

LAND USE COMMISSION HEARING

STATE OF HAWAI'I

Proceedings held on May 22, 2019

Natural Energy Laboratory Hawai'i Authority

73-987 Makako Bay Drive

Kailua-Kona, Hawai'i 96740-2637

Commencing at 9:30 a.m.

AGENDA

I. CALL TO ORDER

II. ADOPTION OF MINUTES

III. TENTATIVE MEETING SCHEDULE

IV. HEARING AND ACTION  
A06-770 The Shopoff Group, L.P. (HAWAI'I)

V. ACTION  
A02-737 U of N BENCORP (HAWAI'I)

VI. HEARING AND ACTION  
A02-737 U of N BENCORP (HAWAI'I)

VII. NON-ACTION  
Discussion of FY2020 LUC Commission Officers

VIII. EXECUTIVE SESSION  
The Commission intends to convene an executive session pursuant to HRS Section 92-5(a)(4) to consult with its attorney regarding the Commission's powers, duties, privileges, immunities and liabilities and HRS Section 92-5(a)(2) to consider personnel matters where consideration matters affecting privacy will be involved.

XI. ADJOURNMENT

BEFORE: Jean Marie McManus, CSR #156

## 1 APPEARANCES:

2 COMMISSIONERS:

3 JONATHAN SCHEUER, Chairperson

NANCY CABRAL, Vice Chair

4 AARON MAHI, Vice Chair

GARY OKUDA

5 EDMUND ACZON

ARNOLD WONG

6 DAWN N.S. CHANG

7 STAFF:

8 RANDALL S. NISHIYAMA, Deputy Attorney General

DANIEL E. ORODENKER, Executive Officer

9 RILEY K. HAKODA, Planner/Chief Clerk

BERT SARUWATARI, Planner

10 RASMI AGRAHARI, Planner

11 DAWN APUNA, ESQ.

Office of Planning, State of Hawai'i

12 RON KIM, ESQ.

13 Deputy Corporation Counsel

DUANE KANUHA, Deputy Planning Director

14 County of Hawai'i

15 A06-770 The Shopoff Group

NOHEA BAPTISTA

16 ROBERT E. LEE, JR.

17 A02-737 U of N Bencorp

KATHERINE GARSON, ESQ.

18 DEREK SIMON, ESQ.

JULIE ANJO, ESQ.

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1 Commissioner Cabral?

2 VICE CHAIR CABRAL: Yes.

3 EXECUTIVE OFFICER: Commissioner Aczon?

4 COMMISSIONER ACZON: Aye.

5 EXECUTIVE OFFICER: Commissioner Mahi?

6 COMMISSIONER MAHI: Aye.

7 EXECUTIVE OFFICER: Commissioner Chang?

8 COMMISSIONER CHANG: Yes.

9 EXECUTIVE OFFICER: Commissioner Okuda?

10 COMMISSIONER OKUDA: Yes.

11 EXECUTIVE OFFICER: Commissioner Wong?

12 COMMISSIONER WONG: Aye.

13 EXECUTIVE OFFICER: Chair Scheuer?

14 CHAIRPERSON SCHEUER: Aye.

15 EXECUTIVE OFFICER: Mr. Chair, the motion  
16 passes.

17 CHAIRPERSON SCHEUER: Thank you very much.  
18 Congratulations. We will now take a five-minute  
19 recess.

20 (Recess taken.)

21 A02-737 University of Nations

22 We are back on the record.

23 Our next agenda item is an action meeting  
24 on Docket No. A02-737, University of Nations' Motion  
25 to Rescind the Order to Show Cause, or to continue



1 the hearing on an Order to Show Cause.

2 Will the Parties please identify themselves  
3 for the record?

4 MS. GARSON: Katherine Garson and Derek  
5 Simon from Carlsmith for University of Nations Kona.

6 To my right is Julia Anjo, she's general  
7 counsel for University of Nations.

8 MR. KIM: Good morning, Chair,  
9 Commissioners, Deputy Corporation Counsel Ron Kim on  
10 behalf of County of Hawai'i, and with me is Deputy  
11 Director Planning Department, Duane Kanuha.

12 MS. APUNA: Good morning, Chair, members of  
13 the Commission. Deputy Attorney General, Dawn Apuna  
14 on behalf of Office of Planning.

