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STATE OF HAWAI'I

LAND USE COMMISSION

January 8, 2020

Commencing at 9:31 a.m.

Natural Energy Laboratory Hawai'i Authority (NELHA)
Hale 'Iako Training Room #119
73-987 Makako Bay Drive
Kailua Kona, Hawai'i 96740

AGENDA

- I. CALL TO ORDER
- II. ADOPTION OF MINUTES
December 17-18, 2019 Minutes
- III. TENTATIVE MEETING SCHEDULE
- IV. STATUS REPORT AND ACTION (IF NECESSARY)
A90-660 Villages of La'i'opua, North Kona,
(HAWAI'I)
- V. STATUS REPORT AND ACTION (IF NECESSARY)
A02-737 U of N BENCORP (HAWAI'I)
- VI. ACTION
A02-737 U of N BENCORP (HAWAI'I)
Consider University of the Nations, Kona,
Inc.'s, Motion for Reconsideration of Order
to [sic] Granting United Nation [sic] of
Kona's Motion to Continue Hearing on
Order to Show Cause
- VII. RECESS

BEFORE: Laura Savo, CSR #347

1 APPEARANCES:

2 COMMISSIONERS:

3 JONATHAN SCHEUER, Chair
4 NANCY CABRAL, Vice Chair
5 (Acting Chair - A90-660 only)
6 EDMUND ACZON, Vice Chair
7 DAWN CHANG
8 DAN GIOVANNI
9 LEE OHIGASHI
10 GARY OKUDA
11 ARNOLD WONG

12 WILLIAM WYNHOFF, ESQ.
13 Deputy Attorney General

14 STAFF:

15 DANIEL ORODENKER, Executive Officer
16 RILEY K. HAKODA, Chief Clerk/Planner
17 RASMI AGRAHARI, Planner

18 DAWN APUNA, ESQ.
19 Deputy Attorney General
20 LORENE MAKI, Planner
21 State of Hawai'i, Office of Planning

22 RONALD KIM, ESQ.
23 Deputy Corporation Counsel
24 City & County of Honolulu
25 JEFFREY DARROW, Planning Program Manager

JEFFREY FUJIMOTO, DHHL Engineer
For A90-660

DEREK B. SIMON, ESQ.
KATHERINE A. GARSON, ESQ.
JULIE ANJO, ESQ.
PAUL CHILDERS, Campus Director
For A02-737

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A02-737

EXAMINATION OF WITNESSES

FOR THE PETITIONER:

JEFFREY OVERTON

Direct Testimony 87

JEFFREY DARROW

Direct testimony 162

1 KAILUA KONA, HAWAI'I JANUARY 8, 2020, 9:31 A.M.

2 - o0o -

3 CHAIR SCHEUER: Aloha mai kakou. Good
4 morning. This is the January 8th, 2020, Land Use
5 Commission meeting. Happy New Year.

6 Our first order of business is adoption
7 of the December 17th, 2019, minutes. Are there any
8 corrections or comments? Seeing none, is there a
9 motion to adopt?

10 COMMISSIONER WONG: I move to adopt.

11 VICE CHAIR CABRAL: Second.

12 CHAIR SCHEUER: A motion, sort of, has
13 been made by Commissioner Wong and seconded by
14 Commissioner Cabral. Is there any discussion on the
15 motion? If not, all in favor, say aye.

16 (The board voted.)

17 CHAIR SCHEUER: Anybody opposed?

18 The motion passes unanimously.

19 The next agenda item is the tentative
20 meeting schedule.

21 Mr. Orodenger.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.

23 Our next meeting will be tomorrow at the Honolulu
24 International Airport for A87-610 Gentry/Waiawa. And
25 we'll have a meeting on January 22nd for the Hawaiian

1 Memorial Park matter at the Ko'olau Ballroom. That
2 will be -- that was also -- that was originally
3 scheduled for the 23rd, but due to quorum issues, we
4 will not be having a meeting on that date.

5 February -- we have tentatively scheduled
6 a videoconference meeting at various places around
7 the state. This is on February 5th to -- re become
8 the (indiscernible) authority for the Windward Hotel
9 on Maui. And then we do not have anything on the
10 calendar until April when we will take up the
11 Hawaiian Memorial Park matter.

12 COMMISSIONER CHANG: Dan, did you have a
13 date for the April meeting?

14 EXECUTIVE OFFICER: No, we don't.

15 CHAIR SCHEUER: Thank you, commissioners.
16 Are there any other questions for Mr. Orodener?

17 I guess I could say this privately too,
18 but after our last videoconference fiasco, I said I
19 never wanted to participate in a videoconference
20 meeting again. What has changed?

21 EXECUTIVE OFFICER: Well, from a
22 budgetary standpoint, it didn't make a lot of sense
23 to fly all the commissioners to Maui for what is
24 essentially going to be a 10-minute meeting.

25 CHAIR SCHEUER: Except when it doesn't

1 last 10 minutes. It lasts two hours because we can't
2 get the video to work.

3 EXECUTIVE OFFICER: Well, I can tell you
4 that we've made a lot of progress at the state, and
5 the IT department is now using technology that we
6 tried -- we told them they should use five years ago.

7 CHAIR SCHEUER: Good. Thank you.

8 The commission will now address the
9 status report scheduled on its agenda for Docket
10 No. A90-660 Villages of La'i'opua, North Kona,
11 Hawai'i.

12 Will the parties please identify
13 themselves for the record?

14 MR. FUJIMOTO: Jeffrey Fujimoto,
15 Department of Hawaiian Home Lands, engineer.

16 MR. KIM: Hi. Good morning, commissioner
17 and members of the commission. Deputy Corporation
18 Counsel Ronald Kim appearing on behalf of the County
19 of Hawaii, and along with me is the planning program
20 manager, Jeff Darrow.

21 CHAIR SCHEUER: Thank you.

22 MS. APUNA: Good morning, Chair and
23 members. Dawn Apuna, Deputy Attorney General for the
24 Office of Planning. Here with me is Lorene Maki.

25 CHAIR SCHEUER: Okay. Thank you.

1 Commissioners, while the LUC has
2 extremely limited jurisdiction over the Department of
3 Hawaiian Home Lands and this is merely an
4 informational matter, they are my client. I help
5 them with water issues around the state. So I'm
6 actually going to hand this portion of the
7 proceedings over to the vice chair and leave the
8 room. And if you want me back, you can call me back.

9 ACTING CHAIR CABRAL: I'll scream loud.

10 All right. Thank you. For members of
11 the public, we like to have you reminded that the
12 commission will not be considering the merits of this
13 petition, but, rather, the commission is interested
14 in learning about the current state of activities
15 related to the docket, including compliance with
16 conditions. Let us go over our procedures for this
17 docket.

18 First, those individuals desiring to
19 provide public testimony for the commission's
20 consideration for each respective docket will be
21 asked to identify themselves and will be called in
22 order to our witness box where they will be sworn in
23 prior to testimony.

24 Has anyone here presented themselves as
25 wanting to give public testimony? Thank you.

1 At the conclusion of public testimony,
2 which we won't have, but if someone does come
3 forward, we will recognize them. Okay. The
4 petitioner is to provide their respective
5 presentations so that we can better understand
6 whether compliance with conditions or representations
7 for each decision and order have been met and whether
8 any concerns about the docket's status in the matter
9 have been adequately addressed and if any further
10 meetings on this matter are needed. After that, the
11 chair will call upon the County of Hawaii and the
12 Office of Planning for comments.

13 The chair would also like to note that
14 the public -- from time to time, that we will be
15 calling for short breaks.

16 Are there any questions about our
17 procedures at this time? Thank you.

18 Okay. Let me update the record of this
19 docket.

20 On June 27th, 2019, the commission
21 received a written status report on the recent
22 activity of Village 9 and the Villages of La'i'opua
23 from the Hawaiian -- Hawaii Housing Finance &
24 Development Corporation which is referred to as
25 HHFDC. Village 9 was excluded from the sale of the

1 Villages of La'i'opua to the Department of Hawaiian
2 Home Lands, DHHL, because HHFDC board of directors
3 approved development of the Kona Community [sic] at
4 that site. However, the hospital failed its
5 construction commencement deadlines. So development
6 of this site has now reverted back to HHFDC.

7 From June to August 2019, the Land Use
8 Commission exchanged email correspondence with
9 representatives from HHFDC and DHHL regarding status
10 reports for this docket.

11 On August 29th, 2019, the commission
12 received a written status report on the statuses of
13 Village 9 and lots 7 and 8 of file plan 2128 at the
14 Villages of La'i'opua development from HHFDC
15 development in complying with conditions imposed by
16 the commission.

17 On December 30th, 2019, the commission
18 mailed and emailed the January 8 and 9, 2020, LUC
19 Land Use meeting agenda notices to the statewide
20 email, Oahu and the Hawaii Island, mailing list.
21 That is the meeting we are now at.

22 On January 6, though, 2020, HHFDC advised
23 the commission that it would not be appearing at the
24 January 8, 2020, meeting and was standing by its
25 August 19, 2019, annual report.

1 At this point we would be taking public
2 testimony, but as there is no one here from the
3 public to testify, the petitioner, which is
4 Department of Hawaiian Home Lands, would you like to
5 please at this time provide us your status report to
6 the commission for us to review and consider?

7 MR. FUJIMOTO: Yes. I have actually a
8 PowerPoint presentation to provide an update on our
9 current developments in La'i'opua and then just a
10 little information on a couple of future villages.
11 So if that's okay, if I could present that.

12 ACTING CHAIR CABRAL: Yes, that's fine.

13 MR. FUJIMOTO: And I distributed --
14 Arnold Wong distributed our handout of the
15 presentation.

16 ACTING CHAIR CABRAL: Okay. Thank you.
17 Please proceed.

18 (Brief pause in the proceedings to
19 set up for PowerPoint presentation.)

20 MR. FUJIMOTO: Good morning, everyone.
21 Jeffrey Fujimoto with the Land Development Division
22 of Department of Hawaiian Home Lands. Thank you for
23 inviting us here. I did get word that we're kind of
24 behind on our annual report. So I'm going to take
25 that back to our administration to follow up on that.

1 So I want to thank Riley for informing me on that.

2 So I wanted to give you an update --
3 status update on our La'i'opua development. So
4 everyone has a handout?

5 So this is an overall shot of the
6 La'i'opua area. So it includes DHHL properties as
7 well as HHFDC, County of Hawaii -- what else -- Board
8 of Water Supply. So this -- sorry. Yeah, the
9 pointer isn't so good. But, yeah, the next slide
10 will show a blowup of the current development that
11 we're working on. So you have Village 3 -- Village
12 3, Kaniohale, which is existing 225 lots. The houses
13 are built, occupied.

14 Village 4, Akau, which is the north half.
15 Village 4, Hema, is the southern half. Village 5 is
16 partially built homes, and we're continuing to
17 develop the homes in that area.

18 Okay. So here's a breakdown of the
19 residential development that's currently ongoing
20 right now. So, again, Village 3, 225 turnkey lots,
21 and that was completed in 2000. Village 4, Akau, is
22 118 residential lots that are scheduled for rent with
23 the option to purchase. Yeah, that's RWOTP.

24 Start of house construction, we're
25 looking at mid-2020 of this year. Next is Village 4,

1 Hema. That's 125 single-family lots planned for
2 2021.

3 Village 5, that's partially completed.
4 So 45 turnkey lots were completed in 2012. 16
5 self-help lots -- houses were occupied in 2017. That
6 was like the Blitz build with Habitat of Humanity.
7 Village 5, 10 vacant lot awards were done or are
8 scheduled to be done in 2020. And then 45
9 single-family lots will be included with that "rent
10 with option to purchase" program that we're preparing
11 for.

12 So what is rent with option to purchase?
13 So this rent with option to purchase, we're going to
14 use it on Village 4, Akau, and then also on the
15 vacant lots in Village 5. So it provides affordable,
16 single-family rental housing to families earning less
17 than 60 percent of the area median income. So
18 qualified renters are provided an option to purchase
19 the home after a 15-year rental compliance period.
20 And the buyer would then be awarded a 99 [sic]
21 residential homestead lease.

22 Okay. Continue. So Ikaika Ohana has
23 been awarded low-income housing tax credits for 60
24 units. Ikaika Ohana is the house developer that
25 we've selected for the Village 4, Akau, and the

1 portion of Village 5.

2 DHHH has committed \$5 million in trust
3 funds. So that's budgeted. House construction and
4 rental start-up subject to the sale of low-income
5 housing tax credits. And then house construction,
6 again, is projected to start somewhere in mid-2020 of
7 this year. And then the rental program would start
8 up the following year. So 2021.

9 Okay. And then La'i'opua Village 4,
10 Phase 2, Hema. So this is the next phase. The first
11 phase was Akau. That was on the northern portion,
12 the northern half of Village 4, and that we completed
13 the infrastructure. So if you go out there, you'll
14 see the roads are in, the street lights, all the
15 utilities are in. So we're working with the county
16 to get our final, final approval of the improvements,
17 and then work for the subdivision approval with the
18 county, and upon that, the house developer can start
19 construction.

20 Phase 2, Hema, which is the southern
21 portion, is planned for 125 residential lots. So I
22 think you saw on the screenshot before, the blowup
23 map, it showed 101. But there's actually 125 lots.
24 We're trying to get more water. So we don't have --
25 we're short 24 water credits that we're trying --

1 we're trying to get or trying to maybe get a new
2 source of water, work with the county to see if we
3 can get the 24 extra water credits. Then we can bump
4 that number up to 125. But right now we're at 101.

5 We did receive \$2.76 million in USDA
6 funds for the water, sewer and storm water. We have
7 that. Bid documents are being prepared. So we're
8 more in the prefinal stage of the bid documents.
9 That's the construction plans to put out the bid.
10 And estimated construction right now is 13.4 million,
11 but we still are working on the budget for that.

12 Okay. So here's future development of
13 La'i'opua. It's Villages 1 and 2. So La'i'opua
14 Village 1 and 2 are approximately 49 acres each, and
15 also current estimated lot counts are approximately
16 260 residential lots each. These projects could be
17 phased. We say phased because it's going to be
18 dependent on the future funding. So the actual
19 number of lots and the project schedules are still
20 depending on -- would be dependent on us getting the
21 available funding, the budget for the projects.

22 So I think that's it. Are there any
23 questions?

24 ACTING CHAIR CABRAL: So yes. Questions
25 right now, we would look to the county. Does the

1 county have any questions of the petitioner?

2 MR. KIM: Not at this time. Thank you.

3 ACTING CHAIR CABRAL: Okay. Office of
4 planning, Ms. Apuna, do you have can questions at
5 this time?

6 MS. APUNA: No questions. Thank you.

7 ACTING CHAIR CABRAL: Okay. Let me ask
8 the commissioners. Do you have any questions at this
9 time?

10 Commissioner Chang.

11 COMMISSIONER CHANG: Mr. Fujimoto, it's
12 really not a question. How would I say? Many
13 Hawaiians, including probably myself, have been
14 critical of Hawaiian Home Lands, but I applaud you
15 and I applaud the department for the work that you
16 are doing on La'i'opua. I'm extremely encouraged by
17 the options that you're offering and the extent of
18 your development. So mahalo for providing us an
19 update and putting more Hawaiians on the land. Thank
20 you.

21 MR. FUJIMOTO: Thank you.

22 ACTING CHAIR CABRAL: Any more comments
23 or questions?

24 Commissioner Giovanni.

25 COMMISSIONER GIOVANNI: Thank you for

1 your presentation. Just a quick question. Can you
2 clarify if the homeowners or those that will be
3 renting will have the option to make the residence
4 available on a short-term rental or will they be
5 prohibited?

6 MR. FUJIMOTO: Yeah. I'm not sure of
7 that, but I can take that question back and I can --
8 for sure I can get back to you with an answer on
9 that.

10 COMMISSIONER GIOVANNI: Thank you.

11 MR. FUJIMOTO: Yes.

12 COMMISSIONER CHANG: I don't believe -- I
13 don't think that is a matter of their policies.
14 Excuse me. But you can double-check.

15 ACTING CHAIR CABRAL: Commissioner Chang.

16 COMMISSIONER CHANG: Yeah, I don't
17 believe the Hawaiian Home Lands -- I think the
18 requirement is they have to reside in the premises.

19 MR. FUJIMOTO: Yeah, I believe so.

20 COMMISSIONER CHANG: But you can
21 double-check.

22 MR. FUJIMOTO: But I will confirm that
23 before.

24 COMMISSIONER GIOVANNI: Thank you.

25 ACTING CHAIR CABRAL: Commissioner Aczon.

1 VICE CHAIR ACZON: I'm just kind of
2 curious. This development, how many houses are built
3 already?

4 MR. FUJIMOTO: Okay. So I think --

5 VICE CHAIR ACZON: Number of houses.

6 MR. FUJIMOTO: I think we have that on
7 there.

8 VICE CHAIR ACZON: For the entire
9 development. Because I know you have by phase.

10 MR. FUJIMOTO: Oh, I see. Like a total,
11 yeah?

12 VICE CHAIR ACZON: Yeah.

13 MR. FUJIMOTO: A total. Let me see --
14 see what we have up there. Okay. Well, for sure on
15 Village 3, there's 225 houses already built. Village
16 5, it shows 116 lots, but my last house count was
17 about 72 houses for Village 5. So --

18 VICE CHAIR ACZON: For example, the 225
19 lots, houses are built on that one?

20 MR. FUJIMOTO: Yes, houses are built.

21 VICE CHAIR ACZON: And how many are
22 occupied?

23 MR. FUJIMOTO: I'll have to check on that
24 because sometimes people might sell it or -- and then
25 the house may be vacant, yeah. So I can check on

1 that too, and I can -- I can send a report on that.

2 VICE CHAIR ACZON: I just wondered
3 because these are all going to be (indiscernible);
4 right?

5 MR. FUJIMOTO: Yeah.

6 VICE CHAIR ACZON: Do you see any
7 problems on (indiscernible) able to -- what do you
8 call this? The loans?

9 MR. FUJIMOTO: Getting loans?

10 VICE CHAIR ACZON: Getting loans or
11 getting financing.

12 MR. FUJIMOTO: So we do have programs to,
13 like, help them, yeah, programs to prepare them for
14 the loans and then to help them to get the house
15 loan, yeah. So we work with our beneficiaries on
16 that part.

17 VICE CHAIR ACZON: How's the success on
18 that one?

19 MR. FUJIMOTO: It's been pretty good,
20 pretty good, actually. But I guess it kind of works
21 both ways, yeah. So we have our responsibility, and
22 then the -- the beneficiary has their responsibility
23 to make it work, yeah.

24 VICE CHAIR ACZON: Okay. Thank you.

25 ACTING CHAIR CABRAL: Any more questions

1 or comments from commissioners?

2 Okay. Thank you very much for your
3 presentation.

4 MR. FUJIMOTO: Thank you.

5 ACTING CHAIR CABRAL: Let me give him a
6 minute to -- okay. Let me have a five-minute recess
7 so he can take down his technology, and then we will
8 proceed.

9 (Brief pause in the proceedings.)

10 ACTING CHAIR CABRAL: Okay. I'd like to
11 call the meeting back to order, and I apologize for
12 not understanding the agenda. I was told to step in
13 just minutes before I stepped in here. So in regards
14 to this current petition with Department of Hawaiian
15 Home Lands, I wanted to make a comment to the
16 commissioners that this is a status report, and we
17 are not required to take any action at this time.
18 Therefore, no action is required. The requirements
19 of continued status report to the commission, though,
20 will remain in effect.

21 So at this point in time, I would like to
22 ask the commission, although no action is taken, they
23 still have that option to take action, and if that is
24 their pleasure, I would like to ask them if they'd
25 like to take any action on this situation or have any

1 motion at this time?

2 COMMISSIONER CHANG: So I'm sorry. So,
3 Chair, so we're going to do the status report before
4 we do the motion? Is that the proposal?

5 ACTING CHAIR CABRAL: Well, this was his
6 status report to us.

7 COMMISSIONER CHANG: No. Aren't we on --
8 oh, I'm sorry.

9 ACTING CHAIR CABRAL: Right. I'm trying
10 to conclude the Department of Hawaiian Home Lands'
11 petition that we just heard. So we are not required
12 to take any action. So my question is -- unless you
13 desire to. So my question to you as commissioners is
14 would you like to take any action at this time? If
15 no action is taken, my understanding then that
16 this -- the petitioner is still required, though, to
17 continue to make annual status reports into the
18 future and, apparently, some into the past that they
19 have not made.

20 So we will then conclude this portion of
21 our meeting, and we'll just take a one-minute break
22 because everybody is ready to move on, and we'll get
23 Commissioner Scheuer back to handle his job. Thank
24 you for your patience. Okay. Ready.

25 (Brief pause in the proceedings.)

1 CHAIR SCHEUER: Welcome back. Our next
2 agenda item is an action item on A02-737 University
3 of the Nations Bencorp, Hawai'i, to consider the
4 University of Nations, Kona, Incorporated --
5 Incorporated's, reconsideration of an order to [sic]
6 granting United Nation [sic] of Kona's motion to
7 continue hearing on order to show cause.

8 Will the parties please identify
9 themselves for the record?

10 MR. SIMON: Good morning, Mr. Chair and
11 commissioners. Derek Simon and Katherine Garson
12 appearing for petitioner, University of the Nations,
13 Kona. Today we have Julie Anjo from the Office of
14 General Counsel, Paul Childers, the campus director
15 and chief executive officer, as well as a few other
16 representatives.

17 MR. KIM: Good morning, Chair Scheuer and
18 commissioners. Deputy Corporation Counsel Ronald Kim
19 representing County of Hawai'i, and with me is
20 planning program manager, Jeff Darrow.

21 MS. APUNA: Good morning. Dawn Apuna,
22 deputy attorney general for the Office of Planning.
23 Here with me is Lorene Maki.

24 CHAIR SCHEUER: Welcome to everyone. Let
25 me update the record. On May 22nd, 2019, the

1 commission met here in Kailua Kona at the NELHA
2 facility and voted to grant U of N Bencorp's motion
3 to continue the order to show cause hearing on this
4 matter.

5 On October 7th, the commission mailed out
6 the order granting the U of N Bencorp's motion to
7 continue the order to show cause hearing to the
8 petitioners on the party -- to the petitioner and
9 parties.

10 On October 14th, the commission received
11 the University of Nations, Kona, Incorporated's,
12 motion for reconsideration of an order granting the
13 United Nation [sic] of Kona's motion to continue
14 hearing on order to show cause.

15 On October 15th, the commission received
16 the petitioner's CD containing the files of the
17 previous day's filing.

18 On November 13th, the commission received
19 a status report from the commissioner [sic].

20 On November 14th, the commission received
21 a request to accept a joint stipulation for
22 protective order regarding confidential financial
23 information for the petitioner, the Office of
24 Planning and Hawaii County.

25 On December 11th, the commission mailed

1 correspondence to the parties denying the request to
2 accept a joint stipulation for protective order.

3 On December 23rd, the commission received
4 a status report for the January 8th, 2020, meeting
5 pursuant to the order granting the motion to continue
6 the hearing on the order to show cause.

7 Now, let me briefly run over our
8 procedures for today. First, I will call anybody
9 desiring to give public testimony for this motion for
10 reconsideration to identify themselves where such
11 individuals will be called, in turn, to our witness
12 box where they'll be sworn in.

13 At this point any public testimony will
14 need to be limited to the University of the Nations'
15 motion for reconsideration of the order to [sic]
16 granting United Nation [sic] of Kona's motion to
17 continue the hearing on the order to show cause.

18 Following that, and I will retain the
19 right to limit testimony in terms of its time, the
20 commission will then begin proceedings on the motion
21 for the reconsideration starting with the petitioner
22 presenting its case followed by the County Planning
23 Department followed by the Office of Planning.

24 The petitioner may reserve a portion of
25 their time to respond to comments made by the County

1 and the Office of Planning. And from time to time,
2 we will be taking breaks.

3 Are there any questions for the parties
4 on our procedures for today?

5 MR. SIMON: None from petitioner.

6 MR. KIM: None from the County.

7 MS. APUNA: No questions.

8 CHAIR SCHEUER: Thank you.

9 Are there any individuals desiring to
10 give public testimony today? Is there anybody in the
11 audience desiring to give public testimony on this
12 matter?

13 Seeing none, the petitioner can proceed
14 with their case.

15 MR. SIMON: Good morning again. Once
16 again, Derek Simon representing petitioner,
17 University of the Nations. First and foremost, we
18 would like to express our sincere gratitude to the
19 commission for granting the motion to continue. We
20 tried to make clear in this motion for
21 reconsideration that we weren't expressing any, you
22 know, dissatisfaction with that or in disagreement
23 with being given a year. And generally with the
24 terms of the year that were given, we did however
25 feel there were a couple items that we thought could

1 be addressed and cleaned up in the order. We did
2 list a number of items we thought we -- we sought
3 reconsideration on, but with the exception of one or
4 two, we're primarily going to rest on our actual
5 motion -- on our papers that we did file.

