

LAND USE COMMISSION

STATE OF HAWAII

May 7, 2019

Commencing at 9:30 a.m.

Natural Energy Laboratory Hawai'i Authority

73-987 Makako Bay Drive

Kailua-Kona, Hawaii 96740

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

Consider Motion to Correct Minutes of
March 28, 2019, for Docket No. A18-805 Church
to read as follows:

"Commissioner Okuda moved to approve
Petitioner's motion that the Commission was the
appropriate accepting agency for Petitioner's
compliance with HRS Chapter 343; and, to
determine an anticipated finding of no
significant impact for the Petitioner's
EA/FONSI; and that Petitioner work with LUC
staff to put together the necessary documents
required by OEQC for publication and review for
an EA."

V. ADOPTION OF ORDER

A06-767 Waikoloa Mauka LLC, (Hawai'i)

VI. STATUS REPORT

A99-729 NEWTON FAMILY LIMITED PARTNERSHIP
(HAWAI'I)

VII. ADJOURNMENT

BEFORE: Jean Marie McManus, CSR #156

COMMISSIONERS:

JONATHAN SCHEUER, Chairperson
NANCY CABRAL, Vice Chair
AARON MAHI, Vice Chair
LEE OHIGASHI
GARY OKUDA
DAWN N.S. CHANG
ARNOLD WONG

RANDALL S. NISHIYAMA, ESQ.
Deputy Attorney General

STAFF:

DANIEL ORODENKER, Executive Officer
RILEY K. HAKODA, Chief Clerk/Planner
SCOTT A.K. DERRICKSON, AICP
RASMI AGRAHARI, Planner

STEVEN LIM, ESQ.
For A06-767 Waikoloa Mauka

LAURA KAAKUA, CEO
For Hawaiian Islands Land Trust
A99-729 Newton Family Limited Partnership

DAWN APUNA, ESQ.
Deputy Attorney General
State of Hawai'i Office of Planning

RON KIM, ESQ.
Deputy Corporation Counsel
DUANE KANUHA, Deputy Director
County of Hawai'i Planning Department

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.
2 Good morning. This is the May 7, 2019, Land Use
3 Commission Meeting.

4 First order of business is the adoption of
5 the April 3rd, 2019 minutes. Any comments or
6 corrections on the minutes?

7 If not, is there a motion to adopt?

8 VICE CHAIR MAHI: I move.

9 CHAIRPERSON SCHEUER: Moved by Commissioner
10 Mahi.

11 VICE CHAIR CABRAL: Seconded.

12 CHAIRPERSON SCHEUER: Seconded by
13 Commissioner Cabral.

14 Any discussion?

15 If not, all in favor say "aye". Any
16 opposed? The minutes are unanimously adopted.

17 Our next agenda item is the tentative
18 meeting schedule. Mr. Orodener.

19 EXECUTIVE OFFICER: Thank you, Mr. Chair.

20 On May 22nd we will be back here at NELHA
21 for the Bencorp and Shopoff matters. We have that
22 scheduled for the 22nd and 23rd at the moment.

23 On June 5th we're asking the Commissioners
24 to keep that date open.

25 On June 6th, we will be on Oahu for

1 Poma'ikai Partners IAL site visit.

2 On June 26th, we will be on Maui for the
3 evidentiary hearing for Ka'ono'ulu Ranch.

4 On June 27th, we will be here again for the
5 Bencorp and Shopoff matter, assuming that there's an
6 adoption of order on those dates.

7 July 10th we're asking the Commissioners to
8 keep open as well.

9 July 11th is the Poma'ikai Partners IAL
10 hearing on Oahu.

11 And on July 25th, we are on Kaua'i for the
12 Kealia EIS hearing.

13 And August 14th and 15th we're asking the
14 Commissioners to keep aside. We will be on Kaua'i
15 for Commissioner training.

16 And August 28th and 29th, we will be on
17 Oahu for the Waiawa matter; and on 29th Kaua'i for
18 the Hokua matter.

19 September is HCPO.

20 CHAIRPERSON SCHEUER: Thank you. Are there
21 any questions for the executive officer?

22 Hearing none.

23 Our next agenda item Action Meeting Docket
24 No. A18-805 - Petition of Kenneth Stanley Church and
25 Joan Evelyn Hildal to Amend the Conservation Land Use

1 District Boundary into the Agricultural Land Use
2 District for Approximately 3.4 Acres of Land at
3 Wailea, Island of Hawaii, Tax Map Keys: (3)2-9-003
4 and lots 29 and lot 60 to Correct Minutes of the
5 March 28, 2019 meeting to read as follows:

6 Quote - I will be reading how the minutes
7 should now read.

8 "Commissioner Okuda moved to approve
9 Petitioner's motion that the Commission was the
10 appropriate accepting agency for Petitioner's
11 compliance with HRS Chapter 343; and, to determine an
12 anticipated finding of no significant impact for the
13 Petitioner's Draft EA/FONSI; and that the Petitioner
14 work with LUC staff to put together the necessary
15 documents required by OEQC for publication and review
16 for an EA."

17 Let me update the record.

18 On April 26, 2019, the Commission received
19 an email from Mr. Church requesting clarification on
20 the minutes for March 28, 2019. In response to his
21 inquiry, LUC staff discovered that the minutes
22 incorrectly reported Commissioner Okuda's motion
23 after a review of the transcript.

24 On April 30, 2019, the Commission mailed an
25 agenda notice letter to the Parties and the Hawaii

1 County mailing lists.

2 Are there any individuals wishing to
3 provide public testimony on this matter today?

4 I note there's no one wishing to provide
5 public testimony.

6 Concluding public testimony, I will
7 entertain a motion to revise and correct the minutes
8 to March 28, 2019 meeting to reflect the stated
9 correction.

10 Commissioners, what is your pleasure?

11 COMMISSIONER OKUDA: I make the motion and
12 so move that the minutes be corrected as you stated
13 on the record.

14 VICE CHAIR MAHI: Second.

15 CHAIRPERSON SCHEUER: A motion has been
16 made by Commissioner Okuda, and seconded by
17 Commissioner Mahi.

18 Is there any further discussion on the
19 motion?

20 Hearing none, Mr. Orodenker, please poll
21 the Commission.

22 EXECUTIVE OFFICER: Mr. Chair, the motion
23 is to amend the minutes.

24 Commissioner Okuda?

25 COMMISSIONER OKUDA: Yes.

1 EXECUTIVE OFFICER: Commissioner Mahi?

2 VICE CHAIR MAHI: Aye.

3 EXECUTIVE OFFICER: Commissioner Chang?

4 COMMISSIONER CHANG: Yes.

5 EXECUTIVE OFFICER: Commissioner Ohigashi?

6 COMMISSIONER OHIGASHI: Yes.

7 EXECUTIVE OFFICER: Commissioner Cabral?

8 VICE CHAIR CABRAL: Yes.

9 EXECUTIVE OFFICER: Commissioner Wong?

10 COMMISSIONER WONG: Yes.

11 EXECUTIVE OFFICER: Chair Scheuer?

12 CHAIRPERSON SCHEUER: Aye,

13 EXECUTIVE OFFICER: Thank you. Mr. Chair,
14 the motion passes unanimously.

15 A06-767 WAIKOLOA MAUKA

16 CHAIRPERSON SCHEUER: Our next agenda item
17 is A06-767 Waikoloa Mauka to Approve the form of the
18 order in this matter.

