSIONER SCHEUER:</b> Commissioner Wong?
24	COMMISSIONER WONG: Aye.
25	COMMISSIONER SCHEUER: The chair is also

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1	prepared to deliberate on this matter.
2	Commissioners, I will entertain a motion that the
3	LUC accepts or does not accept the Motion for
4	Modification of Condition 8(b) of the Decision and
5	Order filed on February 26, 2018. The motion should
6	state the reasons for the acceptance or non-
7	acceptance of the motion and the conditions that
8	will apply.
9	Commissioners, what is your pleasure?
10	I will recognize Commissioner Ohigashi,
11	followed by Okuda.
12	COMMISSIONER OHIGASHI: I move that we
13	grant the petitioner's request in accordance with
14	the stipulation of the parties on petitioner's
15	motion for modification dated July 12th, 2021, that
16	was filed with the commission on 9/13/2021.
17	And the reason that I'm giving is that I
18	see no reason that the two conditions should not be
19	allowed.
20	COMMISSIONER SCHEUER: Okay. Is there a
21	second?
22	Was that Commissioner Okuda? Were you
23	going to second?
24	COMMISSIONER OKUDA: This is Gary Okuda. I
25	second the motion.

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1	COMMISSIONER SCHEUER: Okay.
2	Does the movant want to speak further to
3	the motion?
4	COMMISSIONER OHIGASHI: No. I think it's
5	self-evident.
6	COMMISSIONER SCHEUER: Okay.
7	Mr. Okuda?
8	COMMISSIONER OKUDA: This is Gary Okuda.
9	Thank you, Mr. Chair.
10	I do agree with the movant that it's self-
11	evident. Even so, I'd like to state the five
12	sentences which reflect the five standards why this
13	motion should be granted, just to make clear that
14	it's not like we all here just rubberstamp things
15	that, you know, everyone agrees to.
16	First of all, the motion satisfies HAR 15-
17	15-94, which deals with modification or deletion of
18	conditions or orders. That section, subparagraph (b)
19	states, and I quote.
20	"For good cause shown, the commission may
21	act to modify or delete any of the conditions
22	imposed or modify the commission's order."
23	Secondly, this petition and stipulation
24	satisfies the definition of good cause as stated by
25	the Hawai'i Supreme Court in the case Chen, C-h-e-n,
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NAEGELI (800)528-3335 DEPOSITION & TRIAL versus Mah, M-a-h, found at 146 Hawai'i 157 at 178,
 a 2020 Hawai'i Supreme Court case.

And I quote, "Good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed."

Thirdly, this stipulation and petition 8 9 satisfies the requirements of the case Kilakila, K-10 i-l-a-k-i-l-a, O Haleakala versus Board of Land and 11 Natural Resources. That's found at 138 Hawai'i 383 at 416, a 2016 Hawai'i Supreme Court case which 12 13 held, and I quote, "Agency adjudicators are also required to apply the preponderance of the evidence 14 15 burden of proof in contested cases like trial judges and civil cases." 16

With respect to the preponderance of 17 18 evidence standard, this petition and stipulation 19 satisfies the definition of such found in Masaki, M-20 a-s-a-k-i, versus General Motors Corporation 71 21 Hawai'i at page -- sorry, 74 Hawai'i 1 at page 14, a 22 1989 Hawai'i Supreme Court case which defined the 23 standard as "The preponderance standard directs the 24 factfinder to decide whether 'the existence of the 25 contested fact is more probable than its

NAEGELI

1 nonexistence.'"

2	And finally, this petition and stipulation
3	satisfies the requirements of HRS Section 91-1(5),
4	which states, and I quote, "Except as otherwise
5	provided by law, the party initiating the proceeding
6	shall have the burden of proof, including the burden
7	of producing evidence as well as the burden of
8	persuasion. The degree or quantum of proof shall be
9	a preponderance of the evidence."
10	So for those reasons, I believe the record
11	satisfies all these requirements which we as a
12	quasi-judicial body are required to follow.
13	Thank you very much, Mr. Chair.
14	Thank you to the parties for a very
15	precise presentation.
16	COMMISSIONER SCHEUER: Thank you very
17	much, Commissioner Okuda.
18	Commissioners, we're under deliberation.
19	Who wishes to speak to the motion?
20	Commissioner Cabral?
21	COMMISSIONER CABRAL: Yes. First, I do
22	want to thank my esteemed Commissioner Okuda for
23	taking care of all the absolutely proper things. On
24	the opposite end of that, I'd like to cover some of
25	the more "warm and fuzzies".