6 You know, the big issue from the
7 university's perspective was the third paragraph of
8 the actual order portion of the order granting the
9 motion and, specifically, the first clause that says
10 "substantial commencement has not occurred." You
11 know, it's essentially the university's position that
12 that is -- that's a finding or conclusion that goes
13 to the heart of the OSC process, and that that is
14 really an issue that shouldn't be reached until a
15 hearing has been held on the order to show cause.

16 You know, I've heard the process for an
17 OSC describes a two- or three-step process whether or
18 not you're talking about the status report as the
19 first step, but in either event, once you get to the
20 OSC hearing, there's really two major findings the
21 commission makes in deciding -- in resolving the OSC.
22 And the first and perhaps the more significant
23 finding is substantial commencement.

24 And so, you know, under 15-15-93, Section
25 C, of the commission's rule, the commission is

1 required to hold a hearing on the order to show
2 cause, and, you know, under Hawaii Supreme Court
3 precedent, that is a contested case hearing at which
4 time witnesses can be called and so on and so forth.

5 So, again, it's the university's position
6 that that -- that the finding of no substantial
7 commencement in that order was simply premature, and
8 the university should be afforded an opportunity for
9 a hearing on that issue before the commission makes a
10 finding on that.

11 CHAIR SCHEUER: Will you be reserving any
12 of your time?

13 MR. SIMON: Yeah, just a few moments if
14 any issue comes up.

15 CHAIR SCHEUER: Thank you.

16 Are there any questions for the
17 petitioner? Commissioners?

18 COMMISSIONER CHANG: I have some
19 questions.

20 CHAIR SCHEUER: Commissioner Chang.

21 COMMISSIONER CHANG: Thank you.

22 Mr. Simon, would you agree that the
23 applicable rule for reconsideration is 15-15-84?

24 MR. SIMON: Commissioner Chang, I believe
25 that's correct. I can confirm what we cited in that

1 motion. Yeah, we cited 15-15-70, which is the
2 general motion rule, I believe, and subsection 84 as
3 well.

4 COMMISSIONER CHANG: And in reading
5 15-15-84, subparagraph B, "The motion for
6 reconsideration shall state specifically the grounds
7 on which the movant considers the decision and order
8 unreasonable, unlawful or erroneous." Okay?

9 So in going through your motion, one, I
10 didn't see the motion used any of those terms. So
11 I'm wanting -- and I don't want to go through the
12 exercise of going through every single paragraph, but
13 the tenor I get from your motion is that you just
14 kind of disagree with the implications or it -- it's
15 not in a light maybe most favorable to your client.
16 But other than factual disputes, for example, the
17 date may be wrong, that I don't have an issue with.
18 But what in here is unreasonable, unlawful or
19 erroneous?

20 MR. SIMON: Thank you, Commissioner
21 Chang. And I would note, you know, there are
22 certainly items listed in the motion that wouldn't
23 have warranted in and of themselves standing alone a
24 motion for reconsideration, but I, again, come back
25 to the third paragraph of the order portion of the

1 order, and we do believe that that's erroneous. We
2 do believe that that's -- that's not consistent with
3 the applicable -- with the commission's own rules and
4 the Hawaii Supreme Court precedent both in Aina Lea
5 and other decisions.

6 We think a finding of no substantial
7 commencement is essentially a penultimate conclusion
8 the commission must make before it can order a
9 reversion under Aina Lea, under 205-4(g). And,
10 again, our position and our reading of the order is
11 that the commission reached that conclusion without
12 holding a contested case hearing. So they've
13 announced their decision on one of the primary issues
14 in resolving an OSC in granting a continuance on the
15 hearing that may be held, but hopefully not be held,
16 on the OSC.

17 So, again, it's our position that that
18 finding can't be made under the rules or under case
19 law until petitioner, you know, gets a Chapter 91
20 contested case hearing on the OSC.

21 COMMISSIONER CHANG: But you would agree
22 that we have not had the hearing on the OSC?

23 MR. SIMON: That's correct.

24 COMMISSIONER CHANG: And at that point in
25 time, you would be free to present your case to us?

1 MR. SIMON: Well, I think that is
2 partially one of the concerns raised by this order is
3 that the commission, in the record and through the
4 order, has found no substantial commencement. So the
5 implication, that was not entirely clear. But, you
6 know, the Hawaii Supreme Court said it's not proper
7 to announce a decision that's to be made during a
8 contested case hearing, announce that, and then hold
9 a contested case hearing afterwards. That's sort of
10 our concern is that that should be an undecided issue
11 going into the Chapter 91 hearing on the OSC.

12 COMMISSIONER CHANG: And your specific
13 request is to delete the phrase that says "and to
14 determine whether petitioner was in compliance with
15 conditions of the 2003 decision and order"? That's
16 specifically your complaint? I mean, in your mind,
17 is that a conclusion that we're going to be -- does
18 that go to the heart of whether you're in compliance?

19 It seems to just say that -- I guess I'm
20 just having a really difficult time making the leap
21 that you're making.

22 MR. SIMON: Okay. Maybe I can help. So
23 that is -- that was the -- the item you're referring
24 to is not --

25 COMMISSIONER CHANG: Am I reading the

1 wrong one? Proceed. You said item C.

2 MR. SIMON: Sorry. Item 3 on the
3 order -- portion of the order. So it goes, "hereby
4 orders the motion to continue. Hearing's granted
5 subject to the following," and there's 1 through 5.
6 It's at the very end.

7 COMMISSIONER CHANG: So which paragraph
8 are you referring to in your motion?

9 MR. SIMON: The third paragraph beginning
10 "substantial commencement has not occurred." And
11 it's the last item discussed in our motion.

12 COMMISSIONER CHANG: And it's your
13 contention that that's -- that that would preclude
14 you from submitting -- are you saying you would be
15 bound by that at an order to show cause hearing, that
16 you would not be permitted to provide additional
17 information or evidence at the hearing to contradict
18 that?

19 MR. SIMON: That's certainly part of the
20 concern. I think the concern is two parts. I think,
21 first, the implications of that statement were not
22 clear. It's a finding and order, and if that order
23 went without us filing a motion for reconsideration,
24 that would presumably be a binding order of the
25 commission in this docket. So the implications of

1 that being included in this order, how that would
2 play out in an OSC hearing if it's unclear. So that
3 was part of our concern. But, again, second part of
4 our concern is under the law, under the commission's
5 own rules under case law, it appears that that's a
6 finding that can't be resolved until, you know, a
7 contested case hearing has been held on the OSC.

8 COMMISSIONER CHANG: But didn't you have
9 an opportunity at that hearing also to provide any
10 additional contrary evidence to what was presented?

11 MR. SIMON: Well, so the way that -- I
12 believe you're referring to the May 22nd hearing of
13 last year. So the way that hearing was agendized was
14 we had several preliminary motions that were
15 agendized before the order to show cause. The first
16 motion was our motion to rescind the OSC. Our client
17 subsequently withdrew that, at which point we moved
18 on to two different motions, one of which sought just
19 additional time to prepare for the OSC. The second
20 sought the year the continuance that was ultimately
21 granted. So the issue of substantial commencement
22 really wasn't teed up in that hearing. You know,
23 review of the transcripts is special, and we got to
24 the motion was ultimately granted. It was really
25 focused on, A, the stipulation that we -- that the

1 joint stipulation that we submitted, and in
2 discussions surrounding additional conditions that
3 the commissioners wanted to see imposed in order to
4 be comfortable in granting that continuance.

5 You know, no witnesses were called. We
6 filed a position statement, but, again, you know,
7 we -- we do believe that there's a requirement to
8 hold an actual hearing on the OSC. I think that's
9 clear from the commission's own rules.

10 COMMISSIONER CHANG: But there's nothing
11 in this motion or the order that precludes -- I mean,
12 we understand that that is the next step. It's the
13 order to show cause hearing, and we cannot take any
14 action on this motion to continue. It's not the next
15 step of the order to show cause. So at that time you
16 are free to present whatever evidence you had, but
17 the motion to continue was based upon the evidence
18 that was presented and the arguments that were
19 presented. So you're just saying that this is
20 factually incorrect; that the order is erroneous?

21 MR. SIMON: I don't know if it's -- I
22 think it's really more of a procedural or legal issue
23 as far as ensuring we follow proper process and
24 compartmentalize the positions and the steps that
25 must be taken to resolve an OSC. So the history goes

1 back to the March status hearing. That's a Chapter
2 92 status report. That's not a contested case
3 hearing. You know, the OSC hadn't been issued at
4 this time, but there's obviously exhibits and
5 information in the docket from that.

6 The next hearing that was held was held
7 on the preliminary motions, again, not reaching the
8 order to show cause. So I think absent that item
9 being called, you know, witnesses and testimonies and
10 petitioner being allowed to present its case, we
11 think that -- again, our position is simply that that
12 order or that finding or conclusion is premature at
13 that time.

14 COMMISSIONER CHANG: Is that one of the
15 bases upon which we can reconsider; it's premature;
16 it's not unreasonable; it's not unlawful; it's not
17 erroneous; it's based upon the information that was
18 provided to the commission at that time?

19 MR. SIMON: Well, I do think -- premature
20 was -- I wasn't using it in a legal sense. I just
21 meant as far as how the process works. But we do
22 think it's essentially unlawful. We think it's
23 contrary to the commission's rules. Again, there's
24 really -- when the commission holds a hearing on the
25 OSC, there's two primary dispositive findings the

1 commission must make, and one of those is substantial
2 commencement. So -- and I was simplifying that.
3 It's the petitioner's position that that finding,
4 that conclusion, which is really one of the
5 ultimately conclusions, can't be made before the
6 hearing is even held.

7 COMMISSIONER CHANG: In my view, I don't
8 see anything in this order that's precluding us or
9 the petitioner from raising those issues at the order
10 to show cause hearing.

11 MR. SIMON: Understood.

12 COMMISSIONER CHANG: All right. Okay.
13 Thank you.

14 CHAIR SCHEUER: Is that it for now,
15 Commission Chang?

16 COMMISSIONER CHANG: Yes.

17 CHAIR SCHEUER: Commissioners?
18 Commissioner Okuda.

19 COMMISSIONER OKUDA: Thank you,
20 Mr. Chair.

21 Mr. Simon, if we can take a step back.
22 What is the standard that the Land Use Commission
23 must apply to determine whether or not a finding of
24 fact is proper or not proper? What is the standard
25 that we are to apply?

1 MR. SIMON: I believe it's clearly
2 erroneous.

3 COMMISSIONER OKUDA: And specifically
4 with respect to "clearly erroneous," how do we
5 determine or what has the court told us as far as the
6 standard or elements that must be applied to the
7 determine whether or not a finding is clearly
8 erroneous or not clearly erroneous?

9 MR. SIMON: I believe it's the
10 substantial evidence standard, but I do think that
11 this is -- this is not a pure factual finding, I
12 don't think. I think there's a legal conclusion in
13 there as well, substantial commencement being a term
14 defined in the commission's own rules and also a
15 requirement under the status in Aina Lea.

16 COMMISSIONER OKUDA: Okay. Well, would
17 you agree that if the issue or the finding regarding
18 substantial commencement is -- is not considered a
19 mixed law and factual finding, that the standard is
20 whether or not the decision was clearly erroneous in
21 view of reliable, probative and substantial evidence
22 on the whole record?

23 MR. SIMON: I believe that's the correct
24 standard, but I think -- I don't think the issue's an
25 evidentiary one. I think it's procedural. I think

1 it's whether or not the proper process was followed
2 in reaching that finding. You know, again, it's a
3 situation where a finding is being made before the
4 process set forth to present evidence on that finding
5 has even begun for the most part on the hearing
6 portion.

7 COMMISSIONER OKUDA: I'm just trying to
8 focus in simply on the standard. We can have a
9 discussion -- there needs to be a discussion probably
10 about application and method of applying the
11 standard, but first I want to make sure we're talking
12 about the standard. So let me ask you this just so
13 that the record is clear. And I'll represent to you
14 and everybody else that I'm reading from the Hawaii
15 Supreme Court case in re Water Use Permit
16 Applications, 94 Hawaii 97, found at page 119-9
17 Pacific 3rd 409 at page 431. And let me read this
18 and tell me whether -- and please tell me, after I
19 finish reading the statement, whether what I have
20 read is an accurate statement of the law.

21 Okay. "FOFs are reviewable under the
22 clearly erroneous standard to determine if the agency
23 decision was clearly erroneous in view of reliable,
24 probative and substantial evidence on the whole
25 record."

1 Did I accurately state the law to the
2 best of your knowledge?

3 MR. SIMON: Yes, Commissioner. That's
4 consistent with my understanding.

5 COMMISSIONER OKUDA: Okay. Now, if we
6 look at -- and not from my recollection because I
7 went back and read the transcript from the prior
8 hearings and looked at the record in this case. The
9 whole record in this case, if we use the term as used
10 in this Hawaii Supreme Court, includes whatever was
11 filed in the case; is that correct?

12 MR. SIMON: That's correct.

13 COMMISSIONER OKUDA: And it includes
14 things that are filed in the case even if there's an
15 attempt -- maybe a successful attempt to withdraw the
16 filing. Would you agree?

17 MR. SIMON: That sounds correct. I'm not
18 sure I know specifically the authority, but I don't
19 dispute what you're saying.

20 COMMISSIONER OKUDA: Okay. And in case,
21 and I know your firm probably wasn't involved at this
22 time, but on February 4, 2019, your client filed a
23 pleading titled "Motion to Substitute Petitioner and
24 Withdraw Land Use Commission Approvals and Revert
25 Land Use District Boundary Classification to

1 Agriculture;" semicolon, "Memorandum in Support of
2 Motion;" semicolon, "Affidavit of Paul," P-A-U-L,
3 "Childers," C-H-I-L-D-E-R-S; semicolon, "Certificate
4 of Service."

5 Do you recall that your client filed that
6 pleading?

7 MR. SIMON: I do.

8 COMMISSIONER OKUDA: And later on, your
9 client sought and did withdraw the pleading; correct?

10 MR. SIMON: That's correct.

11 COMMISSIONER OKUDA: But that pleading is
12 still part of the record; you would agree?

13 MR. SIMON: I mean, it's not an issue I'm
14 overly familiar with, but I don't -- I don't dispute
15 your characterization of the law.

16 COMMISSIONER OKUDA: I'm sorry?

17 MR. SIMON: It's not an issue I've ever
18 researched or, frankly, ever dealt with directly. So
19 I can't speak to it directly.

20 COMMISSIONER OKUDA: And the affidavit of
21 Mr. Childers, you know, I would characterize it, and
22 you can disagree, it seems to be like one of these
23 blanket verification declarations that we, as
24 lawyers, sometimes put in saying "I, the client,
25 swear under oath that everything my lawyer said in

1 the pleading is true and accurate." Would that be
2 kind of like a fair characterization of what the
3 affidavit stated?

4 MR. SIMON: I don't have the affidavit in
5 front of me, but I'll certainly take your word for
6 it.

7 COMMISSIONER OKUDA: Okay. Whether it's
8 one of these blanket verifications or not, the bottom
9 line here is by filing this pleading, your client
10 made certain representations, in fact,
11 representations of fact to the commission seeking to
12 get certain relief, which, in the end, your client
13 decided not to seek, but the bottom line is
14 representations were made; correct?

15 MR. SIMON: That's correct.

16 COMMISSIONER OKUDA: And so whether or
17 not this pleading was withdrawn or not, if it's part
18 of the record, the Land Use Commission is entitled to
19 rely on representations that a party makes even if
20 the party attempts to take back those representations
21 letter -- later. Would you agree that's a fair
22 statement?

23 MR. SIMON: Yes, I would.

24 COMMISSIONER OKUDA: And would you agree
25 that in this document, the "Motion to Substitute

1 Petitioner and Withdraw Land Use Commission Approvals
2 and Revert Land Use District Boundary Classification
3 to Agricultural," that, in fact, representations --
4 representations of fact were being made by your
5 client regarding whether or not there was, in fact,
6 substantial commencement of use of the land as that
7 term -- as that term is used in the -- in the Bridge
8 Aina Lea case?

9 MR. SIMON: Well, I would believe the
10 intent of the letter -- I don't know if I want to
11 speak specifically to the representations made in
12 that letter to the extent we weren't involved in
13 that, but I understand that there are representations
14 that go to the issues that you're speaking of.

15 COMMISSIONER OKUDA: Okay. And I'll just
16 tell you so there's no hidden agenda here. You know,
17 would you agree that there's this doctrine in the law
18 called doctrine of judicial estoppel? In other
19 words, if a party says one thing in the same
20 proceeding, usually that party oftentimes or
21 sometimes or many times may not be allowed to
22 contradict itself. I think the Supreme Court said
23 you're not allowed to blow hot and cold in
24 litigation.

25 MR. SIMON: That sounds like a good,

1 accurate summary of that. I would say judicial
2 estoppel requires acceptance or reliance of the
3 position by the court or, you know, the
4 decision-maker, whether we apply it in an
5 administrative context. I don't think we reached
6 that point because it was withdrawn. You know, the
7 commission didn't take action or otherwise rely on
8 it. I'm just saying for the purposes of judicial
9 estoppel. I understand your concerns about past
10 representations that were made and withdrawn.

11 COMMISSIONER OKUDA: I'll tell you for
12 me, and I'm only speaking for myself regarding
13 evidence and representations that are presented to
14 the commission, you know, whether a party attempts to
15 withdraw representations later on, if somebody tells
16 us something, you know, I rely on the fact that
17 they're telling us that. That if a party is going to
18 represent something, especially representations that
19 would appear to be representations of factual
20 situations, then, you know, I think it's reasonable
21 for decision-makers like us to rely on it.

22 But let me ask this because, you know,
23 I'd like to evaluate what is being presented to us
24 and whether you can comment on this. Did you have a
25 chance to review the Office of Planning's filing,

1 which was submitted to us October 22, 2018?

2 MR. SIMON: I did, Commissioner Okuda.

3 COMMISSIONER OKUDA: Okay. Let me ask
4 you this because I'm not asking you to go through
5 each of the points that they made, but just so that I
6 can try to determine whether there's agreement on
7 what the Office of Planning is saying or you dispute
8 any of that.

9 I just want to ask you regarding certain
10 specific points that the Office of Planning was
11 raising. For example, on their -- their position
12 regarding paragraph C which is found -- I'm sorry.
13 It's paragraph 13. It's their paragraph in the
14 Office of Planning's filing labeled paragraph C.
15 That's on pages 2 through 4.

16 Do you dispute any of the statements of
17 fact which the Office of Planning is stating in that
18 paragraph C which deals with paragraph 13 of the
19 procedural background?

20 MR. SIMON: Just a moment. Let me get
21 the right page.

22 COMMISSIONER OKUDA: Sure.

23 MR. SIMON: I apologize.

24 COMMISSIONER OKUDA: In other words, I'm
25 trying to find out do you dispute the factual

1 statements or the statements which the Office of
2 Planning contend are the facts, or do you not dispute
3 them?

4 MR. SIMON: I'm not sure what specific
5 facts you're referring to. They do generally cite
6 from the transcript and exhibits. I don't dispute
7 any citations to those.

8 COMMISSIONER OKUDA: Yeah, I'm just -- I
9 don't mean to be blunt about it. I'm not saying
10 anybody's accusing anybody of being a liar or
11 anything like that. I'm just asking do you see
12 anything in what they stated in their paragraph C
13 which is factually incorrect?

14 MR. SIMON: No. And let me -- if I could
15 perhaps just explain why we included paragraph 13 in
16 the motion. Again, I think this is probably an item
17 that falls into a bucket that really wouldn't warrant
18 a motion for reconsideration on its own or even with
19 some of these others. I think our simple position
20 was that at a status hearing, the purpose under the
21 rules and under the statute 205-4(g) is to determine
22 whether there's reason to believe there's been a
23 failure to comply with conditions. We think the
24 actual phase where there's a determination of whether
25 there's been a failure to comply is really the OSC

1 phase. That's the only distinction we're trying to
2 make here.

3 COMMISSIONER OKUDA: Well, I'm just
4 trying to determine whether or not the findings of
5 fact that we adopted or which are stated in the order
6 have support in the record under the standard that
7 the Hawaii Supreme Court has laid out or whether it
8 doesn't have support.

9 Similar question to the Office of
10 Planning's paragraph G, which is found at page 6 of
11 their memorandum, which is their commentary regarding
12 finding of fact No. 40. Do you see any factual
13 statement made by the Office of Planning or statement
14 by the Office of Planning about facts in that
15 section, paragraph G, page 6, which you believe is
16 not an accurate statement of fact by the Office of
17 Planning?

18 MR. SIMON: Well, I think the Office of
19 Planning -- and I don't think this is intentional. I
20 think they were referring to -- when they were citing
21 the transcript, I think they were referring to the
22 March 31st status hearing, and this is specifically
23 talking about the May 22nd hearing. I think that's
24 really what we're trying to point out here is some of
25 these are maybe a little nitpicky, but, you know, to

1 the extent we were filing a motion, we thought we
2 would make an effort to try to address some of the
3 other issues we saw.

4 COMMISSIONER OKUDA: Yes, I understand
5 that. But my question is a little bit more pointed
6 in the sense that do you see any statement of fact by
7 the Office of Planning in their paragraph G which you
8 contend is not a correct statement of fact?

9 MR. SIMON: Again, I think our only
10 response to Office of Planning, I mean, they quote it
11 straight from portions -- straight from the
12 transcript. So we don't dispute that that transcript
13 says what it says. Again, our point is they're
14 pointing to a transcript from a different hearing;
15 whereas, this paragraph dealt with the May hearing,
16 not the March hearing. That's our only response to
17 what Office of Planning is saying. So we're not
18 disputing necessarily --

19 I mean, again, they're quoting portions
20 of a transcript. We're not disputing what the
21 transcript says. We're just saying for the purposes
22 of this paragraph of the order. They're referring to
23 different transcripts. That's our singular point on
24 that.

25 COMMISSIONER OKUDA: Okay. I understand

1 that. And similar or same question regarding
2 paragraph H of the Office of Planning's filing, which
3 is found on page 7 of their memorandum which deals
4 with finding of fact No. 42, do you or your client
5 contend that the Office of Planning made any
6 misstatements about the facts which they discuss or
7 state or list in paragraph H of their memorandum at
8 page 7?

9 MR. SIMON: Not -- not for the most part.
10 We would disagree with the last part that say,
11 "However, there's nothing in the record to support
12 this assertion," and this assertion being -- the
13 correction we want is to reflect that we acknowledge
14 that not only was it not the commission's fact, but
15 we certainly weren't trying to assign fault for that
16 motion not going forward. And so we didn't think
17 finding of fact 42 was wrong. We just thought it was
18 somewhat incomplete. Again, that's the only basis
19 for that item.

20 COMMISSIONER OKUDA: Okay. Now, the
21 Office of Planning in paragraph K has a discussion
22 regarding conclusion of law No. 4, and that
23 discussion is found at pages 7 through 9 of the
24 Office of Planning's filing. Is it your client's or
25 your position that the Office of Planning has

1 misstated the law anywhere in the memorandum, pages 7
2 through 9?

3 MR. SIMON: No. I generally believe
4 Office of Planning has essentially quoted the law,
5 and our objection was not that that was an inaccurate
6 statement of the law. I believe our objection is
7 primarily based on necessity and the fact that, you
8 know, there's --

9 One of the issues raised in our position
10 statement, and that would have been or will be or
11 hopefully not be argued at an OSC hearing, is the
12 issue of the timing for completion of the project.
13 That's an argument raised in our statement position.
14 It wasn't, you know, addressed, you know, directly
15 with the commission, I don't believe, and so that's
16 essentially the basis for us. It's a correct
17 statement of the law. It's from commission's own
18 rules, but we do think that's an issue that would
19 probably more appropriately be resolved in the OSC
20 stage.

21 COMMISSIONER OKUDA: Okay. And similar
22 question regarding paragraph L of the Office of
23 Planning's filing found at page 9 of their
24 memorandum. Is it your or your client's contention
25 that there is any misstatement of the law made by the

1 Office of Planning in their discussion regarding
2 conclusion of law No. 5, which is their paragraph L
3 found at page 9 of their memorandum?

4 MR. SIMON: Just one moment, please.

5 COMMISSIONER OKUDA: Sure.

6 MR. SIMON: Again, I think this sort of
7 goes to ultimate issues that are appropriately
8 decided through the OSC and not through a hearing on
9 the motion to continue. That's as succinctly as I
10 can put our position is that, that that's an issue
11 University of Nations should be able to argue at the
12 OSC hearing.

13 COMMISSIONER OKUDA: Okay. Thank you
14 very much.

15 Thank you, Mr. Chair. I have no further
16 questions.

17 CHAIR SCHEUER: Thank you, Commissioner
18 Okuda.

19 Are there any questions right now from
20 the commissioners? Commissioner Wong.

21 COMMISSIONER WONG: Thank you. Okay.
22 All this legal stuff was a little over my head.
23 So --

24 MR. SIMON: Me too.

25 COMMISSIONER WONG: So the question I

1 have is two things. The first thing is the
2 statements, that was done -- withdrawn as
3 Commissioner Okuda stated; right? That was
4 withdrawn, the motion?