19 Will the parties please identify themselves
20 for the record?

21 MR. LIM: Steven Lim, attorney for
22 Petitioner, Waikoloa Highlands Incorporated.

23 MR. KIM: Ron Kim, Deputy Corporation
24 Counsel for the County of Hawaii. Appearing with me
25 is Deputy Director for the Planning Department, Mr.

1 Duane Kanuha.

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

4 CHAIRPERSON SCHEUER: Let me update the
5 record for this docket.

6 The Commission met in Kailua, Kona-Hawaii
7 on November 28-29, 2018. Written public testimony
8 was submitted to the Commission by Julia Alos and
9 Petitioner's Exhibit 65 was admitted to the record.

10 The Commission voted 7-1 on Docket No.
11 AO6-767 that a violation of conditions had occurred,
12 and that there had not been a substantial
13 commencement of use of the land, and that the
14 Petition Area should be reverted to its former
15 agricultural land use designation; and instructed
16 staff to prepare a proposed Findings of Fact,
17 Conclusions of Law, and Decision and Order consistent
18 with its decision for consideration, deliberation,
19 and adoption.

20 At that meeting, prior to voting, all the
21 Commissioners affirmed that they had reviewed the
22 record and transcripts in this Docket.

23 On March 18, 2019, the Commission mailed an
24 agenda notice letter to the Parties and the Hawaii
25 County mailing lists advising that the adoption of

1 the order for A06-767 would be addressed at the March
2 27-28, 2019 meeting.

3 On March 27, 2019, the Commission deferred
4 the adoption of the order.

5 On April 30th of 2019, the Commission
6 mailed an agenda notice letter to the Parties and the
7 Hawaii County mailing lists advising that the
8 adoption of the order for A06-767 would be addressed
9 at the May 7, 2019 meeting.

10 Is there anyone in the audience who wishes
11 to provide public testimony on this matter?

12 Seeing none.

13 Mr. Lim, can you please confirm that you
14 have reviewed and will comply with HAR 15-15-45.1
15 with regard to the reimbursement of hearing expenses?

16 MR. LIM: Yes, we have reviewed it on
17 behalf of the Petitioner. Petitioner agrees to the
18 Commission's reimbursement policy.

19 CHAIRPERSON SCHEUER: Mr. Lim, before the
20 Commission goes into deliberation on this matter, I
21 understand you would like to make a statement to the
22 Commission.

23 MR. LIM: Yes, thank you very much, Mr.
24 Chairman.

25 I will be very brief. Again, I want to

1 thank the Commission for its deliberations in this
2 matter. We don't agree -- Petitioners don't agree
3 with the end result, but we do want to make three
4 points for the record before we close.

5 One is a procedural point. And obviously,
6 based upon Hawaii Supreme Court case law, especially
7 relating to the Kaniakapupu and the Lanai Company
8 case before the Commission that were on appeal.

9 An OSC proceeding is a contested case as
10 defined in Chapter 91.

11 One of the requirements of a contested case
12 is that if a decision is adverse to any party, that
13 all the Commissioners must have attended all of the
14 OSC hearings, or they won't be qualified to have, in
15 quotes, "heard and examined all of the evidence"
16 according to HRS Section 91-11.

17 If that's the case here, which I believe
18 so, the state law at 91-11 requires that a proposed
19 Decision and Order be served on the parties, and
20 their be given an opportunity to give their comments
21 and to file exceptions and present argument to the
22 Commission, the same procedure that you see in your
23 typical district boundary amendment process.

24 Only then will the Commissioners who have
25 not attended all of the evidentiary hearings be

1 qualified to have, quote, "heard and examined all of
2 the evidence", close quote.

3 So we are aware that at least two of the
4 Commissioners did not attend all of the evidentiary
5 hearings, so that would be point one.

6 I think the Commission Rule 15-15-93(d)
7 also requires the adoption of the proposed Decision
8 and Order.

9 There are also no written findings in law,
10 at least I haven't seen any written findings of facts
11 or conclusions of law, decision and order that the
12 Commission would sign in this matter. Is there one
13 that's available today?

14 I don't have it anyway; Petitioner doesn't
15 have it. So therefore we can't tell whether there
16 are any written rulings on all substantive motions
17 such as Petitioner's oral motion to dismiss made in
18 November 28, 2018 hearing.

19 Secondly, we believe that the Petitioner's
20 -- we believe the Commission is required to have six
21 affirmative votes to take action on any OSC.

22 While we understand that the Aina Le'a case
23 noted that some of the requirements of Section 205-4
24 need not be followed in an OSC, we would argue that
25 this is essentially reclassification of the land, and

1 otherwise why is there a provision allowing the
2 Commission to change back the land to either revert
3 the land, or to change it to a more appropriate
4 classification such as Urban in this case?

5 So even if only five votes are required for
6 this action, Petitioner repeats its argument that the
7 Petition Area is rightly in the Rural District. No
8 party has alleged that it should be used for
9 agricultural purposes, and the Commission's own
10 findings in the original Decision and Order that the
11 land is unsuitable for agricultural purposes I think
12 stand.

13 And lastly, Petitioner would like to thank
14 the Commission again, but we really request that the
15 Commission look at the obligation the Commission has
16 on any OSC, Order to Show Cause. Is it to revert the
17 land? Or is it to compel compliance of conditions of
18 approval?

19 We think, we believe, especially after
20 going through this hearing, is that the Draconian
21 option of reversion should be reserved for only
22 extreme cases, such as Petitioner's willful disregard
23 of the Commission's orders after notice.

24 Things like the instant Petition, we
25 believe they submitted sufficient evidence to allow

1 the Commission not to revert. And with that, I'll
2 reserve all of our objections made during the
3 hearing.