15 CHAIRPERSON SCHEUER: Let me now update the  
16 record.

17 March 28, 2019, the Commission met here in  
18 Kailua-Kona at the NELHA facility and voted to issue  
19 an Order to Show Cause in this matter. At that  
20 meeting the Petitioner submitted:

21 Annual Report for 2019

22 PowerPoint entitled YWAM Kona PowerPoint

23 Board minutes

24 Letter Accepting Preservation Plan of 2014

25 Preservation 2013

1 Archaeological Data Recover at ten sites

2 On March 29, 2019, the Commission mailed  
3 out a Notice of Order to Show Cause hearing occurring  
4 on May 22, 2019 to Petitioner and Parties.

5 On April 5th, a legal notice of the May  
6 22nd meeting was published in the Maui News,  
7 Star-Advertiser, Garden Isle News, Hawai'i Herald  
8 Tribune and West Hawai'i Today Newspapers and  
9 Star-Advertiser.com website.

10 Also on April 5, 2019, the Commission  
11 mailed a notice of filing deadlines for the OSC  
12 action to the Petitioner and the Parties.

13 On April 26th, 2019, the Commission  
14 received Petitioner's Exhibit and Witness Lists for  
15 the May 22, 2019 hearing; and OP's Statement of  
16 Position.

17 On May 1st, 2019, the Commission received  
18 Petitioner's Notice of Representation of Counsel and  
19 Change in Ownership of Petition Area and Exhibits 1,  
20 2a, 2b, 3a, and 3b.

21 On May 3rd, 2019, the Commission received  
22 the University of the Nations, Kona, Inc.'s Rebuttal  
23 List of Exhibits and Rebuttal List of Witnesses; and  
24 University of the Nations, Kona, Inc.'s Statement of  
25 Position and Rebuttal to the Statement of Position of

1 the Office of Planning on the Order to Show Cause  
2 Issued by the State of Hawai'i Land Use Commission on  
3 March 29, 2019; Exhibits "19" - "28B".

4 On May 8, 2019, the Commission received  
5 University of the Nations, Kona, Inc.'s Motion to  
6 Rescind Order to Show Cause or to Continue Hearing on  
7 Order to Show Cause.

8 On May 13, 2019, an LUC meeting agenda  
9 notice for May 22nd-23rd meeting was sent to the  
10 Parties and Statewide and County of Hawai'i mailing  
11 lists.

12 On May 15th, the Commission received OP's  
13 response to the Motion to Rescind Order to Show Cause  
14 or to Continue Hearing on Order to Show Cause;  
15 Exhibit "A".

16 On May 17th, the Commission received the  
17 following docket: Petitioner University of Nations,  
18 Kona's Notice of Appearance of Counsel-Julie and  
19 Allen Anjo co-counsel; Stipulation Extending time for  
20 University of Nations, Kona, Inc., to file  
21 supplemental exhibits; First Supplemental List of  
22 Exhibits; Exhibits 29-33.

23 On May 20th, the Commission received the  
24 Statement of Position of the County of Hawai'i  
25 Planning Department on the LUC's Order to Show Cause.

1           Also on the same date, the Commission  
2       received U of N, Op and County of Hawai'i Joint  
3       Stipulation to Stay Hearing on Order to Show Cause  
4       and Reservation of Rights.

5           Let me now briefly go over our procedures.

6           First, I will call for those desiring to  
7       provide public testimony on this motion to identify  
8       themselves. By the size of the audience, are there  
9       people intending to provide public testimony in this  
10      matter? I saw nodding heads.

11          Individuals will be called up to the  
12      witness box, which I just gestured to with my right  
13      hand. I will then swear you in, ask you to state  
14      your name and address for the record prior to giving  
15      you testimony.

16          Depending on how many people are planning  
17      to give testimony, I will reserve the right to limit  
18      the time allowed for testimony.

19          After that we will then begin the  
20      proceedings on the motion starting with Petitioner  
21      presenting its case, followed by County Planning  
22      Department and the State Office of Planning.

23          The Petitioner may reserve a portion of  
24      their time to respond to comments made by the County  
25      and the State Office of Planning.

1 Any questions on our procedures for today?

2 MS. GARSON: No.

3 MR. KIM: No.

4 MS. APUNA: No.

5 CHAIRPERSON SCHEUER: Individuals desiring  
6 to give public testimony, is there more than one?  
7 Just one right now.