5 MR. SIMON: Absolutely.

6 COMMISSIONER WONG: So that one, I was
7 taught once you rung the bell, you cannot unring the
8 bell. So those statements are out there somewhere.

9 MR. SIMON: And I don't necessarily
10 disagree with that. Again, this is not an issue, you
11 know, we've worked up or researched or briefed on,
12 but I don't want to misrepresent the law that I don't
13 understand. But that's evidence -- that's record
14 evidence.

15 Again, the simple point is I think the
16 University of Nations is still entitled to a hearing
17 to argue what the evidence says or does not say.

18 COMMISSIONER WONG: So the gist of this,
19 one of your portions, if I heard correctly, was
20 saying about substantial commencement --

21 MR. SIMON: That's correct.

22 COMMISSIONER WONG: -- right? And in the
23 order to show cause about substantial commencement.
24 So if we say we're going to do a motion to order to
25 show cause, we cannot say why or, you know, I mean --

1 MR. SIMON: And I understand. I think
2 the standard for issuing an order to show cause is
3 whether or not there's a reason to believe there's
4 been a failure to comply with the conditions or
5 representations. And, again, that's not a
6 determination. That's like a probable cause. Order
7 to show cause, is there a reason to believe that
8 something's happened? I don't think that's the same
9 as finding something that's happened. And, again,
10 going back to the commission's own rules and
11 205-4(g), the statute, it provides for a hearing to
12 make these determinations. That's our simple point
13 that the evidence that's in the record is what's in
14 the record. But to come to ultimate conclusions on
15 what the evidence says, you know, a chapter 91
16 contested case hearing is required. That's simply
17 our point.

18 COMMISSIONER WONG: So because I guess --
19 I haven't made a decision yet on anything. So even
20 that, you know, substantial commencement issue, I
21 haven't made a decision. So, you know, it's just a
22 statement to me right now. I mean, it's not -- it's
23 just a statement out there without any backing, any
24 facts or anything.

25 MR. SIMON: Right. I'm sorry. I didn't

1 mean to cut you off. Again, I tried to highlight
2 that earlier. I think the implication is what's not
3 clear, in part, to us is that that's -- it's not just
4 a statement. It's in an order of the commission.
5 It's a finding of the commission and, generally
6 speaking, when the commission orders to find
7 something, unless that's challenged, whether through
8 a motion for reconsideration or otherwise, it
9 becomes, you know, binding on the docket, you know,
10 and other things happen. So once that's in there, we
11 think there's implications to that, and we think that
12 the --

13 Again, it's announcing the decision
14 before a hearing to take and consider evidence on
15 that issue that has been made --

16 COMMISSIONER WONG: Right.

17 MR. SIMON: -- been held.

18 COMMISSIONER WONG: So if we say, "Oh,
19 we're going to have an order to show cause," and we
20 say "just because," I mean, without any backup, how
21 would that look?

22 MR. SIMON: Again, I don't think -- I
23 don't think this paragraph goes to whether or not,
24 you know, the reasoning for issuing an order to show
25 cause. I think that determination was made at the

1 status hearing in March that there was reason to
2 believe there was a failure to comply with the
3 conditions and representations.

4 This goes to -- this essentially goes to
5 our reading of the order, and, again, that's one of
6 the reasons why we brought it up is we're unclear on
7 the implications, is that this goes -- this order --
8 paragraph 3 of the order goes to really the central
9 issue to be resolved at the hearing on the order to
10 show cause. So it's not the reasoning for having the
11 order to show cause or for issuing the order to show
12 cause. It's almost resolution -- there's partial
13 resolution of the order to show cause. That's our
14 concern.

15 COMMISSIONER WONG: I guess I differ on
16 that because, to me, it's just a statement out there
17 and because I haven't made a decision yet on
18 anything.

19 MR. SIMON: Right. And, again, I think
20 we're probably in agreement on that. Again, it's the
21 implications of this being within the body of an
22 order.

23 COMMISSIONER WONG: Okay. Thank you.

24 CHAIR SCHEUER: Commissioners?
25 Commissioner Cabral.

1 VICE CHAIR CABRAL: I am not an attorney,
2 and so I am on the side of fellow Commissioner Wong,
3 which is truly a scary statement. I think I have --

4 CHAIR SCHEUER: No offense, Commissioner,
5 certainly.

6 COMMISSIONER WONG: None taken.

7 VICE CHAIR CABRAL: I think I have an
8 even more simple question. I'm a very simple person,
9 and I deal with properties and management of
10 properties.

11 Commencement: Has anything been built or
12 anything been done on the land?

13 MR. SIMON: The university's position is
14 stuff has happened. We set it forth in our statement
15 of position. We have -- there would be witnesses to
16 testify. A hearing was held on it.

17 While -- again, I don't know -- the point
18 of our motion was not per se challenging the merits
19 of the finding, which we do disagree with, but,
20 again, that wasn't our point. Our point is we're
21 entitled to a hearing to find out for the commission
22 to make that determination.

23 VICE CHAIR CABRAL: Wow, I think that was
24 lawyer talk. Has anything -- is there a house or
25 road, water or pipes coming into it? Has anything

1 actually -- you know, I'm in property management.
2 Anything I can go touch?

3 MR. SIMON: We noted in our statement of
4 position -- I don't have a cite. I can get one for
5 you, though. There is educational facilities that
6 have been put up since the reclassification on the
7 petition area, agricultural education. So it's
8 aquaponics. There are activities that are going on
9 on the petition area. They've done substantial
10 archaeological preservation and documentation work.
11 They have a number of SHPD-approved documents that
12 have been obtained. Since the petition was granted,
13 they have an AIS approved in 2003, a preservation
14 plan approved in 2013, a burial treatment plan
15 approved in 2013. I mean, things have gone on on the
16 petition area. So, again, our position is there is
17 evidence of substantial commencement.

18 VICE CHAIR CABRAL: Okay. Thank you very
19 much.

20 CHAIR SCHEUER: Commissioners, anything
21 further for the petitioner at this time?

22 Mr. Simon, have you ever served cake at a
23 kid's birthday party?

24 MR. SIMON: Served cake at a kid's
25 birthday party?

1 CHAIR SCHEUER: Yeah.

2 MR. SIMON: I have.

3 CHAIR SCHEUER: Did you ever get that one
4 kid who says you gave him the wrong piece that didn't
5 have quite enough frosting on it?

6 MR. SIMON: I have two of those at home.

7 CHAIR SCHEUER: That's kind of what this
8 feels like.

9 MR. SIMON: And I understand. Again, I
10 think we tried to leave off in our motion and, again,
11 this morning, we absolutely are not intending to
12 express any dissatisfaction with being granted the
13 year. I think the commission will see this afternoon
14 a great presentation. We've taken full advantage of
15 the opportunities we've been given. A lot of
16 progress has been made, and we're excited to present
17 that all to you. We do think us, as attorneys, have
18 an obligation to our client to make sure to highlight
19 issues that have come up that we perceive and to make
20 sure that things are done properly and in a clean and
21 orderly manner.

22 Again, this is in no way expressing
23 dissatisfaction. Again, I think part of it goes to
24 the nature of the continuance that was granted. The
25 continuance that was granted was in the stipulation

1 and modified by additional conditions, but petitioner
2 reserved the right to make arguments about
3 substantial commencement. That was in the
4 stipulation. That was agreed to at the hearing. We
5 agreed not to argue that. Anything that's taken
6 place in this last year or so or shy of a year would
7 count towards that. But the concern is what does
8 that mean if the commission's already made up its
9 mind?

10 CHAIR SCHEUER: Well, I think part of the
11 thing is I disagree with your characterization of the
12 process of an OSC hearing, having been through a few
13 of them now. That the first question, to paraphrase
14 my understanding of it, is have the conditions put
15 down by the LUC been met? If some -- one or more of
16 the conditions have not been met, then we ask our
17 question, like, "Well, has anything been done
18 meaningfully if there's substantial commencement?"
19 But even those two can be answered in a way that is
20 negative to the petitioner, and you can then still
21 show good cause as to why the land should not be
22 converted.

23 So, to me, whether or not you've had some
24 indications from previous discussions on the record
25 of whether -- how you would answer the first two

1 questions still leaves, in a completely unprejudiced
2 way, whether or not there's good cause.

3 I think what's frustrating to me is -- to
4 go to the cake example, right, I mean, what goes
5 through my mind when the kid's like, "No. I wanted
6 one with more frosting on it," right, it's like one
7 option is, "Well, you get none. That's how much cake
8 you now get"; right? You know, or you say, "Well,
9 you know what, you're going to be happy with this,
10 and maybe you can come back for more later if you
11 finish that and you still want more and everybody
12 else has been served."

13 What we're trying to get to, what you
14 just alluded to in your last response, is, like,
15 listen, basically, however you want to call it in the
16 legal phrasing, nothing meaningful has happened here
17 in relationship to the order in the last decade. We
18 know this community needs things. We know your
19 client needs things to happen. Why are we spending
20 our time spinning our wheels around talking about how
21 much frosting and, rather, spending our time -- our
22 valuable and collective time focusing on are we going
23 to move forward in a serious way? I would much
24 rather be spending our time productively like that.

25 MR. SIMON: And I understand your

1 concerns, and I think we're actually in complete
2 agreement on the steps to an OSC. I was merely
3 highlighting the fact that the turning point when you
4 get to an OSC is substantial commencement. If there
5 is substantial commencement, 205-4 has to be
6 followed. If there isn't, then a reversion can be
7 ordered.

8 And, again, our simple position and,
9 again, we're not trying to be petty or ask for more
10 than we -- you know, come back and say we weren't
11 given enough. Again, it's just to point out what we
12 believe to be incorrect in our reading. But, again,
13 I think we're trying to make clear we're unclear on
14 the implications of the order finding that there
15 hasn't been substantial commencement when, again, we
16 believe under the law that if we're to reach that
17 issue, that a hearing should be held on that before
18 the commission makes a decision. That's all we're
19 trying to express through that portion of the motion.

20 CHAIR SCHEUER: Thank you.

21 Is there anything further? No?

22 Okay. County ready to go?

23 MR. KIM: Yes. The county, as the
24 commission probably noted, did not file any position
25 on this matter. The county did not have a real

1 substantive position one way or the other on the
2 motion for reconsideration.

3 Just a note: You know, the county does
4 understand the petitioner's argument as to findings
5 on substantial commencement because the recollection
6 from the last hearing was that there was still back
7 and forth as to whether or not an order to show cause
8 proceeding was appropriate. The county didn't have a
9 position on that, but petitioner was contesting that.
10 So to make a finding on substantial commencement
11 would -- the county does understand the petitioner's
12 concern that it could be kind of paving a road
13 towards an order to show cause.

14 CHAIR SCHEUER: Thank you.

15 Commissioners, are there questions for
16 the county? Commissioner Chang.

17 COMMISSIONER CHANG: Thank you, Mr. Kim.
18 So are you saying that the Land Use Commission, based
19 upon all of the record before it at the time of the
20 motion to continue, that the commission could not
21 make, based upon that record, a finding that was
22 consistent with the statement that there was --

23 Order No. 3 that says "Substantial
24 commencement has not occurred," are you saying that
25 the commission, based upon the record that was before

1 it --

2 We haven't moved into an order to show
3 cause, and assuming at that point in time, there will
4 be other evidence. But are you saying at that point
5 in time in the record, the commission could not make
6 a finding based upon the record before it?

7 MR. KIM: That clear and definitive of a
8 finding that might preclude further consideration of
9 the issue, yes, essentially we would say that.

10 Now, again, you could find that there's
11 good cause to believe that there's not substantial
12 commencement to go forth in order to show cause. But
13 we just don't believe that we got to that stage of
14 the proceeding necessarily because of the granting of
15 the motion to continue.

16 COMMISSIONER CHANG: And what evidence in
17 the record up until that time is contrary to that
18 finding? Did you find any commencement of use of the
19 land?

20 MR. KIM: Well, we just wouldn't think
21 that it's appropriate to make the finding until
22 there's been legal conclusions made which wouldn't
23 really be appropriate to make until you get into the
24 meat of the order to show cause.

25 COMMISSIONER CHANG: But isn't that

1 burden of the petitioner that, at the time of the
2 order to show cause, to submit evidence to show
3 substantial compliance; that at this point in time
4 but based upon the record before it, that the
5 commission could make such a finding, relying upon
6 the testimony, the previous motions, the motions that
7 were made, the affidavits, the questioning?

8 MR. KIM: Yes. If we had gone
9 forward with the order to show cause, I believe so.
10 But I believe we continued that, actually.

11 COMMISSIONER CHANG: But -- so you're
12 saying that there was not sufficient evidence before
13 to make just that factual finding?

14 MR. KIM: Or I would look at it as a
15 mixed conclusion of law and fact. And just with all
16 due respect, the way I would view things is kind of
17 really simply where the motion to continue would be
18 just simply a motion to continue and state the
19 conditions which the commission had imposed on the
20 petitioner with the granting of motion to continue.

21 COMMISSIONER CHANG: All right. Thank
22 you.

23 CHAIR SCHEUER: Thank you, Commissioner
24 Chang.

25 Are there further questions for the

1 county?

2 After we're done with questions for the
3 county, I'm going to have a 10-minute recess.

4 Anything further for the county at this
5 time? If not, it's 10:55. We will reconvene at
6 11:05 promptly.

7 (Whereupon, a recess was taken
8 from 10:55 a.m. until 11:05 a.m.)

9 CHAIR SCHEUER: We are back on the
10 record. Office of Planning.

11 MS. APUNA: Thank you, Chair. Office of
12 Planning will rest on our pleadings, and I would only
13 add that we understand that the -- if this were to go
14 forward to the OSC, then petitioner would have the
15 opportunity as well as the other parties to provide
16 more information and evidence for a determination of
17 no substantial commencement or that there is
18 substantial commencement. And that finding would be
19 different than what is -- we believe is written in
20 this current order.

21 I think based on the evidence that has
22 been presented thus far, that is a factual
23 determination that was made, but it's not -- doesn't
24 go straight to the order to show cause or for reason
25 for reversion. So I think that OP would advocate

1 that if it were continue -- to continue to the OSC,
2 that they would have the opportunity to build the
3 record. So we don't feel that the language in the
4 order currently is problematic or that it somehow
5 determines the outcome of an order to show cause.

6 CHAIR SCHEUER: Thank you.

7 Commissioners, are there questions for
8 the Office of Planning?

9 If I can clarify your statement, you
10 believe that the factual record to this point
11 supports a conclusion that there has been no
12 substantial commencement, but that going into it,
13 that -- that and the statement in the current order
14 does not, to this point, waive the commission's
15 ability to make a different conclusion in an actual
16 OSC hearing?

17 MS. APUNA: Exactly. I mean, it could be
18 a different conclusion. It could be the same. But
19 you need to have the process allow for that if you
20 were to move forward with the order to show cause.

21 CHAIR SCHEUER: Okay. Anything further
22 for the Office of Planning?

23 COMMISSIONER OKUDA: Yeah, Chair.

24 CHAIR SCHEUER: Commissioner Okuda.

25 COMMISSIONER OKUDA: Thank you,

1 Ms. Apuna. If I could ask you this question. Would
2 the Office of Planning have an objection if the order
3 was just revised to be a simple order continuing
4 whatever matters were being continued without having
5 all these factual findings?

6 MS. APUNA: I think that the order -- it
7 could -- there could be some editing of the order,
8 but I am concerned that, you know, there were some --
9 these were conditions to allow for the motion to --
10 the continuance. You know, that they would not argue
11 substantial commencement. And I think this is part
12 of --

13 I guess petitioner's concern is the
14 phrase "substantial commencement has not occurred,"
15 but it's part of the larger condition regarding what
16 will or won't be argued for the certain amount -- a
17 certain portion of the proceedings. So, I mean, I
18 think it can be edited, but I think it would have to
19 be based on what specifically -- how things would be
20 taken out or it would depend.

21 COMMISSIONER CHANG: Chair, can I just
22 ask --

23 CHAIR SCHEUER: Thank you, Commissioner
24 Okuda.

25 Commissioner Chang.

1 COMMISSIONER CHANG: So, Ms. Apuna, can
2 you identify specifically based upon their motion
3 what are -- because I'm looking at the rule, what's
4 unreasonable and unlawful or erroneous. But are
5 there specific provisions of the order that you have
6 no objections to there being -- maybe, for example,
7 the date was wrong or the -- like, in the caption, I
8 mean, can you specifically identify which points of
9 clarification you would have no objections with?

10 MS. APUNA: Okay. Yes. I think in our
11 pleading, there were portions that we do agree with
12 the petitioner as far as -- yeah. So sorry. Let me
13 find it.

14 COMMISSIONER CHANG: I think it was,
15 like, the caption.

16 MS. APUNA: Right, the caption.

17 COMMISSIONER CHANG: So that was the
18 first one. The second one dealt with the correction
19 of the name change?

20 MS. APUNA: Right. The corporate name
21 change and then -- and then the paragraph No. 35, OP
22 did not object to language, including language
23 directly from the party's stipulation. I think that
24 they wanted to include the specific language of the
25 stipulation into the --

1 And then paragraph No. 36, OP did not
2 object to revision of procedural background to
3 reflect that the May 22nd, 2019, hearing was held on
4 petitioner's motion to rescind order to show cause
5 rather than an order to show cause.

6 COMMISSIONER CHANG: Okay. So it was a
7 factual clarification?

8 MS. APUNA: Uh-huh. And let's see.
9 Finding of fact No. 47, OP did not object to
10 petitioner's revision of this paragraph regarding its
11 provision of affordable housing.

12 Finding of fact No. 49, regarding
13 petitioner's ability to argue what periods of time
14 substantial commencement took place. I believe
15 that's it.

16 COMMISSIONER CHANG: Okay. Thank you
17 very much.

18 CHAIR SCHEUER: Is there anything further
19 for OP, commissioners?

20 Commissioner Wong.

21 COMMISSIONER WONG: Not for --

22 CHAIR SCHEUER: Okay.

23 COMMISSIONER WONG: It's for something
24 else.

25 CHAIR SCHEUER: Go ahead.

1 COMMISSIONER WONG: Chair, I would like
2 to move to executive session to consult with the
3 board's attorney on questions and issues pertaining
4 to the board's powers, duties, privileges, immunities
5 and liabilities on this motion in front of us.

6 COMMISSIONER OHIGASHI: I'll second it.

7 CHAIR SCHEUER: Okay. A motion has been
8 made by Commissioner Wong and seconded by
9 Commissioner Ohigashi to go into executive session to
10 consult with the board's counsel regarding the motion
11 in front of us. Is there any deliberation on this
12 motion? If not, all in favor, say aye.

13 (The board voted.)

14 CHAIR SCHEUER: Is anybody opposed? The
15 motion carries. The commission will go into
16 executive session.

17 (The board met in executive
18 session from 11:13 a.m. until
19 11:29 a.m.)

20 CHAIR SCHEUER: Okay. Mr. Simon, you
21 reserved a portion of your time.

22 MR. SIMON: Nothing further.

23 CHAIR SCHEUER: Okay.

24 MR. SIMON: Nothing further from the
25 petitioner.

1 CHAIR SCHEUER: Are there any questions
2 from the commissioners for any of the parties? If
3 not, commissioners, what is your pleasure?

4 It shouldn't be a surprise at this point
5 in the hearing.

6 Commissioner Wong. Thank you.

7 COMMISSIONER WONG: Okay.

8 CHAIR SCHEUER: Let's get a motion out
9 there so we can deliberate.

10 COMMISSIONER WONG: Yeah. So I want
11 to -- my motion is to approve in part and -- well,
12 deny the petitioner's motion to reconsider in part
13 and approve only the minor typographical errors, such
14 as the name change, the dates, you know, all those
15 things.

16 CHAIR SCHEUER: Okay. So there's a
17 motion before us to grant in part and deny in part
18 the petitioner's motion, and the granting in part
19 would be on only factual matters and the
20 nonsubstantive matters that we spent most of the time
21 discussing?

22 COMMISSIONER WONG: Correct.

23 CHAIR SCHEUER: Is that clear,
24 commissioners? Is there a second to the motion?

25 COMMISSIONER OHIGASHI: Second.

1 CHAIR SCHEUER: Commissioner Ohigashi has
2 seconded the motion. We have a motion in front of
3 us.

4 Commissioner Okuda.

5 COMMISSIONER OKUDA: Chair, thank you. I
6 would suggest that the motion, whether it's termed
7 granting in part or granting in part and denying in
8 part, just make clear that as far as this order
9 regarding this motion we're considering, that it's
10 very clear that notwithstanding any statements in the
11 prior order which has already been entered, that
12 there is no preclusive effect on the issue of whether
13 or not there has or has not been substantial
14 commencement of the use of the land in accordance
15 with the petitioner's representations. In other
16 words, whether -- however this motion is titled, it
17 makes clear that except for, you know, the
18 stipulations about the petitioner agreeing not to
19 argue about conduct or actions that have taken place
20 after the entry of the initial notice with respect to
21 the order to show cause, that there is no -- there's
22 nothing that would preclude the petitioner or any
23 other party from offering evidence which shows
24 substantial commencement of the use of the land or
25 doesn't show substantial commencement of the use of

1 the land. In other words, the order makes clear that
2 we're not entering any type of judgment one way or
3 the other on that issue until and unless there are
4 further proceedings.

5 CHAIR SCHEUER: Thank you.

6 VICE CHAIR CABRAL: I'd like to second
7 that motion if my esteemed colleague could put it in
8 the form of a motion -- an amendment to the motion.

9 CHAIR SCHEUER: If I understood
10 correctly, and correct me if I'm wrong, Commissioner
11 Okuda, you're not -- are you asking for an amendment
12 to the motion, or were you simply asking that the
13 order that would be issued in furtherance of the
14 motion would reflect that this commission has neither
15 made a determination on whether or not substantial
16 commencement occurred prior to the order to show
17 cause being issued as well as we have not prohibited
18 the petitioner from arguing that in an order to show
19 cause hearing?

20 COMMISSIONER OKUDA: Yes, that is correct
21 with one additional clarification, and this
22 clarification doesn't have to be in the order. I
23 don't want my statement taken to be any type of
24 concession that the evidence with respect to
25 substantial commencement or lack of substantial

1 commencement somehow did not play a part in the
2 decision to agree to continue the pending proceeding
3 with the conditions that were agreed to. In other
4 words, at least in my view, I voted in favor of the
5 continuance with the conditions attached based in
6 part on the evidence that was presented in the record
7 about or on the factual issue of whether or not there
8 was substantial commencement of use of the land in
9 accordance with representations made on the petition.
10 I don't mean to confuse the issue so much, but I want
11 to make that clear.

12 CHAIR SCHEUER: So thank you for that
13 clarification. And just procedurally, Commissioner
14 Cabral, there's not actually an amendment to the
15 motion to second, but I think the spirit of your
16 comment is that you're in agreement with what
17 Commissioner Okuda has said is there?

18 VICE CHAIR CABRAL: Yes, I am in
19 agreement. Thank you.

20 CHAIR SCHEUER: Commissioner Wong.

21 COMMISSIONER WONG: So I'm going to speak
22 on behalf of the motion.

23 CHAIR SCHEUER: Please.

24 COMMISSIONER WONG: I totally agree with
25 Commissioner Okuda. You know, to me, I haven't made

1 a decision yet. So you're going to get that time,
2 like they say, in court to show -- to prove to us yes
3 or no you did or didn't do whatever, substantial
4 commencement and everything else. So you're going to
5 have that day. To me, this is just a statement --
6 you know, just a statement to me right now, that
7 substantial commencement. So that's why I made the
8 motion. There is some issues, you know, the time,
9 the change of names and all that that has to be done.
10 So that's the reason. So that's why I made the
11 motion. So that's why I'm speaking on behalf of the
12 motion.

13 CHAIR SCHEUER: Thank you.

14 Commissioner Ohigashi.

15 COMMISSIONER OHIGASHI: I'm going to
16 support the motion because the way I view it is that
17 the order that was issued related only to the issue
18 of continuing this -- continuing this matter. It has
19 no relationship to any indication of whether or not
20 substantial compliance has occurred in an order to
21 show cause hearing. So I think that -- I think that
22 based upon --

23 I believe that the order was limited to
24 just the question of the continuance.

25 CHAIR SCHEUER: Thank you, Commissioner

1 Ohigashi.

2 Any further discussion of the motion?

3 Commissioner Chang. Oh, Commissioner Okuda followed
4 by Commissioner Chang.

5 COMMISSIONER OKUDA: Yeah. And thank
6 you, Mr. Chair. I'd like to add too, also, the fact
7 that I believe it's public policy to have cases
8 determined on the merits. And even if the state of
9 evidence might seem to suggest certain things,
10 especially based on statements made under oath by
11 parties, there still should be a full and complete
12 record. Because we're all humans; right? I mean,
13 sometimes we might really think the record is a
14 certain way, and there might be reasonable
15 explanations about why my personal view of the record
16 is not correct. And I'm always willing to consider
17 the entire record. So I think this allows -- it
18 makes it very clear that it's the preference of the
19 commission to have a complete record and not prejudge
20 anything. So for those reasons and what I stated
21 earlier, I'll be voting for this motion.

