

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on July 23, 2020
Commencing at 9:03 a.m.

Held via ZOOM by Interactive Conference Technology

VII. Call to Order

VIII. STATUS REPORT

A02-737 U of N BENCORP (Hawai'i)

IX. ACTION

A02-737 U OF N BENCORP (Hawai'i)

* Consider Motion to Rescind Order to Show Cause or to Continue Hearing on Order to Show cause filed May 8, 2019

X. HEARING AND ACTION

* A02-737 U OF N BENCORP (Hawai'i)

Hear evidence, deliberate and take action on Order to Show Cause issued March 29, 2019

XI. ACTION

DR20-69 County of Hawaii and DR20-70 Linda Rosehill, et al

* Consider Petitioners, County of Hawaii's and Linda Rosehill, et al's Petition for Declaratory Orders regarding Short Term Vacation Rentals as Farm Dwellings

XII. CONTINUED HEARING AND ACTION (If Necessary)

A17-804 Hawaiian Memorial Life Plan, Ltd (O'ahu)

* Petition for District Boundary Amendment

XIII. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
NANCY CABRAL, Vice Chair (Big Island)
3 EDMUND ACZON, Vice Chair (Oahu)
GARY OKUDA (Oahu)
4 LEE OHIGASHI (Maui)
ARNOLD WONG (Oahu)
5 DAWN CHANG (Oahu)
DAN GIOVANNI (Kauai)

6
7 STAFF:

8 JULIE CHINA, ESQ.
Deputy Attorney General

9 DANIEL ORODENKER, Executive Officer
RILEY HAKODA, Chief Clerk
10 SCOTT DERRICKSON, AICP/Planner

11 DAWN APUNA, ESQ.
Deputy Attorney General
12 RODNEY FUNAKOSHI, Planning Program Administrator
LORENE MAKI, Planner
13 State of Hawaii, Office of Planning

14 JOHN MUKAI, ESQ.
DIANA MELLON-LACEY, ESQ.
15 Deputy Corporation Counsel
MICHAEL YEE, Planning Director
16 APRIL SURPRENANT
Acting Deputy Planning Department
17 County of Hawai'i

18 CALVIN CHIPCHASE, ESQ.
CHRISTOPHER GOODIN, ESQ.
19 Attorney for Linda Rosehill, et al

20 KATHERINE GARSON, ESQ.
DEREK SIMON, ESQ.
21 JULIE ANJO, ESQ.
ALLEN ANJO, ESQ.
22 Attorneys for U of N Bencorp

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25

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.
2 Good morning. It 9:03 a.m.

3 This is the July 23rd, 2020 Commission
4 meeting which is being held using interactive
5 conference technology link videoconference
6 participants and other interested individuals of the
7 public via ZOOM and internet conferencing program to
8 comply with the State and County official directives
9 during the current pandemic health crisis. Members
10 of the public are viewing the meeting via the ZOOM
11 webinar platform.

12 I would like to stress to everyone the
13 importance of speaking slowly, clearly and directly
14 into your microphone, and that before speaking,
15 please state your name and identify yourselves for
16 the record.

17 This is especially important for rooms with
18 multiple people, such as who is actually talking.
19 That way we have one camera.

20 Also please be aware only (frozen screen).

21 COMMISSIONER WONG: Chair, you were
22 freezing half way through the introduction, so I
23 think we missed a couple things.

24 CHAIRPERSON SCHEUER: Where did I --

25 MR. HAKODA: Right at the start, Chair.

1 CHAIRPERSON SCHEUER: At the very start?

2 MR. HAKODA: Yes.

3 CHAIRPERSON SCHEUER: Take two.

4 It's 9:05 A.M. This is the 23rd, 2020 Land
5 Use Commission meeting being held using interactive
6 conference technology link via ZOOM internet
7 conferencing program with State and County official
8 operational directives during the pandemic.

9 For all meeting participants, I would like
10 to stress to everyone the importance of speaking
11 slowly, clearly, and directly into your microphone,
12 and that before speaking, please state your name and
13 identify yourselves for the record.

14 As I noted, or tried to, earlier, this is
15 especially important for people who are in rooms with
16 others, for instance, County, we cannot see readily
17 who it is that is speaking.

18 Please also be aware that all meeting
19 participants are being recorded on the digital record
20 of this ZOOM meeting. So your continued
21 participation is your implied consent to be part of
22 the record of this event. If you do not wish to be
23 part of the public record, you should exit this
24 meeting now.

25 This ZOOM conferencing technology allows

1 the Parties and each participating Commissioner
2 individual remote access to the meeting.

3 Please note, as was recently demonstrated
4 on my connection, that due to matters entirely
5 outside our control, at one time or another, one or
6 other members might have occasional disruptions to
7 connectivity.

8 If you see such disruption, please let us
9 know as we try to record the audio/visual signals to
10 effectively conduct business during the pandemic.

11 I am Jonathan Likeke Scheuer. I am the LUC
12 Chair. I am on Oahu along with Commissioners Aczon,
13 Chang, Okuda, and Wong, our LUC Executive Officer
14 Daniel Orodener, our LUC Chief Planner Scott
15 Derrickson, Mr. Riley Hakoda, the LUC Deputy Attorney
16 General Julie China, and our Court Reporter Jean
17 McManus.

18 Commissioner Cabral is on Hawaii Island.
19 Commissioner Ohigashi is on Maui; and Commissioner
20 Giovanni is on Kauai. We currently have eight of
21 nine seated Commissioners.

22 A02-737 U of N Bencorp:

23 Our next agenda item is a status report on
24 A02-737 University of the Nations Bencorp (Hawaii).

25 Will the parties please identify yourselves

1 for the record?

2 MS. GARSON: This is Katherine Garson from
3 Carlsmith Ball for Petitioner University of Nations
4 Kona, Inc. Here with me in Hilo, Derek Simon, also
5 of Carlsmith Ball, and Julie Anjo and Allen Anjo are
6 general counsel for University of Nations Kona.

7 CHAIRPERSON SCHEUER: Thank you Ms. Garson.
8 County? County of Hawaii, can you hear me
9 now?

10 MS. MELLON-LACEY: This is Diana
11 Mellon-Lacey from Corp Counsel for County of Hawaii.
12 Also present with me is John Mukai from Corporation
13 Counsel and Jeff Darrow from the Planning Department,
14 and April Suprenant and Michael Yee are not here at
15 the moment but they will be joining us.

16 CHAIRPERSON SCHEUER: Thank you very much.
17 Office of Planning?

18 MS. APUNA: Good morning, Chair, members of
19 the Commission, Dawn Apuna Deputy Attorney General,
20 and here with me is Rodney Funakoshi and Lorene Maki.

21 CHAIRPERSON SCHEUER: Let me update record,
22 and please wave your hands or anything as my internet
23 connection appears to be unstable.

24 On January 8, 2020, the Commission met in
25 Kailua-Kona at the NELHA facility, and voted to deny

1 the University of Nations Bencorp's Reconsideration
2 of the Order Granting the University of Nations
3 Kona's Motion to Continue the Hearing on the Order to
4 Show Cause to only allow typographical corrections,
5 date changes to the Petitioner's Corporate name
6 change, and associated amendments and corrections to
7 the caption.

8 March 23rd, 2020 the Commission received
9 two documents: The Petitioner's Withdrawal of its
10 Motion to Amend the Findings of Fact, Conclusions of
11 Law, and Decision and Order dated December 21st,
12 2006, and the Petitioner's Motion to Amend the
13 Findings of Fact, Conclusions of Law, Decision and
14 Order dated March 23rd, 2020 along with Petitioner's
15 Exhibits 1 through 20.

16 Between March 25th and July 7th of this
17 year we received OP's request for extension of time.
18 We issued a prehearing order for the parties.

19 The Petitioner, OP and County submitted a
20 Joint Stipulation regarding the scheduling of the
21 Motion to Amend the Order with LUC.

22 The County of Hawaii submitted Statement of
23 Position on the LUC Order to Show Cause, the
24 Petitioner's Motion to Amend.

25 The Petitioner filed its witness list,

1 exhibit list, and first Supplemental Memorandum in
2 support of its Motion to Amend the Findings of Fact,
3 Conclusions of Law, and Decision and Order filed
4 March 19, 2019, as well as Exhibits 21 through 29.

5 OP filed testimony on the Petitioner's
6 Motion to Amend, and the Petitioner filed its second
7 list of rebuttal witnesses in response to the OSC
8 issued May 20, 2019, as well as its response to OP's
9 and County's Position Statements of Position.

10 On July 14, 2020, the Commission mailed the
11 July 22-23 Notice of Agenda to the Parties and
12 statewide, Oahu and Hawaii regular and email mailing
13 lists.

14 Let me go over our procedures for today.

15 First working staff --

16 MR. HAKODA: Chair, you're cutting out at
17 the very start.

18 CHAIRPERSON SCHEUER: Yeah. Where did I
19 get to?

20 COMMISSIONER WONG: Staff, chair.

21 CHAIRPERSON SCHEUER: Thank you.

22 Working with staff, some mentioned
23 procedural matters for today.

24 First working with staff, I will note any
25 public written testimony received.

1 Second, I will call on any individuals for
2 pre-registered to testify, and I will bring them into
3 the ZOOM meeting.

4 Third, I will, after all registered
5 testifiers have completed their testimony, I will
6 call individuals from the general audience who may
7 wish to testify in this matter.

8 For individuals from the general audience
9 who wish to testify in this matter who are not
10 pre-registered and are participating via phone, if
11 you're participating via computer, use the raise-hand
12 function. If you're participating via phone, dial
13 star 6, toggle mute/unmute, and star 9 to raise your
14 hand.

15 For all witnesses both registered and not
16 registered, I will bring you into the meeting, swear
17 you in, and you will have two minutes to testify.
18 And after your two minutes, you need to remain
19 available for questioning by the parties and the
20 Commission.

21 After the completion of public testimony,
22 parties will be given the opportunity to admit their
23 exhibits into the record.

24 After the admission of exhibits, the
25 Petitioner will provide the Status Report. I will

1 then call on the County of Hawaii and OP to offer any
2 comments regarding the status report, and the
3 Petitioner will be allowed to respond to any comments
4 made by the County and Office of Planning.

5 From time to time I will call for short
6 breaks, approximately one every hour.

7 Are there any questions on our procedures
8 for today, beginning with the Petitioner?

9 MS. GARSON: No questions.

10 CHAIRPERSON SCHEUER: County?

11 MS. MELLON-LACEY: No questions. Thank
12 you.

13 CHAIRPERSON SCHEUER: OP?

14 MS. APUNA: No questions.

15 CHAIRPERSON SCHEUER: Commissioners? Thank
16 you.

17 Either Mr. Derrickson or Mr. Hakoda, is
18 there written testimony on this?

19 MR. HAKODA: Mr. Chair, Riley Hakoda. We
20 had no written testimony. We had Mr. Francis Oda and
21 Jeff Overton registered on behalf of Petitioner, and
22 other public witnesses are Martin Rediger and Robert
23 Rechtman.