8 Are there any individuals desiring to give  
9 public testimony today? I see none.

10 So there is no public testimony. I'm going  
11 to close that portion of the proceedings.

12 Ms. Garson, before you proceed with your  
13 case, I'm going to ask a question.

14 Late Monday afternoon, we received a  
15 stipulation with regard to this matter.

16 MS. GARSON: Yes.

17 CHAIRPERSON SCHEUER: Is there anything  
18 else you're withholding from the Commission at this  
19 time?

20 MS. GARSON: No. You're talking about the  
21 stipulation between the State of Hawai'i Office of  
22 Planning?

23 CHAIRPERSON SCHEUER: That is correct. We  
24 became aware of the stipulation prior to it actually  
25 be being filed with us. Anything else that's been

1 prepared that we have not received that you're  
2 planning to present today?

3 MS. GARSON: No.

4 CHAIRPERSON SCHEUER: To ensure we have  
5 clarity on what we are deciding on, we will take up  
6 Petitioner's Motion as follows:

7 First, we're going to take up the Motion to  
8 Rescind the OSC.

9 After that, we will take up the Motion to  
10 Continue the Hearing on the Order to Show Cause to  
11 give the Petitioner time to prepare.

12 And after that we would take up the  
13 Petitioner's Motion to allow it to have one year to  
14 submit a Motion to Amend the Decision and Order.

15 Is that clear with the parties?

16 So, Ms. Garson, you may please proceed with  
17 your presentation on the argument on the Motion to  
18 Rescind.

19 MS. GARSON: First of all, before we begin,  
20 I would like to move that the Commission accept our  
21 statement on the OSC, and the pleadings and record in  
22 this matter for consideration on the Motion to  
23 Rescind and continue.

24 CHAIRPERSON SCHEUER: Which specific  
25 documents?



1 MS. GARSON: The records and files in this  
2 matter in this docket, and our statement position in  
3 response to the OSC.

4 CHAIRPERSON SCHEUER: I'm going to ask the  
5 parties and the Commissioners if there's any  
6 objection. If you would actually be more specific  
7 than just the motion to the proceedings.

8 Let's take a short recess.

9 (Recess taken.)

10 CHAIRPERSON SCHEUER: Thank you.

11 We are back on the record.

12 Ms. Garson, please specify which documents  
13 you're attempting to include into the record.

14 MS. GARSON: Our Motion to Rescind made  
15 reference to the University of Nations' Statement of  
16 Position and rebuttal to Statement of Position of the  
17 Office of Planning on the Order to Show Cause issued  
18 by the State of Hawai'i Land Use Commission on March  
19 29, 2019.

20 So because we made reference to that  
21 document in our motion, I just wanted to be sure that  
22 we can refer to that, and exhibits, if any. And  
23 also --

24 CHAIRPERSON SCHEUER: Exhibits to that  
25 particular document?

1 MS. GARSON: All of the exhibits.

2 CHAIRPERSON SCHEUER: To what? All of the  
3 exhibits to what?

4 MS. GARSON: That we filed for the OSC.

5 CHAIRPERSON SCHEUER: It's an overly broad  
6 request.

7 MS. GARSON: I ask we be able to refer to  
8 the exhibits that were attached to the Position  
9 Statement.

10 Additionally, the record also has the  
11 Motion to Amend that was filed in 2006, and the  
12 transcript of March 1st, 2007.

13 So those are the documents that I would  
14 like to be able to have you consider also.

15 CHAIRPERSON SCHEUER: Parties, are there  
16 objections -- first of all, did the Office of  
17 Planning and the County, and the -- do you understand  
18 the request? Or do you have clarifying questions  
19 before responding whether you have objections?

20 MR. KIM: I guess just a clarifying  
21 question.

22 Is the request just to admit the exhibits  
23 and statement into the record?

24 CHAIRPERSON SCHEUER: Ms. Garson, please  
25 respond.



1 MS. GARSON: We want to admit the exhibits,  
2 if possible, to the record on this Motion to Rescind.

3 CHAIRPERSON SCHEUER: Which exhibits?

4 MS. GARSON: The exhibits that are attached  
5 to the Position Statement 18 through 28a -- b, sorry.

6 CHAIRPERSON SCHEUER: County, does that  
7 respond? You can follow up if you need further  
8 clarity.

9 MR. KIM: No. I believe that responds.

10 CHAIRPERSON SCHEUER: Do you have an  
11 objection?

12 MR. KIM: No objection.

13 CHAIRPERSON SCHEUER: Office of Planning,  
14 questions or objections?

15 MS. APUNA: No objections to the entering  
16 or admitting the exhibits to this record.

17 CHAIRPERSON SCHEUER: The exhibits to --

18 MS. APUNA: To the record.

19 CHAIRPERSON SCHEUER: Which exhibits, just  
20 to be clear so we all understand what's going on.

21 MS. APUNA: The record that she specified  
22 as attached to Position Statement.

23 CHAIRPERSON SCHEUER: Thank you.

24 Commissioners? Commissioner Wong.

25 COMMISSIONER WONG: First, which motion are

1 we dealing with right now, just to make sure I have  
2 it correct?