1		COMMISSIONER	SCHEUER:	Improper things?
2		COMMISSIONER	CABRAL:	What's that?
3		COMMISSIONER	SCHEUER:	Improper things?
4		COMMISSIONER	CABRAL:	Yes, absolutely. You
5	know me.			

6 Well, I want to thank Mr. Atherton again. 7 I do remember the -- I remember the site visit. I 8 remember the hearing. I remember the fact that I 9 think at the presentation he had a large number of 10 people from the community coming in. I think the 11 butcher, the baker, and the candlestick maker were 12 all present, and all in support of this project.

13 And the fact that he has gone to such 14 great lengths to make it a community project, and 15 when we look at the need -- and, well, when we get 16 lip service as a society to the need for housing, I 17 really thank the petitioner for the continued effort 18 to get this housing on the ground in order to 19 provide some type of housing at whatever level, 20 financially, people can start having more houses. 21 I think that's the supply and demand, and

the sooner we can add to the supply and demand, and greater we're going to be able to help meet the needs of our community. So I want to thank the petitioner for his continued efforts to move this

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1	huge project forward.
2	Thank you.
3	COMMISSIONER SCHEUER: Thank you,
4	Commissioner Cabral.
5	Commissioners
6	COMMISSIONER CABRAL: And obviously, I'm
7	supporting the the motion.
8	COMMISSIONER SCHEUER: Thank you,
9	Commissioner Cabral.
10	Commissioners, any further deliberation?
11	If there's none, I'll just note that I
12	will also vote in favor of the motion, just noting
13	just for clarity that the fundamental public concern
14	here, whether traffic will be appropriately dealt
15	with by this project, the timing of whether the
16	Memorandum of Agreement is completed prior to
17	subdivision's approval of submission or subdivision
18	approval doesn't have a bearing on getting the
19	proper traffic modifications needed as contributed
20	by the developer. So the public's interests are
21	protected in the course of doing this.
22	Anything further, commissioners?
23	If none, Mr. Orodenker, please poll the
24	commission.
25	MR. ORODENKER: Thank you, Mr. Chair. The

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1	motion is to grant the petitioner's motion in
2	accordance with the stipulation filed by the party.
3	Commissioner Ohigashi?
4	COMMISSIONER OHIGASHI: Aye.
5	MR. ORODENKER: Commissioner Okuda?
6	COMMISSIONER OKUDA: Yes.
7	MR. ORODENKER: Commissioner Wong?
8	COMMISSIONER WONG: Aye.
9	MR. ORODENKER: Commissioner Giovanni?
10	COMMISSIONER GIOVANNI: Aye.
11	MR. ORODENKER: Commissioner Chang?
12	COMMISSIONER CHANG: Aye.
13	MR. ORODENKER: Commissioner Cabral?
14	COMMISSIONER CABRAL: Aye.
15	MR. ORODENKER: Commissioner Aczon?
16	COMMISSIONER ACZON: Yes.
17	MR. ORODENKER: Commissioner Aczon?
18	COMMISSIONER ACZON: Yes.
19	COMMISSIONER SCHEUER: He said yes.
20	Aye.
21	MR. ORODENKER: Thank you, Mr. Chair. The
22	motion passes unanimously.
23	COMMISSIONER SCHEUER: Thank you to all
24	the parties for coming forward with that clear and
25	stipulated motion. We really appreciate it.

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HI Commission Meeting September 23, 2021 NDT Assgn # 53150 Page 30 MR. ATHERTON: 1 Thank you. 2 MR. UEOKA: Thank you. 3 MR. ATHERTON: Thank you. 4 COMMISSIONER SCHEUER: Okay. There being 5 no further business, it is 9:32 a.m., and I declare 6 this meeting adjourned. 7 COMMISSIONER WONG: Bye. See you later. COMMISSIONER CHANG: Mahalo, everyone. 8 9 Aloha. 10 COMMISSIONER SCHEUER: Aloha. 11 (The proceedings concluded at 9;32 a.m.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25

1	CERTIFICATE
2	
3	I, Davilyn Payne, do hereby certify that the
4	proceeding named herein was professionally transcribed on
5	the date set forth in the certificate herein; that I
6	transcribed all testimony adduced and other oral
7	proceedings had in the foregoing matter; and that the
8	foregoing transcript pages constitute a full, true, and
9	correct record of such testimony adduced and oral
10	proceeding had and of the whole thereof.
11	
12	IN WITNESS HEREOF, I have hereunto set my hand this
13	5th day of October, 2021.
14	
15	
16	
17	Davilyon Rayne
18	<b>u</b>
19	Davilyn Payne
20	
21	
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24	
25	

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