22 CHAIR SCHEUER: Commissioner Chang.

23 COMMISSIONER CHANG: Thank you very much,
24 Mr. Chair. I too am inclined to vote in favor of the
25 motion because looking at the standard for the

1 reconsideration, those points of clarification that
2 were clearly erroneous, I have no objections to those
3 being modified. But I like, I think, what you
4 already heard from the other commissioners, the
5 intention -- at least my intention was not to be
6 predecisional. It is to hear the evidence. It is in
7 the proper forum. The order to show cause should,
8 one, be heard. At that point in time, we will weigh
9 all the evidence that's heard at that time.

10 But I felt very comfortable that up until
11 that point to the motion to continue, that the order
12 was accurate, except for those provisions that were
13 erroneous, whether they be the date or the name
14 change. But I do want to be very clear. I think
15 this commission has really tried very hard to provide
16 all the parties that come before it an opportunity to
17 present its best case. And we have -- we will
18 listen, and we will weigh everything.

19 So, again, for me, it is not my intention
20 to be predecisional, but it was to be just very -- in
21 compliance with the standards for the
22 reconsideration. Thank you.

23 CHAIR SCHEUER: Thank you, Commissioner
24 Chang.

25 Anything further, commissioners?

1 Commissioner Giovanni.

2 COMMISSIONER GIOVANNI: Thank you, Chair.
3 I have been educated and convinced by my fellow
4 commissioners on this matter, and I will vote in the
5 affirmative.

6 CHAIR SCHEUER: Thank you.

7 Commissioner Aczon, do you want to speak
8 to it? I don't want you to feel left out.

9 VICE CHAIR ACZON: Yeah. I agree with my
10 fellow commissioners. I'm really looking forward to
11 the upcoming hearings to hear all the evidence, but
12 for this motion, I tend to support it because, in my
13 mind, that during the deliberations, during the time
14 that we come out with this decision, it is based
15 purely on the evidence and the records that we have
16 at that time. So from that time, we decided that
17 that is the best decision we have because of the
18 records. So I'm really looking forward to hearing
19 all those evidence, and I can tell you I'm not sure
20 where -- you know, my position on this one.

21 CHAIR SCHEUER: Thank you, Commissioner
22 Aczon.

23 Commissioner Cabral.

24 VICE CHAIR CABRAL: I clearly don't want
25 to be left out. But I want to support what my

1 commissioners have said in general. Clearly, I'll
2 support this motion. Everybody better. I mean,
3 really here. But in terms of the spirit of this
4 group, over and over and over again we have been
5 amazingly supportive of trying to let people,
6 communities, groups, developers, whatever name you
7 want to come under, be able to move forward with
8 projects, absolutely with housing, because we really
9 see the need of our community and our various
10 islands. And this has been over and over again on
11 every single island, the massive need for housing and
12 for support, and almost every single item includes
13 some type of requirement for affordable housing. So
14 I'm going to definitely let you know we're really in
15 favor of you successfully moving forward. Everything
16 we do has been trying to work with people and groups
17 and petitioners and whatever name you are to move
18 forward in a successful manner, and our job is to
19 make sure that we represent the overall larger
20 community, that it's done properly in that successful
21 manner. So we definitely look forward to you folks
22 getting it together, figuring it out, getting your
23 money and getting things built. So bring it on.
24 Thank you.

25 CHAIR SCHEUER: Thank you, Commissioner

1 Cabral.

2 Anything further, commissioners?

3 Commission Ohigashi.

4 COMMISSIONER OHIGASHI: Just a question,
5 Mr. Chair. Do we have -- do we have to enter into
6 the record --

7 I realize I wasn't here on the May -- I'm
8 trying to remember what day -- May 22nd, 2019,
9 hearing. Should we enter into the record that I've
10 reviewed the transcripts, et cetera, in order to make
11 a decision today? Is that necessary? Which I have
12 anyway.

13 CHAIR SCHEUER: Thank you for confirming
14 that on the record. I can certainly ask each of the
15 commissioners to affirm on the record that they've
16 either attended or reviewed the transcripts from each
17 of the hearings. I believe we will absolutely do
18 such a determination on the next matter, which is a
19 continuation of the previous matters rather than this
20 matter which is a somewhat stand-alone motion. But
21 you affirm that you are familiar with the record and
22 preparing to deliberate on this matter?

23 COMMISSIONER OHIGASHI: Yes.

24 CHAIR SCHEUER: Commissioner Wong?

25 COMMISSIONER WONG: Yes.

1 CHAIR SCHEUER: Commissioner Cabral?

2 VICE CHAIR CABRAL: Yes.

3 CHAIR SCHEUER: Commissioner Chang?

4 COMMISSIONER CHANG: Yes.

5 CHAIR SCHEUER: Commissioner Giovanni?

6 COMMISSIONER GIOVANNI: Yes.

7 CHAIR SCHEUER: Commissioner Okuda?

8 COMMISSIONER OKUDA: Yes.

9 CHAIR SCHEUER: Commissioner Aczon?

10 VICE CHAIR ACZON: Yes.

11 CHAIR SCHEUER: The chair has also
12 reviewed the record and is prepared to deliberate on
13 this matter.

14 I will speak to the record or speak to
15 the motion. I'm in favor of the motion as well. I
16 think my general feelings about where we are now --
17 well, not many people say I wonder what Jonathan
18 feels about an issue. I tend to be a little clear on
19 that. So I appreciate that everybody who appears in
20 front of us has the right to counsel and has the
21 right to argue very legalistic arguments about
22 procedure, but the feeling of it again is, like,
23 "Yeah, we want to move forward with you. We want to
24 go shoulder and shoulder, but you know what, we're
25 going to keep this one foot over here just in case."

1 And it's feeling like, right, you succeed at what you
2 focus on, and it seems like we're not spending all of
3 our focus on what, presumably, our goal is.

4 With that, do we need to do a roll call
5 vote? Yeah. Okay. Mr. Orodener, please poll the
6 commission.

7 EXECUTIVE OFFICER: Thank you, Mr. Chair.
8 The motion is to grant in part and approve in part
9 the motion --

10 CHAIR SCHEUER: Deny in part.

11 EXECUTIVE OFFICER: Deny in part. Excuse
12 me. That was double.

13 -- to allow typographical changes and
14 factual corrections and with the order on this motion
15 reflecting that the commission has not predetermined
16 the issue of substantial commencement.

17 Commissioner Wong.

18 COMMISSIONER WONG: Aye.

19 EXECUTIVE OFFICER: Commissioner
20 Ohigashi.

21 COMMISSIONER OHIGASHI: Aye.

22 EXECUTIVE OFFICER: Commissioner Okuda.

23 COMMISSIONER OKUDA: Yes.

24 EXECUTIVE OFFICER: Commissioner Cabral.

25 VICE CHAIR CABRAL: Yes.

1 EXECUTIVE OFFICER: Commissioner Chang.

2 COMMISSIONER CHANG: Yes.

3 EXECUTIVE OFFICER: Commissioner

4 Giovanni.

5 COMMISSIONER GIOVANNI: Aye.

6 EXECUTIVE OFFICER: Commissioner Aczon.

7 VICE CHAIR ACZON: Yes.

8 EXECUTIVE OFFICER: Chair Scheuer.

9 CHAIR SCHEUER: Aye.

10 EXECUTIVE OFFICER: Thank you, Mr. Chair.

11 The motion carries with eight affirmative votes.

12 CHAIR SCHEUER: Thank you. It is now
13 11:46 a.m. Our next agenda item is action on -- or
14 the status report and action on order to show cause
15 issued March 29, 2019, if necessary. What I'd like
16 to do is adjourn for lunch for one hour,
17 commissioners, to reconvene at 12:45 p.m. to take up
18 the next agenda item. Is that okay with the parties?

19 Okay. One hour for lunch and we will
20 reconvene.

21 (Whereupon, a lunch recess was
22 taken from 11:46 a.m. until
23 12:45 p.m.)

24 ///

25 ///

1 KAILUA KONA, HAWAI'I

2 WEDNESDAY, JANUARY 8, 2020

3 12:45 P.M.

4 - o0o -

5 CHAIR SCHEUER: Good afternoon. Our next
6 agenda item is a status report on the action meeting
7 on the order to show cause, if necessary, on Docket
8 No. A02-737, the petition of the University of
9 Nations Bencorp.

10 Will the parties please identify
11 themselves for the record.

12 MS. ANJO: Julie Anjo for the petitioner,
13 University of the Nations, Kona. And Kathy and Derek
14 will still be sitting with me, and also Jeff Overton
15 will be with us in the beginning.

16 MR. KIM: Good afternoon, Chair, members
17 of the commission. Deputy Corporation Counsel Ronald
18 Kim representing County of Hawaii, and along with me
19 is the planning program manager, Jeff Darrow.

20 MS. APUNA: Good afternoon. Dawn Apuna,
21 deputy attorney general, on behalf of the Office of
22 Planning. Here with me is Lorene Maki.

23 CHAIR SCHEUER: Okay. Are there any
24 individuals in the room who are intending to give
25 public testimony on this matter? I see none. So I

1 won't go over our procedures for public testimony.

2 I'm going to make -- start with a brief
3 disclosure. I only realized today in the airport in
4 Honolulu that Jeff Overton was assisting with this
5 project. My wife is an employee of Group 70
6 International and works with Jeff. She's not worked
7 on this project. She has no financial benefit from
8 doing so, but I want to make that disclosure and
9 offer the opportunity to the parties to object to my
10 continued participation on this matter.

11 MS. ANJO: I have no objection.

12 MR. KIM: No objection from the county.

13 MS. APUNA: No objections.

14 CHAIR SCHEUER: Any other disclosures,
15 commissioners?

16 VICE CHAIR CABRAL: Me.

17 CHAIR SCHEUER: Commissioner Cabral.

18 VICE CHAIR CABRAL: I don't know Kathy
19 Garson too well, but I do know her mother and father
20 quite well. Thank you very much. I don't have any
21 problems or any conflict in this matter.

22 CHAIR SCHEUER: I don't think any further
23 waiver is necessary.

24 VICE CHAIR CABRAL: Okay.

25 CHAIR SCHEUER: So here is our

1 procedures. First, the petitioner will provide their
2 status report, and I will call on the County of
3 Hawaii and OP for their comments regarding the status
4 report. The petitioner will be allowed to respond to
5 any comments made by the County and the Office of
6 Planning, and then the commission will consider
7 whether or not there is good cause to further
8 continue these proceedings or whether to reconvene
9 the evidentiary hearing and action meeting on Docket
10 No. A02-737 U of N Bencorp to consider an order to
11 show cause as to why approximately 62 acres, TMK
12 Nos. 37-5-10:85 and 7-5-17:06, situated at Waiaha 1,
13 North Kona, island and county -- island, county and
14 state of Hawaii should not revert to its former land
15 use designation or be changed to a more appropriate
16 classification.

17 If the commission chooses to reconvene
18 action on the order to show cause, a date will be set
19 for such hearings at which time the petitioner will
20 be given the opportunity to conclude its arguments on
21 the matter. From time to time, I will also remind
22 you that I will call for short breaks. Are there any
23 questions from any of the parties in our procedures?

24 MS. ANJO: No questions.

25 MR. KIM: No questions.

1 MS. APUNA: No questions.

2 CHAIR SCHEUER: Okay. Thank you. The
3 record in this docket was updated earlier on our
4 previous agenda item.

5 Last check, there's no public witnesses.
6 Testifiers on this matter? If not, then, Ms. Anjo,
7 you can proceed with your presentation.

8 MS. ANJO: Thank you, Chair. Thank you,
9 commissioners and staff. First off, we wanted -- we
10 want to just say thank you from our deepest hearts
11 and sincerely for the work that you have committed
12 for us, for the State of Hawaii. And in reference to
13 a statement that the chair has stated earlier, just
14 to recognize that we -- we do really appreciate and
15 we do want to work with the commission in every way.

16 So I want to give you an update as to
17 what's happened since we left in May in our last
18 hearing so that you can see what we have accomplished
19 in this really short window of time, and then also I
20 will let you hear how we're ready to move forward and
21 are excited to move forward with this project.

22 First, I wanted to just give you a little
23 background because we're still a unique entity.
24 Since we began in 1977, the University of the
25 Nations, Kona, has had over 63,000 students from 142

1 countries trained in Kona. We've sent students out
2 for field assignments to every country in the world,
3 and we are currently working off 45 acres of land
4 that's adjacent to the reclassified property.

5 As you might guess, with that growth, we
6 really want to expand and grow and develop the 62
7 acres to meet that need and continue serving Hawaii
8 and continue serving the world, which is why we are
9 here.

10 So what have we been doing since May?
11 Well, beginning in May, Tony Ching led us through
12 some design charrettes to confirm the program and the
13 vision for UNK moving forward.

14 On July 22nd, 2019, we hired G70 to help
15 us develop a better master plan and to meet the
16 program needs and move forward with the project with
17 the professionalism that they provide.

18 In August, we contracted with a
19 consultant to complete the various surveys and
20 commence seeking out the data needed to file the
21 motion to amend.

22 In August, we also formalized Waiaha
23 Advisory Committee which is chaired by Leina'ala
24 Fruean, who is a lineal descendant of the
25 reclassified area, the family from the reclassified

1 area. And she is close by if we need any input from
2 her.

3 The written status report was submitted
4 to the commission on November 13, 2019, and since
5 that, we have met with the Office of Planning and the
6 Department of Planning to apprise them of the status
7 update and solicit any questions or concerns that
8 they might have.

9 At this time I'd like to invite Jeff
10 Overton, principal planner with G70, to update the
11 commission on the progress that we have made since
12 our May meeting. After Mr. Overton's presentation,
13 we will provide a brief overview of the budgeting and
14 financing since we've have already submitted that to
15 the record for your review. That demonstrates our
16 ability and readiness to move forward with this
17 project.

18 CHAIR SCHEUER: Jeff Overton, I'm going
19 to swear you in. Do you swear or affirm the
20 testimony you're about to give is the truth?

21 THE WITNESS: I do.

22 CHAIR SCHEUER: Okay. So if you'll just
23 state your name and business address for the record,
24 and then you can proceed with the questioning from
25 your counsel.

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JEFFREY OVERTON,

having been called as a witness by Petitioner,
was duly sworn and testified as follows:

THE WITNESS: Good afternoon, Chair and
commissioners. Jeff Overton. I'm a principal
planner with G70, and our new address -- boy, I gotta
make sure I get this right -- 170 South King Street
[sic], and that's Honolulu 96813. I should know
that, but we were at another address for about
20-something years.

So thank you for this opportunity to go
through status report briefing. I've also prepared
some exhibits that have rightly, I believe, been
circulated to you. It's about 15 slides, and then
I'll project them on the screen if my button works.
It does. That's great. So thanks. And, Julie,
thank you for the overview.

I'll just touch on that, once again, that
University of the Nations, Kona, is a Hawaii
501(c)(3) nonprofit organization, and it is a
mission-based educational institution. We are
located here about one mile southeast of the town
center of Kailua Kona, and we're in the North Kona
District, island of Hawaii.

I've got kind of a location exhibit here

1 that shows us in reference to Kailua town.

2 Founded --

3 You said '77. I have '78. Sorry.

4 -- on a 45-acre existing campus site.

5 Now, this really serves as a training center to
6 prepare followers for Christian service throughout
7 Hawaii and the world and specifically for Asia and
8 the Pacific from this location. It's a very unique
9 college institution here in that it's unique in the
10 field of higher education, nontraditional in that
11 it's a globally networked learning center offering
12 learning opportunities for emerging Christian leaders
13 with branches in 1,200 locations in over 100
14 languages around the world. And that's reflected
15 here in the program that we'll talk about later on.

16 Now, the location of the campus, there's
17 an aerial photograph, and the TMKs of the petition
18 area are outlined in yellow here. So you'll see the
19 existing campus. And I'm sorry. The laser pointer
20 doesn't pick up well on the LCD screen. So I won't
21 try to blind Riley again on this. But you can see
22 the outline, and we have Queen Kaahumanu Highway and
23 Hualalai Road on kind of the mauka side in there,
24 Kuakini Highway and the ocean on the makai side of
25 the property.

1 We are bounded by the -- also the Kona
2 Hillcrest subdivision adjacent to the property.
3 There's a piece of land owned by University of
4 Nations at Kona to the north, which is the Kama'aina
5 Hale apartments which fronts along Kuakini on the
6 side. And this petition area has a modest slope to
7 it. It runs from an elevation of roughly 100 feet
8 above sea level along Kuakini to the upper edge of
9 the property about 325 feet above sea level just
10 below Hualalai Road.

11 So some background on the State Land Use
12 Commission process which you're all familiar with
13 from the record. In 2003, with the urban
14 reclassification of the 62-acre petition area, going
15 back to 2000, University of Nations, Kona, purchased
16 the 62-acre petition area adjacent to their existing
17 site, and they planned what was called the Hualalai
18 Village Development Project. Okay. And this is a
19 different property --

20 Sorry. I left off one more exhibit in
21 here which shows -- just kind of paints the land --
22 the landownership. I should have had this up. I
23 thought -- I was talking there before.

24 So you see the lightest yellow area is
25 the petition. We've now got a mauka-makai

1 orientation to this horizontal slide, and that gives
2 you a good feeling of the property setting: The
3 existing campus to the left, the apartments along
4 Kuakini, and then the existing development on the
5 south side.

6 So let's go to the 2003 master plan that
7 went through a process, and here's a copy that came
8 out of the files. And Group 70 -- we're known as the
9 G70 now -- was fortunate to have been supporting
10 University of the Nations Bencorp, as it was called
11 at that time. Going through quite a different
12 project at that time. There was a big focus on a
13 condominium complex that was a very important part of
14 the financial model for this project with 400 units
15 on the upper section of the property in higher
16 elevations there. And then a 26-acre for-profit
17 cultural center, Pacific Island Cultural Center along
18 with a 5-acre educational facility for U of N along
19 their kind of center boundary there.

20 And in 2003, U of N Bencorp was fortunate
21 to be granted the state land use district boundary
22 amendment to reclassify from the state agricultural
23 district to urban.

24 Flash forwarding to 2006, and here's an
25 updated master plan. Soon after the reclassification

1 of the 62-acre petition area was granted in the
2 following year or so, University of Nations at Kona
3 realized a need to realign itself better with its
4 mission's original faith-based value system and a
5 system that's really focused on service rather than
6 financial gain. And so this plan eliminated the
7 large condominium complex that was planned within the
8 petition area, and it eliminated the 26-acre Pacific
9 islands cultural center. These were both dropped out
10 of the project to realign with the mission goals.
11 And during this time, U of N Kona filed a motion to
12 amend in 2006, but it was not concluded and no action
13 was taken at that time.

14 So now I'm going to put on the screen
15 what is kind of a -- the current master plan that
16 we're working on. As was stated by Julie, there was
17 a charrette process that Tony Ching had helped with
18 earlier last year to help shape things prior to our
19 engagement or at the outset of it to really shape --
20 reshape the program. And there are several early
21 planning principles and concepts that, again, are
22 grounded in the mission's faith-based value system,
23 and I'm going to walk you through this.

24 It's going to take a little while, and I
25 left my water in the bag there. So I'm going to grab

1 that. Thank you, sir.

2 Dr. Bob recommends it's very good with
3 water.

4 UNIDENTIFIED SPEAKER: Best water boy in
5 the room.

6 MR. OVERTON: Off the record, I guess.

7 So here we are with really the beginning.
8 Again, on the left-hand side of the slide, you can
9 see the existing -- 45-acre existing campus area and,
10 in gray or shaded, the existing buildings on the
11 campus. You'll see outlines of the pieces of the new
12 master plan and, really, the focus is on the
13 red-dashed area, the 65-acre petition area and the
14 different uses in there. And I've got a series of
15 slides that we'll go through to show the progression
16 of the campus building.

17 To start with, the focus of this -- and
18 it's really anticipated to have a 20- to 30-year
19 build-out timetable here; yet, a significant
20 downsizing from the original project. The original
21 project had anticipated roughly 1,100 visitors per
22 day in the cultural center that was going to have
23 regular daytime performances. It had a very large
24 outdoor water feature, a museum complex, restaurants,
25 shops. It was basically a visitor attraction center

1 that was part of the old economic model. That's no
2 longer any part of this process here.

3 We, of course, don't have any condominium
4 project in here as well. It's strictly an
5 educational campus that is set up to further the
6 mission here, complement the existing facilities and,
7 as Julie had mentioned, support for the growth of the
8 program organically as elements are funded and
9 brought together with time.

10 This existing campus to the north of the
11 shaded buildings include administration, academic
12 buildings, resource center, cafeteria, bookstore,
13 lounge, student dorms, some faculty housing,
14 conference center, healthcare and early childhood ed.
15 And the goal in the current master plan now for the
16 62 acres is to reflect on these current and upcoming
17 priorities in conjunction with the expansion of some
18 of the facilities on the existing campus site. And
19 we're taking a fresh approach to this campus
20 expansion, tying together functional elements of the
21 existing campus, new academic programs, training and
22 student living program areas.

23 One thing you'll notice because you can
24 see as we go through the slides, there's topography
25 shaded in the background. This plan works much, much

1 better with the land than any of the original plans
2 in respecting the existing topography of this sloped
3 site, to minimize earthwork and grading requirements
4 as well as to preserve the four major cultural sites
5 that exist on the petition area.

6 Also, approximately 40 percent of the 62
7 acres will remain in open space as well as roughly an
8 acre for the archaeological sites.

9 So just to reiterate, this master plan is
10 really emphasizing respect for the slope and better
11 integration for the core campus academic and living
12 components and then introducing sustainable features
13 such as renewable energy, water conservation,
14 material design and systems, connectivity, multimodal
15 transportation, and employing low-impact development
16 principles.

17 The campus will connect the existing site
18 to the petition area with the expansion improvement
19 of a central spine road that goes mauka-makai and
20 branching off into distinct areas to serve in the
21 lower section of the makai section, which would be
22 the lower school, middle school and high school. And
23 I wish I could -- planners need to point at things.
24 So, you know, I'm sorry. I can't use my laser here,
25 but in the more makai section would be that school

1 complex there. The expansion of instructional
2 buildings for the discipleship learning center, which
3 is in the more centralized part of the petition area,
4 and then an athletic complex and training area, and,
5 finally, at the upper section, agricultural/exhibit
6 storage and a maintenance yard and vocational
7 training in there.

8 So we have a whole series of programs
9 that are set to complement what is the existing
10 physical plan of the campus, and I could spend a lot
11 of time. Francis Oda from our office is really the
12 visionary behind the revision of this master plan and
13 brought together a lot of the pieces of this that
14 really are reflected in a new vision for the campus
15 that is more environmentally sensitive, culturally
16 sensitive in terms of tying together the cultural
17 sites and also ties in the sustainability elements
18 that we'll talk about here later.

19 We are for prioritizing in the petition
20 area, excuse me, the expansion of the existing
21 primary education facilities of the lower school, the
22 replacement of what are now 30-year-old dormitory
23 buildings with new student dormitories, and plans to
24 accommodate up to 3,400 students, faculty and staff
25 on a 30-year timeline, and, really, expansion of what

1 is a growing discipleship learning center with new
2 instruction buildings, this significant athletic
3 complex and training area and then the support of
4 storage, maintenance and vocational elements in that
5 upper section.

6 And critically important would be the
7 archaeological sites' preservation and working with
8 SHPD on their preservation plan, the burial treatment
9 plan. Restoration of the sites is already going
10 forward now with the plan under the approved SHPD
11 preservation plan, and the implementation of
12 permanent rock wall buffers around each of the
13 identified burial sites with the restoration plan
14 also for the Great Wall of Kuakini that would be
15 implemented in coordination with SHPD.

16 I'm going to walk us through a few slides
17 here that, as I had mentioned, are going to show the
18 build program. So shaded in yellow on this first
19 phase would be the 5- to 10-year program of
20 build-out. As I mentioned, we have a central spine
21 road that extends up through the center of the
22 property. It needs to be improved, widened,
23 connected, kind of brought up to speed for what is
24 this growing campus.

25 The enrollment on this 10-year horizon is

1 roughly 1,500 students. And new projects, as
2 identified on the 62-acre petition area --

3 I want to mention that as I talk about
4 projects in here, you're well aware that private
5 schools that have donation-based funding, sometimes
6 you'll have a donor that has a very special interest
7 and wants to proceed with a project, and that means
8 you're kind of jumping out of order a little bit with
9 projects. A good example might be a new cafeteria
10 that was built for roughly \$9 million, and the donor
11 covered roughly half of it. It's just an example of
12 projects as they pop up. So we're doing our best to
13 depict what's a logical series of projects here, but
14 we know some may come out of order with time.

15 But let's just walk through briefly what
16 is in this first phase, which would be a real focus
17 in the center of the slope there where we're talking
18 about discipleship, learning center, chapel,
19 instruction building, student-resident dormitory
20 buildings, an athletic training complex, the
21 beginnings of it, with gymnasium and locker rooms and
22 a practice field. And then the lower school being
23 the elementary school component there and instruction
24 building, playground and field.

25 The preservation sites, as mentioned, is

1 already underway, but the restoration of the
2 identified burial sites, rock walls, permanent
3 preservation buffers as well as the Kuakini Wall
4 restoration plan.