4 And, again, I appreciate your
5 consideration. Thank you.

6 CHAIRPERSON SCHEUER: Thank you, Mr. Lim.

7 Commissioners, before you, for your
8 consideration, deliberation and adoption is a
9 proposed order, Findings of Fact, Conclusions of Law
10 and Decision and Order prepared by staff as
11 instructed at the last meeting on this docket.

12 Any discussion? Commissioner Okuda.

13 COMMISSIONER OKUDA: Mr. Chair, I would
14 request that we be given additional time for two
15 things: Number one, to review the staff draft, but
16 also additional time to consider Mr. Lim's
17 presentation and points that he made to determine
18 what course of action might need be taken regarding
19 that.

20 Although, you know, I recognize the fact
21 Mr. Lim did not present something in writing as far
22 as a written motion, I think it behooves us to also
23 take time to consider what he's raised.

24 But with the Chair's indulgence, I do have
25 one question for Mr. Lim if at some point in time I

1 would be allowed to ask it.

2 CHAIRPERSON SCHEUER: Let me first see
3 whether other Commissioners have comments on your
4 desire to defer action on this matter.

5 Commissioner Chang.

6 COMMISSIONER CHANG: I would concur with
7 Commissioner Okuda's request, as I would like some
8 additional time to review the proposed order as well
9 as consider Mr. Lim's oral request today.

10 CHAIRPERSON SCHEUER: Commissioners?

11 COMMISSIONER OHIGASHI: Mr. Chairman.

12 CHAIRPERSON SCHEUER: Commissioner
13 Ohigashi.

14 COMMISSIONER OHIGASHI: I would like to
15 request that we enter into executive session for the
16 purposes of consulting with our attorney to determine
17 the procedures that we should follow in adopting this
18 Findings of Facts and Conclusions of Law, so I'm
19 going to make that motion.

20 CHAIRPERSON SCHEUER: A motion has been
21 made to go into executive session to consult with our
22 attorney on our powers, duties, privileges, and
23 immunities, particularly regarding the procedures
24 that we must follow in adopting this order.

25 Is there a second?

1 COMMISSIONER WONG: Second.

2 CHAIRPERSON SCHEUER: It has been seconded
3 by Commissioner Wong. Is there discussion on the
4 motion?

5 If not, all in favor say "aye". Anybody
6 opposed? The Commission will go into executive
7 session.

8 (Executive session.)

9 CHAIRPERSON SCHEUER: We are back on the
10 record.

11 Commissioners, we were discussing that
12 before you for your consideration, deliberation and
13 adoption was a proposed Findings of facts,
14 Conclusions of Law, and Decision and Order prepared
15 by the staff as they had been instructed to at the
16 last meeting on this docket.

17 Commissioner Okuda.

18 COMMISSIONER OKUDA: Thank you, Mr. Chair.

19 Mr. Chair, I would like to make a motion to
20 defer the matters on the agenda regarding this docket
21 to consider the request that was made by Mr. Lim,
22 which he orally stated, with this proviso:

23 Provided that within 48 hours as of right
24 now, Mr. Lim puts in writing his request so that
25 we're very clear what the request is, and states the

1 legal basis for the request he is making. And when I
2 say "state the legal basis", I mean specific citation
3 to either statute, rule, case authority, or other
4 legal authority, and containing the appropriate
5 citation to such authority, and file that request
6 with the Land Use Commission.

7 CHAIRPERSON SCHEUER: Thank you. Mr.
8 Okuda.

9 COMMISSIONER WONG: Second.

10 CHAIRPERSON SCHEUER: Commissioner Wong has
11 seconded the motion.

12 So there's a motion before us to defer for
13 the reasons with the provisos provided.

14 Is there discussion on this motion?
15 Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you, Mr. Chair.

17 The reason why I'm making this motion is, I
18 believe that even though much time has already been
19 spent on this docket, Mr. Lim has raised on its face
20 what seemed to be legitimate concerns, and I think it
21 behooves any decisionmaker to give him and his client
22 due process, meaning the opportunity to be heard on
23 matters which, on its face, seem to be made in good
24 faith, and so I think that -- or I would urge support
25 of this motion.

1 CHAIRPERSON SCHEUER: Commissioner Okuda,
2 may I ask you a question about your motion?

3 Procedurally, if the Petitioner filed a
4 brief, the other parties in this case would have a
5 chance to respond to their brief, and then the
6 Petitioner might have a further chance to answer
7 anything that was in those briefs.

8 Do you believe that it should be a part of
9 the process, and if so, what timelines did you
10 envision?

11 COMMISSIONER OKUDA: Yes, Mr. Chair. I'm
12 sorry I didn't think of that.

13 I would suggest that the parties be allowed
14 to file any responses to Mr. Lim's request. I would
15 likewise suggest and request that they file their
16 responses in writing with the Land Use Commission
17 within 48 hours of being served with Mr. Lim's
18 document; service means receipt by email, hand
19 delivery, not by putting it in the mail, regular U.S.
20 mail, and that Mr. Lim have 24 hours thereafter to
21 respond or file a reply limited to only those items
22 which were filed in response to his initial filing,
23 and the filing that he makes within would have to be
24 with the Land Use Commission within 24 hours after
25 receiving the response by any other party.

1 CHAIRPERSON SCHEUER: Thank you for that
2 clarification.

3 MR. LIM: I want to make it clear, it's not
4 my request that the Commissioners do this. I'm just
5 pointing out what Chapter 91 requires.

6 CHAIRPERSON SCHEUER: Are you stating for
7 the record that you're not agreeing to file such a
8 written document as requested by this Commission?

9 MR. LIM: We could file it, but I don't
10 want to be limiting my rights by doing so.

11 CHAIRPERSON SCHEUER: Mr. Okuda.

12 COMMISSIONER OKUDA: Mr. Chair, my motion
13 is requesting the deferral based specifically on what
14 has been orally stated here on the record today. So
15 by Mr. Lim -- so, Mr. Lim, it's to give you the -- I
16 should speak to the Chair not specific party.

17 So, Mr. Chair, it's to allow counsel who is
18 making this request the ability to put in writing so
19 that it's very clear what the request is, so that the
20 party who counsel is representing has their due
21 process rights respected.

22 Again, the reason to ask for this to be
23 placed in writing is so that we are very clear that
24 we don't misinterpret what was stated on the record
25 today as the basis for the statements.

1 CHAIRPERSON SCHEUER: Thank you very much,
2 Commissioner Okuda.

3 Is there further discussion on the motion
4 with its clarifications by the Commission?

5 Commissioner Chang.

6 COMMISSIONER CHANG: Mr. Okuda, 48 hours, I
7 guess I would ask the parties, I want to be
8 reasonable, and you've provided 48 hours. If all the
9 parties agree to that, and they stipulate with your
10 time period, I'm comfortable; but if there is a
11 request for additional time, I would like to consider
12 that.

