

1 Urban and more dense development. And this -- and
2 that this particular property does not have that or
3 particular conservation values of note.

4 I say this, and I give this description to
5 you because, again, you might ask why would the
6 University of Nations filed a Motion to Voluntarily
7 Revert the Property? The answer is that while
8 through their period of recollection or --

9 CHAIRPERSON SCHEUER: If I may. I want to
10 give you great latitude in presenting, but the
11 presentation should be on the status report.

12 Should we, after the status report, move
13 into an Order to Show Cause hearing, that would be
14 the appropriate venue for discussions about when the
15 appropriate reclassification might be if we went
16 through that entire process.

17 THE WITNESS: In fact, it's a good note,
18 Chair, because we segue now to commitment statement
19 by the University of Nations COO Paul Childers with
20 respect to compliance with the LUC conditions.

21 CHAIRPERSON SCHEUER: I'm also going to
22 swear you in.

23 Do you swear or affirm that the testimony
24 you're about to give is the truth?

25 THE WITNESS: Yes, sir.

1 CHAIRPERSON SCHEUER: Please proceed.

2 PAUL CHILDERS

3 Was called as a witness by and on behalf of the
4 Petitioners, was sworn to tell the truth, was
5 examined and testified as follows:

6 MR. CHING: These next slides specifically
7 speak to compliance with the LUC conditions and I'll
8 quickly go through them.

9 Infrastructure, public program conditions.
10 Again, they relate to affordable housing, drainage,
11 public school facilities, water resources, wastewater
12 facilities, soil erosion, transportation, traffic,
13 civil defense and solid waste. And, again, they are
14 triggered particularly as development proceeds.

15 We have attached for you a much more
16 specific and lengthy annual report narrative for you
17 that details responses to date for those particular
18 conditions.

19 And the statement at this point would be
20 that the University of Nations Kona is committed to
21 complying with all of these conditions and approval
22 as the project progresses.

23 Technical conditions, again, are listed,
24 and they relate to compliance which relate
25 representations to the Commission, notice of change

1 of ownership interest, annual reports, release of
2 conditions and recording of conditions.

3 Again, commitment is that we're obliged to
4 observe these conditions, although we note the
5 following exceptions:

6 With reference previously that they have --
7 there have been changes to title, and we recognize
8 that they should be appropriately noticed and
9 recorded to the Commission. So we acknowledge a
10 greater diligence on our part is required with
11 respect to the submission of its annual reports.

12 I note for you that we have previously
13 sought on March 1st, 2007, a release of conditions
14 with a motion hearing, but that the LUC took no
15 action. We look to proceed on this matter as
16 directed by the Commission on this matter.

17 With respect to the archaeological
18 condition, I note that the Petitioner is compliant
19 with the Condition 6A through F, but I offer this
20 following note for Site 23683, which happens to be a
21 burial site.

22 On January 5th through 6 there was a fire
23 that was reported in the area supposedly triggered to
24 investigation by the firing of bottle rockets from a
25 neighboring subdivision. It produced an intensive

1 fire that required fire department helicopter and
2 four engine companies to respond. In the course of
3 the response, it is believed that Site 23683 might
4 have been overrun by a bulldozer from the HFD as they
5 were seeking to carve out access to the fire for
6 their equipment. That's despite the marking and the
7 efforts by staff to ensure that there would be no --
8 or appropriate actions in the area.

9 I note for you that Hawai'i Burial Council
10 on Big Island Burial Council was informed of it, and
11 we seek to find further documentation and necessary
12 next steps which we are obliged to take to, again,
13 preserve and restore that particular site.

14 With respect to Condition No. 16 in terms
15 of notice of change of ownership interest, I'll note
16 for you again, I have described the particular
17 changes in ownership, and we understand that we are
18 obliged to conform to that standard in the future to
19 let you know whatever changes are taken.

20 With respect to Condition No. 17 in terms
21 of annual reports, you can see where annual reports
22 have been submitted. We understand that we need to
23 perform better with respect to that standard of
24 annual reports being given without fail.

25 With respect to Finding of Fact 93(a),

1 which is not a condition but represents a commitment
2 made by the Petitioner, I'm going to defer now to the
3 COO to present the university's document.