3 CHAIRPERSON SCHEUER: Right now we are  
4 dealing with the Motion to Rescind the Motion, their  
5 Motion to Rescind our Motion on the Order to Show  
6 Cause.

7 COMMISSIONER WONG: So it's like a  
8 prehearing motion, or so is it appropriate to -- is  
9 it appropriate to include all these exhibits for this  
10 motion? You know, it kind of doesn't make sense to  
11 me right now. So I'm --

12 CHAIRPERSON SCHEUER: Do you object to it?

13 COMMISSIONER WONG: Yes, I object to it.

14 CHAIRPERSON SCHEUER: Commissioners?  
15 Commissioner Okuda.

16 COMMISSIONER OKUDA: Chair, I believe that  
17 what's been filed in the docket is already part of  
18 the record, number one.

19 And number two, in the interest of having a  
20 full discussion and full consideration of everything  
21 based on the merits, I believe that the Commission  
22 can and should look at the entire record of the  
23 docket which includes everything that's filed,  
24 because that comprises the information that's been  
25 presented to us; and sometimes statements made in one

1 part of the docket or record, might be relevant in  
2 making a decision to another part.

3 So unless there's some real prejudice,  
4 actual prejudice that's demonstrated by the parties  
5 or prejudice to the decision-making process of the  
6 Commission, and that prejudice can include, you know,  
7 waste of time or things like that, number one, I  
8 believe that what's been filed already is part of the  
9 record;

10 And number two, any of the parties can  
11 refer to any part of the docket that's been  
12 presented; and the Commission can take into account  
13 anything in the docket in making its decision, unless  
14 I believe there's a ruling otherwise.

15 CHAIRPERSON SCHEUER: So, Mr. Okuda, you  
16 believe that the documents that -- at least the  
17 narrow request that Ms. Garson has asked for already  
18 are part of the record in this matter?

19 COMMISSIONER OKUDA: That's my belief, my  
20 own advice. I don't believe that the Petitioner's  
21 motion is really necessary at this point.

22 We can just get to the heart of the matter,  
23 because what's filed has been filed, and I'll  
24 disclose that I've tried to read, and I think I've  
25 read everything that's been filed, including the

1 stipulation that was filed very recently.

2 So, you know, it's going to be hard for me  
3 to unring the bell now and ignore something that I've  
4 already read.

5 I will ignore it if there is a proper  
6 motion that's granted to exclude on some legal or  
7 proper grounds, improper evidence or improper filing  
8 in the record.

9 But generally I plan to consider everything  
10 that's been filed in this docket.

11 CHAIRPERSON SCHEUER: Thank you, Mr. Okuda.

12 Anything further, Commissioners?

13 Commissioner Chang.

14 COMMISSIONER CHANG: Thank you.

15 I guess I share the same sentiment as  
16 Commissioner Okuda. And I guess my confusion was,  
17 with your motion, are you seeking to just enter a  
18 limited portion of the record? Because I, like  
19 Commissioner Okuda, believe that everything that has  
20 been filed in this docket is part of the record  
21 already.

22 So by just specifying certain documents,  
23 are you then precluding everything else that's  
24 already been filed? I'm not sure, just in abundance  
25 of caution you wanted to direct us to particular

1 documents, but I too believe that everything that has  
2 been filed with LUC, late including, is already part  
3 of the record.

4 CHAIRPERSON SCHEUER: Thank you,  
5 Commissioner Chang. You may respond, Ms. Garson, to  
6 Commissioner Chang's inquiry.

7 MS. GARSON: Thank you.

8 It was really an overabundance of caution,  
9 so I did not mean to confuse the Commission at all.  
10 And if that is the Commission's position, I would  
11 withdraw the motion.

12 CHAIRPERSON SCHEUER: Thank you.

13 To repeat, where we are procedurally,  
14 because it's already become, dare I say, kapulu.

15 First, we will take up the motion on the  
16 Order, to Rescind the Order to Show Cause.

17 After that we will take up the Motion to  
18 Continue the Hearing on Order to Show Cause.

19 Finally, we will take up the Petitioner's  
20 Motion to allow for one year.

21 Are you prepared to start to present on the  
22 first item, Ms. Garson?

23 MS. GARSON: I am prepared.

24 First of all, I would like to correct the  
25 record. I apologize, in some of our pleadings we

1 made references to a May 1st and 2nd date for the  
2 hearing on the Motion to Amend the 2006 motion. That  
3 was a typographical error. It was on March 1st,  
4 2007.