24 CHAIRPERSON SCHEUER: Thank you very much.

25 Going in that order, I'm going to bring in

1 Mr. Oda -- Ms. Garson?

2 MS. GARSON: Mr. Chair, procedurally, Mr.
3 Francis Oda and Jeff Overton were going to assist in
4 the presentation of our status report, so I don't
5 know if they registered incorrectly, but they were
6 going to be assisting with the status report.

7 And Mr. Rediger was on standby should this
8 matter proceed or you have any questions. He's also
9 from the University of Nations and Paul Childers
10 also, so they're within the University of Nations and
11 they are physically on standby if you have any
12 questions that we could not answer ourselves.

13 CHAIRPERSON SCHEUER: I had a little bit of
14 audio problems here. What I understood you to say,
15 all four names mentioned are people who are on
16 standby for your presentation?

17 MS. GARSON: Correct.

18 CHAIRPERSON SCHEUER: So we can wait to
19 call them in as testifiers, if you want to call them
20 during your presentation.

21 Are there any other people who are
22 attending this meeting as members of the public who
23 wish to testify in this matter? If so, please use
24 the raise-hand function and I will admit you in.

25 I am going to admit in Mr. Aaron Espereza.

1 When you come into the meeting, please enable your
2 audio and video. You need to unmute yourself and
3 turn on your video.

4 THE WITNESS: Can I speak? Can you hear me
5 now?

6 CHAIRPERSON SCHEUER: That is better. I'm
7 going to swear you in.

8 Do you swear or affirm the testimony you're
9 about to give is the truth?

10 THE WITNESS: Yes.

11 CHAIRPERSON SCHEUER: You have two minutes.
12 Please go ahead, beginning with stating your name and
13 address.

14 AARON ESPARZA

15 Was called as a witness by and on behalf of the
16 Public, was sworn to tell the truth, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: For the record, my name is
20 Aaron Esparaza, speaking on my own behalf. I live in
21 73-4177 Malino Place, Kailua-Kona, speaking regarding
22 University of Nations.

23 Since 2017 I've worked in organizations
24 such as Catholic Charities, as well as for
25 (indecipherable) in Kona.

1 I'm versed with the foster care system,
2 social workers, attorneys, children and resource
3 caregivers.

4 Throughout my time at Catholic Charities
5 I've noticed a drastic increase in the improvements
6 of the university in their role (indecipherable).

7 The RCD that training have provided for
8 have gone above and beyond helping foster children
9 and their parents. And to me they've become some of
10 the best foster parents here because they do not get
11 conflict, no reports of abuse or harm, providing a
12 way for bio parents to connect with the children.

13 When the university started keiki closet,
14 we were very excited because CWS does not have a
15 holding space for the Nation. The Catholic Charities
16 have had very little space. So to have a dedicated
17 site where RCDs and bio parents could come get
18 supplies and advice is a big deal.

19 And one of my clients here at the Kohana
20 stated that he was able to get a high chair for his
21 kid. I believe that was extremely helpful.

22 During this pandemic I believe the
23 university realized an important error. As the
24 planes with grounded and their missionary kids did
25 not have a country to go to, they though, well, maybe

1 we should do missions here and support the island
2 (indecipherable) but then they realized they did not
3 have many, if not any long-term projects or support
4 (indecipherable). I think it's critical to know and
5 share.

6 I know how many in the community either do
7 not why it exists, or they're completely indifferent.

8 During the Corona Virus back in March and
9 April, I was working with many organizations
10 non-profits and government officials to come up with
11 plans to identify needs to meet them.

12 One particular need was met. I was able to
13 rally (indecipherable) and they rallied 80 volunteers
14 from the University to help clean the entire --
15 (indecipherable) helping the janitorial staff,
16 providing help on construction and playground.

17 CHAIRPERSON SCHEUER: Two minutes. Could
18 you summarize your testimony?

19 THE WITNESS: My final thought, I can't
20 speak to the construction plans. I hope they can
21 address the three big crisis (indecipherable) but
22 whatever it is at the finish line, I hope that
23 instead of people from mainland, that there is an
24 integration of community leaders talking to families,
25 cut away from their families. Because they know this

1 is a blessing to them and the aina.

2 So the University continues to keep
3 checking their hearts, know the plan is not to be
4 taken for personal gain. We are stewards. Continue
5 to love the people, provide for the widows and
6 orphans of the aina (indecipherable) -- thank you.

7 CHAIRPERSON SCHEUER: Before you sign off
8 I'm going to ask if any of the parties have questions
9 for you, beginning with Ms. Garson

10 MS. GARSON: No questions, thank you.

11 CHAIRPERSON SCHEUER: County?

12 MS. MELLON-LACEY: No questions, thank you.

13 CHAIRPERSON SCHEUER: OP?

14 MS. APUNA: No questions.

15 CHAIRPERSON SCHEUER: Commissioners, any
16 questions?

17 MR. HAKODA: Chair, you are frozen. We
18 left off --

19 CHAIRPERSON SCHEUER: I left off with
20 asking the Commissioners if there were any questions.

21 MR. HAKODA: Chair, this is Riley. I
22 believe none of the Commissioners have any questions
23 for you.

24 COMMISSIONER WONG: Because, Chair --

25 CHAIRPERSON SCHEUER: I'm back. Not sure

1 what happened.

2 COMMISSIONER WONG: None of the
3 Commissioners have questions, Chair.

4 CHAIRPERSON SCHEUER: Thank you, Mr.
5 Esparza, for your testimony. Thank you.

6 I am now going to admit Alapai Kauila.

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

10 THE WITNESS: Yes, I do.

11 CHAIRPERSON SCHEUER: Please state your
12 name and address for the record and proceed.

13 ALAPAI KAULIA

14 Was called as a witness by and on behalf of the
15 Public, was sworn to tell the truth, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: (Hawaiian spoken.)

19 My name is Alapai Kaulia, and I currently
20 reside in the ahupuaa of the University of the
21 Nations.

22 MR. HAKODA: Chair, this is Riley. We need
23 the public witness to please slow down, and he's
24 breaking up, so please speak more slowly so that we
25 can be sure we're catching your testimony.

1 Thank you very much.

2 THE WITNESS: Okay.

3 My name is Alapai Kaulia. I currently
4 reside in the Ahupua'a of Wa'awa'a. It's the same
5 ahupua'a as the University of the Nations is
6 proposing. I am here to testify on behalf of the
7 Haleo Hawaiian language class that they hold on
8 campus. I have been part of that class since 2013.
9 I have also taken Palamanui, which is the college
10 classes.

11 First I like to say I'm here on behalf of
12 myself. Through taking the Hawaiian language class
13 through University of Nations, I am currently a
14 teacher and helping cover the shortage of teachers
15 within the State of Hawaii because there is a
16 shortage of Hawaiian language speakers.

17 I was offered \$3,000 in scholarship because
18 I am native Hawaiian. Like I said, I've been
19 teaching since 2014. I started class in 2013, and
20 being able to gain the language from this class as
21 well as Hawaiian lifestyles, I was offered a job by
22 Department of Education and I have been working for
23 them since 2014.

24 In 2017 I moved up to a science teacher,
25 within the middle and high school of that class, and

1 I truly believe that the Haleo class has been
2 supporting the community.

3 Since joining the class 2013 I have been
4 able to network with others that have been part of
5 the class since 2011 and able to join initiatives to
6 get (indecipherable) -- in every home, helping the
7 teacher shortage within the State of Hawaii.

8 I've also been able to become a site
9 coordinator for after school programs through the
10 language class, and I have deeper understanding of
11 place. And this class has also given me the ability
12 to provide future for our kanaka, our future
13 Hawaiians that are out there using the knowledge of
14 our kupuna. So I fully support University of
15 Nations.

16 Prior to becoming a Hawaiian language
17 student of theirs, about 24 years ago I was able to
18 get impacted by them in a low income housing where
19 they were able to come and provide food as well as
20 spending time with us.

21 So I really support what they're doing.
22 And I'm not speaking on behalf of the school, but I
23 know there are a total of nine people that came to
24 our school, two are volunteers which were there
25 before me, so I can say that this program has made a

1 big impact on our community within the Island of
2 Hawaii. Mahalo.

3 CHAIRPERSON SCHEUER: Mahalo for your
4 testimony. Questions for the testifier, beginning
5 with Petitioner?

6 CROSS EXAMINATION

7 BY MS. GARSON:

8 Q Kathy Garson, attorney for the Petitioner.
9 Just one question.

10 So when you went through the program, did
11 you have to pay tuition for the language program?

12 A I did not.

13 So that was the scholarship that I was
14 provided, total of seven classes. I was provided
15 \$3,000 in scholarship myself. I also had family
16 members, so my family has been personally impacted
17 with at least \$7,000 of scholarship into the Hawaiian
18 language program.

19 And I believe it's for the native
20 Hawaiians, because when you go to the college,
21 they're teaching in the academic style, and that's
22 totally different. I learned more in the lifecycle.

23 Q Thank you very much.

24 THE WITNESS: Thank you.

25 COMMISSIONER WONG: Chair? Chair, are you

1 there?

2 CHAIRPERSON SCHEUER: I am still here.

3 COMMISSIONER WONG: Petitioner just
4 finished their questioning of the witness.

5 CHAIRPERSON SCHEUER: I was able to hear
6 all of that, but I'm not sure what's happening here.

7 County?

8 MS. MELLON-LACEY: No questions, thank you.

9 CHAIRPERSON SCHEUER: OP?

10 MS. APUNA: No questions.

11 CHAIRPERSON SCHEUER: Commissioners?

12 Commissioner Okuda.

13 COMMISSIONER OKUDA: Chair, for the benefit
14 of the court reporter, could the person who has been
15 speaking for the County identify themselves? Thank
16 you.

17 MS. MELLON-LACEY: This is Diana
18 Mellon-Lacey speaking for County of Hawaii.

19 The County of Hawaii has no questions for
20 this testifier. Thank you.

21 COMMISSIONER WONG: Chair, I thought you
22 froze again.

23 CHAIRPERSON SCHEUER: I'm not at the
24 moment. Are there any further questions for Alapai?
25 If not, mahalo for your testimony.

1 THE WITNESS: Mahalo.

2 CHAIRPERSON SCHEUER: Are there any other
3 members of the public wishing to testify on this
4 matter? If so, use the raise-hand function.

5 I'm going to bring in Wilfred Murakami,
6 followed by Rollin Rabara.

7 Mr. Murakami, if you would enable your
8 audio and video.

9 THE WITNESS: Can you hear me? Good
10 morning.

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

14 THE WITNESS: Yes.

15 CHAIRPERSON SCHEUER: State your name and
16 address for the record and proceed.

17 WILFRED MURAKAMI

18 Was called as a witness by and on behalf of the
19 Public, was sworn to tell the truth, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 THE WITNESS: Wilfred Murakami, reside at
23 81-979 South Kapili Loop in Kealakekua.

24 I am -- you want me to wait for you to give
25 meet okay to testify?

1 CHAIRPERSON SCHEUER: No, go ahead.

2 THE WITNESS: So I was a State principal at
3 Kealakehe High School until June of 2018, and I was a
4 principal since the school opened.