4 CHAIRPERSON SCHEUER: If you would please
5 state your name on the record again.

6 THE WITNESS: My name is Paul Childers.

7 PAUL CHILDERS

8 DIRECT EXAMINATION

9 THE WITNESS: Thank you, Mr. Chairman, for
10 making the time today for us to come in and share.

11 As Tony was sharing, we have had a season
12 of realignment. We were really getting back to our
13 core values of who we are as a mission and a
14 university.

15 And so moving forward, we do want to remain
16 very diligent in making the commitment that were the
17 spirit and the intent of the original commitment made
18 for the reclassified area, even though back in 2007
19 we had mentioned that we will not be able to get the
20 cultural center up and going.

21 We make a commitment to provide scholarship
22 for University of Hilo's students at the College of
23 Hawaiian language. And in the same spirit of that we
24 also will be giving a free internship for a student
25 from that college to be able to intern in our haleo

1 immersion Hawaiian studies that actually do occur on
2 the University of the Nations campus at the moment.

3 Moving along, we also will continue with
4 our haleo course that Mr. Ching has already mentioned
5 that 397 students have gone through that. And we
6 will be able to continue that and no tuition will be
7 required from the Big Island Native Hawaiians in that
8 regard.

9 Moving forward to our commitment, the
10 archaeological sites that are on the reclassified
11 area, we will establish and record the permanent
12 easements around those sites for each one of the five
13 sites that have been recognized as needing to be
14 protected, and the development around that.

15 We will also utilize our best efforts to
16 maintain the area within these preservation easements
17 with our students and kokua crew making it -- getting
18 any vegetation out of the place as well as being able
19 to really take care of these archaeological sites.

20 In regards to LUC Condition No. 7, we also
21 will be moving towards forming the KWC, which is the
22 Ka Ohana Waiaha Committee, that will also give
23 counsel as well as oversight over these
24 archaeological areas and will be moving towards
25 formally establishing the KWC.

1 There are several issues that have happened
2 over the last several years that definitely have
3 absorbed a lot of our effort and energy within the
4 University of Nations. One was a fraud perpetrated
5 on us over the last year by Palo Rivera, who was a
6 volunteer with us. We're a full voluntary staff, and
7 so he joined with us. And in January 2017 we
8 discovered that he was perpetrating fraud on us. He
9 was tried. He plead guilty. He was sentenced to
10 115 months in federal penitentiary.

11 Also during this season had litigation
12 against us in connection with an accident on the
13 mainland, and the court ultimately found that
14 University of the Nations Kona was in no control over
15 that place, and they found in favor for us. And that
16 was also upheld on the 9th Circuit Court of Appeals.

17 So these are a couple of issues that have
18 taken a lot of our energy and time as well as
19 resources.

20 So as we have come through this relatively
21 challenging season, we believe that reestablishing,
22 reaffirming our faith-based model, which is walking
23 forward, really, walking with the lord in the issues
24 of development, we really believe that we will be
25 able to develop this campus as an educational

1 facility for the local Hawaiians, training
2 missionaries to go around the world, and we will be
3 able to do it in a way that accords with Kona, our
4 town here, as well as being able to fulfill our
5 mission mandate.

6 So, thank you, Mr. Chair, for your time
7 this morning.

8 MS. ANJO: Thank you, Mr. Chair, and the
9 Commission. This concludes our annual report. We do
10 look forward to working with you and keeping you
11 apprised of this project as we develop forward, and
12 await any directive that you have for us, and we
13 thank you.

14 CHAIRPERSON SCHEUER: Thank you.

15 Commissioners, do you have questions for
16 the Petitioner? Commissioner Wong.

17 COMMISSIONER WONG: Thank you, Chair.

18 So from your status report, Mr. Ching
19 stated that from 2003 to now there's been a lot of,
20 can I say, difficulties? And lot of issues that
21 happened with your corporation and changing and all
22 that. And that these conditions, a lot of them have
23 not been met, or you're going to try to meet them
24 from now on; is that correct?

25 MS. ANJO: Yes. The conditions, yes, we

1 have been facing a lot of difficulties since 2003 and
2 realignment, and a lot of the conditions although
3 have not been expressed on the reclassified area. In
4 heart, we've met a lot of the conditions on the
5 broader scale, what they were trying to convey.

