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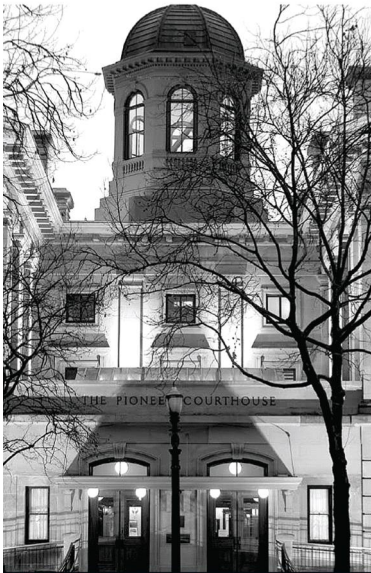
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STATE OF HAWAII

LAND USE COMMISSION

STATE OF HAWAII

LAND USE COMMISSION

Hearing held on September 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 :

- Jonathan Scheuer, Chair (Oahu)
- Nancy Cabral, Vice Chair (Big Island)
- Edmund Aczon (Oahu)
- Gary Okuda (Oahu)
- Lee Ohigashi (Maui)
- Arnold Wong (Oahu)
- Dawn N.S. Chang (Oahu)
- Daniel Giovanni (Kauai)

STAFF PRESENT BY VIDEOCONFERENCE :

- Linda Chow, Esquire
Deputy Attorney General
- Daniel Orodener, Executive Officer
- Riley Hakoda, Chief Clerk/Staff Planner
- Scott Derrickson, Staff Planner
- Natasha Quinones, Program Specialist

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

1 each participating commissioner individual remote
 2 access to the meeting via our own personal devices,
 3 so also please note that due to matters entirely
 4 outside of our control, occasional disruptions to
 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
 8 we try to restore audiovisual signals to conduct
 9 business during the pandemic.

10 For any items in which public testimony
 11 will be accepted, for any members of the public who
 12 wish to provide public testimony and who are
 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.

18 Depending on how long this meeting goes,
 19 we will take breaks from time to time, approximately
 20 10 minutes every hour.

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

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.

1 Mr. Hakoda or Ms. Quinones, has any public
2 testimony been received on adoption of the minutes?

3 **MS. QUINONES:** Chair, this is Natasha.
4 There has been no testimony received on the minutes.

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.
15 You're admitted, Mr. Church. You may enable your
16 audio and video now, please, to testify on adoption
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.

1 **MR. CHURCH:** Thank you.

2 **COMMISSIONER SCHEUER:** Okay. So you were
3 not actually testifying on this matter; is that
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.

18 **COMMISSIONER SCHEUER:** Commissioner Wong?

19 **COMMISSIONER WONG:** I move to adopt.

20 **COMMISSIONER SCHEUER:** Is there a second?

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.

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. Orodenger,
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

1 agenda item is the tentative meeting schedule.

2 Mr. Orodenger, 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

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?

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,

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.

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

25 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.

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

1 its pro rata share of the Waiale Road extension.

2 As that is a major public works
3 improvement project, it's been difficult for the
4 county to estimate what Waikapu Country Town's pro
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
9 moving towards that.

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

17 Thank you, Chair.

18 **COMMISSIONER SCHEUER:** Thank you very
19 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

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

1 condition of change does not actually change the
2 obligation; it's simply the timing. And so the
3 county is supportive of the change for the reasons
4 set forth in the -- in the motion.

5 I can be available for questions if -- if
6 you would like. Thank you.

7 **COMMISSIONER SCHEUER:** I would like you to
8 be available for questions. Thank you.

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
14 parties, or the applicant at least, that we modify
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
18 the nature of the condition. I've seen either TIARs
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.

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
 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

1 required timing of execution of the Memorandum of
2 Agreement with state DOT and the County of Maui in
3 relation to petitioner's subdivision application. It
4 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.

17 Commissioners, questions for Office of
18 Planning and Sustainable Development?

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

22 **MR. UEOKA:** Jeff Ueoka. I'll stay silent.
23 Thank you, Chair.

24 **COMMISSIONER SCHEUER:** Okay.

25 Any final questions for the petitioner

1 from the commissioners?

2 I will ask, and I'm going to say you may
3 feel free entirely to decline to say anything, Mr.
4 Atherton, but this is certainly a project that this
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
8 any general appraisal of how things are proceeding
9 beyond what you're asking for us today?

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

16 And we hope to start. The schedule starts
17 -- in January of next year would start the water
18 system and the sewer infrastructure backbone system.
19 And we're currently working with Maui County on the
20 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.

25 **COMMISSIONER SCHEUER:** Yeah. I mean, I

1 will say that I believe that this commission wants
2 to see you succeed, and succeed well. We frequently
3 refer back to the proceedings that you had before us
4 as an example of a really great way to proceed in
5 front of this commission in the proposal that you
6 have.

7 Anything further, commissioners?

8 Commissioner Aczon?

9 **COMMISSIONER ACZON:** Mr. Chair, I just
10 want to confirm if that was a sworn testimony.

11 **COMMISSIONER SCHEUER:** I did not swear in
12 the petitioner. I can retroactively do so, though it
13 was at the direction of the chair.

14 Would you affirm that the testimony you
15 just gave is the truth, Mr. Atherton?

16 **MR. ATHERTON:** Yes.

17 **COMMISSIONER SCHEUER:** Thank you.

18 Thank you, Commissioner Aczon.

19 Anything further, commissioners?

20 Okay. Seeing none, we can move on to
21 formal deliberations. I will note for the parties
22 and for the public that during the commission's
23 deliberations, I will not entertain any additional
24 input from the parties or the public unless those
25 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 **COMMISSIONER SCHEUER:** 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 **COMMISSIONER SCHEUER:** Commissioner Okuda?

22 **COMMISSIONER OKUDA:** Yes.

23 **COMMISSIONER SCHEUER:** Commissioner Wong?

24 **COMMISSIONER WONG:** Aye.

25 **COMMISSIONER SCHEUER:** The chair is also

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.

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,

1 versus Mah, M-a-h, found at 146 Hawai'i 157 at 178,
 2 a 2020 Hawai'i Supreme Court case.

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

8 Thirdly, this stipulation and petition
 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
 12 at 416, a 2016 Hawai'i Supreme Court case which
 13 held, and I quote, "Agency adjudicators are also
 14 required to apply the preponderance of the evidence
 15 burden of proof in contested cases like trial judges
 16 and civil cases."

17 With respect to the preponderance of
 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

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

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. Orodanker, please poll the
24 commission.

25 **MR. ORODENKER:** Thank you, Mr. Chair. The

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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MR. ATHERTON: Thank you.

MR. UEOKA: Thank you.

MR. ATHERTON: Thank you.

COMMISSIONER SCHEUER: Okay. There being no further business, it is 9:32 a.m., and I declare this meeting adjourned.

COMMISSIONER WONG: Bye. See you later.

COMMISSIONER CHANG: Mahalo, everyone.

Aloha.

COMMISSIONER SCHEUER: Aloha.

(The proceedings concluded at 9:32 a.m.)

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.

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19 Davilyn Payne

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