13 MR. LIM: Perhaps 72 hours.

14 CHAIRPERSON SCHEUER: Hold on. The
15 question was addressed through me to Commissioner
16 Okuda.

17 Commissioner Okuda.

18 COMMISSIONER OKUDA: Commissioner Chang, I
19 believe 48 hours is a reasonable amount to submit
20 both the initial statement that Mr. Lim made and any
21 reply to that.

22 The reason why I believe it's reasonable
23 is, for example, when we're in trial in circuit
24 court, the judge oftentimes will give us only
25 12 hours or the next morning to submit a memorandum

1 that something -- an issue that came up at the close
2 of the trial date but, you know, I believe Mr. Lim,
3 if he mentioned 72 hours. I think 72 hours would
4 also be a reasonable amount, so I would amend my
5 motion and request that the parties -- that Mr. Lim
6 be given 72 hours to submit his initial, or submit
7 confirmation in writing as far as what he stated on
8 the record so the submission is basically confirming
9 in writing what was said here orally on the record
10 today.

11 And, again, let me just supplement that,
12 Mr. Chair, if I can.

13 This is not meant to be a criticism of
14 anyone, but it would have been possible, if this was
15 going to be an important issue, to file something in
16 writing beforehand so all of us could have at least
17 tried to do our homework to educate ourselves on this
18 issue.

19 So the filing within 72 hours would be to
20 basically put in writing what was said here on the
21 record today. It's not intended to expand what was
22 stated here on the record today.

23 CHAIRPERSON SCHEUER: Thank you, Mr. Okuda.
24 Commissioner Ohigashi.

25 COMMISSIONER OHIGASHI: Just a short

1 clarification.

2 72 hours, so what we're saying is Friday,
3 by this Friday. If you're giving the county and the
4 state another 24 hours, that would be on the weekend,
5 but that would be probably Tuesday their response is
6 due. I'm just trying to clarify.

7 CHAIRPERSON SCHEUER: Commissioner
8 Ohigashi, first of all, I think because the motion
9 has been clarified a few times. I would actually ask
10 to have the most clear record, that the original
11 motion and second be withdrawn, and the motion be
12 restated in its entirety.

13 With that said, I would also like to
14 briefly check with the parties, knowing that we're
15 not bound by their wishes, whether the rough
16 timelines that we're talking about, taking into
17 account weekends and other issues would be acceptable
18 to them.

19 I'm going to go to the parties one by one.

20 Mr. Lim?

21 MR. LIM: Petitioner can file its position
22 statement by close of business this Friday.

23 CHAIRPERSON SCHEUER: Hawaii County?

24 MR. KIM: Hawaii County would ask, I
25 believe, for 72 hours as well following the filing of

1 Mr. Lim's position statement.

2 CHAIRPERSON SCHEUER: Would you like that
3 72 hours to include or exclude weekends, holidays,
4 bank holidays, and other birthdays?

5 VICE CHAIR CABRAL: Power outages.

6 MR. KIM: We can include it.

7 CHAIRPERSON SCHEUER: Office of Planning?

8 MS. APUNA: I would like to note that the
9 rules provide one week for responses to motions, so
10 that would be --

11 CHAIRPERSON SCHEUER: This is not a motion,
12 however.

13 MS. APUNA: Well, response to whatever
14 question.

15 CHAIRPERSON SCHEUER: Are you asking for a
16 week, Ms. Apuna?

17 MS. APUNA: I think that's reasonable. If
18 the Petitioner puts in the written questions by
19 Friday, I think it's reasonable for the other parties
20 to respond by the following Friday.

21 CHAIRPERSON SCHEUER: And, Mr. Lim, if you
22 have further response to the briefs from the county
23 or the Office of Planning, how long would you -- if
24 the 24 hours, which was initially proposed by
25 Commissioner Okuda acceptable?

1 MR. LIM: We could file that by close of
2 business the next Monday.

3 CHAIRPERSON SCHEUER: Thank you, parties.

4 So I suggested -- you don't have to do
5 it -- but I suggested that it might be best to
6 withdraw the first motion and just state a new motion
7 in its entirety.

8 Is the movant and seconder open to that?

9 COMMISSIONER OKUDA: Yes.

10 CHAIRPERSON SCHEUER: The motion that was
11 on the table has been withdrawn and the secondary
12 concurred with that.

13 Is the movant ready to make a new motion?
14 Do you want a couple minutes?

15 COMMISSIONER OKUDA: May I have a moment
16 just to --

17 CHAIRPERSON SCHEUER: We're going into
18 recess.

19 (Recess taken.)

20 CHAIRPERSON SCHEUER: We are back on the
21 record.

22 Commissioner Okuda.

23 COMMISSIONER OKUDA: Thank you, Mr. Chair.

24 I would like to make a motion that we defer
25 the matters on the agenda regarding this docket to

1 consider the oral request that was made by Mr. Lim,
2 which he stated on the record, provided that the
3 following take place:

4 Number one, that Mr. Lim confirm in writing
5 and state the request that he made by Friday May 10,
6 2019, close of business. And confirmation means
7 filing with the Land Use Commission and serving on
8 all other parties by email or hand-delivery his
9 filing, and that the other parties may have until
10 close of business Friday May 17 to file their
11 responses to what Mr. Lim has filed, and to serve by
12 either hand-delivery or email to all other parties,
13 including Mr. Lim, their responses, and Mr. Lim will
14 have until the close of business Monday, May 20 to
15 submit any reply limited to the issues or matters
16 that the other parties had filed and served on him in
17 their responses.

18 The filing shall include any citation or --
19 strike that.

20 The filing shall include citation to the
21 appropriate legal authority for any request or
22 statements made. Legal authority means citation to
23 the appropriate statute, rule or case law. That's my
24 motion.

25 COMMISSIONER WONG: Second.

1 CHAIRPERSON SCHEUER: The motion has been
2 made by Commissioner Okuda and seconded by
3 Commissioner Wong.

4 Is there any discussion on the motion?
5 Hearing none.

6 Commissioner Okuda.

7 COMMISSIONER OKUDA: Mr. Chair, I
8 incorporate by reference what I said earlier about
9 the reasons about making my prior motion.

10 CHAIRPERSON SCHEUER: Thank you.

11 Commissioner Chang.

12 COMMISSIONER CHANG: Before we act on the
13 motion, can I ask Mr. Lim why he didn't file a
14 proposed --

15 CHAIRPERSON SCHEUER: Commissioner Chang,
16 please direct it towards me.

17 COMMISSIONER CHANG: I would like to ask
18 the parties why they didn't file proposed Findings of
19 Facts, and Decision and Order to the LUC on this
20 matter?