5 In addition to that, you know, I served
6 about 48 years active service in the Kealakehe
7 community. And so I have a long history of working
8 with public education.

9 As principal of the high school, I was able
10 to have the opportunity to work with University of
11 Nations, and enlist their help in helping the school
12 in general in a number of projects, whether it be
13 serving, helping the community.

14 And a part of that that is very close to my
15 heart was helping the English learners in our school
16 and in the community, and people, the volunteers as
17 well as the coordinators, Chris Richards, who I
18 primarily worked with a lot was instrumental in
19 helping us to provide the manpower needed to
20 tutoring, to build relationships, to help supervise
21 the campus, to help provide transportation in certain
22 instances, to provide access to their facilities so
23 that our kids could get to see construction that was
24 going on there, and the development of some of their
25 high tech facility.

1 Before I left, we had made some plans to be
2 involved in video technology and trying to do a
3 partnership between the school and the University of
4 Nations to use their recording and televising
5 facilities.

6 I found that the people really do -- who
7 came to the school -- really love our community and
8 they want to be invested in the development of the
9 children, especially that's the aspect that I dealt
10 with.

11 And one program, which is teaching second
12 language learners English, they volunteered several
13 of their community members to come in and actually be
14 trained as tutors with no compensation. They would
15 meet with us. They would get trained, and then they
16 worked with a group of students for about two or
17 three months after we went through the training.

18 So the short of it is that they have been
19 active participants in our community. They have not
20 been a community that comes by for their own -- well,
21 I guess it's their own ends, because they use to
22 empower the community.

23 And I have seen action on their part, and
24 as I said before, I've been serving as a teacher
25 administrator for 48 years in Kona primarily in the

1 Kealakehe area, and I have never seen such
2 longstanding quality volunteerism. We have help
3 from --

4 CHAIRPERSON SCHEUER: Can I ask you to
5 summarize, please, Mr. Murakami?

6 THE WITNESS: We have had help from other
7 organizations, University of Nations, their
8 volunteers have been very, very consistent in
9 providing a willingness to help our kids.

10 CHAIRPERSON SCHEUER: Thank you.

11 Questions for the witness, starting with
12 the Petitioner?

13 MS. GARSON: No questions. Thank you, Mr.
14 Murakami.

15 THE WITNESS: You're welcome.

16 CHAIRPERSON SCHEUER: County?

17 MS. MELLON-LACEY: This is Diane
18 Mellon-Lacey for the County. Thank you. We have no
19 questions.

20 CHAIRPERSON SCHEUER: Thank you for
21 identifying yourself, County. OP?

22 MS. APUNA: No questions.

23 CHAIRPERSON SCHEUER: Commissioners?

24 Commissioner Okuda.

25 COMMISSIONER OKUDA: I just wanted to say

1 thank you to you and the public school teachers. I
2 think historically in this community it's been an
3 education and have given opportunities to people in
4 the community. So thank you again to you and local
5 educators.

6 THE WITNESS: Thank you.

7 CHAIRPERSON SCHEUER: Anything else --
8 Commissioner Cabral.

9 VICE CHAIR CABRAL: Hello, this is Nancy.

10 THE WITNESS: Hi.

11 VICE CHAIR CABRAL: I wanted to also thank
12 you as Commissioner Okuda stole my thunder, but I
13 wanted to thank Mr. Murakami also for being willing
14 to serve our students, and the other testifiers.

15 Also I was really glad to hear from people
16 in the community that University of Nations has been
17 and is involved with our Big Island community in the
18 Kona area and helping to serve our general public.

19 So I appreciate their on-the-ground report,
20 otherwise it's just paperwork, lawyers that we get to
21 hear from, so I appreciate the public coming forward.
22 Thank you.

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner Cabral.

25 Anything else?

1 Thank you Mr. Murakami for your testimony.

2 THE WITNESS: Thank you for taking the
3 time.

4 CHAIRPERSON SCHEUER: Oh, Commissioner
5 Ohigashi, excuse me. Commissioner Ohigashi.

6 COMMISSIONER OHIGASHI: I just wanted to
7 commend you, especially since it appears you're on
8 the side of the road parked in your car.

9 THE WITNESS: Yes, I am.

10 COMMISSIONER OHIGASHI: I just wanted to
11 make a comment that I think that one of the benefits
12 of the ZOOM technology is to permit this kind of
13 testimony. Thanks a lot.

14 CHAIRPERSON SCHEUER: My internet
15 connection is displaying the downsides of the
16 testimony, but your testimony is displaying the
17 upside. Thank you for your testimony. I'm going to
18 demote you back into the audience.

19 I'm going to bring in Rollin Rabara. Could
20 you enable your audio and video?

21 THE WITNESS: Can you hear me, Chair?
22 Chairman, can you hear me?

23 CHAIRPERSON SCHEUER: Yes, I could hear
24 you. I can hear.

25 THE WITNESS: Okay. Aloha, my name is

1 Rollin Rabara, born and raised --

2 CHAIRPERSON SCHEUER: I need to swear you
3 in. Actually, I'm going to first ask you, you're not
4 driving, right?

5 THE WITNESS: After I tell you what I did
6 for my lifetime, I got to guarantee you I'm not.
7 That's a good portion of my life.

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

11 THE WITNESS: Yes, I do.

12 CHAIRPERSON SCHEUER: Now, please proceed.

13 ROLLIN RABARA

14 Was called as a witness by and on behalf of the
15 Public, was sworn to tell the truth, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: Good morning, Rollin Rabara,
19 R-a-b-a-r-a. I'm born and raised resident here in
20 Kona. I just retired from the Hawaii Police
21 Department after a short 29 years of service.

22 As I stated earlier, born and raised here,
23 so I'm very familiar with some of the good stuff
24 obviously that University has done in our community.
25 As you already know, University of Nations has been

1 part of our to community for about 40 years now.
2 They've been involved in many, many different types
3 of activities. A lot of it involved projects,
4 various projects obviously straight out to our
5 community. As well as too, I know when they first
6 started rolling in as far as students and work staff,
7 they actually (indecipherable) -- that's when we got
8 to know a lot of the early leadership of the
9 Catholics at that time.

10 As we move forward, and going to relate
11 some of this to my work experience. When you talk
12 about a University connected, and we talking about
13 having the students there, you look at, you know, you
14 compare it to some large university where you got
15 problems that be might occur on those campuses. And
16 I can testify basically from experience that we
17 really never did actually get any calls to that
18 campus from the law enforcement standpoint, I'm
19 talking about.

20 In the meantime, we did grow a relationship
21 where we could do training there. We did some active
22 shooter training there at the campus. Sometimes it's
23 kind of tough to do it on high school campus, but
24 they were nice enough to actually have us do several
25 trainings there and involved the students as well

1 too.

2 And that prepared us obviously in the --
3 hopefully -- that something like that would happen in
4 our state.

5 So my basic testimony is to let everybody
6 know that they have been a part of our community for
7 a long time. We haven't, again from the law
8 enforcement standpoint, we haven't had to deal with
9 much of anything at that campus outside of a few
10 minor things. But nonetheless, they have showed that
11 they're good neighbors obviously to everybody here in
12 Kona, including our first responders as well too. So
13 I can have nothing but aloha for the campus, for all
14 the people involved as well too.

15 And I could see that their vision obviously
16 to expand the campus and take on another 60 acres,
17 high school and all the things they actually doing
18 can only be positive in this community. And right
19 about now I would imagine that we need a lot more
20 (frozen screen).

21 CHAIRPERSON SCHEUER: Thank you for your
22 testimony.

23 Ms. Garson?

24 MS. GARSON: Thank you, Mr. Rabara. No
25 questions.

1 CHAIRPERSON SCHEUER: County.

2 MS. MELLON-LACEY: This is Diana
3 Mellon-Lacey, County of Hawaii. We have no
4 questions. Thank you, Mr. Rabara.

5 MS. APUNA: No questions. Thank you.

6 CHAIRPERSON SCHEUER: Commissioners?
7 Commissioner Okuda.

8 COMMISSIONER OKUDA: Thank you, Mr. Chair.
9 Thank you, Mr. Rabara, for your testimony.

10 It might have been my internet connection,
11 but I kind of lost the last part of your sentence or
12 your testimony.

13 Can you repeat that -- give us the final
14 part you were saying?

15 THE WITNESS: Pretty much just reiterating
16 the fact that U of N has obviously been a good
17 neighbor to all of our people here in Kona, both from
18 a business standpoint and first responder standpoint,
19 which I was a part of obviously, and just in general.

20 I mean they have -- I was mentioning
21 earlier, call for service, that campus there really,
22 you know, testify to the fact that we had no calls
23 there. And when you're dealing with a university of
24 young adults, obviously there's going to be a
25 tendency -- you can look at Manoa campus as well as

1 UH campuses abroad, you know, you see stuff that will
2 happen on those campuses. We did get calls there for
3 service, but they were very minor in nature. Nothing
4 real serious.

5 But most of all it's opening doors to allow
6 us to do training on the campus, became very
7 important too for us moving forward.

8 COMMISSIONER OKUDA: Again, it might have
9 been my internet connection, but at very beginning of
10 your testimony you identified who you had retired
11 from -- I don't want to assume. I think I can figure
12 out the context, but can you state, just so that it's
13 clear on the record, who or what organization you
14 retired from after all those years of service?

15 THE WITNESS: (Frozen screen.)

16 CHAIRPERSON SCHEUER: He may be frozen.

17 COMMISSIONER OKUDA: I'm sorry, your
18 response broke up again. Can you repeat what you
19 just said, please?

20 THE WITNESS: Retired from the Hawaii
21 Police Department, and actually assigned to the Kona
22 District, patrolling sergeant.

23 COMMISSIONER OKUDA: Thank you very much
24 for your testimony, and thank you very much for your
25 service to the community.

1 THE WITNESS: Thank you. Thank you for
2 your time.

3 CHAIRPERSON SCHEUER: Thank you very much
4 for your testimony.

5 THE WITNESS: Appreciate it, Chair.

6 CHAIRPERSON SCHEUER: Are there any other
7 members wishing to testify on this matter? If so,
8 please use the raise-hand function. Seeing none.
9 One moment.

10 I would like to begin with the status
11 report on the docket, but what I would like to do is
12 to note that while now for the last few minutes my
13 internet connection seems be stable (frozen screen).

14 COMMISSIONER WONG: Chair --

15 MR. HAKODA: Chair, this is Riley. The
16 moment you said you were not having problems, we
17 started to have problems with your transmission.

18 CHAIRPERSON SCHEUER: I think the judicial
19 term is bachi. So what I would like to suggest,
20 hopefully this will not freeze, for the safety of my
21 LUC colleagues and staff downtown, I would like to
22 remain at home if possible, but if this continues
23 much, I will declare a recess for about a half our
24 hour and head down to the office. But with that, can
25 we start with your status report?

1 MS. GARSON: Yes. Good morning, Chair and
2 members of the Commission.

3 Again, Kathy Garson for the University of
4 Nations Kona. Francis Oda from G70, and Jeff Overton
5 from G70 are also going to assist in the status
6 report, but if I could just kind of tell you where we
7 are going to go with this, that would be great.

