have certain standards that I think the Commission
has to evaluate the case on based on what we have
right here and now. Of course, we will take into
account all necessary and admissible evidence and
factors we have to take into account.

But just so I can try to clear up the
standard in my mind, do you agree that, as we look at
the conditions that are stated in black and white
right now, and the facts that have been stated by
your updated -- or your client's updated annual
reports, that the Petitioner has failed to perform
according to the conditions imposed and to the
representations and commitment made to the Commission
in obtaining reclassification of the subject
property?

Do you agree that -- I mean, I'm not saying
that, you know, your answer stipulates to a reversion
or to an order to show cause, and your answer is not
to be deemed as a waiver of any objections to
whatever the Commission might look forward. But just
looking at that question, do you agree that -- let me
ask you first -- that there's at least some evidence
that shows there has not been performance according
to the representations made in obtaining the original
reclassification?
MR. CHING: Commissioner, I would respectfully disagree with that representation that Petitioner has failed to deliver on LUC conditions.

COMMISSIONER OKUDA: So your position, or your statement is there's no evidence at all that the Petitioner has not delivered or performed on the conditions and representations made to obtain the reclassification; that's your statement?

MR. CHING: Yes, it is.

COMMISSIONER OKUDA: Thank you. I have no further questions, Mr. Chairman.

CHAIRPERSON SCHEUER: It's 9:59. We'll reconvene at 10:09.

(Recess taken.)

CHAIRPERSON SCHEUER: We're back in session, and the Commissioners were asking questions of the Petitioner.

Commissioners, any further questions for the Petitioner at this time?

I have a few questions. And I suppose the core questions that I have is:

Do you have clarity at this time as to what you want to do with the subject property? Or are you still on your journey to figuring that out?

MR. CHILDERS: We believe we want to move
forward with this in a way for education to serve the community locally, as well as to extend our mission here on the Big Island and abroad.

   So with that, it's educational as well as the service of the Big Island community, yes.

   CHAIRPERSON SCHEUER: How far along are you in terms of translating that vision, if you will, to an understanding of what might physically occur on the property? Or do you have a thought on the process by which you might go from that vision of serving this island and the global community through education and service on the property?

   MR. CHILDERS: Yes. We're at the beginning of that process, and we're beginning to make plans. Nothing is finalized yet.

   CHAIRPERSON SCHEUER: Can you share anything about your process for how you're going to develop that vision into a physical understanding of how it might -- how the property might be used?

   MR. CHILDERS: We have gathered a team around of professionals to help us facing truth. And we're in the process of discussing that and seeing how that would best serve our vision and the local community.

   CHAIRPERSON SCHEUER: This is not directed
to the last person. Everyone please silence your phones.

I did want to note for the record, just so it's clear to everybody having reviewed the historic record on this, I just want to clarify, Tony, that is your signature at the bottom of the Decision and Order originally on this docket?

MR. CHING: Yes, Chair.

CHAIRPERSON SCHEUER: My last set of questions for now have to do with what happened in 2007.

I understand from your presentation, Mr. Childers, that Petition to Amend Conditions was submitted, and the Commission took it up, but the Commission lost quorum.

Did the Petitioner, to your knowledge, follow up with the Commission to ask them to reconsider or take action on that Petition to Amend Conditions?

MR. CHING: Chair, at the time on March 1st, 2007, I was the Executive Officer for the Land Use Commission. I was a part of that hearing that took place. There was very much interest from the Commission with respect to Petitioner's intentions and capacity to move on.
I think just before we lost quorum, it's my recollection that there was a comment made to the Petitioner to don't come back to us until you have all your ducks in a line and financing and ready to go. That was an off-the-record comment that I offer not substantiated, just by my testimony.

CHAIRPERSON SCHEUER: But based on that representation here, you believe that the Petitioner went away based on that comment to, in your words, get their ducks in a row. Then other things intervened and this is where we are now?

MR. CHING: Yes.

CHAIRPERSON SCHEUER: So just to be clear for the record, it wasn't necessarily the action of the Land Use Commission in any professional capacity that prevented the Petitioner to come back to us to take action on that Petition to Amend Conditions?