21 CHAIRPERSON SCHEUER: I'll give you each
22 about a minute to respond.

23 MR. LIM: In short, the position is that an
24 order to show cause, unlike district boundary
25 amendment petition, is the Commission's burden.

1 MR. KIM: The county was also believing
2 that the Commission would file a proposed finding of
3 fact, conclusion of law. I believe that was ordered
4 at the conclusion of the last hearing.

5 MS. APUNA: I concur with the other
6 parties.

7 CHAIRPERSON SCHEUER: Commission, knowing
8 we are in deliberation among ourselves, is there any
9 further discussion on this matter?

10 Hearing none, Mr. Orodener, please poll
11 the Commission.

12 EXECUTIVE OFFICER: Thank you, Mr. Chair.

13 The motion is to defer this matter to allow
14 Petitioner's arguments to be submitted in writing by
15 Friday May 10th with responses due from the other
16 parties by Friday May 17th, and the response is due
17 on May -- responses from the Petitioner by May 20th.

18 Commissioner Okuda?

19 COMMISSIONER OKUDA: Yes.

20 EXECUTIVE OFFICER: Commissioner Wong?

21 COMMISSIONER WONG: Yes.

22 EXECUTIVE OFFICER: Commissioner Cabral?

23 VICE CHAIR CABRAL: Yes.

24 EXECUTIVE OFFICER: Commissioner Ohigashi?

25 COMMISSIONER OHIGASHI: Yes.

1 EXECUTIVE OFFICER: Commissioner Chang?

2 COMMISSIONER CHANG: Yes.

3 EXECUTIVE OFFICER: Commissioner Mahi?

4 VICE CHAIR MAHI: Aye.

5 EXECUTIVE OFFICER: Chair Scheuer?

6 CHAIRPERSON SCHEUER: Aye.

7 EXECUTIVE OFFICER: Thank you. Mr. Chair,
8 the motion passes unanimously.

9 A99-729 NEWTON FAMILY LIMITED PARTNERSHIP

10 CHAIRPERSON SCHEUER: I will begin with a
11 disclosure that the land that is the subject of this
12 docket was recently gifted to the Hawaiian Island
13 Land Trust, of which I am currently the Board Chair.

14 While I have no financial benefit
15 whatsoever from this transaction or from our
16 management on the land, in abundance of caution, and
17 to avoid any appearance of impropriety, I'm going to
18 recuse myself from this matter, and Vice Chair Cabral
19 will reside for the remainder of the hearing.

20 (Chairperson Scheuer leaves the room.)

21 ACTING CHAIR CABRAL: The next item on the
22 agenda, Status Report on Docket A99-729 Newton Family
23 Limited Partnership.

24 Let me pause for a moment and have all of
25 the parties introduce themselves for the record on

1 this docket, please.

2 MS. KAAKUA: Aloha, Commissioners, thank
3 you for allowing me to be here today. My name is
4 Laura Kaakua, and I'm CEO of Hawaiian Islands Land
5 Trust.

6 MR. KIM: Good morning, Commissioners.
7 Deputy Corporation Counsel, Ron Kim for the County of
8 Hawaii, and with me is Deputy Director -- or Director
9 of Planning Department, Mr. Duane Kanuha.

10 MS. APUNA: Good morning, Deputy Attorney
11 General Dawn Apuna on behalf of State Office of
12 Planning.

13 ACTING CHAIR CABRAL: Thank you very much.

14 Let me update the record in this docket.

15 On November 16, 2001, the Commission issued
16 its Decision and Order for this docket.

17 From 2002 until 2018, the Commission
18 received the annual reports and the various County of
19 Hawai'i comments and correspondence on the annual
20 reports.

21 On April 17, 2019, the Commission received
22 a copy of the County of Hawaii's correspondence to
23 the Petitioner Newton's representative Belt Collins
24 describing how water issues and zoning issues had not
25 been addressed in the response in their earlier

1 notice of March 19, 2018.

2 On April 24, 2019, LUC staff sent an email
3 notifying Petitioner Newton's attorney, Steve Lim,
4 that in reaction to the information contained in
5 County of Hawaii's letter, the LUC would be
6 requesting a status report at its May 7, 2019
7 meeting.

8 On April 25, 2019, Petitioner Newton's
9 attorney replied via email that they were authorized
10 to move forward and would be responding soon. Later
11 that day, a Notice of Transfer of Ownership from the
12 Newton Family Partnership to Hawaiian Islands Land
13 Trust was filed by Petitioner.

14 On April 30, 2019, the Commission mailed an
15 agenda notice letter to the Parties and the Hawaii
16 County mailing lists advising of the May 7, 2019
17 meeting.

18 For the members of the Public, please be
19 reminded that the Commission will not be considering
20 the merits of A99-729 Newton Family Limited
21 Partnership Petition; rather, the Commission is
22 interested in learning about the current state of
23 activities related to this docket, including
24 compliance with conditions.

25 Let me go over our procedures for this

1 docket.

2 First those individuals desiring to provide
3 public testimony for the Commission's consideration
4 will be asked to identify themselves and will be
5 called in order to our witness box where they will be
6 sworn in prior to testimony.

7 Have any public signed up to be heard
8 today?

9 EXECUTIVE OFFICER: Madam Chair, we don't
10 have anyone signed up.

11 ACTING CHAIR CABRAL: Thank you. No one
12 has signed up so we will proceed.

13 The Chair will now call for the Status
14 Report from the new owner, Hawaiian Islands Land
15 Trust. Please, Laura, please proceed.

16 MS. KAAKUA: Thank you.

17 So I just want to give a little bit of
18 background from the Hawaiian Islands Land Trust's
19 perspective.

20 And also related to myself, the property is
21 new to the land trust, and I'm also new to the land
22 trust, so I started as CEO with Hawai'i Island Land
23 Trust on March 11th, and two days later the deed for
24 the Kukuau forested property was recorded giving
25 title to the Hawaiian Island Land Trust, and so it is

1 a very new property to us.

2 And just a little bit of background on why
3 we were very thankful for the Newton's donation of
4 this property.

5 The mission of the Hawaiian Islands Land
6 Trust is to protect the lands that sustain us for
7 future and current generations. We currently own
8 five preserves throughout the islands, most are
9 coastal preserves, and we actively steward all those
10 preserves in partnership with communities; and we
11 also hold conservation easements restricting lands
12 that have high conservation or cultural values.