8 As you know -- thank you for allowing the
9 University the time to file their Motion to Amend,
10 which as you mentioned filed on March 23rd, and at
11 the same time we also withdrew the 2006 Motion to
12 Amend so that the record was clear and you would only
13 have one Motion to Amend pending.

14 I want you to know that the University
15 didn't stop work upon filing the Motion to Amend,
16 they actually continued on. And there was a
17 conceptual infrastructure master plan that was filed
18 as a supplement later on in June, and so we'll talk
19 about that.

20 OP and the County support the motion
21 showing that there's a viable project moving forward.
22 And what we are going to discuss in a few minutes,
23 since we last appeared in front of you in January,
24 there were a few modifications to the project, so we
25 wanted to point this out.

1 We took into account some of the things
2 that the Commissioners said to us, made some
3 modifications to the project, so we do want to go
4 over that.

5 Mr. Oda will first present to you. There
6 was a question about how the sense of place was going
7 to be incorporated into the design, and so he's going
8 to discuss that with you.

9 I think he can also, if he's willing, speak
10 a little bit about volunteerism at the University of
11 Nations because he is involved.

12 Then we're going to have Mr. Overton
13 discuss the changes that have been made, and also
14 give you an update on basically the Chapter 343
15 implications moving forward.

16 So if we can allow Mr. Oda in, and if you
17 can also let Mr. Overton in at the same time, I
18 believe Mr. Overton was going to share his screen
19 for Mr. Oda to speak, if that was possible.

20 CHAIRPERSON SCHEUER: That's possible.
21 About how long do you envision your presentation?

22 MS. GARSON: I think Mr. Oda will be about
23 ten minutes, and Mr. Overton perhaps 20, so I'm
24 thinking a half hour. Please don't hold me to that.

25 CHAIRPERSON SCHEUER: (Frozen screen). So

1 I don't know if that was my side or your side.

2 MS. GARSON: I'm thinking ten minutes for
3 Mr. Oda, just for his presentation, not including any
4 questions.

5 I think Mr. Overton probably about a half
6 our or less, without any questions.

7 CHAIRPERSON SCHEUER: Well, let's start
8 with Mr. Oda. I'm going to move both Mr. Oda and Mr.
9 Overton into our meeting.

10 I'm going to swear both of them in so they
11 can talk freely.

12 Do you swear or affirm the testimony you're
13 about to give is the truth?

14 MR. ODA: I do.

15 Mr. Overton: I do.

16 FRANCIS ODA

17 Was called as a witness by and on behalf of the
18 Petitioner, was sworn to tell the truth, was examined
19 and testified as follows:

20 DIRECT EXAMINATION

21 JEFF OVERTON

22 Was called as a witness by and on behalf of the
23 Petitioner, was sworn to tell the truth, was examined
24 and testified as follows:

25 CHAIRPERSON SCHEUER: Mr. Overton, you have

1 the ability to share screen.

2 MS. GARSON: I'm sorry, I thought I lost
3 everything, but he's sharing his screen.

4 BY MS. GARSON:

5 Q Mr. Oda, can you please introduce yourself
6 to everyone, give a little bit of your background?
7 And I kind of prompted the Commission that you were
8 going to talk about the design and the sense of place
9 that was incorporated, then also about your
10 experience and involvement with the University of
11 Nations.

12 A Okay, thank you.

13 Aloha, Mr. Chair, and members of the
14 Commission.

15 So I want to talk to you today to give you
16 a little bit of my background. You already have my
17 resume and all that, but I was asked by Katherine to
18 share a little bit more background especially in
19 regard to my education.

20 I got my architecture degree from Cornell,
21 my Doctor of Arts from University of Hawaii. I'm a
22 member of AICP, that's the planning organization.
23 I'm also pastor of a church here in Honolulu that's
24 located in Chinatown that ministers largely to people
25 who are usually homeless, out of prison, and sort of

1 out of dysfunctional habits such as alcohol, drugs,
2 things like that.

3 In the late 1990s I worked extensively with
4 George Kanahele, who I think many of you know or
5 knew. George and I worked towards defining a kind of
6 Hawaiian sense of place as we understood it at that
7 time. And we made many talks, gave many talks around
8 Honolulu, talks about this subject, and even went as
9 far as New Zealand together requested by the
10 East-West Center to talk about how this might apply
11 to Maori land and Maori culture.

12 And then, again, in the late '90s, when the
13 convention center competition came up, Momi Cazimero
14 and I were asked by the State to define Hawaiian
15 sense of place. That was the first time that that
16 term had actually be been used officially in any kind
17 of State document, and that was a requirement for the
18 competition for the convention center.

19 George was on the one of the teams, in
20 fact, the team that ultimately won the competition.
21 So Momi and I had a series of talks that we gave to
22 not only contestants, but also the larger community
23 about what Hawaiian sense of place was. That was a
24 new term, a phrase very commonly used, of course.

25 Well, in general things have developed much

1 further than that, but I just wanted to share with
2 you how this might apply to this project, how this
3 does apply to this project.

4 And what we wanted to do is give these
5 students, who come from all over the world, a setting
6 that, while modern, would reflect a sense of Hawaiian
7 space and culture.

8 And, as you know, this land was extensively
9 disturbed by agriculture, and right now it's covered
10 with kiawe and a lot of brush, but it does retain
11 certain archaeological features that contribute a lot
12 to the meaning of the place and especially the
13 Kuakini wall. What we did was what we do for all our
14 projects, we first identify the people. And all of
15 us know what the piko na'au is. It's related to
16 enable the source of energy, light. And we always
17 locate first the piko na'au. And I'm going to show
18 this to you.

19 Jeff, could we have that screen?

20 Could you put the palm over the area of the
21 piko na'au, which is there in the center. There is
22 also, as probably many of you already know, so many
23 people, there is also piko po'o, which is the
24 location and source of the ancestral knowledge,
25 spiritual knowledge, and all of that. And that's the

1 chapel here where you see the palm.

2 And the piko mai, which in general relates
3 to the future, future generations represented by the
4 genitals. And the lower school, the high school,
5 that we define as the piko mai, the younger people,
6 the next generation.

7 What we did after that, what we always do,
8 then we put facilities that really relate to these
9 concepts of the people around what we sense are the
10 locations of these people, for example, the piko mai,
11 we have things like student resource center.

12 Of course, we have a large gathering place
13 here (indicating), we have a cafe. We have
14 instructional facilities. And what this does is give
15 a sense of real place to the center of this extension
16 of the campus.

17 The piko po'o, the chapel. The chapel
18 reflects the knowledge, the spirituality of the place
19 and at the same time the school down below was
20 developed around what we consider to be the piko mai.

21 What we did in terms of connecting these
22 up, and I see that what I'm going to do right now is
23 go to -- ask you, Jeff, to go to the rendering.

24 This gives you a sense of the area of the
25 piko na'au as well as the piko po'o, and this is --

1 will be the center, centering place. It includes the
2 resource center, the cafe, and classrooms as well as
3 the chapel.

4 There was a historic trail bisecting this,
5 and what we've done is connect these piko with a
6 path, and you can see it here. This path we sort of
7 wanted to make it like a dry streambed, water, as you
8 all know, is very valuable there, so we only have
9 water at certain key locations. I think you can see
10 a little water here. No, up mauka, yeah, right
11 around here (indicating).

12 Well, you know, at the chapel there also is
13 a major water feature, but the idea here is water,
14 increase volume. The relation with the dry streambed
15 being defined by rocks and pebbles, as well as
16 dryland vegetation, ground cover, and it connects
17 these piko in a continuous way and, of course, there
18 are paths elsewhere, but this is the major spine of
19 the campus.

20 We now go back -- well, why don't you stay
21 here and come out a little bit in this drawing, a
22 little bit more. You can see here on the corners
23 three of four major archaeological sites. We've
24 tried to honor them and actually at the beginning
25 they had this idea of integrating them more into the

1 function of the campus. But then we realized that
2 three of the four had iwi. So what we decided to do
3 was honor them by certainly preserving them, putting
4 a wall around them, 20-foot setbacks and all of that,
5 but not really physically involve them. Here you see
6 little indication of concept of palipili (phonetic).

7 Jeff, can you point that out, that relates
8 to the cafe area, and there are all kinds of
9 activities that go on the campus that are
10 demonstration of cultural parts of Hawaii, and we
11 think this could be one of the centers of them, but
12 they will be distributed throughout the campus.

13 We also envision that there will be
14 imprints of Hawaiian art and graphics throughout the
15 campus that will give it a stamp of being here in
16 Hawaii, and not somewhere else.

17 Putting in walls will be restored as you
18 see in the application.

19 Now, the landscaping is going to be largely
20 native dryland species, so we're going to limit the
21 grass, but we are going to have a few areas of grass
22 which, as you know, require a lot more irrigation,
23 but what we want to do is do it sustainably. So we
24 will recycle groundwater to irrigate the landscaping.

25 Now, the buildings are going to follow what

1 I call the ranch style of kama'aina art structure,
2 which is sort of the signature style of Kailua-Kona.
3 So the buildings will be largely wooden, which as you
4 know, renewable material with metal roofs. This
5 whole complex will be very sustainable. It's going
6 to be naturally ventilated. There will be PV on the
7 roofs. There will be water saving devices.

8 As I mentioned, recycling of groundwater,
9 and improved storm water system. And the buildings
10 are going to be built into the slope in that they
11 won't be more than two stories above the upslope
12 elevation, more or less the mauka elevation. That's
13 to preserve mauka-makai use from any properties at
14 higher elevations.

15 So in general, the campus we hope will
16 reflect its place in Hawaii, and it's going to serve
17 the needs of this international student body. We
18 want them in their time here in Hawaii to really
19 sense more of the culture, more and more of the
20 culture, and really be able to be responsible for
21 extending the culture here on this campus.

22 Katherine asked me to talk about
23 volunteerism. The history, and YWAM -- and I have
24 been familiar with YWAM for 30 or 40 years. I
25 work -- I am chair of a local board called TOW,

1 transform our world, and YWAM and University of
2 Nations are very much -- we work together on things.
3 And I have been just always super impressed by their
4 commitment, the commitment of the people that they
5 train, and the volunteers that they have.

6 The volunteers are from all levels, but
7 there are many that are volunteers that have
8 phenomenally successful careers in engineering,
9 business, whatever it might be. And on this project
10 I'm actually one of those volunteers.

11 It is something we give not just to them,
12 but to the community, and to this global enterprise,
13 because the focus of YWAM is really to serve
14 nations -- well, always, the most needy in nations,
15 and so I think volunteers are motivated by that, and
16 they give sometimes years of their lives to helping
17 YWAM.

18 So thank you very much. Mahalo for
19 listening to me and happy to take questions at the
20 appropriate time.

21 CHAIRPERSON SCHEUER: Thank you, Mr. Oda.

22 Ms. Garson, is the witness available for
23 questions from the County, the OP and the Commission?

24 MS. GARSON: Yes.

25 CHAIRPERSON SCHEUER: Maybe, Mr. Overton,

1 if you want to stop screen sharing for a moment.