6 For example, affordable housing, commitment
7 to the community, Hawaiian culture. So we have
8 actually been really moving forward, creating a
9 strong foundation to make these conditions met with
10 the heart of what they were for.

11 And that's -- and then some of them, the
12 archaeological sites, and the reports really trying
13 to make sure those were done well.

14 COMMISSIONER WONG: I'll thank you for the
15 status report. It was very informative.

16 However, I'm concerned because, you know,
17 the conditions were set for the parcel we're talking
18 about now, not of the surrounding areas. So I'm
19 concerned that the affordable housing piece is not
20 done on the parcel, it's done maybe on the
21 surrounding areas as you stated.

22 So that to me is not our kuleana. The
23 parcel itself is our issue right now. And I'm very
24 concerned right now, because has there even been
25 plans on the affordable housing that's been set?

1 Do you want me to stop, Mr. Chair?

2 CHAIRPERSON SCHEUER: No, please proceed.

3 COMMISSIONER WONG: I'm just concerned.

4 Has there even been plans set up for affordable
5 housing on the parcel at this time?

6 MS. ANJO: We came with a realignment of
7 the mission, trying to return the faith-based value.
8 We came before the Commission in 2007 and requested
9 in that motion if we could -- to amend kind of the
10 condition and the housing vision. So to shift the
11 housing vision at that time.

12 COMMISSIONER WONG: But there was no --
13 sorry, I wasn't here in 2007. So it's kind of new to
14 me in terms of that portion.

15 But at this point in time, it seemed like
16 there's no commencement or plan in front of us right
17 now but the affordable housing for that parcel; is
18 that correct?

19 MS. ANJO: Correct. The housing is,
20 instead of it being put for the sell of condos, it
21 was -- the current revision is to have it for staff
22 housing and for student housing on the property,
23 instead of -- and so the affordable housing original
24 vision which was to make condos and sell them off.

25 COMMISSIONER WONG: So shouldn't you have

1 come -- if that was a change, shouldn't you have come
2 to amend that condition? A request for the
3 amendment?

4 MR. CHING: If I could respond to the
5 question.

6 The affordable housing condition on the
7 reclassified area would be triggered by the
8 development of housing, which then on that area,
9 which then triggers a commiserate response. In this
10 particular case, as no housing has been developed to
11 date, we're compliant in the sense that, well, we
12 haven't done -- we haven't produced that trigger for
13 housing from activity on the reclassified area.

14 And Mr. Childers has indicated, and a
15 commitment as housing is developed on the
16 reclassified area, and at this point it's going to be
17 the student dorms, staff housing. If that triggers
18 an affordable housing requirement, they must produce
19 and they must comply.

20 What Julie has mentioned is simply that in
21 advance of that, and in good faith, they have
22 provided and rehabbed and brought to the market 128
23 units of very qualified affordable rentals that is
24 needed in the community.

25 COMMISSIONER WONG: Thank you for taking a

1 drug infested area, as you stated, to do something
2 for the public.

3 Because I'm still concerned, because right
4 now I think if you are planning to do housing, even
5 for students or faculty, wouldn't you need some sort
6 of drainage and water issue? I mean the
7 infrastructure for that. Has that started?

8 MS. ANJO: Yes, we've been working on water
9 on the 62 acres.

10 COMMISSIONER WONG: Is that with the county
11 or how is it set up?

12 MS. ANJO: Currently we are working on
13 wells.

14 COMMISSIONER WONG: And wastewater also,
15 you're working on what type of plan? Just
16 infrastructure?

17 MS. ANJO: A lot of things are still under
18 the development. The plan with the wastewater is
19 to -- to follow the same with the county.

20 COMMISSIONER WONG: It's just that I'm just
21 concerned in terms of it's been, what, 2003 to now,
22 and it appears, even though it's not your fault,
23 there's been changes, that there's been nothing done
24 until now. I mean outside, yes, you did some things,
25 but from the inside of that parcel there's nothing to

1 it, pretty much fallow.