13 And so for us this property, which is over
14 1600 acres in total above Hilo, is really exciting
15 from a conservation standpoint, because the property
16 still has very healthy koa and ohia trees on the
17 property, as well as predominantly native understory
18 of uluhe and pala'a ferns and moa.

19 I took an initial site visit onto the
20 property a few weeks back, and the first thing that
21 we saw upon getting up to the land was an i'o
22 Hawaiian hawk perched high up on one of the trees.
23 So it is native habitat.

24 What we also noticed right away is that
25 there are invasive species rapidly encroaching upon

1 the native forest, strawberry guava, albesia, African
2 tulip. And so our thought when we accepted the
3 property was we know there is native species here.
4 It's really the land trust's responsibility to
5 protect what we can, and that was a special area for
6 us.

7 And so now, looking forward now, that we
8 have accepted this generous donation from the Newton
9 Family, we are anticipating needing to actively
10 manage the forest rather than, okay, it's now under
11 the land trust and we're just not going to touch it.

12 Because there is invasive species, we do
13 anticipate getting outside sources to give us their
14 expert opinions on whether the property should be
15 fenced for native habitat; what that would look like
16 to remove those invasive species.

17 And so we're really just starting to
18 develop a plan for the land. And one of our big
19 questions is, is the current agricultural land use
20 district, agricultural county zoning, actually
21 possibly beneficial to not subdivide and develop the
22 property, but to help us actively steward the
23 property's natural and cultural resources, its native
24 resources, and what's actually on the property.

25 And so we would request a year's time if

1 possible to give us a chance to make the best plan
2 possible for the forest resources on the land, and be
3 able to update this Commission as our plan
4 progresses.

5 We think that in six months time we can
6 have a biological survey done with an inventory so we
7 know what native species are there; we know the
8 extent of the invasive species there.

9 And in six months time we will have some
10 opinions from our other conservation partners on
11 different forest stewardship possibilities. Then we
12 think in a year's time we will have our full detailed
13 plan for management of the land, and then we will
14 then be able to know if we can support a full
15 reversion back to the original Conservation District,
16 or if maybe there's a possible middle ground of the
17 A800, which the county had proposed; or maybe based
18 on our conservation practices that we want to engage
19 in, we might actually benefit from the current county
20 zoning.

21 So we're really not sure at this time, and
22 we're hoping for just a little more time to help us
23 plan.

24 I can say now that we will not be pursuing
25 subdivision of the property. We don't want it to be

1 subdivided to allow for different residential
2 possibilities. We want to see an intact forest, and
3 we're just trying to find the right steps to get us
4 there.

5 ACTING CHAIR CABRAL: Thank you very much.

6 I'd like now to call on County of Hawai'i.
7 Any questions of the Petitioner?

8 MR. KIM: We have no questions of the
9 Petitioner and -- let me just check -- no objection
10 to the request for a year to get a conservation
11 management plan.

12 ACTING CHAIR CABRAL: Thank you very much.

13 Can I ask the Office of Planning, do you
14 have any questions or comments at this time?

15 MS. APUNA: I just had a question.

16 I think she mentioned 1600 acres was the
17 total area, is that correct?

18 So I understand the Petition Area is about
19 800, but what is the other? Was it they donated
20 1600.

21 MS. KAAKUA: Right. They donated the
22 entire tax map key and it's over 1600 acres. The
23 mauka half of the property is still within the
24 Conservation District. And so that mauka half of the
25 property actually has the native forest on the mauka

1 half is much more in tact. It's 800 acres that's
2 further makai in the Agricultural District that we
3 anticipate will need more active management to remove
4 those invasive species. We don't want to change the
5 mauka Conservation District into Ag.

6 ACTING CHAIR CABRAL: Thank you.

7 I would like to ask then if there are any
8 comments or questions from anyone in the public that
9 has not already commented?

10 Moving right along.

11 Do you, Laura, have any other comments you
12 would like to make at this time? Are you ready to
13 conclude your presentation?

14 MS. KAAKUA: I think the only thing to add
15 is, we would welcome status updates being required of
16 us to keep you all up-to-date, so I don't know if one
17 year seems acceptable to the Commission. We welcome
18 as frequently as you would like us to update you all
19 until we reach our conclusion, which would really
20 either be full concurrence with reversion, or we will
21 come back to you and request specific amendments that
22 may no longer make sense, because they were tied to
23 the original subdivision plan.

24 ACTING CHAIR CABRAL: Thank you.

25 At this point I would like to open it up to

1 the Commissioners for questions for our Petitioner.

2 COMMISSIONER CHANG: I would just like to
3 make a comment.

4 I appreciate you being here today providing
5 us some clarification and update. And the fact that
6 when you did acquire the property you were aware of
7 the LUC conditions.

8 MS. KAAKUA: Yes. I think that there was
9 absolutely proper disclosure made to Hawaiian Islands
10 Land Trust. And my understanding is that my
11 predecessor was definitely aware of the conditions
12 and that we were not -- that we would basically be
13 inheriting a property that was not in compliance. So
14 our real goal is to get in compliance, or amend so
15 that the goals of the Commission and the land trust
16 and the county and state are in alignment.

17 COMMISSIONER CHANG: Thank you.

18 VICE CHAIR CABRAL: Any other comments?
19 Commissioner Lee.

20 COMMISSIONER OHIGASHI: There is a Korean
21 comment --

22 ACTING CHAIR CABRAL: Spare me.

23 COMMISSIONER OHIGASHI: So my question is:
24 Do you intend to follow the reporting
25 requirements under the existing? And I'm just

1 curious when is the 2019 reporting requirements due;
2 if you know?

3 MS. KAAKUA: Yes. So we do intend to file
4 our annual report, unless it needs to be changed, but
5 our default would be that we would file an annual
6 report with this Commission on time. And I don't
7 know off the top of my head exactly when that annual
8 report is due.

9 ACTING CHAIR CABRAL: That's honest. Thank
10 you.

11 Commissioners, any other comments or
12 questions? Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you, Ms. Chair.

14 As a new owner, does your entity have any
15 intention to use the property for agriculture?

16 MS. KAAKUA: So any intention of using the
17 property for agriculture, so my understanding of
18 agriculture is that it's wide enough to also
19 encompass forestry or sustainable forestry, so I
20 guess there is a possibility that -- especially
21 invasive species that we remove from the land, that
22 if there was another use for them, we would want to
23 make use of them, which I believe would fall under
24 forestry, which would fall under agriculture, so I
25 think in that respect.

1 But really our goal for that landscape is
2 to preserve it and kind of enhance it as native
3 forest, so limited in use to forestry.