5 I also think in our pleadings we made  
6 reference to two days of hearing, March 1st and 2nd;  
7 it was only one. So I apologize for those errors and  
8 so I just wanted to correct the record.

9 CHAIRPERSON SCHEUER: Those are now  
10 entered.

11 MS. GARSON: Thank you.

12 This docket has a procedural anomaly. The  
13 Motion to Amend the 2003 Decision and Order was filed  
14 in 2006. There was a hearing on it on March 1st,  
15 2007, and there was no resolution to that motion.

16 Procedurally, for the Commission to then  
17 issue an OSC on failure to comply with the original  
18 conditions of the D&O was really being denying the  
19 Petitioner due process to continue on in its Motion  
20 to Amend.

21 So just from a procedural perspective, you  
22 cannot issue the OSC without dealing first in some  
23 fashion with the Motion to Amend. It is pending. It  
24 is out there.

25 If you proceed to the OSC and issue an



1 order, that motion will have never been addressed in  
2 the docket. Procedurally you need to address that  
3 before you proceed with the Order to Show Cause.

4 This is particularly important, because I  
5 think the OSC was based, at least the Office of  
6 Planning's position was that they needed to complete  
7 part of the project by 2007. So if 2007 was a date  
8 that they had to complete, this Motion to Amend was  
9 filed prior to that.

10 Again, it shouldn't have been addressed --  
11 it should be addressed before you proceed to the OSC.

12 What the Petitioner would like to do, and I  
13 would like to say, as in your confines of the Motion  
14 to Rescind, so with that argument and what is in our  
15 pleadings, that is our position on the Motion to  
16 Rescind.

17 CHAIRPERSON SCHEUER: Thank you.

18 Commissioners, are there questions for Ms.  
19 Garson? Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you, Mr. Chair.

21 Ms. Garson, can you cite to specific legal  
22 authority, meaning statute, rule, or case that holds  
23 or states that the Commission cannot proceed with an  
24 order to show cause where there's pending a motion to  
25 amend?

1 MS. GARSON: The constitutional principle  
2 of due process.

3 The Motion to Amend itself the contested  
4 case. There is due process considerations that need  
5 to be taken into account, privileges, rights on the  
6 Motion to Amend.

7 By proceeding to the OSC without addressing  
8 those, they deny the Petitioner due process to  
9 proceed with the Motion to Amend.

10 COMMISSIONER OKUDA: My question wasn't a  
11 question of argument.

12 My question was: Can you give me a  
13 citation to a specific statute, a specific  
14 constitutional provision?

15 And when we say that, I would want article  
16 and section. When I'm asking for a statute, the  
17 specific citation to section, if it is the Hawai'i  
18 Revised Statutes, or if it is a case, the case name,  
19 reporter citation.

20 And this is the reason why. This is not a  
21 trick question. I'm just trying to find out what the  
22 authority is so that I can look at that authority to  
23 be sure that we comply with whatever authority we're  
24 supposed to comply with.

25 So, again, it's a specific legal authority



1       which states or holds that the Land Use Commission  
2       cannot proceed with an order to show cause while a  
3       motion to amend is pending.

4               CHAIRPERSON SCHEUER:   The record will note  
5       that counsel is looking for a document.

6               MS. GARSON:   I think the basic elements of  
7       procedural due process were discussed in Sandy Beach  
8       Defense Fund versus City Council, and the City  
9       Council and the City and County of Honolulu, 70  
10      Hawai'i 361, 1989.

11              COMMISSIONER OKUDA:   Isn't it true that the  
12      Hawai'i Supreme Court -- let me just make sure that  
13      I've got it clear in my mind.

14              You cite to those cases for the proposition  
15      that somehow the party's due process rights would be  
16      violated where an order to show cause is considered  
17      by the Land Use Commission before deciding a pending  
18      motion to amend.   Is that --

19              MS. GARSON:   I am citing to those cases for  
20      procedural due process principle, which I think are  
21      in play if you hear the Order to Show Cause before  
22      you rule on the Motion to Amend.