2 So it's just a concern of myself that
3 nothing has been done. Because I know you're trying
4 to do good but, you know, I haven't seen the good
5 right now in what is in front of us. So I'm just
6 concerned about that.

7 Thank you, Chair.

8 CHAIRPERSON SCHEUER: Commissioners?

9 Commissioner Aczon.

10 COMMISSIONER ACZON: Good morning. Kind of
11 slow this morning. Like Commissioner Wong, I wasn't
12 here from the beginning, and I just want to
13 understand the whole process.

14 Annual report was good. A lot of
15 information. But fast forward to today, we are here
16 to hear about the Petitioner's request to revert back
17 the property to the original condition. Is that the
18 case?

19 MS. ANJO: We withdrew the motion for
20 reversion and said, upon further wisdom and advice
21 from very knowledgeable people, that the appropriate
22 action is to give the annual report and to show you
23 what we've been doing, and that was what we needed to
24 do. So we're through the motion.

25 COMMISSIONER ACZON: So we are here now

1 just for annual report?

2 CHAIRPERSON SCHEUER: To clarify why,
3 Commissioner Aczon, why we are here today, we're here
4 to receive the annual report.

5 And after having asked questions of the
6 Petitioner, hearing any presentation from Hawaii
7 County and from Office of Planning on this, the
8 Commission may deliberate on this matter, can take no
9 action, or can take other actions including a motion
10 for an order to show cause if there is a belief among
11 the Commissioners that there may be a reason that we
12 believe that the Petitioner is not in compliance with
13 the Decision and Order on this matter.

14 COMMISSIONER ACZON: Thank you, Mr. Chair.

15 CHAIRPERSON SCHEUER: Commissioner
16 Ohigashi.

17 COMMISSIONER OHIGASHI: You have to excuse
18 me, I'm in the junior chair today.

19 I'm intrigued by your comment, Mr. Ching.
20 You made a comment about that the affordable housing
21 or affordable housing component would only be
22 triggered by a -- if the development went through or
23 went forward on the main property.

24 Is that your -- that was essentially --

25 MR. CHING: In broad strokes there is

1 affordable housing requirement condition imposed on
2 any activity developed in the reclassified area.

3 So my statement was that as the project
4 progresses and housing is developed, then there will
5 be in -- and the Petitioner understands and realizes
6 that they will have to appropriately comply with the
7 requirement, however it turns out.

8 COMMISSIONER OHIGASHI: So the existing
9 plans for that parcel, does that include any housing
10 that has been approved by the Commission? In other
11 words, was there a housing component in the original
12 presentation?

13 MR. CHING: In 2003 the Petitioner
14 indicated that they would be selling 297 market
15 housing units. And they've represented today as well
16 as in 2007, that they will not be developing any
17 market housing units.

18 COMMISSIONER OHIGASHI: And based upon that
19 representation, is there -- that that part of the
20 motion to amend that was in 2007?

21 MR. CHING: I believe in 2007 that
22 particular -- there were no exhibits or motion made
23 to relieve the Petitioner of an affordable housing
24 condition.

25 COMMISSIONER OHIGASHI: So technically

1 then, the plan before us is, there's no amendment to
2 the plan, that you will provide those affordable or
3 those housing units for sale; is that correct?

4 MR. CHING: I think it's -- it would be
5 accurate to say that Petitioner has made a
6 representation that they would like to change the
7 tenor of the development, and that they would be
8 advised by the Commission as to what action needs to
9 be taken.

10 In 2007 a motion hearing was convened by
11 the LUC, exhibits were offered by the Petitioner,
12 but, again, no action was taken.

13 COMMISSIONER OHIGASHI: And I think you
14 testified that that motion to amend did not include
15 the changing of the sale of the condominium units, it
16 dealt with something else?

17 MR. CHING: I'm sorry if I wasn't clear. I
18 do believe in 2007 the documents offered clearly
19 indicated a deletion of removal of any intent to
20 develop for sale real estate condo units.

21 COMMISSIONER OHIGASHI: So we don't know
22 what happened to that? So is it your intent to file
23 a motion to amend to delete that portion or renew
24 that motion to amend; is that your intent?

25 MR. CHING: Well, actually, again, the

1 specific purpose here is to provide the report and to
2 take direction as appropriate from the Commission.