4 COMMISSIONER OKUDA: So in other words, if
5 you did conduct agricultural activity, it would be
6 basically for purposes broadly described as
7 conservation; is that what you're saying?

8 MS. KAAKUA: Yes, I think so, right. So
9 native forest management. I guess native forest
10 management. I think most people would typically
11 think of that as conservation and conservation
12 practices.

13 But the interesting thing is that I think
14 technically it would fall under agriculture, and
15 having it in the Agricultural District and
16 agricultural county zoning would actually help us to
17 more easily remove the invasive species encroaching
18 on the native forest, because then we wouldn't have
19 to go ahead and do a conservation district use permit
20 to remove an invasive species or -- we are still
21 trying to figure that out.

22 COMMISSIONER OKUDA: Thank you. I
23 understand.

24 ACTING CHAIR CABRAL: Commissioner Chang.

25 COMMISSIONER CHANG: So at this point in

1 time, are you planning to do any activity on the
2 property prior to the submission of your plan, not
3 even removal of invasive species?

4 MS. KAAKUA: No. So we will complete the
5 plan for the land before taking any action, and then
6 any action that we take will be per the directions of
7 our plan.

8 COMMISSIONER CHANG: The land use
9 conditions on this particular document really were
10 tied to the subdivision, but it does include, for
11 example, prior to any land alteration, you have to do
12 an archaeological inventory survey.

13 So that may or may not be appropriate, but
14 what I'm hearing your representation is you're not
15 proposing to do any activity on the property, even
16 including invasive species, until you have a plan in
17 place?

18 MS. KAAKUA: That's correct.

19 COMMISSIONER CHANG: And you would report
20 back to us and you're asking for a year?

21 MS. KAAKUA: I'm asking for a year.

22 COMMISSIONER CHANG: Thank you.

23 ACTING CHAIR CABRAL: Commissioners, if
24 there are no final questions or comments for the
25 parties, I believe we can now enter into

1 deliberations in this matter.

2 Commissioner Chang.

3 COMMISSIONER CHANG: I have a question for
4 the county.

5 Were you proposing -- you had sent a letter
6 to the Petitioner proposing to change the zoning to
7 the property to Ag 800A.

8 Could you explain to me what is that? What
9 were you going to change the zoning to?

10 MR. KIM: Agriculture 800A.

11 COMMISSIONER CHANG: I was trying to recall
12 the letter. You sent them a letter saying there's
13 been no activity, and we're going to change the
14 zoning if you don't get in compliance.

15 What were you going to change the zoning
16 to?

17 MR. KIM: Agricultural 800 acres, it's Ag
18 800A. So just means your minimum lot size would be
19 800 acres. So it's a big, big parcel basically.

20 COMMISSIONER CHANG: I'm just wondering
21 procedurally, would your zoning change, affect the
22 rights of the landowner, the Petitioner, under the
23 Land Use Commission's existing -- the boundary
24 amendment and the conditions? Would your zoning in
25 any way have affected the landowner's ability to

1 proceed on the proposed development?

2 MR. KIM: Yes, it would have. I mean, the
3 land use classification and the zoning would be
4 consistent, but with the specifics of, you know, the
5 conditions and what they were being asked to do, for
6 all intents and purposes that wouldn't have been
7 practicable if they're limited to an 800-acre parcel.

8 COMMISSIONER CHANG: This is probably a
9 legal question, and hopefully it's not relevant
10 depending upon what happens in a year, but does the
11 county have the authority to change the entitlements
12 by the Petitioner that the Land Use granted in this
13 docket to subdivide this land?

14 MR. KIM: With all due respect, my analysis
15 would be that this Commission, the State Land Use
16 Commission has jurisdiction and authority to change
17 the district boundary. But when it comes down to the
18 detailed and nitty-gritty of an actual subdivision,
19 that would fall within the county's authority
20 actually.

21 COMMISSIONER CHANG: So if the conditions
22 were approved at a time when they could do certain
23 kinds of activities, the county -- is it your
24 position that the county can subsequently change
25 those conditions that would no longer permit the

1 Petitioner to proceed on the approved Application?

2 MR. KIM: No, it wouldn't change the
3 conditions, so much as there would be a separate
4 matter with the zoning, because we couldn't change
5 the Land Use Commission's Decision and Order. That's
6 within this body's jurisdiction, so we couldn't
7 change that.

8 COMMISSIONER CHANG: Hopefully that won't
9 be an issue. I was wondering about the legal
10 authority to do that. Okay.

11 ACTING CHAIR CABRAL: Thank you,
12 Commissioner Chang.

13 COMMISSIONER CHANG: That's it, I promise.

14 VICE CHAIR CABRAL: Commissioners, I
15 believe we are now ready to enter deliberations on
16 this matter.

17 Based on the circumstances, I would like to
18 remind the Commissioners that this agenda item is of
19 the nature of a status conference, and the Commission
20 is not required to take action or schedule an order
21 to show cause hearing if it is willing to receive
22 more information and give more time before rendering
23 a decision.

24 So the ability to have a motion to allow
25 more time to come forward would be acceptable from my

1 understanding from management.

2 COMMISSIONER OHIGASHI: Madam Chair.

3 VICE CHAIR CABRAL: Yes.

4 COMMISSIONER OHIGASHI: May I make a
5 motion?

6 VICE CHAIR CABRAL: Yes, Commissioner.

7 COMMISSIONER OHIGASHI: I move that we
8 accept the Status Report by the Petitioner, and that
9 we schedule this matter within one year, conditioned
10 upon the Petitioner filing the necessary updated
11 reports required under the Petition.

12 VICE CHAIR MAHI: I second that.

13 ACTING CHAIR CABRAL: We have a motion and
14 now Commissioner Mahi made a second on that.

15 Would you folks like to provide testimony
16 supporting your motion?

17 COMMISSIONER OHIGASHI: I think it's
18 self-evident.

19 ACTING CHAIR CABRAL: Commissioner Mahi?

20 VICE CHAIR MAHI: Likewise.

21 CHAIRPERSON SCHEUER: Commissioners, any
22 other comments on the motion?

23 Commissioner Okuda.

24 COMMISSIONER OKUDA: I'm sorry to my fellow
25 Commissioners, sometimes I don't get the self-evident

1 stuff. It's like weighing pros and cons.

2 I understand the advantage of active forest
3 management based on some of what my other clients do
4 who are in this for profit, that actually managing a
5 forest and getting rid of invasive species, in fact,
6 sometimes even cutting down some of the koa trees,
7 leads existing trees to drop more seeds. And if you
8 manage it properly, you actually restore the forest.