2 Thank you.

3 Questions from the County for the witness.

4 MS. MELLON-LACEY: This is Diane
5 Mellon-Lacey from the County. We have no questions
6 at this time. Thank you.

7 CHAIRPERSON SCHEUER: Thank you.

8 Ms. Apuna?

9 MS. APUNA: No questions. Thank you.

10 CHAIRPERSON SCHEUER: Commissioners?
11 Commissioner Chang.

12 COMMISSIONER CHANG: Thank you, Chair.
13 Thank you, so much, Mr. Oda.

14 As a native Hawaiian I greatly appreciated
15 the thoughtful presentation, and especially the great
16 sensitivity that you and your team with the
17 University put into this design. Thank you very
18 much. I appreciated that.

19 I know we talk about the three pikos, but
20 not everybody truly integrates that into activity.
21 So again, I appreciated your presentation and
22 specifically how that's being integrated into this
23 project.

24 I just wanted to ask with respect to the
25 consultation process, maybe you'll have others who

1 are going to talk about this, so if you're not the
2 appropriate person, but I understand that there's
3 been iwi on some of these archeological sites. So
4 how are those families engaged in your process, if
5 they are?

6 THE WITNESS: Yes. I'm not the one to
7 address that, so you might ask that question of Jeff.
8 That has been considered, of course.

9 COMMISSIONER CHANG: And so the other
10 question maybe that you can answer is, a lot of the
11 nations, their financial plan is based upon
12 volunteerism, and a lot of it dealt with actually
13 very skilled expertise like yourself.

14 So is this the level of volunteerism where
15 skills that would otherwise you would have to pay for
16 consultants, there are volunteers who are willing to
17 do it at no cost, but to support the University of
18 Nations.

19 THE WITNESS: Yes, my experience I've met a
20 number of these volunteers and it kind of blows my
21 mind, these are people extremely successful.
22 Probably one of the reasons they can volunteer
23 because they have been so successful. They literally
24 leave where they are. Many are retirees, and come
25 and live on the campus to help. And that's usually

1 coupled -- and they become a huge resource not only
2 in the area of their expertise, but their maturity as
3 successful people, as models to these young people
4 who a lot of them have just gotten out of high school
5 and some of them have talked -- I know I have
6 lectured to a number of the foster system.

7 These people are so young. And to a
8 certain extent they have dedicated, but kind of --
9 but they are -- and I think these volunteers really
10 have something you cannot find. You cannot find this
11 kind of wisdom, this kind of talent that they have.
12 Most feel even if they had a lot of money, couldn't
13 even afford to hire them.

14 Some of these have come with various
15 technology, and so not only University of Nation,
16 it's like cutting edge of a lot of technical
17 development there.

18 And I think a lot of what we see here which
19 arguably might be in the adjacent parcel, so arguably
20 \$100 million or so of development. Started off four
21 years ago or so, piece of land very similar to the
22 one we have right now. And I think they developed
23 that largely in the same way that they are projecting
24 to develop this.

25 So I think they have a tract record that

1 they can rely on as they move forward. And, in fact,
2 if anything, as you well know, you kind of develop
3 momentum as you go along.

4 When you haven't really started yet, it's
5 hard to get people to jump in, but at this point
6 they're at a critical mass, so I believe they can do
7 that area.

8 COMMISSIONER CHANG: So in other words,
9 when you can quantify the volunteerism into a
10 monetary value that is -- I'm trying see that part of
11 their financial plan is based upon this volunteerism.
12 I mean, you've done enough development in Hawaii, the
13 quantification of that volunteerism does equate to
14 real dollars towards their financial?

15 THE WITNESS: Yes, it does. And we
16 actually interacted with them on that, questioned
17 them. But they have past experience. And so I have
18 to -- we had to see to that, and I think that their
19 past experience is amazingly successful.

20 COMMISSIONER CHANG: Thank you very much.
21 I really appreciated your testimony.

22 CHAIRPERSON SCHEUER: Commissioner Okuda
23 has questions, but we have been going an hour and 15
24 minutes. I would like to take a ten-minute break
25 which is necessary for various reasons.

1 It is 10:15. We will reconvene at 10:25.

2 (Recess taken.)

3 CHAIRPERSON SCHEUER: 10:27. We are back
4 in session. There was a question from Mr. Okuda for
5 the witness.

6 COMMISSIONER OKUDA: Thank you, Mr. Chair.

7 Mr. Oda, I know you have not been offered
8 as an expert witness. But for those of us who might
9 not know your full background, can you tell us a
10 little bit about it, like, for example, I notice you
11 have a designation FAIA. I think that means Fellow
12 of the American Institute of Architect.

13 Can you give us a little bit of your
14 professional background besides planning background?

15 THE WITNESS: Sure. I am a Fellow of the
16 American Institute of Architect, which as we all
17 know, it's kind of this separate college that you get
18 selected to as a practitioner. Maybe it's a function
19 of (indecipherable) -- something like that. It's an
20 honor to be there.

21 I have been a principal in G70, which is an
22 architecture planning engineering design firm which
23 is going to be about 50 year's old next year, and I
24 was the president and I'm now its chair. And it has
25 come before you many times, but we have a practice

1 here in Hawaii, Indonesia, throughout the Pacific,
2 Tahiti, Japan, quite extensive.

3 Aloha United Way, various other
4 non-for-profit organizations, and I'm now the vice
5 chair, make sure to take care of Hawaii's public
6 radio. So I've tried to involve myself in
7 professional work.

8 I've been, of course, president of the
9 local American Institute of Architect Chapter in
10 Hawaii, but that was many, many years ago.

11 I have taught at University of Hawaii, in
12 fact, it was University of Hawaii that brought me
13 back from California where I had a practice, 30 years
14 old at that time, had a practice in Berkeley with my
15 partner, Vice Chair of the School of Design there,
16 and we were fortunate in winning many awards.

17 My wife and I wanted to come back and raise
18 our family back here in Hawaii.

19 Is there any other aspect of my background?

20 COMMISSIONER OKUDA: If you don't mind, if
21 you can try to speak more into your microphone, I'm
22 having a hard time hearing. It could be on my end.

23 You have also been the architect of many,
24 for lack of a better term, significant or big
25 projects in Hawaii, is that correct?

1 THE WITNESS: Yes. Over the years, I've
2 been fortunate to work on all kinds of projects from
3 urban planning project to, for example, the master
4 plan of City of Kapolei, master plan of Ho'opili.
5 And so I've been involved in large urban plans, to
6 things like university facilities, school facilities,
7 hotels, for example, the two hotels on Lanai, used to
8 be known as the Lodge at Koele and Manila Bay. I
9 also designed the recently reopened Four Seasons.

10 The facility at Hanauma Bay, for example,
11 that represents my feeling about architecture fitting
12 into the environment. I thought there should be no
13 building on it, just the mauna. We did it in such a
14 way that it doesn't look like a building.

15 My doctorate, my dissertation for doctorate
16 was architect versus culture. What I did was trace
17 architecture not from an historic architect, but from
18 the Hawaiian perception of geology, the land, and my
19 belief as well has been that (indecipherable).

20 MR. HAKODA: Mr. Chair, this is Riley. Mr.
21 Oda needs to speak up into his microphone. We are
22 having trouble hearing.

23 THE WITNESS: I'm sorry, is this better?

24 CHAIRPERSON SCHEUER: That's better.

25 We might -- with extreme respect for the

1 witness, we do have a very long and full agenda
2 today.

3 THE WITNESS: So I'll conclude by saying
4 just as you are keepers of the culture, I believe
5 architects, planner, others in the professional roles
6 should be keepers of the culture, also builders of
7 the culture.

8 COMMISSIONER OKUDA: Based on your
9 education, years of experience, do you have an
10 opinion about the viability of the project that's
11 being proposed here?

12 THE WITNESS: Yes, of course, the project
13 is projected at over a number of years, but I have
14 absolutely no question about the viability of the
15 project. I am fully convinced that the project will
16 be developed. How many years it might take is a
17 question, but that it will be completed at some point
18 I have no question.

19 COMMISSIONER OKUDA: Thank you very much,
20 Mr. Oda, for your testimony. Thank you, Mr. Chair.

21 CHAIRPERSON SCHEUER: Thank you.
22 Commissioner Ohigashi.

23 COMMISSIONER OHIGASHI: Mr. Oda, I was just
24 wondering with regard to your present, I guess,
25 conceptual plans, how does that -- is that different

1 from the 2003 plans that were on file?

2 THE WITNESS: In 2003 the idea was to
3 involve the campus, but in a much less significant
4 way, and also, you know, that there was a venue for
5 tourism, which had to do with the campus program
6 which they have to this day, which involves Hawaiian
7 dance and music, they call it Island Breeze.

8 The proposal that we have now before you
9 totally integrates the campus into it. So it's a
10 matter of degree. And I believe that this total
11 integration actually is a very good use of this land
12 because it has developed it partially for housing.
13 It involves housing right now, and as we proposed it,
14 but for people directly related to the program.

15 So I think that that's positive.

16 COMMISSIONER OHIGASHI: The other question
17 that I had is, how does your proposed conceptual plan
18 differ from the proposal's made in the 2006 Motion to
19 Amend, if you're able to answer that?

20 THE WITNESS: I am not able to answer that.
21 I have seen that, but not having been involved in
22 that, I cannot say.

23 COMMISSIONER OHIGASHI: Thank you for your
24 testimony.

25 THE WITNESS: Sure, thank you.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioners, are there further questions from the
3 Commissioners?

4 Mr. Oda, if I may, I know that the Kuakini
5 wall is being preserved and restored in this plan.
6 Could you speak at all to any consideration of its
7 cultural or symbolic historic value and its
8 relationship to the new plan?

9 THE WITNESS: Well, what we're doing is
10 setting back from it. It does decline the separation
11 between the schools and this research complex that
12 part of an on-going program, but beyond that we went
13 through maintenance and enhance the integrity of the
14 wall, because we realize it's not just on our site,
15 it's something that extends much further.

16 So outside of restoring it and honoring it
17 by the setbacks and maintaining a nice, and of
18 course, interpretive information regarding it, and
19 that will be true of all the archaeological sites.

20 It's not consciously integrated. However,
21 as you well know possibly better than me, the Kuakini
22 wall was always a separate, always a dimension. And
23 so that it is a division between now the schools,
24 younger kids, and this research center.

25 CHAIRPERSON SCHEUER: Thank you very much.

1 Is there anything further, Commissioners?

2 Thank you very much, Mr. Oda.

3 Mr. Overton was next, is that right, Ms.
4 Garson?

5 MS. GARSON: Mr. Overton was going to talk
6 to you about some changes in the master plan since he
7 last presented to you in January, and then the
8 completion of the report that's supporting the Motion
9 to Amend.

10 CHAIRPERSON SCHEUER: You want him to do
11 that now?

12 MS. GARSON: Yes. And I was a little bit
13 off in my time estimate previously, so I apologize.
14 So perhaps Mr. Overton can give you a better idea of
15 how long he might take.