3 COMMISSIONER OHIGASHI: That's not
4 answering my question.

5 My question is, that assuming that we -- we
6 have -- we have two courses today. Well, we can do
7 nothing, or we can file an OSC, or say let's move to
8 OSC and have a big hearing on this matter; or we can
9 say we understand that the Petitioner, you guys, are
10 going to file a motion to clear up what they're going
11 to be doing on that property, and defer an OSC
12 hearing.

13 So my question is very simple. Is it your
14 intent to file a motion to amend to identify what
15 changes in the project is necessary that you're
16 seeking, and to show us the necessary financing
17 ability?

18 Because I'm assuming that the development
19 of the condominium was meant to finance some of the
20 development on this property, and absent that
21 financial component.

22 So I'm just asking a simple question. Is
23 it your intent to file a motion to amend?

24 MR. CHING: If allowed by the Commission, I
25 believe that would be an appropriate action.

1 COMMISSIONER OHIGASHI: I think the rules
2 allow you to do it no matter what. I'm just asking
3 your intent.

4 MR. CHING: Again, I believe that would be
5 the logical step. It's just that there was the
6 unresolved issue of the previous filing and no action
7 being taken, and that's why we defer to the
8 Commission to give us direction in that matter.

9 COMMISSIONER OHIGASHI: Are you asking us
10 to bring up that motion again?

11 MR. CHING: Again, if, given the
12 opportunity, I think we would offer a new motion that
13 would be up-to-date and would be consistent with any
14 instructions that we have received from the
15 Commission, as well as in compliance with the vision
16 moving forward for the Petitioner.

17 CHAIRPERSON SCHEUER: Commissioner
18 Ohigashi, can you take a break? And we will go back
19 to you, Commissioner Aczon.

20 COMMISSIONER ACZON: I'm still just trying
21 to follow up on Commissioner Ohigashi's questioning.

22 I'm just trying to kind of see where the
23 end gate is. I'm pretty sure you guys have some idea
24 where you guys want to go.

25 I'm just curious. You folks filed a Motion

1 to Revert the property to its original designation,
2 and then all of a sudden you guys pulled out. Why do
3 you -- did you file a Motion to Revert the property
4 to begin with?

5 MS. ANJO: We filed a Motion to Revert
6 because we were trying to figure out how to move
7 forward. And that had been some advice that had been
8 given to us, revert the property.

9 And so then I had the privilege of being
10 with Ms. Apuna and she asked me some questions. And
11 then we sought some broader -- some broader counsel,
12 and that's when they said, you know, this is a good
13 classification for what you want to do, so it would
14 be better to, you know, go -- go back to the
15 Commission and give them an update and see how they
16 want you to move forward.

17 For us we weren't sure how you wanted us to
18 move forward. What could we do to do this? We tried
19 to come before, and they didn't --

20 COMMISSIONER ACZON: As if --

21 MS. ANJO: Then we pulled the motion and
22 then --

23 COMMISSIONER ACZON: The question now is:
24 When you decided to file or to revert
25 original designation, your plan is when you get the

1 reversion, then file again for reclassification?

2 MS. ANJO: If that's what we needed to do.
3 We felt like that -- that we needed -- we wanted to
4 move with the land. We wanted to make things right
5 that -- where there has been a lot of silence. We
6 were trying to fix it. We were just operating on
7 what we were advised to do on how to move forward.

8 COMMISSIONER ACZON: I just wanted to get
9 some idea on where the end game is. I don't want to
10 go through all those, then we're back to square one.
11 I just kind of wanted to get some ideas.

12 CHAIRPERSON SCHEUER: Commissioner Okuda,
13 and then I'm going to call for a ten-minute recess.

14 COMMISSIONER OKUDA: Thank you very much,
15 Mr. Chair.

16 Mr. Ching, I appreciate your background
17 information about your relationship with ethnic
18 studies program. I don't know whether I have to
19 disclose or not. Right before I went to law school,
20 I was the convenor of the dean's advisory committee
21 on ethnic studies at UH Manoa, which ended up hiring
22 Dr. Franklin Oda as permanent director, so I
23 understand the concepts and framework that you're
24 trying to present.

25 My question is basically this: Because we