MR. CHING: Yes.

CHAIRPERSON SCHEUER: Any further questions at this point, Commissioners? Then we will move on to Hawaii County's presentation.

MR. KIM: Thank you, Chair.

Initially Deputy Director Kanuha would like to make a comment.

CHAIRPERSON SCHEUER: Do you swear or
affirm that the testimony you're about to give is the
truth?

THE WITNESS: I do.

CHAIRPERSON SCHEUER: Please continue
Commissioner -- former Commissioner.

DUANE KANUHA

Was called as a witness by and on behalf of the
County of Hawaii, was sworn to tell the truth, was
examined and testified as follows:

DIRECT EXAMINATION

THE WITNESS: Thank you, Mr. Chairman,

members of the Commission. My name is Duane Kanuha,
currently Deputy Director for Hawaii County Planning
Department.

With respect to the updated status report
of this project, we really have no comments. The
only comment I would like to make is that as you
know, the land use entitlement process is a two-step
process. And that is the district boundary amendment
is given to Petitioners by the State.

And the next step to effectuate whatever
the project is, is a rezoning to whatever would fit
the project within the realm of what was represented
to the Land Use Commission.

So just for the record, at this point in
time, there's been no rezoning request for this particular piece of property, so the current zoning status of it is still Agricultural 1-A, which means that at some point in time to perfect what they want to do, again, within the realm of what they represented to the Commission, the appropriate zoning would have to be sought from Hawaii County with approval of the Hawaii County Council.

At this point in time, given that there's still some uncertainty in what this project would be, the appropriate zoning is kind of up in the air. It could be multiple-family. It could be a combination of single-family/multiple-family.

Since this district boundary amendment was approved, there is a new zoning category that we have called "project district", which allows for a variety of zoning densities within the project area.

So that's just our comment, the comment from the Planning Department at this time, and that the zoning has not been effectuated to actually allow this project to go through as of this date.

CHAIRPERSON SCHEUER: Thank you. Anything further, Mr. Kim?

MR. KIM: Just add a few more comments from the county.
The first one is it was very interesting to hear about the affordable housing project from U of N, and that they might be able to get some credit for that project actually per county code. But, again, we don't know what the requirements are going to be on the housing until, you know, there's something more concrete with what is proposed for development actually too.

So I can't say whether or not they satisfied that or not. Normally you come into an agreement with the developer and then we give them the credit that way. So this is going to be a little bit different because it's after-the-fact.

From my perspective, if they have work and health and contributed to developing affordable housing, they should get credit for it. I think that's fair.

The other comment I would make. Recently I have had contact with University of Nations during our lava eruption disaster, and they were gracious hosts to offer their property and housing to set up temporary housing for evacuees. Unfortunately, I don't think the project ever came to fruition, but there was a real -- (indecipherable).

Those are my comments.
CHAIRPERSON SCHEUER: Thank you.

Commissioners, are there questions for the County of Hawaii? Thank you.

Office of Planning, Ms. Apuna.

MS. APUNA: Thank you, Chair. I think that Office of Planning would just like to point out that Finding of Fact 64 of the Decision and Order states that the Hualalai Village residential development was cited to run over a period of five years, and would be completed during the year 2007.

And then commencement of the cultural center was targeted to begin during the year 2007, and that the educational facility was being planned for commencement in 2005/2006.

I would just like to add that to the record. Thank you.

CHAIRPERSON SCHEUER: Thank you.

Commissioners, are there any questions for Ms. Apuna?

Hearing none, Commissioners are there any further questions for any of the parties at this time? Ms. Cabral.

VICE CHAIR CABRAL: Here on the Big Island I appreciate the efforts particularly in your affordable housing efforts and that. And I think
that from all I can hear, the project's potential and
what you do is positive in so many areas, housing,
cultural, language and that, and I would encourage
you to work with all parties to try and bring the
appropriate use of this land to its best use under
the current circumstances. So I encourage you folks
to move forward. Thank you.

CHAIRPERSON SCHEUER: Commissioner Wong.

COMMISSIONER WONG: Chair, I wanted to move
into executive session to consult with the board's
attorney on questions and issues pertaining to the
board's powers, duties, privileges, immunities and
liabilities on this issue, especially what we can do
with -- since they presented their report.