16 CHAIRPERSON SCHEUER: I will note that
17 January 2020 seems like about five years ago. We
18 were all off on our time estimates of how 2020 has
19 gone.

20 Mr. Orodanker, you're muted, if you want to
21 start.

22 JEFF OVERTON

23 DIRECT EXAMINATION

24 THE WITNESS: Chair, good morning. Good
25 morning, members of the LUC. Jeff Overton, principal

1 planner with G70, and a pleasure to be present with
2 Dr. Oda, also the University of Hawaii architect he
3 failed to mention. It was his first position back
4 here in Hawaii. So he has a long history with
5 University, and with this project.

6 So today I'm going to provide and try to
7 speak as quickly and clearly. I'll also go outside
8 and jiggle the wires, because I share the same
9 ahupua'a that Jonathan lives in. Hopefully that will
10 help us connect through here.

11 Providing a presentation on the update of
12 the master plan for University of Nations of Kona,
13 following our last status update hearing in January,
14 the Commission hinted to the Petitioner that these
15 plans are quite ambitious. And that, you know, can
16 you really do this as some of the comments have been
17 made today.

18 And so at that time we came away from that
19 hearing discussing that very question. And the
20 University of Nations leadership went back. Worked
21 with our architects and master planners to take a
22 closer look at the plan and decided upon what were
23 truly the necessary elements of the plan and where we
24 could possibly consider trimming where necessary.

25 They reviewed this internally with

1 leadership, went back, sharpened their pencils, and
2 I'm going to present to you some adjustments that we
3 made to the plan that were part of the March filing
4 and go through that.

5 So I'll share screen here as I continue.
6 Hopefully you folks can see that.

7 So here is the January exhibit for the
8 overall master plan. And I'll try to zoom in just
9 for better use on your personal devices.

10 What we have shown here is removal of six
11 dormitories in the plan where these red X's fall. We
12 had a cluster of dormitories in this mauka position
13 here, and a couple other locations where dormitories
14 are being dropped out of the plan.

15 So six buildings have been removed from the
16 overall dormitory program, as well we are eliminating
17 two of the instructional buildings right here in this
18 location here (indicating).

19 Now, we're able to do this basically by
20 reviewing, carefully reviewing the program, matches
21 up with reduction in the enrollment from what was
22 5,000 student count at the full development period
23 down to 3,000 students in this program.

24 So the thinking has been dialed back a
25 little bit, taking perspective here that in some ways

1 this will relieve the density on the project,
2 development requirement to the overall cost, and yet
3 still really service the projected program needs here
4 and furthering their mission.

5 So the revisions to remove the buildings
6 actually results in the increase in open space on
7 this property from what was, back in the January
8 filing, to a total of 56 percent in the current one.

9 So with this removal I want to show you the
10 next kind of generation of the plan here. You can
11 see this is laid out nicely here. We've got much
12 more spatial kind of ground here that allow the
13 dormitories to layout properly in this location,
14 freeze up some space in the instructional area, and
15 as Francis described, piko na'au, and the area here,
16 the center of the campus.

17 In March 2020 filing G70 also completed
18 it's Environmental Planning Report to support the
19 Motion to Amend. As was explained previously, the
20 Environmental Planning Report includes updates to
21 previous technical studies that were done for the
22 Petition Area.

23 I described these briefly at our update
24 hearing in January, and we promised that we'd share
25 with you the summary findings from the Environmental

1 Planning Report, specifically the technical studies
2 that were there.

3 So the studies that were conducted were
4 natural resource study, a flora-fauna study, mobility
5 analysis report, which really is a traffic study that
6 was done and addresses the other modal transportation
7 elements. Preliminary infrastructure assessment, a
8 civil engineering (indecipherable) water supply
9 analysis was done. Cultural Impact Assessment update
10 with the Ka Pa'akai O Ka Aina analysis that was
11 included here.

12 The archeology had largely been completed
13 previously, and those studies as well as the SHPD
14 correspondence were included in the Environmental
15 Planning Report.

16 Then we also addressed project's
17 conformance with the County General Plan and Draft
18 General Plan update as well as the Kona Community
19 Development Plan.

20 It's important for us to emphasize here
21 that the Petition Area is -- previously in the State
22 Agricultural District before it was reclassified over
23 a decade ago, very poor agricultural conditions on
24 this property. All the soils land study are Bureau
25 rating E where it is very poor, among the lowest

1 levels of ag productivity. It doesn't mean some
2 farming can't occur on here, because there's
3 obviously some in the demonstration projects that are
4 included on campus, but it's a very restricted
5 agricultural capability here.

6 It's in an Urban area that's classified as
7 medium density in the Urban and the General Plan as
8 well as the Kona CDP.

9 So if we could, let me provide you with
10 kind of a high level of the technical studies, I'll
11 come back to the screen.

12 AECOS is the consultant that provided us
13 with the flora-fauna study, and with the exception of
14 the Hawaiian hawk, which you'll see circling the
15 thermals overhead there. There's no plant or animal
16 species that are protected status or proposed for
17 protection under either federal or state, none of
18 these were detected on the Petition Area. There's no
19 federally delineated critical habitat for any of
20 these species included here or close by to the
21 Petition Area.

22 And the study made recommendations as to
23 lighting with which Petitioner will comply with
24 there, dealing with seabirds.

25 Now, the mobility assessment report, the

1 traffic study conducted by Ferren Piers basically for
2 Phase I, there is going to be modest affects
3 associated with the driveway of the existing campus,
4 driveway and that refuge lane was recommended at that
5 location.

6 This could be accomplished within the
7 existing highway with restriping and some minor
8 pavement modifications.

9 But in Phase II and III, with growth of
10 traffic, ambient traffic on the highways as well as
11 the campus population growing, the Petitioner will
12 be -- have both King Ka'ahumanu and Kuakini Highway,
13 we're aware of phase improvements that are programmed
14 for both of those facilities.

15 And so it's a nice measure of the growth of
16 the campus along with infrastructure improvements,
17 the Petitioner could be required to contribute
18 funding or collect selective improvements here, and
19 that further consultation with both DOT and DPW will
20 be required as being consulted with this going
21 forward. It's many years out.

22 The intention was that Petitioner would
23 make improvements on their own property such as
24 right-of-way, right in-lane, right out-lane, which
25 connects to the highway, and that's kind of a softer

1 way for the project to interface with the highway and
2 not cause disruptions.

3 G70 civil engineering did the preliminary
4 infrastructure report that's included in the
5 Environmental Planning Report, and it indicated that
6 a new water source would be needed ultimately for
7 full build out of campus.

8 We identified three potential sources,
9 working with Tom Nance, water resource engineering,
10 and so that information is included in the report as
11 well.

12 They connected with the County with regard
13 to the wastewater facilities capacity and the DEM had
14 indicated that they had capacity available at their
15 Kealakehe Water Treatment Plant to accommodate the
16 planned increase in demand generated by the campus
17 improvements.

18 Finally, we have also provided updated
19 cultural assessment and the Ka Pa'akai analysis, and
20 these studies indicated although there may be over
21 time significant and cultural resources on this
22 property, the CIA did not identify any past or
23 ongoing traditional or customary practices. And the
24 reports made recommended archaeological and cultural
25 cautionary monitoring measures as Dr. Oda pointed out

1 in the master plan.

2 We have set aside and protected with walls,
3 the heiau structures, the different archaeological
4 preserves on the property. And so those are
5 indicated in the master plan as setback and walls and
6 protection.

7 Dr. Rechtman is the archeologist ASM
8 affiliate who can provide further details on that as
9 necessary.

10 So with the supplemental filing that was
11 made in June, civil engineers prepared a conceptual
12 infrastructure master plan for the report.

13 The Petitioner was really looking forward
14 to advancing the project towards a County rezoning
15 application with the conclusion of the Motion to
16 Amend, and so I'm going to show a couple of exhibits
17 that relate to the infrastructure.

18 And, Chair, I've probably got about five,
19 ten minutes left max here on this presentation.

20 Here is -- I'll zoom this back -- this is
21 an existing infrastructure, and first phase site and
22 utility plan that was included in the report. So
23 this is an important exhibit, because I know one of
24 the questions that came from the Commission is what
25 are the initial phases of development in the Petition

1 Area, and some of this is explained in this graph
2 that I'll walk us through.

3 Actually quite a lot of work that will be
4 completed in Phase I infrastructure plan. We believe
5 that with the existing campus infrastructure, the
6 demands are modest and that we could use many of the
7 existing utility connections to tie into.

8 One of the major elements in here is shown
9 in blue. We kind of grade out what is the existing
10 campus, but you can see this blue line that comes up
11 through the center, and this is really the center
12 spine road of the campus. It meanders along the
13 boundary of the Petition Area here, and will form the
14 connections, the driveway, access points for the
15 first phase of development of the expansion area.

16 So you can see the parking area that is
17 associated with the area that eventually will feed
18 into the schools but service the existing campus
19 parking demand.

20 Student resource center here (indicating)
21 and access drive, there are two of the instructional
22 buildings here, as well as two of the dormitories in
23 Phase I, athletic practice field and gymnasium.

24 Further up, additional support facilities
25 for parking, storage facility, industrial use up at

1 the top here.

2 And a couple of the points, the spine
3 access road, which exists today is actually quite
4 narrow and needs to be widened and improved as it
5 comes in here.

6 We will have penetration where these
7 driveways come in and feed, and then the utilities
8 will be connecting up. We have waterlines that are
9 expanding through the campus, and doing the extension
10 here, so the water system is being expanded. The
11 sewer system as well is connecting up and coming into
12 connect with the existing sewer system on the
13 existing campus side.

14 There is a road that follows the perimeter
15 of the Petition Area shown in this red ribbon here
16 and basically follows the whole southern property
17 boundary adjoining at the adjacent community here.

18 There's also a wall that will be built
19 along this boundary in here. And so the combination
20 of the wall and this access roadway that becomes part
21 of the overall transportation plan on campus will
22 provide access for instruction, support for
23 construction, staging of the various elements, as
24 well as equipment and access, and then form an
25 important fire break with the community from this

1 62-acre area that is very overgrown, not that we've
2 had a fire hazard here, but we are always paying
3 attention to that in our planning and in the
4 community that we want to be cognizant of measures to
5 protect against fire in these areas. So that will be
6 a good benefit in here.

7 As we look ahead to the full build out, and
8 now we've got all the campus facilities are shown in
9 the -- call it the reduced scope development plan
10 that I had described to you before, and this built-in
11 phases, you can see all the pieces of it that are
12 coming in, so we have the waterlines that run
13 through, sewerlines that come through and connect all
14 the roadway system and the facilities.

15 In this infrastructure analysis some new
16 findings emerged for particularly the wastewater
17 system plan, and it's been determined that a new
18 sewer connection needs to be made with the existing
19 sewerline that extends along Kuakini Highway.

20 So we have circled this area here that
21 shows connection to the sewer system, the existing
22 sewer connection down here at this part, but this
23 would be a new connection here.