5 Up at the top would be the agricultural
6 exhibit. As folks are out on mission and the
7 different efforts that are made in the world,
8 agricultural knowledge and the ability to actually
9 project this, implement it in the field is critical.
10 So we need to be able to work with agricultural
11 examples here to work with this as part of the
12 instruction.

13 We also have food supplies, storage
14 warehouse, maintenance shops up at the top, a garage
15 storage, and then as I mentioned, the center spine
16 road improvements, driveways, ADA pathways, a lot of
17 open space and xeriscape, kind of less thirsty
18 landscaping to complement this. And then the bones
19 of it, the wastewater drainage, roadways, electrical
20 supplies, things like that.

21 The next phase of development is really
22 beyond 10 years, sort of 10 years and beyond. It's
23 anticipated that additions will be made to each of
24 these elements with another 500 to 1,000 students.
25 Again, the discipleship learning center is really the

1 core of the instructional setting here. A student
2 resource center is planned with more instructional
3 buildings and added dorms to help support the growing
4 on-site student population. Further improvements at
5 the athletic training complex, the soccer field,
6 gymnasium, locker rooms, courts, athletic buildings,
7 and then the beginnings of an aquatic center in here.
8 You may have a donor who wants to really jump-start
9 the pool. So that would be great if that could
10 happen here. It would be perfect.

11 An entry exhibit building down along the
12 Kuakini side, which is the entry exhibit building of
13 the Discovery Center, and I'll talk more about that
14 downstream here. More work on the lower and middle
15 schools with additional instruction buildings, courts
16 and a field, and the beginnings of the high school in
17 here with some instructional buildings, courts and
18 support elements.

19 There's also a youth camp element in the
20 mid-elevation. You can see it kind of stretches over
21 to the south boundary, and that it would have cabins
22 in it. That is a very specific instructional program
23 tied to it, a youth camp, and then the supporting
24 infrastructure, pathways, et cetera.

25 And then the final kind of element of

1 campus development is this nice light blue that comes
2 in. Subsequently, the future facilities requirement
3 to support the overall campus build-out of the
4 discipleship learning center, some supporting
5 elements of outdoor space in gathering places,
6 additional dormitories, as you can see, to support
7 the growing student population, build-out of the
8 athletic complex, build-out of the lower, middle and
9 high school elements, more with the youth camp. And
10 then this Discovery Center which is really an
11 expansive language library, informational resource
12 center that will function as both instructional and
13 research facility, admin and staff. And that's along
14 the Kuakini frontage there on that side.

15 We put together -- so you can see the
16 logic of how we've built out over time the 62-acre
17 piece in here. It can't all be tucked in one corner
18 of the site and just built, you know, up the hill, up
19 the hill, up the hill or the reverse. It's meant to
20 be complementary with the core of the campus, the
21 flow of it and how it works with the land, and
22 really, functionally, you need private spaces for
23 dormitories. Ultimately, there will be some faculty
24 staff housing on the existing campus side. Those
25 pieces of it kind of progress through.

1 I've got a summary development tabulation
2 that I won't bore you with a read-through on, but it
3 gives you very specific design development tabulation
4 because we need to be able to calculate all the
5 supporting elements and requirements for
6 infrastructure.

7 So there's been quite a bit of work done
8 over the last six to eight months with our team. And
9 I know we've kind of hustled pieces of it together
10 here. We'd like to be further along with it at this
11 point, but this is where we're at right now. There
12 is quite a bit of work on the technical side and an
13 environmental report that we're working on. So I'm
14 going to bridge to that if we could give you a
15 progress --

16 Again, as mentioned, G70 is providing
17 University of the Nations, Kona, with master planning
18 and conceptual, architectural work, preliminary civil
19 engineering and planning for environmental analysis
20 and land use entitlement support. We're also
21 coordinating a variety of technical studies that will
22 be supporting this environmental planning report that
23 you'll see in your package for the March date.

24 So I was cute and I just showed covers
25 here today, but there's more than covers. We've made

1 quite a bit of progress.

2 You know, and what's nice is we do have a
3 lot of resource from the 2003 information; that it
4 actually went all the way up through a project
5 district or rezoning application at that time in
6 2006. So we have quite a bit of, what we say,
7 information that's readily available that needs to be
8 updated and then made current to this project. It
9 was for a much different project at the time.

10 Archaeology, Dr. Bob Rechtman is here.
11 His group has been consistently working on this
12 project through its lifespan here. So we just
13 snapped in one letter from State Historic
14 Preservation. These are gold. If you can get
15 letters from State Historic Preservation, it's really
16 great, and Bob and his group are good at that. So
17 they've been working through the process.

18 You know, we did have a long time ago a
19 vote by Hawaii Island Burial Council which supported
20 the plan for burial treatment plan. It took until
21 2019 to actually get the letter that confirmed that.
22 So that's a good thing to have. And then there's
23 preservation plans and archaeological monitoring
24 plans such that, you know, Bob's group has been very
25 good at working with. So in consultation with them,

1 we are working on the restoration -- dismantling and
2 restoration plan for a portion of Kuakini Wall.
3 We'll be submitting that to SHPD. We do have that
4 acceptance letter from August. The date of recovery
5 for 10 sites was submitted to SHPD in '07 and
6 resubmitted again this past August.

7 Regarding implementation of the BTP and
8 the archaeological preservation plan, University of
9 Nations, Kona, is hiring rock masons to complete rock
10 walls around the permanent preservation buffers of
11 the four sites that are significant in the center of
12 the property. Once that's verified as completed,
13 that will satisfy the implementation of the BTP and
14 the archaeological preservation plan. So
15 Dr. Rechtman's group has been making good progress on
16 those pieces. As well, they've been helping with the
17 update with a cultural impact assessment.

18 So back in '03, actually Kawika McCabe
19 from Group 70 helped prepare this cultural impact
20 assessment for U of N Bencorp. And, again, a lot of
21 the information, the background, history, was very
22 useful. Matt Clark, from ASM Affiliates, working
23 with Bob are updating this CIA, and a draft of that
24 will be included in the package that you'll be
25 receiving in March. So I'm sure you'll be interested

1 in reviewing that. It will include the Ka Pa'akai
2 analysis in there.

3 Our flora/fauna we thought important for
4 us to take a good look at what's there now. Even
5 though we had a 15-year-old botany study, we wanted
6 to make sure things were current. So we engaged
7 ECOS, Rick Guenther (phonetic) and their group,
8 Reggie David, supporting them to update that study.
9 They did field studies in November, detailed plant
10 and bird and mammal survey. No species currently
11 proposed for listing or listed under federal or state
12 as endangered species occur on the property. So that
13 was good news, and we'll have a draft of their study
14 available for you to review as part of the package
15 coming up.

16 One of the really important pieces on the
17 technical side is traffic, and we're in an area that,
18 you know, folks recognize traffic in the Kona region
19 is an issue. And what we've done is engage Fehr &
20 Peers --

21 They're excellent, Sohrab Rashid and his
22 group.

23 -- to help us with traffic conditions
24 analysis, and here what they're calling a fancy name
25 for traffic sites, "mobility analysis report." And

1 so, you know, we do more than cars these days; right?
2 Bikes, TEDS (phonetic) and everything else that
3 happens in there. So they're preparing this report.
4 We should have a draft late this month. And they had
5 conducted their counts in September and October. So
6 the baseline information and existing conditions has
7 already been completed. And they're also in contact
8 with county DPW and the Hawaii DOT Highways Division
9 to consult with them on the roadway conditions.
10 They'll also be reviewing the report to have them put
11 on it. So that will be part of your package in
12 March.

13 Finally, our group, our civil engineering
14 group at G70, Paul Matsuda leads the civil
15 engineering group. And they're going through the
16 work through on updating with this master plan, and,
17 again, it's a scaled-down master plan in terms of
18 demands on a lot of the infrastructure components
19 from the earlier 2003 or even 2006 plans. Paul
20 Matsuda's group is looking at water supply,
21 wastewater, drainage, roadways, power and
22 communications. They've done their existing
23 conditions assessment in the fall and now preliminary
24 engineering studies of the access roadways,
25 earthwork, grading, drainage, water, wastewater as

1 well as touching base with both the county and the
2 state agencies to address systems and service
3 capacity.

4 So that's pretty much the highlight of
5 our update. I just want to conclude saying the
6 petitioner and our technical consultant team, G70 and
7 the group I just presented, have made significant
8 progress over the past almost three quarters of a
9 year master planning and then the various supporting
10 studies, and we're moving ahead, really accelerating,
11 because we know we'll need a great level of
12 information to satisfy the county's project district
13 zoning application that we're targeting, roughly, by
14 midyear should we stay on the current pace. And I'd
15 be glad to respond to questions. Thank you.

16 CHAIR SCHEUER: Commissioners?
17 Commissioner Cabral.

18 VICE CHAIR CABRAL: How long has Group 70
19 been contracted to work on this project?

20 THE WITNESS: I'd have to review the
21 proposal. So Francis Oda, our chairman, was probably
22 helping with the master planning back nearly a year
23 ago, I think, and was talking with Loren Cunningham
24 and Paul Childers and Tom Watling (phonetic), the
25 team at University of the Nations, on preparation for

1 this revised master plan. So I don't have the exact
2 date.

3 Our contract work started probably in the
4 spring of last year where we started pulling the
5 pieces together. The hearing that happened roughly a
6 year ago, I think, helped to really accelerate the
7 pace of all this, and so I said, "We gotta step on
8 the gas, guys, because we've got less than a year to
9 get all this together." So that's why I'm saying
10 roughly three quarters of a year we've been working
11 on it.

12 VICE CHAIR CABRAL: Thank you. And I
13 want to thank you for all of the nice drawings. I
14 really like maps and drawings.

15 CHAIR SCHEUER: Commissioners, questions
16 for Mr. Overton?

17 Commissioner Wong.

18 COMMISSIONER WONG: Okay. I have a
19 question, Mr. Overton. On the diagram of the phase,
20 the next phase --

21 THE WITNESS: I can go back to it if
22 you'd like.

23 COMMISSIONER WONG: Yes. Okay.

24 THE WITNESS: That's the full build-out
25 one.

1 COMMISSIONER WONG: So let's leave it on
2 this one.

3 THE WITNESS: Okay.

4 COMMISSIONER WONG: When, I'm going to
5 say, University of Kona came to us or Bencorp, they
6 said they were going to do some affordable housing.
7 I don't see any affordable housing on there anymore.
8 What happened?

9 THE WITNESS: Sure. Okay. Well, as I
10 mentioned earlier in the presentation, they are
11 operating Kama'aina Hale, which is the land to the
12 north just off-site of, say, to the left of the image
13 along Kuakini Highway. And that project, when they
14 took it over from the state, as I understand it, and
15 there's people that have much greater knowledge than
16 I do, they had to go through kind of a cleanup of
17 hazardous materials, and then it had to be made
18 available to the broader community so that it's,
19 roughly, I think half-half or one-third, two-thirds
20 occupied by University of the Nations' affiliated
21 faculty and staff and the rest of the broader
22 community. So they essentially had predone an
23 affordable housing project at the outset even though
24 we've eliminated any for-sale housing element in this
25 project.

1 So I would think, ultimately, as we clean
2 things up in terms of conditions and all, the need to
3 fulfill an affordable housing requirement downstream
4 may not apply to what's currently being proposed in
5 the petition area, if that makes sense. I hope I
6 answered your question.

7 COMMISSIONER WONG: Yeah, it does. It's
8 just, I guess -- I'm sorry. It's just my concern --

9 I guess Commissioner Cabral can answer
10 this better than it or state this better than I.

11 -- that, you know, this island, like all
12 islands, need affordable housing. So we're -- I'm
13 just wondering, you know, will that suffice what you
14 just stated, you know, that mauka portion for the
15 needs that was stated before? That's all.

16 THE WITNESS: At this time I probably
17 can't answer that. I might defer that back to Julie
18 or the rest the team.

19 MS. ANJO: Yeah. So with Kama'aina Hale,
20 that project, we actually brought the director for
21 Kama'aina Hale today if you had any specific
22 questions for him on the nuances of that. That
23 affordable housing project is already well in
24 progress, and it's -- the whole development continues
25 to be occupied at, I think, 50 percent or less of the

1 line required. They have minimum requirements. So
2 if you would like more questions, we can definitely
3 bring him up and you can get some very specific
4 details from him.

5 COMMISSIONER WONG: If the chair allows
6 and if time permits. The other thing I want to ask
7 is, you said about the funding issues. Now, you said
8 you're going to get funders, and you may move around
9 what's being built because of funders. Say I'm a
10 funder and I want to build the auditorium instead of
11 the high school or something like that. How set in
12 stone is this?

13 (Reporter clarification.)

14 COMMISSIONER WONG: How set in stone is
15 this? Because, you know, sometimes I'll bet on the
16 stock market as a funder, and stock markets plunge.
17 So you know, then they say, "Oh, you know what,
18 sorry, but I cannot fund you anymore." So, you know,
19 I mean, do you have -- is it in bond or is it, like,
20 in escrow, the monies, or how is it being done?

21 MS. ANJO: I was going to do a financial
22 presentation after.

23 COMMISSIONER WONG: Okay. I'll hold on.
24 Thank you, Mr. Overton. That's all.

25 THE WITNESS: If you have a stock market

1 tip, I'm open.

2 COMMISSIONER WONG: That's it. Thank
3 you.

4 CHAIR SCHEUER: Commissioner Chang.

5 COMMISSIONER CHANG: Thank you,
6 Mr. Overton. I really appreciate the presentation.
7 Very ambitious. Obviously, you guys have done a lot
8 of work since the last time you were here before us.
9 I think you heard the commission about what are you
10 going to -- what are you doing. So I appreciate the
11 work that's been done. Obviously, a lot of work. It
12 sounds like you also did some charrettes. I'm hoping
13 you met with the community.

14 So I just have a few questions. Clearly,
15 this is a very different project than what was
16 approved in 2003. Is it your intention procedurally
17 to come back to the Land Use Commission with a motion
18 to amend? How are you going to handle the
19 different -- you know, the fact that it's a totally
20 different project and those conditions were tied to
21 that particular project?

22 MS. ANJO: No. We've been -- we're going
23 to bring the motion to amend to request an amendment
24 of the conditions that's very similar to the previous
25 motion to amend that we brought in 2006. So we're

1 still asking the same thing. We're still at the same
2 place that we were in 2006 wanting to do a
3 development as we previously represented at that
4 hearing.

5 COMMISSIONER CHANG: So all of the
6 infrastructure requirements that were part of the
7 conditions in 2003, you're going to still be able to
8 comply with those for this particular development?

9 THE WITNESS: So, obviously, with a
10 change in the development program, we're reassessing
11 what are the requirements on each of those areas.
12 And as we meet with the county and state agencies and
13 look at what's going to be required to fulfill those,
14 we would more than likely tailor things in comparison
15 to what the 2003 conditions were set.

16 COMMISSIONER CHANG: So I guess that
17 leads me to the next question about was there an EIS
18 prepared at the time the original project came to the
19 commission?

20 THE WITNESS: There was not.

21 COMMISSIONER CHANG: Will you be doing
22 an -- will the development that you're proposing
23 trigger an environmental impact statement?

24 THE WITNESS: We don't see a trigger at
25 this point. Now, the project -- that's a great

1 question because, as a team, we're having to ask that
2 of ourselves. We want to make sure we comply with
3 343 if required here. So the types of things that
4 might trigger that would be off-site infrastructure
5 improvements.

6 Right now, and I walked through the
7 phasing with you of the project and the build-out, as
8 we go through and analyze each of the individual
9 pieces of it, whether it's wastewater satisfaction or
10 roadways and things like that, for instance, if you
11 go back -- I'll just click back to the 2000- -- I'm
12 sorry. I went the wrong way.

13 If we look at the 2003 plan -- this is
14 taking awhile to get back.

15 Okay. Along the makai edge, there were
16 two driveway connections with Kuakini Highway in
17 there. In the new plan, we have a single driveway
18 connection there. So in some ways, that's good in
19 that we have, you know, less penetrations of the
20 state or the highway system in that area, which a lot
21 of times the public works and highway folks like
22 that, but it also concentrates the traffic at one
23 location. So the question really is will the traffic
24 flows warrant any kind of improvements in the public
25 right-of-way that would either potentially be exempt

1 from 343, because they fit within the exemption list
2 of allowable improvements, or they exceed that, and
3 then it would potentially trigger 343.

4 We're going to know better as this new
5 traffic study comes out. Really, it's just weeks
6 ahead that we'll have some answers to this. So right
7 now, we've done sort of a gut check of projected
8 traffic flows. In the 10 year, even up to the 20
9 year in terms of the build-out scenario, it's not
10 really looking like it. And in some cases, you can
11 have turnout lanes of your own property. You just
12 slow down when you pull into the driveway, and that
13 wouldn't necessarily trigger it. But if we had to do
14 some kind of widening or signalization, none of this
15 seems to be warranted at this time. Then I think
16 you're starting to push the edge of that. And we
17 would want to meet with the county and the state as
18 it applies, most cases, the county here, and look at
19 whether we hit a 343 trigger here. If we had to
20 upsize the sewer line, for example, that, again,
21 exceeded what is the exemption threshold for that
22 agency, that would potentially trigger it.

23 So I don't have a firm yes or no answer
24 for you here today. I will in March, I think, have a
25 better answer for you on that. I hope that hits your

1 question.

2 COMMISSIONER CHANG: Yeah. At least what
3 I'm hearing is it depends. So you haven't
4 necessarily ruled it out. It depends upon your
5 consultation with the regulatory agencies and I guess
6 the requirements of your project, whether any of
7 those project components would trigger a 343-5?

8 THE WITNESS: Yeah, that's really the
9 one. Public land -- use of public lands that is not
10 meeting the exemption threshold. The only other one
11 would be an on-site wastewater treatment facility. I
12 think that's the only other trigger that could
13 potentially hit here. And, again, we're looking at
14 using the county's available capacity, and their
15 system is an 18-inch sewer line that runs along
16 Kuakini. So our initial indications are that there's
17 going to be adequate capacity, but we need to go
18 through a confirmation of that process.

19 COMMISSIONER CHANG: Okay. So for
20 purposes of my question, I think, again, in my view,
21 it -- in my view, it just depends. Because, I mean,
22 this is a substantial project even though it's
23 phased. It is 62 acres, mauka-makai. I don't know
24 what the erosion -- and I appreciate the fact that
25 you are phasing it. So it may not be as open space.

1 But, nonetheless, there still remains an issue
2 whether a 343 would be triggered.

3 THE WITNESS: Yeah.

4 COMMISSIONER CHANG: You're not using any
5 state funds, no federal funds?

6 THE WITNESS: That's correct.

7 COMMISSIONER CHANG: All of this is just
8 private funding. Okay. And I know Bob Rechtman just
9 left, but are your archaeological sites those that
10 are marked in A?

11 THE WITNESS: Correct. Those are the
12 major ones, the preservation sites.

13 COMMISSIONER CHANG: So I notice that you
14 have a burial -- you have a burial treatment plan.
15 So these were found -- were these burials previously
16 identified found during an archaeological inventory
17 survey?

18 THE WITNESS: So we're testing the limits
19 here of my edge, but that, of course, they had to go
20 through all that when they identified things going
21 through that. Again, the property was acquired in
22 2000. Then they went through the studies that
23 supported the 2003 process.

24 I've got the old -- so they all got the
25 site numbers attached to them, and it's all been

1 coordinated with SHPD in terms of establishing -- and
2 Hawaii Island Burial Council.

3 COMMISSIONER CHANG: Do you know if there
4 were any recognized cultural descendants or lineal
5 descendants identified during this process?

6 THE WITNESS: I'm going to have to defer.

7 COMMISSIONER CHANG: And I would like to
8 know whether, and if you can check with Bob, whether
9 those, one, have there been any cultural or lineal
10 descendants identified for these burials, and, two,
11 if so, have they been consulted with respect to the
12 project? If you can just kind of confirm that for
13 me.

14 THE WITNESS: Okay.

15 COMMISSIONER CHANG: And I think it was
16 during -- there was a mention about do you have a --
17 you said a lineal descendant Leina'ala? What was her
18 name -- her last name?

19 MS. ANJO: Fruean.

20 COMMISSIONER CHANG: And she is a lineal
21 descendant?

22 MS. ANJO: F-R-E-U-E-N [sic].

23 COMMISSIONER CHANG: And she is a
24 recognized lineal descendant?

25 MS. ANJO: Yes. She is a recognized

1 lineal descendant of the Gomes property. So the
2 reclassified area, we had comped the Gomes property.
3 She's a Gomes descendant. So she's been actually
4 involved with us for many years as we've walked
5 through the process.

6 COMMISSIONER CHANG: And only because
7 it's kind of a term of art being a recognized lineal
8 descendant, so do you know is she a descendant
9 because burials were found on that adjacent property?
10 Who is she a lineal descendant too?

11 MS. ANJO: The ownership. The past
12 ownership of the land as it's passed down.

13 COMMISSIONER CHANG: Would this be a
14 question you can ask Bob? Because recognized lineal
15 descendants are a term of art under Chapter 6E.
16 Usually you recognize a particular burial. You can
17 be an ancestral -- you can have an ancestral
18 connection to the land; you're from there. But if
19 you can just confirm what is she a lineal descendant
20 to? Because they have a particular status under the
21 law. So if you can just confirm that.

22 And the project that's adjacent to your
23 property where your existing site is, campus, what's
24 the zoning of that property? Is that urban too where
25 your existing campus is? The 45 acres.

1 THE WITNESS: Yes, that's urban.

2 COMMISSIONER CHANG: It's urban. Okay.

3 And I know --

4 Jeff, have you been on the land?

5 THE WITNESS: Just on the edges. I have
6 not done a thorough tour of the property.

7 COMMISSIONER CHANG: And we're not at an
8 order to show cause here, I understand. But has
9 there been, based upon your personal observation of
10 the land, any existing uses of this -- of the 65
11 acres, 62 acres?

12 THE WITNESS: Yes. There is some modest
13 aquaponics/agricultural elements that's tied to the
14 campus there. So there's some --

15 COMMISSIONER CHANG: Was that part of the
16 original LUC approval, the aquaponics, or is that
17 just an overflow from the existing campus?

18 THE WITNESS: There was always going to
19 be a university component in there, and agriculture
20 has been one element of the education group.

21 COMMISSIONER CHANG: But was that
22 particular component one of what was being proposed
23 in the original -- was that represented to LUC that
24 that was part of the original project?

25 THE WITNESS: Here's the original that

1 was in the -- and I'm pointing to the exhibit of the
2 2003 master plan. So if you see on the left-hand
3 side and handwritten, it says "Future U of N
4 educational pavilion." That area is actually where
5 we have some of the existing agricultural functions
6 that -- sort of modest improvement of the petition
7 area in there. This doesn't say "farm."

8 COMMISSIONER CHANG: But beyond that, are
9 there any roadways that have been constructed or any
10 other existing -- and I'm not making a judgment call.
11 I'm just wanting to know as someone who's actually
12 been on the property, whether you saw any actual uses
13 of the land other than some modest aquaponic uses.

14 THE WITNESS: So I'm going to defer to
15 some of the U of N team for more of the details on
16 that.

17 COMMISSIONER CHANG: All right. Thank
18 you.

19 CHAIR SCHEUER: Commissioner Aczon.

20 VICE CHAIR ACZON: Like Commissioner
21 Chang, I kind of -- this is a substantial change from
22 the original project. Out of that 19 conditions
23 attached to the 2003 decision and order, do you have
24 any idea how many of these were complied to?

25 THE WITNESS: I don't. I didn't come

1 prepared to go through a conditions compliance
2 analysis.

3 VICE CHAIR ACZON: I just want to know if
4 you have some idea because this is a status report.
5 I just want to kind of see --

6 THE WITNESS: Right.

7 VICE CHAIR ACZON: -- the status.

8 THE WITNESS: So I'm going to defer to
9 the applicant or their counsel to respond to that
10 issue because we've just been in the kitchen working
11 on the master plan and pushing forward really. I
12 know the archaeological conditions have been the one
13 I'm aware of in terms of pretty high level of
14 compliance really on the archaeological requirements.

15 VICE CHAIR ACZON: Because I notice
16 there's a lot of progress on papers --

17 THE WITNESS: Yeah.

18 VICE CHAIR ACZON: -- on design and
19 everything, but wondering if there's any kind of --

20 THE WITNESS: I know there's a condition
21 on education in there because they were building a
22 residential component before, that there was
23 affordable housing in there, and, of course, those
24 conditions just don't apply the same to the current
25 development program in there. Even though they have

1 gone ahead with their affordable piece, and Julie
2 said most of it's 50 percent AMI qualified by the
3 residents in there. So it's serving a purpose quite
4 well already on affordability. They are a school.
5 So I don't know if they need to build a school. But
6 they are building a school, actually. Sorry.

7 VICE CHAIR ACZON: Yeah, maybe the U of N
8 people can answer those questions. You mentioned
9 about the affordable housing. Hale -- the Kama'aina
10 Hale is outside of the petition area?