9 So I understand having active agriculture
10 actually can actually assist conservation, and
11 nothing wrong with making money off that too, you
12 know, because that's part of sustainability.

13 I think the concern I have is a year seems
14 like a long time to wait for the next report,
15 especially since these conditions haven't been met
16 for many, many years.

17 And so I would just ask if we could have a
18 shorter time for at least an initial report to come
19 back to the Commission, something less than a year,
20 maybe around a six-month or four-month period of time
21 just to see, to ensure that these conservation
22 measures -- or these measures to have conservation
23 agriculture I think you could call it -- are moving
24 forward so that we're not left with a situation where
25 we have, again, conditions unfulfilled since the time

1 the docket was first approved.

2 COMMISSIONER OHIGASHI: May I respond?

3 ACTING CHAIR CABRAL: At this point the
4 Chair would like to recognize Commissioner Wong.

5 COMMISSIONER WONG: Madam Chair, with all
6 due respect to Commissioner Okuda, in my former life
7 I note that the standing that the Petitioner is
8 getting for a 600-acre parcel will take a long time.
9 They cannot do it like overnight sending a helicopter
10 in one specific area, so I totally disagree with that
11 position and would like to give them a year.

12 CHAIRPERSON SCHEUER: Commissioner
13 Ohigashi.

14 COMMISSIONER OHIGASHI: I think that the
15 specific request or specific statement that they
16 provide us the annual report, since they're a new
17 Petitioner, and they just got this, they should
18 include in their annual report the mechanism of how
19 they're planning this out, should include in the
20 annual report what is their timetables, and provide
21 that.

22 And that to me, that would be the report
23 that we would rely upon. And I believe, I haven't
24 seen the filing of the 2019 report, but I believe
25 they indicated that they would be filing a 2019

1 report.

2 So in a sense, we do have some kind of
3 report. And if it's necessary to move to a status
4 hearing based upon that report, the Commission can do
5 so affirmatively, if they do come up with some kind
6 of agreement or some kind of statement or some kind
7 of plan prior to the one year time, they're free to
8 petition the Land Use Commission to bring up their
9 proposed plan to the Land Use Commission, which I
10 envision that they intend to do, and that may resolve
11 everything.

12 But I think there's enough safeguards in
13 this. That's all I'm saying.

14 VICE CHAIR CABRAL: Commissioner Okuda.

15 COMMISSIONER OKUDA: Listening to
16 Commissioner Ohigashi and Commissioner Wong, they've
17 convinced me, and I think I reconsider my position.
18 So I think I'm in favor of the motion now. I
19 understand.

20 ACTING CHAIR CABRAL: Thank you.

21 And Commissioner Chang.

22 COMMISSIONER CHANG: My understanding,
23 based upon the Petitioner's representation, is
24 actually this is going to occur in two phases:

25 Within six months develop a conservation

1 plan to determine what they're going to do on the
2 land; and within a year they're going to come back to
3 the LUC in their status report on whether reversion
4 is the right thing, or how they're going to comply
5 with the conditions.

6 Because I think there are two separate
7 conditions. One is LUC conditions, and I don't think
8 they're prepared to address whether they're going to
9 comply with those conditions or whether they may
10 voluntarily, you know, say reversion is the
11 appropriate course of action.

12 So I, for those reasons, I would support
13 the motion to give them a year.

14 I would also ask that the county, I guess,
15 Madam Chair -- not too sure if it's a question --
16 that the county not take any action on zoning this
17 property until this Petitioner has had an opportunity
18 to decide what course of action they're going to
19 take.

20 ACTING CHAIR CABRAL: Would the county like
21 to respond?

22 MR. KIM: I don't believe -- deputy
23 director.

24 MR. KANUHA: Thank you, Madam Chairperson,
25 and members of the Commission.

1 Just to clarify Ron's comment on that, this
2 dba was issued in 2001, and following that it came to
3 the county for the rezoning, and they got it rezoned
4 to ag, what we call A80. In other words, 80 acre
5 lots is the sizes they could have.

6 But in the process of getting county
7 rezoning, there's also a performance time, just like
8 how the Land Use Commission has a performance time.

9 So what happened in this application is
10 that the time frame to comply with the zoning timed
11 out. And when that happens, then the county can
12 initiate rezoning back to the original zoning, or
13 more appropriate zoning. That's why the latest
14 correspondence to the previous petitioner was if we
15 were to initiate a rezoning, we would initiate it
16 back to this A800 acre.

17 In other words, the parcel would be one
18 intact parcel, rather than the ability to create ten
19 80-acre lots. And that was, you know, that's the
20 sequence. That's how it got to this A800.

21 Given that there's this new petitioner,
22 they going to take a look at it again, you know, we
23 have no problem in holding any initiation of that
24 rezoning component in abeyance until we find out what
25 they do plan to do. Because if it reverts to

1 conservation, then our zoning is moot, doesn't apply.
2 Thank you.

3 ACTING CHAIR CABRAL: Thank you for your
4 input and explanation.

5 Commissioners, do I hear any other comments
6 at this time in our deliberations?

7 I believe we have a motion on the floor by
8 Commissioner Ohigashi and a second by Commissioner
9 Mahi. And if there's no other comments, are we
10 prepared to have a vote taken?

11 Can I call on our executive director?

12 EXECUTIVE OFFICER: Thank you, Madam Chair.

13 The motion is to accept the status report
14 and reschedule this matter within one year,
15 conditioned on Petitioner filing the required
16 reports.

17 Commissioner Ohigashi?

18 COMMISSIONER OHIGASHI: Aye.

19 EXECUTIVE OFFICER: Commissioner Mahi?

20 VICE CHAIR MAHI: Aye.

21 EXECUTIVE OFFICER: Commissioner Chang?

22 COMMISSIONER CHANG: Yes.

23 EXECUTIVE OFFICER: Chair Scheuer is
24 excused.

25 Commissioner Okuda?

1 COMMISSIONER OKUDA: Yes.

2 EXECUTIVE OFFICER: Commissioner Wong?

3 COMMISSIONER WONG: Yes.

4 EXECUTIVE OFFICER: Chair Cabral?

5 VICE CHAIR CABRAL: Yes.

6 EXECUTIVE OFFICER: Thank you, Madam Chair,
7 the motion passes unanimously.

8 ACTING CHAIR CABRAL: I would like to turn
9 the Chair back over --

10 And if there is no other business before
11 this group, I will adjourn this meeting. Thank you
12 very much.

13 (The proceedings adjourned at 11:04 a.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on May 7, 2019, at 9:30 a.m., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 7th day of May, 2019, in Honolulu,
Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156