24 This in conjunction with possible lane
25 widening here within the County system at the

1 entrance, new entrance to the Petition Area that
2 would happen in Phase II and III. We began to talk
3 about this as a potential for Chapter 343 Hawaii
4 Revised Statute environmental law triggered because
5 we are utilizing County and public lands is a trigger
6 understand Chapter 343.

7 You know, where we were last January we
8 believed -- this area is so urbanized with
9 development on both sides and makai of the Petition
10 Area and the robust utilities that exist within the
11 existing campus area, we really believed that we
12 would be able to work with the existing
13 infrastructure connections without making
14 improvements on County or State lands here.

15 After studying it in greater detail,
16 feeling it's here at this point that very likely
17 we're using State and County lands here. And that
18 nature as Chapter 343 triggers will require
19 compliance through the preparation of an EA or
20 potentially even EIS.

21 So that is a new factor that we have to
22 address in terms of planning and the pathway here
23 forward. Again, an EA was not prepared as part of
24 the project before. Everything was done with an
25 environmental report that supplemented the prior

1 Petition and filing since then. The good thing is,
2 we do have all the existing technical studies in hand
3 now that address the resource areas and
4 infrastructure concerns.

5 And so it really is going to come down to
6 us determining what level of document needs to be
7 done here, and going through the process to get
8 approval.

9 So we would like to request respectfully to
10 the Commission here that we will come back with a
11 motion for the LUC to be the approving agency that
12 accepts the EIS under the HAR 11-200.1 be the
13 accepting authority here for this EIS.

14 So Kathy wears the legal hat, she can speak
15 more formally on that, but that's the conclusion of
16 my summary update here, and I'm ready to answer
17 questions. Thank you.

18 CHAIRPERSON SCHEUER: Thank you very much,
19 Mr. Overton.

20 Are there questions for Mr. Overton from
21 the County?

22 MS. MELLON-LACEY: This is Diane
23 Mellon-Lacey for County of Hawaii. County has no
24 questions at this time. Thank you.

25 CHAIRPERSON SCHEUER: OP?

1 MS. APUNA: No questions.

2 CHAIRPERSON SCHEUER: Commissioners?
3 Commissioner Wong.

4 COMMISSIONER WONG: Thank you, Chair.
5 Mr. Overton, thank you for the
6 presentation.

7 The question I have is this is a status
8 report. And I guess the Petitioner wanted to -- is
9 looking at doing other things to their project.

10 How long more would this be, you know, if
11 you have to go through an EIS project, you know,
12 everything else, how much more time will you need?

13 THE WITNESS: So because we have the
14 technical studies in hand, we feel like we could move
15 very quickly. An EA could take five to six months,
16 an EIS more like nine to ten months.

17 Again, because we need to come before you
18 for actions that relate to approval of the documents
19 and such, we would be subject to your availability
20 and calendar, but I would call that expedited
21 timetable knowing we have much information available
22 to us and we don't have to start from scratch.

23 COMMISSIONER WONG: It's just that, you
24 know, I guess the Commission did change the boundary
25 amendments, and from that time now it's almost like

1 nothing has been done. And to me -- or it appears,
2 and so it looks like now we have to do other things
3 before we even break ground, so it's just that how
4 much longer? That's the question, how much longer,
5 or then you going to say something happened, then we
6 want to Order to Show Cause again. That's the
7 question I'm having in my mind.

8 Can you say something about that?

9 THE WITNESS: Well, at least from our side,
10 G70, we have been supporting as described in January
11 and today, we have been supporting on the
12 architecture and master planning side, reporting on
13 the civil engineer side as well as the planning and
14 environmental consultant side.

15 I would say we've been quite busy actually
16 helping University of Nations Kona address all of
17 these pieces.

18 And as mentioned earlier, we were loading
19 up to go forward with the project district rezoning
20 at County level, which takes us to a higher level of
21 detail.

22 So what you're not seeing is the level of
23 rigor that's gone into each of those major
24 disciplines in the time since we saw you last in
25 January. We have all this information, technical

1 study, so there's an actual team that's working on
2 this. We talk every week. We have a team of say
3 four that are working on it, and this group of five
4 or six consultants plus the attorneys and the people
5 at University of Nations.

6 So there is a whole team working away on
7 this every week. It is not on hold or in limbo. We
8 are progressing forward, and that's where we
9 discovered this wrinkle that honestly I'm glad we are
10 out in front of it.

11 If this needs to happen, and we do
12 officially trigger, again, we want to consult with
13 the proper agencies State and County to be sure there
14 is a trigger here, and possibly exempt, but we want
15 to have an abundance of caution and not get hung up
16 on a 343 technicality or so.

17 That's why we want to bring this fully
18 transparent, bring it right to the Commission and
19 say, this is what we found, and looks like we have to
20 stay on progress we've got to accomplish this other
21 task.

22 COMMISSIONER WONG: So the question I have,
23 this is just hypothetical, is it better to change
24 back the land to Ag and then come back with
25 everything set and, you know, hit it all at one time,

1 all these changes, EIS and everything, and go from
2 there?

3 I mean, in your expertise in seeing all
4 these other things that came in front of us, would it
5 be faster to do it that way, then amending, amending
6 and all this other thing?

7 THE WITNESS: Well, I'm going to let Kathy
8 come out with a formal opinion on behalf of the
9 owners here, the University, but you folks are very
10 attuned on where we are at with the project now, and
11 frankly, I don't see the sense in backing up and
12 starting over.

13 I think if we can get all the pieces
14 together here, we can move forward. This is just a
15 compliance requirement as we move ahead, but that's
16 just my opinion.

17 COMMISSIONER WONG: Just that I'm very
18 concerned because we also had the issue about
19 affordable housing in one of the conditions, and now
20 we are kind of looking almost like throwing that out
21 into never, never land. Just one of those things
22 running through when I hear this. That's all I'm
23 just trying to say.

24 THE WITNESS: Understood.

25 COMMISSIONER WONG: Thank you, Chair.

1 Thank you, Mr. Overton.

2 CHAIRPERSON SCHEUER: Thank you,
3 Commissioner Wong.

4 Commissioner Chang.

5 COMMISSIONER CHANG: Thank you, Chair.
6 Thank you so much, Mr. Overton. I really appreciated
7 your update.

8 So this is sort of a followup with
9 Commissioner Wong's line of questioning.

10 So there are -- currently there's a status
11 report. There's an Order to Show Cause, and there's
12 a Motion to Amend, and now you're raising the
13 potential issue of coming back to the Commission to
14 be the accepting agency for the EIS.

15 So maybe Kathy or your attorney might be
16 the best person to address this, but what I'm hearing
17 you say, because I actually quite appreciate the fact
18 that you have all done a lot more thoughtful work in
19 this new plan, and it seems to be supportive and very
20 viable and much more reflective of this community and
21 what may be best.

22 And looking at the surrounding property it
23 doesn't appear that going back to Ag may be the best
24 use of this property.

25 So nonetheless, you're giving us this

1 update on the status report. And then there is an
2 Order to Show Cause, but a Motion to Amend the
3 original LUC, what we approved on the conditions.

4 So I just want to confirm that since we met
5 the last time there's been no substantial use of the
6 property, all of the work that you've been doing is
7 primarily technical studies and recordings, but
8 you've not really done anything on the property
9 itself. Can you just confirm that?

10 THE WITNESS: Our focus has been working on
11 these plans and studies. So I would need to check
12 with University if there's been any further
13 improvements to some of the initial development
14 components within the Petition Area. I know that
15 they have done work on the archaeological
16 preservation pieces with the walls protecting, which
17 is I think the right way to start, you want to make
18 sure you're attacking those sensitive sources. So
19 that work is progressing.

20 I know they are advancing towards getting
21 that perimeter road cleared along that edge, and
22 getting that started, but I don't know the exact
23 extent of what they have done there. Those are two
24 things that I'm aware of.

25 The water fees is also something that is

1 very actively being pursued to be sure that -- it
2 takes awhile to get all the pieces together for our
3 future water system.

4 So characterizing the different pieces, all
5 of the major pieces are in our motion, but there's
6 not a lot of yellow trucks out there from moving
7 dirt.

8 COMMISSIONER CHANG: I appreciate that
9 maybe we will just ask your counsel to confirm that.
10 I guess for me, my concern is there was an
11 existing -- procedurally there was an Order to Show
12 Cause, I just wanted to make sure that there's really
13 been no activity since there was a Motion to Continue
14 that pending the status report. So I just wanted to
15 make sure that there was really good will amongst
16 everybody. That nobody was doing anything to put the
17 LUC in an awkward position with respect to no
18 substantial use of the property.

19 And so am I understanding your position
20 that you're going to confirm whether 343 is
21 triggered, or you're going to do a 343?

22 THE WITNESS: At this point it would be --
23 I would say a reconfirmation of the trust. I'm not
24 saying we are going to do a 343. I would not have
25 brought that up if we had not felt certain we have

1 got a trigger.

2 Again, as I said when I came before you
3 before, we really thought we were going to be able to
4 work with the infrastructure connection, but that's
5 not the case.

6 Just a little side bar, a lot of people
7 over the years, five, six, ten years ago 343 was
8 being interpreted very literally. People with
9 waterline or a line coming in for a single line
10 resident, were triggering 343, the rules were
11 intended to pick up those things.

12 In this case, you might call this a fairly
13 minor act that triggers us to a position where we
14 have got to evaluate all the new uses that are
15 contemplated in the Petition Area. So it's a toe
16 over the line, so to speak, but it is one we can't
17 segment out, so it does force us to document it and
18 go through the process.

19 COMMISSIONER CHANG: But I did notice the
20 Office of Hawaiian Affairs also submitted some
21 comments and also suggested the same thing, and in an
22 abundance of caution, it may be better just to do the
23 343, because if you do the 343, all of these studies
24 and updates that you've done will be much more
25 elaborated in the EIS.

1 THE WITNESS: Correct. We feel they're
2 strong enough to go forward, but we will also check
3 back with each of those consultants to make sure we
4 need that. Good point.

5 COMMISSIONER CHANG: Thank you very much.
6 You've answered my question.

7 THE WITNESS: Aloha.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Chang.

10 Commissioner Ohigashi.

11 COMMISSIONER OHIGASHI: I tried to answer
12 my own question that I asked Mr. Oda, and I'm looking
13 at Exhibit 4 attached to your Motion to Amend, and
14 that would be the original -- I guess, the original
15 approval in 2003.

16 Then I looked at Exhibit 5 and that would
17 be the 2006 request.

18 THE WITNESS: If you want me to, I can
19 screen share them if you would like me to pull them
20 up.

21 COMMISSIONER OHIGASHI: No, no need. I
22 just wanted to clear the record, and Exhibit No. 2
23 attached to your motion is the proposal that you have
24 now, is that right?

25 THE WITNESS: That's correct.

1 COMMISSIONER OHIGASHI: I just wanted to
2 make sure that I understood.

3 THE WITNESS: Yeah, I apologize, it could
4 be confusing.

5 COMMISSIONER OHIGASHI: Comment and sort of
6 question. Maybe you can answer it, answer it
7 eventually. I'm not getting -- looking at the
8 original approval in 2003 as being -- for that area,
9 as being sort of like a residential attached to some
10 kind of looks like commercial kind of venture in
11 2003.