11 THE WITNESS: Correct.

12 VICE CHAIR ACZON: So the original
13 proposal of the housing project, was it in the
14 petition area?

15 THE WITNESS: As far as I know, it was
16 going to be intermixed with the development proposal.
17 But I don't have details on how the specifics of the
18 affordable housing was going to be provided and
19 implemented.

20 VICE CHAIR ACZON: I'm just kind of
21 wondering how the county thinks about the issues.

22 MS. ANJO: Yeah. According to the D & O,
23 the original conditions, it just says "provide
24 affordable housing opportunities for residents in the
25 State of Hawaii in accordance with applicable housing

1 requirements. The location and distribution shall be
2 under the terms as agreeable." So it doesn't specify
3 that it was to be on the reclassified area,
4 specifically.

5 VICE CHAIR ACZON: Okay. Thank you. I
6 might want to ask that later.

7 CHAIR SCHEUER: Thank you, Commissioner
8 Aczon.

9 Further questions for Mr. Overton?
10 Commissioner Ohigashi.

11 COMMISSIONER OHIGASHI: Obviously, you're
12 proposing to do it in two phases, this project. The
13 question that I have is has there been any kind of
14 determination what initial groundwork or putting down
15 water lines or putting down roads, what areas would
16 that go in initially and what would be the time frame
17 for those?

18 THE WITNESS: Okay. I'd be glad to
19 answer that. I'll advance us to the slide on here
20 that is the first colored -- that's the existing ones
21 in gray, and now this is the first -- what we're
22 calling a 5- to 10-year initial phase or first steps
23 in development in here. So, again, in the core area,
24 you see the disciple -- it's like sort of the
25 instruction training area in the center there, some

1 of the athletic complex pieces in there. In the
2 upper section of the property with the agricultural
3 and the storage and the maintenance facility and then
4 the beginnings of the lower school at the far makai
5 edge, those are the pieces that are intended to come
6 in as well as the archaeological restoration and
7 protection.

8 COMMISSIONER OHIGASHI: Have there been
9 any planning with regard to infrastructure
10 requirements for those particular areas?

11 THE WITNESS: That's what we're working
12 on right now.

13 COMMISSIONER OHIGASHI: And will those
14 infrastructure be phased into the phase? In other
15 words, will there be phases of infrastructure
16 improvements ongoing into the area?

17 THE WITNESS: Exactly. We would not
18 necessarily --

19 COMMISSIONER OHIGASHI: Would you be
20 providing a timetable for those infrastructural
21 phases to go into it?

22 THE WITNESS: Right now, we just have a
23 macro-level timetable of a 5- to 10-year build-out of
24 what's depicted here and the table that responds to
25 this.

1 COMMISSIONER OHIGASHI: So are you going
2 to prepare more specific plans?

3 THE WITNESS: Absolutely.

4 COMMISSIONER OHIGASHI: And when would
5 that be available?

6 THE WITNESS: So for the March
7 presentation, the information going there, I think
8 will spell out the different elements, as you say,
9 requirements to support these different levels of
10 campus build-out.

11 COMMISSIONER OHIGASHI: And the cost for
12 those different elements, will those be included in
13 your projections?

14 THE WITNESS: We need to prepare
15 preliminary cost projections.

16 COMMISSIONER OHIGASHI: Would there be
17 also financing of those costs for those preliminary
18 items?

19 THE WITNESS: Well, I'm going to let
20 Julie speak to finance pieces.

21 COMMISSIONER OHIGASHI: So I'm going to
22 assume that they're going to have to provide that?

23 THE WITNESS: Yeah. It's going to be
24 hard to build it otherwise.

25 COMMISSIONER OHIGASHI: Right.

1 Otherwise, we won't know whether or not it's even
2 possible to build. Because here we have a situation
3 where we have everything approved way back when;
4 right? I'm assuming there was a different financing
5 plan based upon the amount of housing that they were
6 going to provide, a different model, and that was,
7 you know -- and now that the housing market has
8 revived, that model may work; however, we're faced
9 with a model that is preliminarily described as if
10 you can find the donor, then we'll build it.

11 THE WITNESS: I don't --

12 COMMISSIONER OHIGASHI: At this point in
13 time, are you aware of any reserves that the church
14 has dedicated to the -- to the initial infrastructure
15 requirements that are not required on a donor basis?

16 MS. ANJO: Yes, Commissioner. Do you
17 want me to --

18 CHAIR SCHEUER: If I understand,
19 Ms. Anjo, you have a presentation planned later --

20 MS. ANJO: Yeah.

21 CHAIR SCHEUER: -- as far as financial.

22 COMMISSIONER OHIGASHI: Perhaps you can
23 remember my question then.

24 MS. ANJO: Well, hopefully, the
25 presentation, that will address your concern, and

1 then if you have additional questions.

2 COMMISSIONER OHIGASHI: Going back to
3 that affordable housing provision, the first -- the
4 master plan that you have shows that particular
5 housing within the project area?

6 THE WITNESS: You gotta go backwards.

7 COMMISSIONER OHIGASHI: This Lalali [sic]
8 Village something; right?

9 THE WITNESS: Yeah.

10 COMMISSIONER OHIGASHI: So was that part
11 of the project area at that time?

12 THE WITNESS: You're talking about kind
13 of the central mauka --

14 COMMISSIONER OHIGASHI: Yes, up there.

15 THE WITNESS: -- piece in there?

16 COMMISSIONER OHIGASHI: Or is the --

17 VICE CHAIR CABRAL: Hualalai Village.

18 THE WITNESS: That was actually built
19 independent of the campus plan.

20 COMMISSIONER OHIGASHI: This original
21 document, that portion is not part of the petition
22 area --

23 THE WITNESS: Correct.

24 COMMISSIONER OHIGASHI: -- right? It
25 seems to me that it was designed to be the same type

1 of housing throughout the --

2 THE WITNESS: That's the way --

3 COMMISSIONER OHIGASHI: They sold it off
4 or they reacquired it, or what was the reason for
5 that, if you know?

6 THE WITNESS: As I understand it, it was
7 not part of -- well, it's not in the petition area,
8 first of all, because the 62 acres excludes that
9 area. But as you mentioned, the style of
10 development, it's complementary to that, basically
11 mimics that. I don't have enough familiarity to talk
12 about whether there was a connection with that prior
13 development.

14 COMMISSIONER OHIGASHI: And your
15 statement is that you believe that this development
16 that is not part of it originally, that may satisfy
17 the housing -- low-cost housing development within
18 the -- within the project area requirement?

19 THE WITNESS: Go ahead.

20 MS. ANJO: So the top part -- just to add
21 some clarification, so the affordable housing element
22 is Kama'aina Hale, and it's on the other side of the
23 45 acres at the bottom portion towards Kuakini. So
24 it's a different development. That's the affordable
25 housing -- yes, there you go. You see, it's the

1 purple piece. And then the mint green color or the
2 green-colored one is the one that you're questioning
3 which is called Hualalai Village.

4 COMMISSIONER OHIGASHI: So that's where
5 my confusion comes from is the original map that you
6 provided that has this piece -- additional piece of
7 property appears to have -- do we know -- I'm just
8 curious, was it one whole development at one time or
9 was it -- because there seems to be integrated roads
10 and --

11 THE WITNESS: I think the confusion is
12 that the master planner in the graphic that you're
13 looking at there included that to show sort of
14 adjacency in there even though it wasn't part of the
15 petition area. As I look in the records, it actually
16 is whited out elsewhere, but this was an original
17 graphic that was in the file. So I can understand
18 the possible confusion here that that may have been a
19 development increment of it. It was never part of
20 the 62-acre petition area.

21 MS. ANJO: It is -- it was --
22 Commissioner, it was also -- it was phase 1 of the
23 project, but it was outside, as he said, the
24 reclassified area. So, originally, the vision, they
25 did that portion first, but it did not require any

1 change of classification.

2 THE WITNESS: It was urban.

3 MS. ANJO: It was already urban. So this
4 other section did require change of classification to
5 the urban classification. And it was to be all
6 luxury condos. So the project was initially
7 submitted to be luxury condos. It was not submitted
8 to be affordable housing.

9 CHAIR SCHEUER: I think perhaps if I may
10 briefly step in, is the clarification that's being
11 sought that this map of the original 2003 master plan
12 is beyond the scope of the petition area that we are
13 focused on?

14 COMMISSIONER OHIGASHI: That portion.

15 MS. ANJO: It is beyond the scope of the
16 petition area.

17 CHAIR SCHEUER: But includes other lands
18 that are not in the petition area?

19 MS. ANJO: It does. Yes, it does.

20 COMMISSIONER OHIGASHI: So may I follow
21 up on one more question about that? How many
22 affordable housing units were planned on the property
23 itself?

24 MS. ANJO: This property, it's not --
25 this is for luxury condos, and so they were going to

1 be building the affordable housing condition was --
2 so I think that's why it was brought in and to be at
3 other locations according to the actual condition of
4 the D & O, condition No. 1.

5 COMMISSIONER OHIGASHI: So your testimony
6 is there has never been on-property low cost or
7 housing plans for this?

8 MS. ANJO: As it happens, it is a
9 community -- they subsequently made this into a
10 community land trust. But I believe the original
11 vision and the original plan, which is before we
12 actually came onto the scene, but the original plan
13 was for high luxury condos to be sold off to finance
14 other projects. So that was what was granted, but we
15 changed vision a lot and we're not seeking --

16 COMMISSIONER OHIGASHI: I'm just asking
17 under the D & O, was there any on-site low-cost
18 housing?

19 MS. ANJO: Based on the condition itself,
20 it does not say that.

21 COMMISSIONER OHIGASHI: That's what I
22 wanted to know.

23 CHAIR SCHEUER: Thank you, Commissioner
24 Ohigashi. Where are we at in terms of questions for
25 Mr. Overton? We've been going a little bit over an

1 hour. Commissioners, are there further questions for
2 Mr. Overton at this time? Are there further
3 questions that you want to ask after a break? I have
4 a couple, but I can wait. We've been going one hour.
5 So let's take a break. And just for everybody's
6 benefit, it's 1:53. Commissioner -- commissioners
7 are on a 5:10 flight to Oahu. So we can probably go
8 to about 4:00 o'clock. Hopefully, we can reach some
9 kind of decision by then. Let's take a break till
10 2:05.

11 (Whereupon, a recess was taken
12 from 1:53 p.m. until 2:08 p.m.)

13 CHAIR SCHEUER: We're back in session.

14 Were there other questions from the commissioners for
15 Mr. Overton?

16 I have a couple questions. Where are you
17 in the process of -- I'll ask my question, and I'll
18 explain why I'm asking the question before you
19 respond. Where are you in terms of developing
20 analysis of compliance of the new master plan for
21 this property with the Kona Community Development
22 Plan and the Hawaii County General Plan?

23 I ask the question, and I think this is
24 perhaps resonant with some of the questions of some
25 of my fellow commissioners is that the new plan is so

1 significantly different than what the Land Use
2 Commission originally considered, that while we are
3 currently simply in a status hearing, there's this
4 pendent OSC hearing, and there is the consideration
5 of what would be happening here in the future, and in
6 some ways, I think it is at least useful to think
7 about it as if we were considering this sort as a de
8 novo district boundary amendment, one criteria which
9 is are these proposals in compliance with regional
10 and county general plans. So where are you at in
11 terms of that analysis?

12 THE WITNESS: We will address compliance
13 with --

14 CHAIR SCHEUER: I think your microphone
15 might not be on.

16 THE WITNESS: Thanks. Jeff Overton, G70.

17 So to respond to that question, I'd say
18 at a high level, we need to address compliance with
19 existing county and then proposed amended plans, such
20 as Kona Community Development Plan or the general
21 plan, how we would be in compliance with those.
22 Right now they view the site under its existing urban
23 reclassified position, and I guess -- I haven't gone
24 and reviewed what is new drafts of those, but it was
25 based on what was on the books as of the 2003

1 urbanized land there. So alongside the existing
2 campus. And so I have not heard -- it's not been
3 brought to my attention that there's interest from
4 the planning department to change things based on
5 that, but I'm kind of taking that at a high level.
6 We'd like to speak with the county on this if there's
7 concerns about that.

8 CHAIR SCHEUER: And thank you. Just to
9 be clear, I wasn't suggesting that because there have
10 been revisions -- there is a pendent revision of the
11 Hawaii County General Plan, I wasn't suggesting that
12 the general plan was now going to suggest this is a
13 nonurban area, but I believe compliance goes beyond
14 "is the zoning complementary?"

15 I mean, certainly, the Kona Community
16 Development Plan is a document I actually read from
17 cover to cover. It has very clear visions about the
18 kinds of uses beyond just what the specific zoning
19 is. So that's the -- you know, what's being proposed
20 is very different than what's envisioned. The Kona
21 Community Development Plan was developed after a very
22 exhaustive process of looking at what's already on
23 the landscape and what people were planning at the
24 time. So that's the kind of -- is it harmonized with
25 this new vision? Does it work into the general plan

1 and the Kona Community Development Plan?

2 THE WITNESS: To supplement my response,
3 I'd say we're headed towards the project district
4 zone change application, which would be a much more
5 substantive examination of districts within the
6 property and how it would fit within that context of
7 the Kona Community Development Plan and that vision
8 for the region and subareas. At the same time, we'd
9 be meeting with the county to really chart the best
10 course for the property to implement that project
11 district zone change. So you raise a good point, and
12 I think we will touch on it in our environmental
13 report to show how we're complementary with it, but
14 the meat of it is really going to come in the project
15 district app further downstream.

16 CHAIR SCHEUER: Thank you. Sorry. Just
17 to follow up immediately, you keep referring to an
18 environmental report, and I'm assuming you're being
19 very careful to not say "environmental assessment" or
20 "environmental impact statement," but some
21 compilation of various studies. Is that what you're
22 referring to when you say "environmental report"?

23 THE WITNESS: Correct.

24 CHAIR SCHEUER: So that leads into my
25 second question which is if this was de novo, we

1 would probably be, in this day and age, looking at an
2 EIS or an EA at minimum, and you'd look at a whole
3 range of things in an obligatory fashion, one of
4 which would be water. I don't see anything in your
5 update so far in terms of securing water sources for
6 this very substantial development. And water is also
7 something I'm somewhat familiar with in this area.

8 THE WITNESS: So we need to address it as
9 one of the many infrastructure components that we're
10 updating to be sure that we are supporting what is a
11 downscaled project now in terms of water demand and
12 as well as wastewater management for the property.
13 So it's one piece of the puzzle. We're acutely aware
14 of what is the water situation here in the region,
15 and it differs from where things were at in 2003. So
16 we're looking at both sides of it.

17 We are working with a hydrogeologist, Tom
18 Nance, as our consulting hydrogeologist on the
19 project. We have some options for it in terms of
20 potable well development partnering that are in the
21 works, as well as we know that a certain amount of
22 supply could be provided through on-site water
23 development with the reverse osmosis process. We
24 would love to work with rainwater preferentially
25 here, but it would involve some participation in

1 off-site. The details of this are in the works, and
2 we'll have more information for you in March.

3 I don't have a lot of details other than
4 to say the current water system on the property needs
5 repairs. So they are using more water than they have
6 the right to, I guess, with the county. The county,
7 in our meetings with them, are saying, "You need to
8 fix your system." So that's one of the first
9 priorities right now to fix the leaks on the property
10 to reduce the current demands at the campus, and that
11 just makes sense today.

12 And then going forward, how can we reduce
13 what would be the potable water demand on this
14 property through what is a current understanding of,
15 say, a sustainable approach to the property? Of
16 course, all the low-flow fixtures, less thirsty
17 landscape. Can we reuse water on the property? We
18 really want to minimize what would be the potable
19 demand for the property. We're looking at roughly a
20 quarter million gallons per day as a total built-out
21 campus demand, and we won't need all that in 10
22 years. But through the project at the ultimate
23 build-out, that's roughly the target that we're
24 looking at.

25 CHAIR SCHEUER: So an update on that

1 would be good, and I think I would also just
2 highlight that since the original entitlement of this
3 project, the water development is governed by a few
4 documents, the Water Resources Protection Plan of the
5 State of Hawaii as well as the Hawaii County Water
6 Use and Development Plan and its component parts,
7 including a draft, not finalized, plan for the
8 Keauhou aquifer.

9 One critical statement in the Water
10 Resources Protection Plan that was recently adopted
11 acknowledges that when the state sets sustainable
12 yields for aquifers, they do not explicitly consider
13 the impacts on groundwater-dependent ecosystems. So
14 what that means is when the state says there is 38
15 million gallons a day as a sustainable yield for
16 Keauhou, that does not necessarily protect the flows
17 of groundwater which, especially in this area, are
18 really important to near-shore ecosystems and
19 traditional and customary practices and especially
20 with the great proximity of this site to the coast.

21 The development -- certainly, the
22 development of groundwater very near the coast tends
23 to have very observable and significant impacts that
24 if you only look at an aquifer-wide equation and say,
25 "Oh, we only need a quarter of a million gallons.

1 There's 38 million gallons available. Everything's
2 fine," doesn't capture those other actually known,
3 very significant issues. So I would hope to see some
4 attention to that.

5 THE WITNESS: Yeah. So our timetable
6 with March looming, we will have more information
7 than we have today. We may not have every answer
8 definitively established by that time, but I would
9 definitely say we will definitely have more
10 information on the water supply for that need.

11 CHAIR SCHEUER: And, again, you mentioned
12 Mr. Nance who is, if I was to drill a well, I would
13 absolutely go to Mr. Nance. If I was to ask about
14 the ecological impacts of water development, I would
15 not go to Mr. Nance.

16 Are there other questions for Mr. Overton
17 at this time?

18 If not, Ms. Anjo, can you give me an
19 overview of the remainder of your presentation?

20 MS. ANJO: I was just going to briefly
21 cover the finance plan and then close.

22 CHAIR SCHEUER: About how long did you
23 anticipate needing absent the unpredictable nature of
24 our questions? I would ask no one to predict that.

25 MS. ANJO: I was thinking like eight

1 minutes or something.

2 CHAIR SCHEUER: Great. Please proceed.

3 MS. ANJO: I'm going to look at my clock
4 and make sure that I'm not going over the time.

5 So the first portion of what I wanted to
6 bring before you was the finance plan for financing
7 this development. We submitted to you on
8 December 24th, 2019, the financials, and also the
9 faith-based model enclosure No. 5 of the status
10 report in November was also submitted.

11 The first point I wanted to make was
12 according to 2019 net assets, approximately 3 to 4
13 million in liabilities of 7.5 million, the assets
14 exceed the liabilities which shows that the
15 University of Nations is financially sound at this --
16 well, we're a financially sound entity.

17 The second is a question of where our
18 revenues derived from, and as a nonprofit and a
19 volunteer mission organization, our primary revenues
20 have historically been based off donations of large
21 donors or even small donors to finance projects to
22 date. So we use donations, and we use tuition and
23 fees as well from the students that come in.

24 The financial plan for the financing of
25 this 62 acres is three -- threefold, fundraising and

1 donations, cash surplus and increase in student
2 enrollment in fees -- student enrollment, and then,
3 if necessary, the conventional loan financing option
4 is available as well. So with financing and
5 donations, we call this a faith-based model, but,
6 effectively, most people call it fundraising.

7 So to date, for the last 35 years, we've
8 raised approximately \$78 million to develop the 45
9 acres that we are on in this form. And this does
10 bring up what was mentioned before that if we have a
11 donor who comes in who has a specific project on
12 their heart, something that they're concerned about,
13 they may ask if they can contribute to a specific
14 project. For example, the easiest and most recent
15 example would be the cafeteria project on the 45
16 acres, not on the reclassified area, where a donor
17 came in and requested to contribute to that specific
18 project in the building of that -- of that structure.

19 So it's not as clean -- it's not the same
20 as when you're developing a project and we say, "Oh,
21 the first phase has to be completed, and then the
22 funds from that phase are going to be used to fund
23 the second phase." For us, what is available, what
24 the donors are wanting to contribute to, that's
25 obviously what we're going to look at for development

1 as well. But we do have a structure plan to move
2 forward, and for the structure plan to move forward,
3 we have current cash surplus and increase of student
4 enrollment. Our cash surplus at this time, the
5 annual -- the annual cash surplus is between 1.5 and
6 2 million per year, and that can be applied to --
7 it's discretionary and can be applied to the
8 development of the reclassified area.

9 We also have -- we have been having an
10 increase in student enrollment for several years on
11 the trajectory that will continue, and even a
12 conservative estimate on that will -- will also
13 increase that cash surplus available to us to develop
14 out the property -- to develop the property. And in
15 the March statement, we will also be able to give you
16 the exact details of those numbers.

17 And then the other element is that we
18 have reduced costs in that we are a volunteer
19 organization. So a lot of the work that's done in
20 construction is done through volunteer labor, through
21 highly qualified individuals who come and volunteer
22 their time to help us develop the property and the
23 land. So that also significantly reduces our costs
24 by about 40 percent.

25 And then the last option that is

1 conventional loan financing. At this time the
2 financials show the university can very easily take
3 out a loan at a minimum of 10 million to easily
4 follow that through. And the first phase of this
5 project in the next 5 to 10 years is estimated about
6 14 million. Based on just the student number and the
7 excess cash flow that we have, the cash surplus
8 coming through, that alone would be conservatively
9 \$15 million. So that would finance easily the first
10 phase of the project as we move forward. However, as
11 the student enrollment increases, we'll have
12 additional funds available to us in that sense, not
13 even discussing the donation basis through which we
14 often operate.

15 So just a quick summary because I know
16 we're a little bit short on time, and then I would
17 love to answer any questions that you have on the
18 finances.

19 Just the overall project on the
20 reclassified area and the land, it integrates changes
21 that align better with our nonprofit purpose from the
22 original plan. The changes in the plan do provide a
23 lesser impact than the original plan by removing the
24 for-profit cultural center and the market housing.
25 Instead of -- instead, the new plan allows the

1 reclassified area to be used for university and
2 educational facilities, including classrooms,
3 dormitory buildings and the integration of the
4 archaeological sites into the University of the
5 Nations' curriculum.

6 It is also evident from our master plan
7 and our financial statements that we've submitted
8 that the University of the Nations is in a position
9 and is ready to move forward on this development so
10 that we can continue to train those who are serving
11 in Hawaii and in the nation. Thank you.

12 CHAIR SCHEUER: Thank you.

13 Commissioners, questions?

14 Commissioner Ohigashi, did you have a
15 follow-up to your earlier questions on finances?

16 COMMISSIONER OHIGASHI: I thought she was
17 going to answer it.

18 CHAIR SCHEUER: So I take it you have a
19 follow-up? No?

20 COMMISSIONER OHIGASHI: Not right now.
21 Let me think.

22 CHAIR SCHEUER: Commissioner Chang.

23 COMMISSIONER CHANG: Thank you for the
24 presentation. Just a couple of questions. Is your
25 financing dependent upon the phased project as

1 proposed, the three phases?

2 MS. ANJO: The financing is as we -- as
3 the phases continue, it allows for better or greater
4 enrollment opportunities. It does impact the
5 financing, but not -- not in the traditional sense.
6 It's just -- obviously, the more students we have, if
7 we're using that as the mechanism for financing, then
8 it would increase the funds.

9 COMMISSIONER CHANG: Can I ask what is
10 your student tuition? If that's one of the
11 considerations is the student enrollment, what is the
12 cost first?

13 MS. ANJO: Student tuition is \$2,400 per
14 quarter. So that's for three months. We're on a
15 quarterly system. And, also, I have -- I have one of
16 the gentlemen from our finance department if you're
17 looking for really nuanced numbers from the
18 financials that we submitted, but it is \$2,400 per
19 quarter. So every three months.

20 COMMISSIONER CHANG: Okay. And I was
21 trying to find the specific rule in the specific
22 finding, but in most instances, many of our LUC,
23 we're looking at projects completing in 10 years.
24 This is being proposed for 30 years. That's your
25 phased approach. If you had to build it in a shorter

1 period of time, do you have financing to finance the
2 entire project on a more expedited schedule?

3 MS. ANJO: I would need to examine all
4 the numbers to see. We -- the project -- the
5 financing that we have exceeds currently the cost of
6 the project. So I would need to just go over the
7 details to see at what -- at what time frame that
8 that would be.

9 COMMISSIONER CHANG: And what kind of
10 commitment has the church made to this project? I
11 mean, you say you're -- you are sound, financially
12 sound and you've prepared your finances, but what
13 kind of commitment is there in writing specifically
14 to finance this project from the church?

15 MS. ANJO: From the mission?

16 COMMISSIONER CHANG: Yes.

17 MS. ANJO: Well, it is the mission who's
18 seeking to do this development. But if you would
19 like, we also have our COO if you want to get a word
20 from him. But it is the mission seeking to do this
21 development. So they are quite committed to it.

22 COMMISSIONER CHANG: Does the mission do
23 any other projects, or is this the only project that
24 they have?

25 MS. ANJO: Development projects?

1 COMMISSIONER CHANG: Yes. Is this the
2 only project that they're financing?

3 MS. ANJO: This -- sorry. The University
4 of Nations, Kona -- sorry. I've got my team back
5 here who's hollering. Sorry.