COMMISSIONER ACZON: I would like to second
it.

CHAIRPERSON SCHEUER: A motion has been
made to go into executive session by Commissioner
Wong, and seconded by Commissioner Aczon for the
reasons stated by Commissioner Wong.

Is there discussion of the motion? If not,
all in favor say "aye". Anybody opposed? The motion
carries. The Commission will go into executive
session.

(Executive session.)
CHAIRPERSON SCHEUER: We're back in session.

Commissioners, one last chance. Any further questions for any of the parties?

If not, Commissioners we're going to now enter deliberations on this matter. As a reminder, pursuant to Hawaii Administrative Rules Section 15-15-93(b), quote, "whenever the Commission shall have reason to believe that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the Petitioner, the Commission shall issue and serve upon the party or person bound by the conditions, representations or commitments, an order to show cause why the property should not revert back to its former land use classification or be changed to a more appropriate classification," and set the matter for hearing.

So we may deliberate on this matter.

Commissioner Wong.

COMMISSIONER WONG: Go ahead, Commissioner Aczon.

CHAIRPERSON SCHEUER: Excuse me, Commissioner Aczon.

COMMISSIONER ACZON: Mr. Chair, I would
like to make a motion. I kind of waited for the Big Island member.

VICE CHAIR CABRAL: Go ahead, I'll second.

CHAIRPERSON SCHEUER: Hawai'i Island Commission might wait to hear the motion before it seconds it.

VICE CHAIR CABRAL: I'm just so supportive of my Commissioners.

COMMISSIONER ACZON: Mr. Chair, I want to make a motion for the Commission to issue an Order to Show Cause for this project, and I'll explain later.

VICE CHAIR CABRAL: And I will second that.

CHAIRPERSON SCHEUER: Okay, let's deliberate on the motion, which is currently stated as an order to proceed with an order to show cause.

Anybody want to speak towards the motion? Commissioner Aczon.

COMMISSIONER ACZON: I made a motion. The discussions today, and also previous motion which was withdrawn, I just kind of -- because of that motion, the Petitioner admitted that they're not in compliance with all or some of the conditions. And I just for myself, I don't want to take -- I don't want to have a blind side on those noncompliance, and just to get this project going. So perhaps if you do an
order to show cause, more of the information that we
needed would come up. And I'm hoping that, you know,
if this motion is approved, then the Petitioner can
come back with a better plan, better financial plan,
better plan to move this project along.

CHAIRPERSON SCHEUER: Commissioner Cabral.

VICE CHAIR CABRAL: I'll speak in favor of
that motion, because it's my intent, as the seconder
of it, that to provide the Petitioner time to
organize and to really come forward with a new plan,
if that's what it's going to take, or to show how
they are in compliance, and we can keep this moving
ahead.

I would hate to have more land on the Big
Island go away from being possible housing at this
time. Thank you.

CHAIRPERSON SCHEUER: Commissioner Wong.

COMMISSIONER WONG: So, Chair, thank you.

So listening to the status report and also
when you asked the question about the 2007 request
and it wasn't -- there was no quorum, and nothing
came out of that that the Petitioner didn't say I
want to come back and have that hearing again to have
something done. So it wasn't the Land Use's fault,
but it was up to the Petitioner to come back to us.
And also that it seems like when the county said that there's no permits have been issued, nothing has been issued yet, that it would be great to hear what is the real plan for this parcel. Because it seemed like there's going to be housing on there but it's for the students or something, but in the original docket, it said for something else.

So I would like to hear more to this, and other things. So that's why I'll support the motion.

CHAIRPERSON SCHEUER: Thank you,

Commissioner Wong.

Commissioner Okuda.

COMMISSIONER OKUDA: Thank you, Mr. Chair.

I view this motion a little bit more narrowly, that it's simply a question about whether or not, based on the current record, the Commission has reason to believe that the Petitioner has failed to perform according to the conditions imposed and the representations and commitment made to basically get the reclassification.