23              COMMISSIONER OKUDA:   Let's hold that  
24      thought here.   I just wanted to make sure that we  
25      have this point clear, we have some agreement on

1       this.

2               Holding the argument or statement -- let me  
3       not call it an argument -- the statement that you  
4       just made, putting that aside or holding that  
5       thought, because we will come back to that, but isn't  
6       it true there is no statute, rule, or case, appellate  
7       case in the State of Hawai'i which holds that the  
8       Land Use Commission may not proceed with an order to  
9       show cause while a motion to amend is pending?  
10      There's no case.

11              MS. GARSON:  No.  And your rules don't  
12      provide for that either.  Your rules do not have a  
13      time limit on motions.

14              COMMISSIONER OKUDA:  I'm trying to find out  
15      whether we're prohibited by a case from proceeding  
16      with an order to show cause while a motion to amend  
17      is pending.  And you do agree with me there is no  
18      appellate case that so holds, correct?

19              MS. GARSON:  Specifically on that very  
20      narrow issue, I agree.

21              COMMISSIONER OKUDA:  Isn't it true that the  
22      Sandy Beach case gives a definition of due process,  
23      and that definition is basically that a party has  
24      notice of what the government entity intends to do  
25      and the opportunity to be heard with respect to what

1 the government entity intends to do before the  
2 government entity actually does the stuff?

3 MS. GARSON: That's correct.

4 COMMISSIONER OKUDA: So you would have to  
5 agree in this case that your client got notice of  
6 what the Land Use Commission intended to do with  
7 respect to the matters that are involved in this  
8 Order to Show Cause, correct?

9 MS. GARSON: Again, I am speaking to the  
10 motion to amend; and no, they did not.

11 COMMISSIONER OKUDA: No, no, no. I'm  
12 talking about notice of the Order to Show Cause. I  
13 mean, that's in the record. And that's why my view  
14 is we should have the entire record before us when we  
15 make a decision.

16 Your party is not contesting a fact that  
17 your client received a copy of the Order to Show  
18 Cause which has resulted in this proceeding, correct?

19 MS. GARSON: No, they are not. But that is  
20 not my point.

21 COMMISSIONER OKUDA: Okay. I understand  
22 that, but I just want to try to narrow some of these  
23 points.

24 And because you're here and you filed  
25 pleadings and motions and things like that, you do

1 agree that you had, or your client has had at least  
2 preliminarily an opportunity to be heard, correct?

3 MS. GARSON: Not on the Motion to Amend.

4 COMMISSIONER OKUDA: But you're able to  
5 make the argument that the existence of the Motion to  
6 Amend somehow precludes the Land Use Commission with  
7 proceeding with the Order to Show Cause; correct?

8 MS. GARSON: Correct. But you have not had  
9 the conclusion of the hearing on the Motion to Amend,  
10 and there is no notice of your decision on the Motion  
11 to Amend either.

12 COMMISSIONER OKUDA: Let's talk about the  
13 Motion to Amend.

14 When was that Motion to Amend filed?

15 MS. GARSON: 2006.

16 COMMISSIONER OKUDA: Was there anything  
17 that precluded your client, or any of its consultants  
18 from -- I don't want to use the term "resurrecting",  
19 because that motion was filed -- but doing something  
20 to move that motion forward?

21 MS. GARSON: They were having -- there were  
22 a number of considerations, mostly financial, that  
23 precluded them from coming forward. However, my  
24 point is the simple existence, the simple existence  
25 of the unresolved motion precludes the OSC.

1           Just the fact that it is unresolved, and it  
2 is in your record. So that if you did hold the OSC  
3 and you order to revert it, procedurally that motion  
4 is still pending. You have to address the motion.

5           COMMISSIONER OKUDA: Okay, well -- I don't  
6 want to -- I understand your point. And I'm not  
7 ignoring your point, and I don't think any of my  
8 fellow Commissioners are ignoring that point.

9           I'm just trying to find out whether or not  
10 we have certain agreements on certain facts.

11           So there were these financial reasons you  
12 stated as far as why the Motion to Amend was not  
13 moved forward.

14           Besides financial reasons, were there any  
15 other reasons the Motion to Amend did not move  
16 forward?

17           MS. GARSON: They were financial, and also  
18 the fact that the University at that time was very  
19 involved in some other matters.

20           COMMISSIONER OKUDA: And in your pleadings  
21 and memos you filed, those other matters included  
22 litigation, correct?

23           MS. GARSON: Included litigation. Also  
24 included fraud.

25           COMMISSIONER OKUDA: So you had these