6 Yeah, the University of Nations, Kona,
7 this is their -- this is their development project.

8 COMMISSIONER CHANG: And the finances you
9 provided us were specifically from the University of
10 Kona, those finances --

11 THE WITNESS: Yes.

12 COMMISSIONER CHANG: -- or are they from
13 your larger --

14 THE WITNESS: Yes. This is the
15 University of Nations, Kona, specifically. Every
16 entity and Youth With a Mission or the University of
17 the Nations is a separate legal entity. So we are
18 all individualized.

19 COMMISSIONER CHANG: Okay. That's the
20 questions that I have right now as I'm thinking.

21 COMMISSIONER OHIGASHI: Mr. Chair?

22 CHAIR SCHEUER: Commissioner Ohigashi.

23 COMMISSIONER OHIGASHI: Do you have
24 estimates as to what the entire build-out cost would
25 be?

1 MS. ANJO: Yes. The estimate, based on
2 inflation, is currently at 224 million.

3 COMMISSIONER OHIGASHI: And that would be
4 within the 30-year time period?

5 MS. ANJO: Yes.

6 COMMISSIONER OHIGASHI: In other words,
7 you would spend 220 million -- 230- --

8 MS. ANJO: 224.

9 COMMISSIONER OHIGASHI: 224 million over
10 a 30-year period of time?

11 MS. ANJO: Yes.

12 COMMISSIONER OHIGASHI: Do you have any
13 estimate as to phase 1?

14 MS. ANJO: Phase 1 is 14 million, almost
15 15.

16 COMMISSIONER OHIGASHI: And under that
17 scenario, do you have estimates for the total amount
18 of infrastructure necessary to fund for phase 1?

19 MS. ANJO: They have set out the
20 estimates on --

21 COMMISSIONER OHIGASHI: Approximately.

22 MS. ANJO: They have set out the
23 estimates.

24 COMMISSIONER OHIGASHI: So what I'm
25 trying to get at is this: If you do get this project

1 approved and you do get to move forward in this area,
2 in order for -- to justify a timetable, would it
3 be -- wouldn't it be necessary to make some initial
4 dedication to make sure initial infrastructure is
5 done? Otherwise, we run the same risk of having OSC
6 come back after five years or two years or three
7 years, no action. So my question is, is that initial
8 numbers, have they been researched and have you
9 determined whether or not that initial amount can be
10 funded within a certain amount of period of time that
11 would make the phase -- 10-year phase work?

12 MS. ANJO: Yes, sir, we have.

13 COMMISSIONER OHIGASHI: And can you
14 explain how it's done?

15 MS. ANJO: Yes. So just on the cash
16 surplus, even without using donations and fundraising
17 that we traditionally use, even if we just used that,
18 that would fund the first phase of the project
19 completely.

20 COMMISSIONER OHIGASHI: In other words,
21 you can raise \$15 million in 10 years?

22 MS. ANJO: Yes.

23 COMMISSIONER OHIGASHI: Is that right?

24 MS. ANJO: Yes, sir.

25 COMMISSIONER OHIGASHI: That cash surplus

1 will be dedicated towards that amount? Is that what
2 you're saying?

3 MS. ANJO: If we need to, we have that
4 available. Obviously, if we have the fundraising
5 coming in through donations, then we would be
6 applying the donations first to the project that
7 they've been designated for.

8 COMMISSIONER OHIGASHI: You know, like,
9 I've seen in past OSCs, people come up with a
10 financing plan saying that, "Hey, we have this letter
11 of credit. The bank will give us this amount,"
12 et cetera, et cetera. So they have some dedicated
13 financing source. Is your organization willing to
14 enter into that to dedicate that amount of funding
15 source? In other words, use up all your cash
16 reserves for that purpose?

17 MS. ANJO: Yes, to my -- yes, to my
18 knowledge.

19 COMMISSIONER OHIGASHI: I'm just asking.

20 MS. ANJO: We are very committed to this
21 project to see it move forward, and we will do
22 whatever we can do to see that move forward.

23 COMMISSIONER OHIGASHI: Are you able to
24 get -- are you able to get indications from banks or
25 anything that will be able to ensure that you are

1 able to provide the funding?

2 MS. ANJO: So far we've spoken with one
3 bank, and they have been very amicable about
4 providing conventional funding through loans to us
5 because of our -- the assets versus our liabilities.
6 They find it -- they seem quite open by asking lots
7 of times to provide that financing.

8 COMMISSIONER OHIGASHI: And I'm not
9 trying to be difficult or anything like that, but one
10 of the reasons why this project hasn't been going
11 forward was the statements I remember reading in the
12 record that made it untenable to do the type of
13 development that there was: financially, the bottom
14 fell out, financial difficulties, and was not able to
15 do it. And that was, my guess, was the funding
16 source for a lot of the improvements that would be
17 done.

18 So the question is, is that in order to
19 go forward and not have the same situation reoccur
20 again, it would behoove some kind of more meatier
21 presentation with regard to how items will be funded
22 in the future, I guess.

23 MS. ANJO: Yes.

24 COMMISSIONER OHIGASHI: Assuming that we
25 get to that stage.

1 MS. ANJO: Yes. And that is the
2 intention as we are preparing the motion to amend to
3 submit that as well to you in March.

4 COMMISSIONER OHIGASHI: And rest assured,
5 even if it doesn't occur, a motion to amend or it
6 would appear that under the OSC process, you would be
7 able to provide that type of information also --

8 MS. ANJO: Yes.

9 COMMISSIONER OHIGASHI: -- in order to
10 determine whether or not to go forward with this
11 matter?

12 MS. ANJO: Yes, sir.

13 CHAIR SCHEUER: Thank you, Commissioner
14 Ohigashi.

15 Commissioner Wong.

16 COMMISSIONER WONG: Okay. What is your
17 student body makeup?

18 MS. ANJO: I'm sorry?

19 COMMISSIONER WONG: Student body makeup.
20 What is the makeup of your student body? What
21 location or how many, et cetera?

22 MS. ANJO: Probably -- I'm probably going
23 to need to ask --

24 COMMISSIONER WONG: Go ahead. Go ahead.

25 MS. ANJO: I probably need to ask

1 somebody who's versed in this.

2 It's approximately about 700.

3 COMMISSIONER WONG: From where?

4 MS. ANJO: 33 nations. It's quite
5 international, and it does change every quarter. So
6 it's a bit difficult to pinpoint it.

7 COMMISSIONER WONG: Okay. Several things
8 going through my head. So please bear with me. That
9 besides dinner.

10 Anyway, right now, as we all know,
11 there's issues in the Middle East. Okay? I'm just
12 thinking forward. Hopefully, nothing happens. But
13 when something happened like the former Iraq War
14 occurred, tuition in the state plummeted for Hawaii
15 Pacific University, which is an international
16 cottage. So you stated in your statement that some
17 of the funding will come from the tuition. Do you
18 have -- are you prepared for something like that in
19 your reserves if you're going to construction?

20 MS. ANJO: Yes. This is based -- this is
21 outside the operational costs.

22 COMMISSIONER WONG: Okay. All the
23 student tuition will be operational while you have
24 CIP money already set aside?

25 MS. ANJO: Yeah. The operational costs

1 are separate and distinct, and because of the way our
2 structure is, we keep our tuition relatively --
3 actually relatively low because we're volunteers. So
4 our overhead costs are less than a typical
5 university's.

6 COMMISSIONER WONG: I'm from a
7 construction background. Guys, from construction
8 background, when you have to construct a project, you
9 have to have licensed contractors. As you said,
10 you're going to have volunteer people assisting.
11 Will you have licensed contractors? I don't want to
12 see the building crash on anyone's head.

13 MS. ANJO: That would not be ideal.

14 COMMISSIONER WONG: Yeah.

15 MS. ANJO: No. Absolutely, we have
16 licensed contractors. We have civil engineers that
17 volunteer for us. We have architects. We have a lot
18 of very highly qualified --

19 COMMISSIONER WONG: That are licensed in
20 Hawaii?

21 MS. ANJO: Yes, they are licensed
22 currently.

23 COMMISSIONER WONG: And I heard you say
24 that you are going to come back maybe in March to
25 amend this docket?

1 MS. ANJO: Yes. The goal has been for
2 this status report to provide you a status update
3 just to show that we are moving forward, that we're
4 doing what we need to do so that we can file the
5 motion to amend in a timely manner.

6 COMMISSIONER WONG: So I don't know how
7 to say it, but I will just say it and put it --

8 You know, right now or before this
9 statement you just said, I felt for myself now that I
10 was being jerked around as a commissioner in terms
11 of, you know, you had -- you guys are going to
12 withdraw. We're going to move it to ag because we
13 cannot do it. Now we're going to withdraw that
14 motion. You know, I felt like what's happening, man?
15 You know, and then -- so that's my feeling right now.
16 But with Mr. Overton and your issues, I'm a little
17 bit more satisfied. Okay. I'm just going to say
18 that for the record. However, I am still concerned
19 about the funding stream because, you know, escrow
20 money, construction costs, bridge loans and all that
21 because you only said you have a bank that's
22 agreeable at this point in time, but there's nothing
23 on record. There's no letter of credit. So I just
24 wanted to say that that's where I am right now.

25 And the other thing I'm very concerned

1 about is because this sounds like a brand new
2 project. I'm very concerned. Even though I have a
3 little background in this and my other commissioners
4 too, the environmental portion, the EIS/EA, you know,
5 I don't know if there's going to be a trigger or not,
6 but this is a very big change than what was requested
7 in the beginning. And I'm just going to state that
8 for -- to tell you that, hopefully, I will be -- you
9 know, less -- be put more at ease on this. That's
10 it.

11 Thank you, Chair.

12 CHAIR SCHEUER: Thank you, Commissioner
13 Wong.

14 Commissioner Aczon followed by
15 Commissioner Okuda.

16 VICE CHAIR ACZON: This is going to be a
17 quick question. Similar to Commissioner Wong, my
18 background is construction. I have some projects now
19 which is kind of smaller than this project and costs
20 more than what you have. So is your testimony of the
21 \$14 million phase 1 based on volunteer work?

22 MS. ANJO: Yes, sir, it does factor in
23 volunteer workers.

24 VICE CHAIR ACZON: Thank you.

25 CHAIR SCHEUER: Thank you, Commissioner

1 Aczon.

2 Commissioner Okuda.

3 COMMISSIONER OKUDA: Thank you, Chair.

4 This question relates to viability to the
5 extent that viability's at issue. Is your
6 institution accredited by any accrediting entity
7 which accredits post-secondary institutions?

8 MS. ANJO: Our institution is accredited
9 the Global Accreditation Agency, which is more, like,
10 for GLO universities, but not recognized by the
11 Department of Education.

12 COMMISSIONER OKUDA: Okay. And when we
13 say not recognized by the Department of Education,
14 are we speaking of the federal Department of
15 Education --

16 MS. ANJO: Yes.

17 COMMISSIONER OKUDA: -- or the state
18 Department of Education or both?

19 MS. ANJO: The federal Department of
20 Education.

21 COMMISSIONER OKUDA: Are the credits
22 earned by your students transferable to other
23 institutions that are accredited?

24 MS. ANJO: Yes, sir. It can be
25 transferred.

1 COMMISSIONER OKUDA: Okay. Is there a
2 reason why your institution is not accredited by, for
3 example, the institutions that accredit, let's say,
4 the University of Hawaii, different campuses or
5 Chaminade University or Hawaii Pacific University or
6 even, I think, Argosy University even though Argosy
7 had some business issues?

8 MS. ANJO: I think that's a good question
9 we often get, and there are several reasons why we
10 did not choose to pursue accreditation through a U.S.
11 accrediting agency. One of the biggest reasons or
12 concerns is we're in, like, approximately 142
13 countries. Branches of our university are in other
14 countries. So if we sought accreditation from every
15 country that we were a part of, there's no way that
16 we could get all of those countries to agree upon
17 what accreditation guidelines and restrictions would
18 be for us to comply with is one major issue.

19 COMMISSIONER OKUDA: But your primary
20 campus is here in the county of Hawaii; correct?

21 MS. ANJO: I would say our largest campus
22 is probably here in the county of Hawaii.

23 COMMISSIONER OKUDA: So your university
24 has other campuses?

25 MS. ANJO: Yes, sir.

1 COMMISSIONER OKUDA: I'm sorry?

2 MS. ANJO: Yes, sir. And it's based out
3 of Lausanne, Switzerland.

4 COMMISSIONER OKUDA: I don't want to get
5 too far afield. That was basically my question.

6 Thank you, Chair.

7 CHAIR SCHEUER: Thank you, Commissioner
8 Okuda.

9 Any further questions for the petitioner
10 at this time? We still also have to hear from the
11 county and OP.

12 COMMISSIONER CHANG: Just one.

13 CHAIR SCHEUER: Commissioner Chang.

14 COMMISSIONER CHANG: Thank you. I think
15 I found the provision in our rules that, in light of
16 this 30-year schedule, I'm looking at the rule
17 15-15-70, "Incremental Districting"; that this
18 appears to be -- that what you're proposing is very
19 different from what the original development was, and
20 I am assuming the original development was being
21 proposed to be developed within 10 years. You're
22 proposing a development within 30 years. And this
23 particular rule says, "If it appears to the
24 commission that the full development of the subject
25 property cannot substantially be completed within 10

1 years after the date of the commission's approval and
2 that the incremental development plan submitted by
3 the petitioner can't be substantially completed" --

4 I mean, there's a whole different set of
5 procedures. So I really would ask you to review
6 that, and if this is a -- you know, we all agree
7 this looks like a very different project, and
8 you're -- what I originally heard you say was you're
9 going to wait until March. But, you know, are you
10 going to come in for a new amendment to amend the
11 previous -- the existing D & O? But I'd also like
12 you to consider this incremental districting
13 provision because we do have many projects. And the
14 reason we're here is because there's been an issue.
15 There's been substantial commencement of use of the
16 land. This was originally 2003. So given that this
17 is a very different project, I am wondering what is
18 the implications of our own administrative rules to
19 now the disclosure that this is going to be a 30-year
20 project?

21 CHAIR SCHEUER: More of a comment, or
22 were you requesting a response?

23 COMMISSIONER CHANG: Yeah. And I guess I
24 would also have staff look at this because this has
25 not come up. But I know that it will come up. So

1 I'm just raising this as a question.

2 CHAIR SCHEUER: Well, commissioners, we
3 can, at the conclusion of today, take action or
4 simply continue this process that we're on. So other
5 comments or questions? I have some questions, but
6 I'll reserve them for the end.

7 Hawaii County.

8 MR. KIM: Good afternoon, Chair and
9 commissioners. From the county's end, I can say that
10 petitioners have come in to meet with the planning
11 department to share the results of their charrettes
12 and plan update. And we did preliminarily discuss
13 how they could come in with a rezoning if they are
14 able to come through the order to show cause
15 proceeding with the same land use designation. And
16 that's all the real updates that we have for now.

17 CHAIR SCHEUER: Good thing I didn't look
18 away. Are there any questions for Hawaii County?

19 Commissioner Wong.

20 COMMISSIONER WONG: One question. You
21 know, Chair Scheuer asked this question about the
22 Kona redevelopment plan. How does that enfold with
23 their new idea?

24 MR. KIM: So there's the general plan and
25 the Kona Community Development Plan. But, generally

1 speaking, with the general plan, it is consistent
2 because that area is supposed to be urban. As far as
3 any specifics, I could --

4 Mr. Darrow, do you have anything you want
5 to say on that?

6 MR. DARROW: Sure.

7 MR. KIM: Because there was a
8 transit-oriented development on this; right?

9 MR. DARROW: Yes.

10 CHAIR SCHEUER: Sorry to put you through
11 this, but do you swear or affirm the testimony you
12 are about to give is the truth?

13 THE WITNESS: I do.

14 CHAIR SCHEUER: Okay.

15

16 JEFFREY DARROW,
17 having been called as a witness by Petitioner,
18 was duly sworn and testified as follows:

19 THE WITNESS: Jeff Darrow, planning
20 program manager with Hawaii County.

21 Good afternoon, Chairman and
22 commissioners. In regards to the Kona Community
23 Development Plan, this is one of these areas in Kona.
24 Within the plan, there is what are called concurrency
25 zones, and I don't know if you're familiar with that.

1 But what these zones do is they lay out requirements
2 that if a project comes in for redistricting, mainly
3 through change of zones, but, obviously, it's the
4 step after the redistricting, is that they have to
5 comply with road segments that are needing to be
6 built in that particular concurrency zone. So that
7 was a real tough issue when the plan got built
8 because for about 10 years, we actually didn't have
9 any real projects go forward because it was so
10 difficult, yeah, to be able to have one developer be
11 required to build these segments of roads to allow
12 their project to go through.

13 In this particular area where University
14 of the Nations is, their falling in a concurrency
15 zone that has no requirements. It's actually not
16 considered a concurrency zone, yet a portion of their
17 property is in what we call a transit-oriented
18 development, yet it's only on the outskirts of it.
19 It appears that that center is more located up near
20 Queen Kaahumanu Highway. So it's unlikely that
21 they're going to be required to create a hub -- a
22 transportation hub there. But they could participate
23 in some sort of transportation improvement.

24 But in regards to the overall
25 consistency of the plan, again, this is in the heart

1 of the Kona area, the Kona urban area. It's -- it
2 meets consistency with all levels of the plan. It
3 identifies the existing as well as the fact that this
4 has been changed to the urban district since 2003.
5 So they consider it as an existing-type project now
6 that it's coming before the commission to either
7 amend or whatever the process is. It still falls
8 within that Kona urban area and that core area. So
9 we find it consistent with the plan.

10 COMMISSIONER WONG: Thank you. Just a
11 follow-up to your question, Chair.

12 CHAIR SCHEUER: Any other questions for
13 the county?

14 COMMISSIONER OHIGASHI: I have.

15 CHAIR SCHEUER: Commissioner Ohigashi.

16 COMMISSIONER OHIGASHI: So they're not
17 required to do any more affordable housing units; is
18 that correct?

19 MR. KIM: It's going to depend on what
20 they come in to do with the rezoning, actually,
21 because there are certain triggers, say, by the
22 number of residential units they might have or
23 industrial-type units where we would be able to
24 determine the number or level of affordable housing
25 units we would need.

1 COMMISSIONER OHIGASHI: What about
2 dormitories, what is that count?

3 MR. KIM: We would have to talk to the
4 housing department on that because we need to see
5 their specific rezoning proposal before we can
6 respond to that question.

7 COMMISSIONER OHIGASHI: And so --

8 MR. KIM: But with that said, though, I
9 would say our code does allow for them to get credits
10 probably for the affordable housing that was zoned
11 prior because it is within a 15-mile radius, but,
12 again, they have to talk to our housing department
13 about that to enter into a housing agreement, so the
14 department can see what number of credits, if any,
15 would be available to them for --

16 COMMISSIONER OHIGASHI: Was that housing
17 provided for under the original D & O in this case?

18 THE WITNESS: If I can try and --

19 Commissioner Ohigashi, if we refer to the
20 docket, it actually speaks about the compliance with
21 the affordable housing on page 20, and it's
22 referencing the ordinance that created the Hualalai
23 Village, and it appears that that was what the
24 compliance for affordable housing was being
25 referenced to in regards to this docket. So what --

1 I believe the applicant may have information as to
2 how they met that condition as far as compliance with
3 the affordable housing for the Hualalai Vistas
4 project. It references a county zoning ordinance for
5 compliance on Finding of Fact 102, Condition J of
6 Ordinance 02101.

7 COMMISSIONER OHIGASHI: So is the county
8 going to take the position that only those ordinances
9 that were in effect in 2003 and to the original D & O
10 would be the requirement for their housing
11 requirements?

12 THE WITNESS: If -- it sounds that
13 there's a likelihood that this ordinance may be
14 amended. And so if that's the case, then what will
15 happen is possible new conditions will be placed on
16 this docket. But as Ron had mentioned, that when
17 they come before the county for zoning, whatever
18 zoning they're going to be requesting is going to be
19 placing those types of affordable housing conditions.
20 And, again, until we see that project and what
21 they're proposing, normally, affordable housing
22 requirements are placed on housing.

23 COMMISSIONER OHIGASHI: Would it be
24 beneficial, assuming that they go and file an
25 amendment for a specific recommendation from the

1 county with regard to affordable housing, to be
2 included in any amended D & O?

3 MR. KIM: I don't think that's normally
4 the procedure for the Land Use Commission. If you --
5 if Land Use Commission does want to change its
6 procedure, you might, but I think the reason that
7 there normally is some flexibility written into the
8 decision and order.

9 Basically, what I'm normally seeing is
10 that affordable housing should comply with county
11 requirements. I think that is good because it allows
12 some flexibility as to the county's needs, and the
13 code might change too.

14 COMMISSIONER OHIGASHI: Would the county
15 be providing us information concerning what its
16 requirements are presently and how it may affect the
17 requirements in this project?

18 MR. KIM: I think you're asking us to
19 provide you with an answer in a vacuum. With all due
20 respect, Commissioner, because --

21 COMMISSIONER OHIGASHI: No, I'm not. I'm
22 asking you a simple question. Will you be providing
23 us recommendations or information concerning housing
24 requirements as they exist now and how it might apply
25 to this particular project? That's all I'm asking.

1 And if you say, no, you won't be doing it, I'll
2 accept that.

3 MR. KIM: Okay. No.

4 CHAIR SCHEUER: Are there further
5 questions for the county?

6 If I can just follow up on Commissioner
7 Wong's questions. Very briefly first, Mr. Darrow, I
8 had understood concurrency applied to more than just
9 road improvements, but, rather, there was a broad
10 concurrency requirement in the Kona Community
11 Development Plan that there be sufficient
12 infrastructure in place prior to the development, not
13 just roads.

14 THE WITNESS: Yeah, in the CDP, there was
15 already concurrency requirements in the zoning code
16 that applied to water and traffic. So that applies
17 across the board to any rezoning. But when the Kona
18 CDP was adopted, they took it to another level and
19 basically required certain particular road segments
20 be constructed prior to occupancy of those
21 developments within those zones. So it actually took
22 it to a stricter level.

23 CHAIR SCHEUER: So I appreciate that, but
24 I guess my question is, particularly as it regards
25 water, right, ultimately, is this new plan going to

1 meet the concurrency requirements and be harmonious
2 with the concurrency requirements of the Kona CDP
3 given the change and then level or lack of
4 commitments to water development that they have is
5 one of my questions.

6 THE WITNESS: Sure.

7 CHAIR SCHEUER: And then, I guess, the
8 other question is, you know, the Kona CDP and the
9 subsequent zoning ordinances envisioned a mix of job
10 creation activities and tourist accommodation
11 activities and residential activities, and since this
12 is a big switch, that's one of the areas, like, okay
13 it's going to -- there were a whole bunch of housing
14 units that were envisioned for here that are not
15 going to be built under this new plan. That seems to
16 throw off the calculations that were in the Kona CDP.
17 So I'm interested in how it fits into that as well
18 when I ask about concurrency.

19 I certainly understand, yeah, Kona CDP
20 knew it was in the urban district and this is in the
21 urban district and that's compliant, but I thought --
22 I think that when we do our job and we look for
23 de novo redistricting, we look for a higher level of
24 just as it is in the urban district.

25 THE WITNESS: I don't think they went to

1 the level of, you know, like, identifying how many
2 housing units were going to be proposed on projects
3 that were still pending or that's needed. I think
4 they just overall were looking at the requirement to
5 provide affordable housing to this particular area
6 and to look for any means that we could to provide
7 that.

8 In this particular case, yes, the
9 original project is different than what's being
10 proposed now. As far as the affordable housing
11 component, again, we're just seeing what's being
12 proposed now. We're not real clear yet as to whether
13 or not there's going to be an affordable housing
14 requirement on the overall project.

15 CHAIR SCHEUER: Thank you.

16 Anything further for the county?

17 Commissioner Cabral followed by
18 Commissioner Ohigashi.

19 VICE CHAIR CABRAL: I look at that
20 location, and that is unbelievably close to
21 downtown -- greater downtown Kona and Ali'i Drive and
22 that, and I can't help but somewhat almost wonder if
23 you've ever thought about the possibility of selling
24 off all of that land, taking all that profit and
25 going to a more affordable place to develop your

1 great vision because that would be something that it
2 would provide you probably a tremendous amount of
3 cash. Particularly if the housing that the plan that
4 was approved by the Land Use in 2003 would allow
5 someone else to come onboard and build out a huge
6 number of housing units, which is what's in such
7 great demand, and I don't think there's restrictions
8 aside from your affordable; that those could be
9 potentially very expensive condominiums that could be
10 resold at a great profit if somebody were to so
11 invest in such a plan. Just an idea.

12 CHAIR SCHEUER: Commissioner Ohigashi.

13 COMMISSIONER OHIGASHI: Does the
14 petitioner -- or does the petitioner meet the housing
15 requirement under the present D & O affordable
16 housing?

17 THE WITNESS: Commissioner Ohigashi, I'm
18 not really sure if they met that, but, apparently, it
19 appears that the information in the D & O that was
20 reflecting the affordable housing requirements was
21 specific to Hualalai Village which has been
22 constructed. So just by that mere fact, I'm thinking
23 that they most likely have met that requirement.