So it's based on that standard. And this motion, or if an order to show cause is issued, it doesn't prejudge what the ultimate outcome is, but just looking at whether or not the standard has been met for the issuance for the Order to Show Cause. I
believe the standard has been met.

As far as substantial amount of time having
been passed where there hasn't been fulfillment of
the conditions and representations that have been
made.

And so for those reasons, and based on the
testimony of other good cause as shown in the record,
I believe that the standard for issuance for an order
to show cause has been met.

And, again, this is not to prejudice what
the ultimate outcome would be in this process.

Thank you.

CHAIRPERSON SCHEUER: Commissioners, other
comments on the motion or deliberation?

I will also be voting in favor of the
motion. I'll just lay out the four reasons why I'll
be voting in favor of it.

First of all, I believe that, just based
solely on today's discussions, and the Petitioner's
own acknowledgements there's been at least certain
issues such as reporting commencement where the
Petitioner has apparently failed to comply with the
conditions of the order.

So I think there's clarity on the record
that moving to an order to show cause is justified.
I think it's also appropriate, given the duties of the Land Use Commission, we are supposed to facilitate development, not sometimes stop development, or modify development where it's inappropriate or harmful to public trust values, but facilitate where it is appropriate, and holding parties to deadlines is part of that.

So I think it's within our duties to try to at least start to set deadlines in this matter to see that progress is made on this.

I also think it's a matter of fairness to other petitioners who have had to comply with deadlines and other dockets before this Commission, the third reason.

But fourth, I actually do believe, and I believe that Commissioner Okuda's comments reflected this, I believe this offers a good opportunity to the Petitioner to focus their intention, gain clarity on how they're going to try to fulfill their mission on this particular property, and to then come in the context of an OSC hearing with any arguments they have about what their future plans are.

So in that sense, while there is a burden to the process, I believe it actually can be of service to the Petitioner as well.
Are there any further deliberations on the motion before us? If not, Mr. Orodenker, would you please poll the Commission?

EXECUTIVE OFFICER: Thank you, Mr. Chair.

The motion is to schedule an Order to Show Cause in this matter.

Commissioner Aczon?

COMMISSIONER ACZON: Aye.

EXECUTIVE OFFICER: Commissioner Cabral?

VICE CHAIR CABRAL: Yes.

EXECUTIVE OFFICER: Commissioner Mahi?

VICE CHAIR MAHI: Aye.

EXECUTIVE OFFICER: Commissioner Ohigashi?

COMMISSIONER OHIGASHI: Aye.

EXECUTIVE OFFICER: Commissioner Okuda?

COMMISSIONER OKUDA: Yes.

EXECUTIVE OFFICER: Commissioner Wong?

COMMISSIONER WONG: Yes.

EXECUTIVE OFFICER: Chair Scheuer?

CHAIRPERSON SCHEUER: Aye.

EXECUTIVE OFFICER: Thank you, Mr. Chair.

The motion passes.

CHAIRPERSON SCHEUER: Thank you very much.

We look forward to working with you on this matter.

MS. ANJO: Thank you.
CHAIRPERSON SCHEUER: Commissioner Wong.

COMMISSIONER WONG: Did you want to schedule a meeting?

CHAIRPERSON SCHEUER: The staff will work on it with the parties. We will take a couple moments for the next parties, the parties in the next docket to come forward.

(Recess taken.)

AO6-770 The Shopoff Group

CHAIRPERSON SCHEUER: It's 10:45. The next agenda item is a status report on Docket AO6-770 the Shopoff Group and for Commission to take action if appropriate.

Will the parties please identify themselves?

MS. BAPTISTA: My name is Nohea Baptista. I'm Robert Lee's daughter.

MR. LEE: Robert E. Lee, Jr.

MR. CHILDS: Colin Keola Childs.

CHAIRPERSON SCHEUER: And you're here --

MR. CHILDS: As a consultant adviser to the parties.

CHAIRPERSON SCHEUER: Thank you.

MR. KIM: Good morning, Chair and
CERTIFICATE
STATE OF HAWAII

COUNTY OF HONOLULU

I, JEAN MARIE McMANUS, do hereby certify:

That on March 28, 2019, at 9:00 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 28th day of March, 2019, in
Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156