24 COMMISSIONER OHIGASHI: So I'm assuming
25 that we don't expect any kind of information

1 concerning that either?

2 THE WITNESS: I believe the applicant may
3 have --

4 COMMISSIONER OHIGASHI: I mean from the
5 county. Wouldn't the county determine if its own
6 ordinances have been met?

7 THE WITNESS: Sure. We can make an
8 effort to get that information.

9 COMMISSIONER OHIGASHI: That's a yes?

10 THE WITNESS: Yeah.

11 CHAIR SCHEUER: Anything further for the
12 county?

13 I'm going to check with our court
14 reporter. Are we fine to plow through since we're
15 going towards a 4:00 o'clock deadline?

16 THE REPORTER: Yes.

17 CHAIR SCHEUER: Thank you. Office of
18 Planning.

19 MS. APUNA: Thank you, Chair. I think OP
20 similarly views this as almost like a new DBA because
21 of the drastic changes. So OP has met with the
22 petitioner, and we hope to continue to work with them
23 and, hopefully, get a draft of the motion to amend
24 sooner rather than later so we can be consulting with
25 state agencies and determine consistency with state

1 policies and plans. I think that's it.

2 CHAIR SCHEUER: And you beat the county.
3 Are there questions? Are there questions for the
4 Office of Planning? Oh, do you have something
5 further to say?

6 MS. APUNA: I was just going to add. I
7 forgot one thing. That, you know, so I think
8 Commissioner Chang brought up incremental districting
9 and things that would happen in the first 10 years,
10 and OP is open to working with the petitioner to see
11 what could be plausible and consistent with 205 in
12 that respect.

13 CHAIR SCHEUER: Thank you. Questions for
14 the county?

15 Commissioner Wong.

16 COMMISSIONER WONG: For the OP.

17 CHAIR SCHEUER: For OP.

18 COMMISSIONER WONG: This is just a
19 statement because of what OP just stated. Just a
20 statement now for the petitioner. Because the
21 increment -- with looking at incremental phasing
22 also, I just wanted to state that, you know,
23 sometimes phase 1 would not trigger an EA or EIS, but
24 phase 2 may. So just stating for the record to be
25 aware of that. That's all I'm saying. Okay. Thank

1 you.

2 CHAIR SCHEUER: Thank you, Commissioner
3 Wong.

4 Commissioners, questions for the Office
5 of Planning?

6 Commissioner Chang --

7 COMMISSIONER CHANG: Yes.

8 CHAIR SCHEUER: -- followed by
9 Commissioner Aczon. Sorry.

10 COMMISSIONER CHANG: Thank you,
11 Ms. Apuna. I appreciate the fact you are in
12 consultation with the petitioner. One agency that I
13 am particularly concerned with is DOT because that is
14 a trigger if they're going to be using state land,
15 for example, for access to the highway, DOT is going
16 to require -- that's going to be a 343 trigger.

17 And with the incremental districting, as
18 Commissioner Wong said, if it is going to be built in
19 phases, 30 years is a long time. Laws change.
20 Populations change. So I'm expecting to see that
21 those future considerations are being contemplated as
22 we begin -- as the amendment comes to the commission.
23 So that any decisions we make, we understand are
24 going to be the life of this project or that we have
25 the right to go back and revisit, you know, any of

1 those conditions. But, again, I am -- because there
2 may not be at this point in time. Previously, there
3 was not a 343 trigger, but I think it is really
4 critical in light of the traffic conditions, in
5 particular, whether DOT is going to require any kind
6 of improvements along Ali'i Drive which is --

7 Is that a state or county highway? It's
8 a public highway, nonetheless.

9 So if you can make sure that before that
10 comes forward, we are -- we have heard from those
11 agencies in particular where there may be a use of
12 state land, state or county lands.

13 MS. APUNA: Okay. Thank you.

14 CHAIR SCHEUER: Other questions?

15 Oh, Commissioner Aczon.

16 VICE CHAIR ACZON: Yeah, I just wanted to
17 clarify your comment about this looks like this is a
18 completely different DBA. So are you talking about
19 starting over again from scratch, different hearing,
20 new hearing?

21 MS. APUNA: I think that for OP's
22 purposes, we do kind of look at it as if it were a
23 new DBA because the amount of time that has passed as
24 well as the new uses that are different than the
25 current D & O. So we evaluate -- I think we do

1 evaluate it in the same manner as a new DBA. And I
2 guess as far as the procedural requirements for the
3 hearing, it's -- I think it might take, you know --
4 it's more than just a simple motion, you know. It
5 might take more time. But it's just a matter of us
6 feeling comfortable with all the new information and
7 the changes that have occurred and feeling
8 comfortable with that as far as a motion to amend.

9 VICE CHAIR ACZON: So would it have been
10 a lot better if they went ahead with their motion to
11 improve the property last year and start all over?
12 I'm just -- if you're going to start all over again,
13 then we lost at least a year or they lost at least a
14 year.

15 MS. APUNA: No, not necessarily. I mean,
16 I think it's just a matter of making sure everything
17 is vetted well enough based on the circumstances. So
18 not necessarily starting completely over from
19 scratch, but making sure we -- we do our due
20 diligence in every respect.

21 VICE CHAIR ACZON: I'm kind of wondering
22 what type of precedence this thing is going to be
23 having by allowing this to start over.

24 MS. APUNA: I mean, I think --

25 VICE CHAIR ACZON: Some future developer

1 coming to us later on and say, "Hey, you know, 10
2 years, 20 years later, I change my mind. I want to
3 do this."

4 MS. APUNA: Right. Yeah, I think it's a
5 question for the commission whether you think that
6 they need to completely start over and move forward
7 with the OSC or if they have enough information and
8 enough good cause to just try to fix things and move
9 forward from here with the current, you know,
10 classification. So something for you guys to ponder.

11 VICE CHAIR ACZON: Thank you.

12 CHAIR SCHEUER: Thank you, Commissioner
13 Aczon. Is there anything further for the Office of
14 Planning? If not, Petitioner, you have a chance for
15 rebuttal to anything that's come up during the county
16 or OP's discussions.

17 MS. ANJO: Nothing further. Thank you.

18 CHAIR SCHEUER: Commissioners, any
19 further questions for any of the parties or any
20 comments?

21 COMMISSIONER CHANG: Shall I dare ask
22 this question? I know when I was asking Mr. Overton
23 about has there been any use of the land and he said
24 he was not in the best position to answer that, are
25 you in a good position to answer that? Has there

1 been any use of the land? Well, maybe I should
2 phrase it the other way. Other than the aquaponics,
3 what other uses have occurred on the land?

4 MS. ANJO: Well, we do currently have the
5 sustainability farm -- sustainability agricultural
6 lab where people can learn about aquaponics, and we
7 have been having -- we do have students that have,
8 like, class there on the land.

9 COMMISSIONER CHANG: Any infrastructure,
10 any, like, roadways been build? I'm seeing nods
11 saying no. I appreciate the honesty. All right.

12 CHAIR SCHEUER: Further questions,
13 commissioners?

14 COMMISSIONER OHIGASHI: Chair?

15 CHAIR SCHEUER: Commissioner Ohigashi.

16 COMMISSIONER OHIGASHI: I just have a
17 comment.

18 CHAIR SCHEUER: Please.

19 COMMISSIONER OHIGASHI: We're here
20 because of -- the question is for an OSC. If they
21 were successful -- if we handled the OSC and they
22 were successful, it would be the same thing that we
23 have now. They would have to build according to what
24 the original D & O is now. If we were -- if it was
25 unsuccessful, in other words, if the OSC was found

1 that there was just cause to revert and it was
2 reverted, then they would have to file something to
3 start to do what they want to do now. So my comment
4 is this: In either case, it would appear that we are
5 headed for the same direction.

6 The second thing, though, that I wanted
7 to comment about was it seems to me that in either
8 case, we are leaving the old project behind. That
9 bugger is going to be gone; right? And it's time
10 that we think about what the new project would intend
11 to look at and what requirements we may want to have
12 on it and what things, like affordable housing, would
13 be enhanced by this project? If we're saying the old
14 project is gone, then whether or not those
15 requirements for affordable housing were met or not
16 is irrelevant because that was the old project. This
17 is a new project. We have needs in this community.
18 It would appear to me it would go a far way to moving
19 something forward if there is a component that gives
20 back to the community something.

21 Now, that is just my personal opinion and
22 my two comments on this matter. It's not a question.
23 It's up to what the county -- what the county and the
24 parties and the state want to do. And that's why I
25 was trying to get you guys to find out is there going

1 to be additional requirements that we can put on to
2 help our community in the biggest crisis that we have
3 today? That's my thought.

4 CHAIR SCHEUER: Thank you, Commissioner
5 Ohigashi.

6 Commissioner Aczon.

7 VICE CHAIR ACZON: Since Commissioner
8 Ohigashi made a comment, I want to make a comment
9 too.

10 CHAIR SCHEUER: So go ahead,
11 Commissioner.

12 VICE CHAIR ACZON: I'm just having a hard
13 time on this one. I know we're doing a status
14 report, and there's a lot of questions that I wanted
15 to ask, but I'm having a hard time to ask those
16 questions without going through -- over OSC
17 proceedings. That's what I'm kind of struggling
18 with, and I don't want to, you know, be told later
19 that I made up my mind because of those questions.
20 So that's what my struggle is. That's my one
21 comment.

22 CHAIR SCHEUER: Thank you, Commissioner.

23 So let me share with the commissioners
24 where we're at procedurally today, that before we
25 recess and reconvene tomorrow morning in Honolulu, is

1 we have an option to do two basic things. One is we
2 can continue the evidentiary hearing and action
3 meeting, or we can reconvene the order to show cause
4 proceedings. I have a sense -- I'm just going to
5 throw out there, but I'll make the space available.
6 I'm not sensing from the membership the desire to
7 make a motion at this time to resume the order to
8 show cause proceedings. So with that then, it would
9 mean that we're going to direct the staff to set a
10 date for further proceedings in this matter, and
11 before we do that, I'd like to offer the opportunity
12 for each one of the commissioners to speak in an
13 eloquent manner in which both Commissioners Ohigashi
14 and Aczon have spoken about the things they wish to
15 see when we come together again on this really
16 significant matter. The chair will go last.

17 COMMISSIONER CHANG: Okay. I'll start.

18 CHAIR SCHEUER: Commissioner Chang.

19 COMMISSIONER CHANG: Thank you, Chair,
20 for providing us the opportunity.

21 I mean, I think you clearly sense the
22 struggle that we're all having, and I do applaud the
23 effort, that you heard us, and you decided to step
24 back, reassess. Entitlement is extremely valuable.
25 You have this zoning change. What do you do with it?

1 I guess, one, as a lawyer and as a land use
2 commissioner, I don't think we're going to provide
3 you legal advice. You're going to have to consult
4 and decide what's the best course of action. Do you
5 choose to just seek an amendment to this existing
6 D & O? I mean, procedurally, I'm really struggling
7 with how you do that given the 30-year time period
8 that you've got. But to the extent that you are all
9 having conversations, you're conversing with the
10 county, with OP, to me that's really where a lot of
11 this should happen. If you guys can structure
12 something out, that that is better than using a
13 public -- you know, our meetings as a forum to do
14 that.

15 I would also encourage you to be meeting
16 with the community. We had some really great
17 meetings on the island of Maui. A developer of a
18 similar situation came in, highly criticized by the
19 community. The community was in opposition of their
20 development. Took a step back, reengaged genuinely
21 with the community. At that second meeting, the
22 community was their greatest ally. They're champions
23 for their project.

24 So I don't know --

25 You talked about having it short.

1 So I would just urge you that whatever
2 you are reconsidering, because it looks like you as
3 an organization, really stepped back and looked at
4 what is consistent with our mission. It may not be
5 housing. It may be developing a campus -- a larger
6 campus around your college which makes sense.

7 So I guess it's just I would urge you --
8 because in my mind kind of -- I think, as the chair
9 said, I don't think you see -- at least I'm not at
10 the point of looking at reversion. I would like you
11 to be successful. So I would hope that you would use
12 this time to continue to meet amongst yourselves and
13 then meet with the community and then meet with our
14 staff on what's the best course of action. But
15 that's what I am hoping will happen during this
16 pause. Thank you.

17 CHAIR SCHEUER: Thank you, Commissioner
18 Chang.

19 Commissioner Okuda.

20 COMMISSIONER OKUDA: Yeah. Chair, thank
21 you. I'd like to echo what the other commissioners
22 have said not only in response to this question, but
23 other things. One thing you should be aware of, and
24 I believe your able lawyers know that from
25 representing other parties before us, is this

1 commission is not afraid to revert property. If
2 representations are made to the community or
3 representations are made to government agencies, we
4 intend to make sure these representations are carried
5 out. I think it's a real problem why people don't
6 just trust government is that the government says
7 certain things, and then 15, 20, 25 years later, the
8 government is saying something totally different and
9 expect the public just to stomach it and say, "Okay,
10 no problem. The powers that be said that and so we
11 should all be quiet and be quiet about it." Without
12 getting into specific politics, I think that explains
13 why there's just a lot of people who don't trust
14 government and get outraged on a lot of things.

15 So we will enforce the law, and we will
16 revert property. And if people make representations
17 to us, we will hold people to their representations.
18 But at the same time, we recognize that in our
19 democracy, democracy functions the best when people
20 get involved. And so it's not to say that the
21 commission is just going to rubber-stamp whatever
22 people throw together, but we do recognize and give a
23 lot of deference that where there's a reasonable
24 difference of opinion, if people of goodwill get
25 together, try to come to solutions for their

1 community, might not be the world's best solution,
2 but at least it's a good faith attempt at a solution,
3 I don't think you'll see too many of us trying to
4 bring up what some people would call legal
5 technicalities just to show that, "Hey, we're smart
6 and we're smarter than you. So we'll demonstrate it
7 by just screwing around with the good you're trying
8 to do." At least that's not what a lot of us try to
9 do here.

10 So if you can work a project that meets
11 the goals that your university seeks that can meet
12 community goals, it doesn't have to be a perfect
13 world. I'd just like to say that compared to where
14 we started in this process, there's a lot of things
15 that have been accomplished here in a very short
16 period of time. I think it's a testament to the
17 dedication of the government agencies involved, the
18 members of your university community, your able
19 consultants. And I know the lawyers at your law
20 firm. They're solid. And I think if we try to, you
21 know, follow the law, try to implement the
22 constitutional requirements of protecting the
23 environment, but doing development with the view of
24 sustainability and protection of our resources, we
25 move everything forward. So you'll get cooperation

1 from us, but again, you know, we have and we will in
2 the future enforce conditions if it appears that,
3 based on the record and the evidence, it looks like
4 we're just getting, you know, things told to us and
5 there's no specific action being done.

6 Thank you, Mr. Chair.

7 CHAIR SCHEUER: Thank you, Commissioner
8 Okuda. Anything further, Commission Aczon?

9 VICE CHAIR ACZON: No, Mr. Chair, I'll
10 defer to Commissioner Ohigashi.

11 CHAIR SCHEUER: Commissioner Cabral.

12 VICE CHAIR CABRAL: I will reflect in the
13 same manner that my other commissioners have stated
14 that, clearly, this is such a completely different
15 project. It's almost like sitting here asking
16 questions and detailed questions wanting to know what
17 we normally get presented when someone comes to us
18 with a new project and you're not at that place to be
19 able to even have those answers, housing, roads, you
20 know, infrastructure, what have you. So if that's
21 the direction you're going and it's clearly a risk
22 because you need to spend a whole lot of money to get
23 those answers together, but based on your decision
24 to -- it takes so long these past years, and your
25 decision to now move forward with a whole different

1 project, it's going to matter that you have to sort
2 of belly up to the table and start getting all of
3 those answers put together, come back to us with your
4 project so that we can all decide, and that OP and
5 the county have time to have their input on that too
6 because we have to look at their input also and see
7 what -- you know, making sure it's going to fit with
8 everyone's requirements because you have multiple
9 sets of requirements here. So, again, I wish you
10 good luck on all fronts.

11 CHAIR SCHEUER: Thank you, Commissioner
12 Cabral.

13 Commissioner Wong.

14 COMMISSIONER WONG: Okay. You know, I am
15 pake. So my grandparents taught me education, No. 1.
16 So I applaud you for that. You know, education.
17 However, when you come back, I want to ensure that
18 you get a line of credit, if possible, with the bank.
19 Also, your finance plan is a little bit more tight.
20 Especially if it's a 30-year project, using not
21 today's money, but future money, including inflation,
22 what is the outlook? Well, taking apart the
23 operational side, but just the CIP side. Also
24 looking at, because it's a 30-year project, looking
25 at a possibility of, as Commissioner Chang said,

1 incrementing that project because as I stated
2 earlier, what if phase 2 and phase 3, something on
3 EIS picks up or an EA, you know, get triggered, you
4 know, I don't want to come back and then say, "Look,
5 we gotta do something." I don't want this to happen.
6 So that's the other thing that you may want to look
7 at.

8 I'm still concerned about affordable
9 housing just because, you know, I'm concerned about
10 the people in Kona because, you know, people driving
11 from maybe Hilo going from, you know, by Mountain
12 View, wherever, going to Kona to work, just
13 something. I mean, even though it's a county issue
14 that's gotta work with you, think about that, you
15 know, just because I'm just concerned about the
16 people. I just want to make sure that they have
17 housing, and they don't say, "Hey, look, the
18 university, the kids, get them, but I gotta come all
19 the way from Hilo just to work." I just want to say
20 that for the record, I don't want them to look down
21 and frown upon the university for not helping the
22 local people here. So that's the other thing.

23 But I want to see, hopefully, if the
24 chair and Land Use Commission staff works out a
25 detail, hopefully, I see you in two months. That's

1 my feeling. Push that time limit up of March. Yeah,
2 March. I thought it was December. But, anyway,
3 that's it. Thank you.

4 CHAIR SCHEUER: Thank you, Commissioner
5 Wong.

6 Commissioner Cabral.

7 VICE CHAIR CABRAL: Wanting to have the
8 last word always. I manage a low-income, HUD,
9 subsidized housing project, and listening to all of
10 this, it just came to mind students are not a
11 protected class, but we cannot discriminate against
12 them. So there is the possibility that you could
13 have low-income housing on your property that
14 students could rent and be subsidized by the federal
15 government in paying the rent, and you can get higher
16 rental rates in that manner. So I'm not saying to do
17 it, but, I mean, it's legal and we can have this
18 conversation.

19 If housing is going to become an issue
20 and you were to look at a section of your land that
21 you could section off because you also don't want --
22 you cannot just say only students. So you don't
23 necessarily want --

24 I manage properties with mixed groups.
25 Not a good idea. Because you don't want just regular

1 low-income people always cruising through the campus
2 either. So, anyway, you might want to talk to a
3 really good expert and the requirements and the
4 opportunities and the different variations of what is
5 considered affordable housing, and you might be able
6 to come up with some really amazing project that
7 could be helped and subsidized by the federal
8 government and build sooner rather than later and
9 that your current students in your campus that's
10 already underway as well as future students might be
11 able to actually be your tenants in. Okay.

12 CHAIR SCHEUER: Thank you, Commissioner
13 Cabral. I'm going to heed Commissioner Chang's
14 advice. We don't provide legal advice.

15 VICE CHAIR CABRAL: (Laughing). That's
16 not legal. I work there.

17 CHAIR SCHEUER: Anything further before I
18 provide some remarks?

19 So my perspective on this docket and all
20 of our work in the LUC, you know, what comes first?
21 Why do we have this LUC; right? 49 states do not
22 have a state Land Use Commission like us. Why did
23 the State of Hawaii retain some of these police
24 powers, these zoning powers, right, and what duties
25 did they give to us?

1 There's a few things. One is, right,
2 with the tremendous pressure on development in
3 Hawaii, the state wanted to ensure orderly
4 development, development didn't leapfrog, development
5 didn't get out of control. As is coming up and why
6 the financial planning is such a concern is we're to
7 help ensure that speculation in land, raw land, is
8 avoided because we don't want people to come in, get
9 their entitlements to land without any real attention
10 and then just flip it to the next person and flip it
11 to the next person. We want to zone land so that it
12 actually gets developed in an orderly and timely
13 manner, which relates to we want to see development
14 that truly meets the needs of our community and our
15 state. Right? So it's like another major charge to
16 us. That's where affordable housing and other things
17 come in.

18 We also have this really heavy-duty "to
19 protect public trust resources." Right? All land in
20 Hawaii is not private property. As you should well
21 know from court cases on this island, that applies
22 statewide. It's not like private property everywhere
23 else in the U.S. Right? Certain rights were
24 retained by the maka'ainana and all, by the tenants'
25 traditional and customary practices, and we have to

1 consider and protect those things, things like water
2 and things like access.

3 And we also have to apply the law fairly.
4 So even when we see a development we like or people
5 that come before us and we want to trust them, we
6 cannot treat them any differently. Right? We have
7 to apply these laws fairly and as consistently as we
8 can.

9 You know, so those form my approach and
10 my comments and what we look for when you come back
11 to us with your amendment. Right? How are you
12 protecting these public trust resources? Are you
13 asking us to do something for you that we're not
14 allowing any other developers to do to stretch things
15 out over incredibly long periods of time, or if we
16 are, under what condition and how are we doing it?

17 One part I liked about your financing
18 plan was that you actually referenced the reluctance
19 to go into debt. I was kind of curious as a
20 Christian organization whether, you know, the idea
21 that from Proverbs that the debtor is slaved to the
22 lender, whether that was going to come up or not. It
23 did lead me to -- I thought there was an absence in
24 your financial plan, a reference that I thought would
25 be particularly appropriate. Luke 14:28 through 30,

1 "Suppose one of you wants to build a tower. Why
2 don't you first sit down and estimate the cost to see
3 if you have enough money to build it. For if you lay
4 the foundation and are not able to finish it,
5 everyone who sees it will ridicule you saying 'This
6 person began to build and was not able to finish.'"

7 So I guess the last thing that I have to
8 say about that -- well, two other things.
9 Second-to-last thing. And I'm a little surprised
10 given the involvement of G70 and others, the current
11 master plan, as you've presented in the conceptual
12 phase, it does seem to better reflect your mission.
13 I don't think yet that it reflects this place that
14 you are. Not something that often -- almost
15 everybody now who appears in front of us really tries
16 to tie into the particular aina that they're in and
17 the way that their lives and their mission and their
18 goals reflect to that place. It just seems to be a
19 little absent at this point. And that leads to the
20 protection of public trust resources and other unique
21 characters.

22 And then the last thing I'll just say,
23 and this gets to the earlier agenda item we have. As
24 we approach, like, how do you roll this out over 30
25 years and you've fought severely against -- at every

1 possible motion against any possibility of moving
2 towards reversion, right, there's, I think, in many
3 religious teachings, there's discussions like do you
4 approach something tightfisted or openhanded; right?
5 Are you clinging; right? Or are you sort of open to
6 what can come in? So just in terms of an approach, I
7 think you get the greatest vision and, frankly, you
8 get the greatest fundraising from donors when you
9 approach the visioning of these things with a more
10 openhanded idea and open concept to what you're
11 supposed to be doing in a place. So that was it.

12 Is there anything further, commissioners?
13 If not --

14 COMMISSIONER OKUDA: Chair?

15 CHAIR SCHEUER: Commissioner Okuda.

16 COMMISSIONER OKUDA: If I could just
17 supplement the chair's statement. However, I want to
18 make it really clear that parties and their counsel
19 have the right to raise whatever you want to raise in
20 front of us. We don't -- we don't hold it against
21 anyone, and we don't favor people because they raise
22 issues or they don't raise issues. And I know as a
23 practicing attorney that sometimes, we as attorneys,
24 we're under an obligation to raise certain things.
25 So I'm not suggesting that anybody be disrespectful

1 or anything like that, but just, you know, we do
2 recognize that oftentimes given the fact that we are
3 acting in a quasi judicial forum, people have to make
4 arguments which may seem sometimes impolite in other
5 types of settings. So I just want to add that
6 comment and supplement the record. Thank you.

7 CHAIR SCHEUER: Thank you, Commissioner
8 Okuda.

9 Are there any further comments from the
10 commissioners on this matter or any other business
11 today to discuss? If not, the staff is instructed to
12 notice and set date for further proceedings on this
13 matter, and we will recess and reconvene tomorrow
14 morning at 9:00 a.m. in the Honolulu Airport
15 International [sic] conference meeting rooms.

16 (Whereupon, the proceedings were
17 adjourned at 3:37 p.m.)

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C E R T I F I C A T E

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

I, LAURA SAVO, a Certified Shorthand Reporter in and for the State of Hawaii, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place herein stated, and was thereafter reduced to typewriting under my supervision;

That the foregoing is a full, true and correct transcript of said proceedings;

I further certify that I am not of counsel or attorney for any of the parties to this case, nor in any way interested in the outcome hereof, and that I am not related to any of the parties hereto.

Dated this 28th day of January 2020 in Honolulu, Hawaii.

s/s Laura Savo
LAURA SAVO, RPR, CSR NO. 347