12 Then it has like a water park, seems to be
13 a water park.

14 Then in 2006, my conception is that turned
15 into more of a campus-oriented plan, and that
16 included stuff like stadium, football stadium, which
17 football could mean soccer, I guess, football
18 stadium. Looks like softball activities, and it
19 looked like more of a campus in getting away from the
20 commercial activity as well as the residential focus
21 type of use.

22 And then now the Petition Area is being
23 totally encompassed by the educational use.

24 Is my perception wrong or is that --

25 THE WITNESS: Thank you for those comments.

1 When I walked through this with the
2 Commission in January, that evolution of the plan as
3 you characterize it, it was sort of a joint plan for
4 the condominium component and the attraction
5 essentially, which is kind of a revenue generator and
6 attraction ballpark, so that really didn't meet the
7 mission of the school, the University and their
8 direction going forward, so that was, again, departed
9 in the 2006 plan which we were not involved with, did
10 very much to retool the plan to add towards a campus
11 master plan and eliminate the condominium --
12 eliminate the attraction, the water park, so that was
13 a purposeful direction.

14 But as you might recall, the layout of that
15 plan was not done by our firm. And it very much did
16 not fit the lay of the land at all. The grading and
17 earthwork and visibility of structures, the cultural
18 context, both native and Kona cultural, it just
19 really didn't work.

20 So when we overhauled the master plan,
21 Francis and his team spent quite a bit of time
22 working with the new layout that was presented here
23 earlier, that very much more reflects the working
24 with the land, designing with nature here in this
25 sort of sustainable approach to the campus, much less

1 earthwork, and really just fit better.

2 So, Commissioner, I hope that addresses
3 your question.

4 COMMISSIONER OHIGASHI: Well, yeah, it sort
5 of does. But I was just trying to find out, did you
6 determine that there's a 343 trigger with a plan that
7 seems to be less intensive and requires less
8 infrastructure use, why would the 2006 plan not
9 create a trigger, if you know?

10 THE WITNESS: At that point, again, we were
11 not involved with the action at that point. I don't
12 know if they had done the level of detail that we had
13 done in terms of infrastructure, master planning, so
14 University of Nations engaged G70 civil engineer to
15 really dig into the details to be sure that we could
16 serve wastewater requirements, utilities and access,
17 and that's when this was discovered just really in
18 recent time here.

19 So I would say it's a new twist, and it
20 doesn't help the timeline, doesn't help the cost, but
21 it's where we are for future build of the Petitioner.

22 COMMISSIONER OHIGASHI: Thank you, Mr.
23 Overton. I appreciate your professionalism in this.

24 I do have a comment, Mr. Chair. I just
25 thank God that we had them withdraw their motion,

1 2006 Motion to Amend, and that we're not dealing with
2 that at this point in time.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Ohigashi. I agree.

5 Commissioners, further questions at this
6 time for Mr. Overton?

7 I have -- if I may then, I have a whole
8 line of questions about this overall project, and how
9 we get to the good end that we all want to get to.

10 One, this is almost like a planning theory
11 question for Mr. Overton.

12 In terms of the theoretical layout of this
13 343 process, if you're doing an EIS, you're supposed
14 to start, I believe, with the EISPN to ask all
15 possible interested parties for the broad scope of
16 what you're looking at.

17 So then you can direct your consultant to
18 look and investigate these things that come up during
19 the preparation of this process to guide the
20 preparation of the document.

21 And so I'm trying to reconcile that with
22 the statement that most of these studies that you've
23 already done are sufficient for incorporation into
24 the EIS. Can you walk me through that?

25 THE WITNESS: Thank you, Mr. Chair.

1 So in summary form, you address what is the
2 EIS Preparation Notice. That's assuming an EIS is
3 warranted here. That still needs to be determined.
4 It may be the best course of action, because this is
5 a significant use here, even though we believe the
6 impact's mitigated.

7 So the preparation notice is really a
8 scoping phase of the document, as you have said, and
9 so coming into it with a very say work fleshed out
10 master plan here, as well as technical studies, we
11 have the benefit of really understanding the land,
12 and having worked through the technical solutions
13 that address this property.

14 So there is a change to the law that
15 happened in 2019, which obligates, under EFIS (sic)
16 process, a public scoping meeting that happens during
17 the publication of this EIS Preparation Notice.

18 So it's a doubling of a thorough process to
19 vet the front end of a project to get all the input
20 and guidance towards aspects of the environmental
21 review that should be fleshed out.

22 As professionals, and you've seen the team
23 of experts that are working on the project with us,
24 we've had to actually ask those questions of our team
25 as we've gone through the master plan process, and

1 the environmental report that supports the Motion to
2 Amend.

3 And we'd like to feel that we have been
4 thorough. We've been out there with our agency
5 consultation as well as input from the community
6 through the process. Not to say that there won't be
7 more and greater rigor offered if we issue a prep
8 notice or do the early consultation that is needed
9 for an environmental assessment.

10 That will give an opportunity for
11 additional comments and directions as you've
12 indicated.

13 CHAIRPERSON SCHEUER: So if -- I'm going to
14 try and rephrase some of your response in my
15 understanding, and you can tell me if I understood
16 you correctly or not.

17 Whether EA over EIS process, there was a
18 commitment to undergoing the outreach whether EISPN
19 and scoping meeting, or process under development of
20 an EA, and that can, and will, as appropriate, change
21 the work that you've already done towards that. Is
22 that correct?

23 THE WITNESS: I think it will supplement
24 it. Whether it will redirect it or just inform it to
25 a greater level, that's what we hope.

1 We are always open to hearing from
2 neighbors, and the community and government, the
3 resource agencies that need to review specifics on
4 historic, et cetera.

5 CHAIRPERSON SCHEUER: Okay.

6 And I'll just note very briefly, I think I
7 have in previous hearings, I've read the assessment
8 from Mr. Nance. I'll just state that his assertion
9 that there can be no impacts from a water development
10 from the so-called mid-level source are simply an
11 assertion of his opinion.

12 But actually are contradictory to some
13 peer-reviewed scientific research in the area. So
14 one would hope that during the EA or EIS process that
15 there would be greater analysis done than just the
16 individual opinion of one person, no matter how
17 professional they are.

18 THE WITNESS: Yes, we will have a report
19 from him. One of the points that there is a new
20 water source developed is that the share always
21 relates to really going to benefit the County as well
22 in terms of providing a third of that source to the
23 public in this area as well. But we will need to
24 meet the rigor of all the analysis, as you point out.

25 CHAIRPERSON SCHEUER: Anything else,

1 Commissioners, at this time?

2 Ms. Garson, what did you have remaining?
3 We are at 11:24. We are going have to take a lunch
4 at some point.

5 MS. GARSON: So as far as the status
6 report, it was sort of a wrap-up that we were going
7 to be coming back to you with a motion accepting for
8 your approving agency within the next few months, and
9 with that, that was basically what we had for you for
10 a status report and then to respond to any questions
11 that you had.

12 CHAIRPERSON SCHEUER: Let's do, if the
13 Commissioners are up for it, let's do comments from
14 the County, comments from OP, and any questions of
15 any of the parties from the Commission, starting the
16 County.

17 MS. MELLON-LACEY: This is Diana
18 Mellon-Lacey for the County of Hawaii. We have no
19 questions or comments at this time. Thank you.

20 CHAIRPERSON SCHEUER: OP comments on the
21 status report?

22 MS. APUNA: Thank you. OP doesn't have any
23 comments on the status report.

24 CHAIRPERSON SCHEUER: Commissioners,
25 questions? Commissioner Okuda.

1 COMMISSIONER OKUDA: Thank you, Mr. Chair.

2 I have a question first to the County, then
3 same question to the Office of Planning.

4 The question, if the County can give us
5 their thoughts. What is the County's position on
6 whether we should keep active the Order to Show Cause
7 proceeding that we have right now; or whether given
8 the testimony that's been given, whether or not the
9 continued Order to Show Cause proceeding is
10 necessary? Does the County have a position on that
11 question?

12 MS. MELLON-LACEY: This is Diana
13 Mellon-Lacey. Speaking for the County, we do not see
14 a reason to go forward with the Order to Show Cause.
15 I believe we stated that in our Position Statement as
16 well.

17 COMMISSIONER OKUDA: And, Mr. Chair, if I
18 can ask the Office of Planning?

19 CHAIRPERSON SCHEUER: Go ahead, please.

20 COMMISSIONER OKUDA: If Ms. Apuna or
21 someone from Office of Planning can also give their
22 thoughts on that.

23 Do we need this Order to Show Cause
24 proceeding to continue on or not?

25 MS. APUNA: No. We believe that the OSC

1 should be dismissed. But I was going to speak to
2 that in the next agenda item as far as the motion to
3 have it -- but, yes -- I mean, no, OP believe that
4 the OSC should be (indecipherable) --

5 COMMISSIONER OKUDA: I apologize to
6 everyone if I jumped the gun on that.

7 Thank you, Mr. Chair, no further questions.

8 CHAIRPERSON SCHEUER: That's okay.
9 Obviously this is just a status report. These are
10 the questions looming for us.

11 Commissioner Chang followed by Commissioner
12 Cabral.

13 COMMISSIONER CHANG: Thank you, Mr. Chair.

14 Ms. Garson, can you confirm that there has
15 been no substantial use of the property since our
16 last hearing?

17 MS. GARSON: There has -- yes, there has
18 been no ground disturbing activity on the property.
19 That was actually one of the stipulations as we move
20 forward that there not be.

21 COMMISSIONER CHANG: Thank you. I just
22 wanted to confirm that.

23 I don't want to prematurely address the
24 next agenda item.

25 In your summary, you did not talk about the

1 Order to Show Cause or Motion to Amend. You just
2 talked about the Status Report, and the next time you
3 would come back to the Commission would be to be the
4 accepting authority for the EIS.

5 So you acknowledge there is a Motion, Order
6 to Show Cause and a Motion to Amend that needs to be
7 addressed.

8 Maybe I misunderstood your summary of the
9 next step.

10 MS. GARSON: And the way I understand your
11 process too is that Motion to Amend is filed, and
12 we've also filed a Motion for you to be the accepting
13 authority or approving agency, and that while that is
14 going on, you hold the motion in abeyance. That is
15 my understanding of the process that was going to be
16 taking place.

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

19 CHAIRPERSON SCHEUER: Commissioner Cabral.

20 VICE CHAIR CABRAL: Thank you.

21 Kathy, this is probably directed to you.
22 I'm not as learned as my fellow Commissioners, but
23 I'm looking at my notes from January and that -- and
24 I appreciate both Mr. Overton and Mr. Oda and their
25 information and the drawings, because it looks so

1 wonderful and sounds so great, but, you know me, I
2 like my money.

3 I'm concerned because I don't yet see it,
4 and maybe it's premature that you're going to be able
5 to show where the funding is going to be coming from.
6 Somewhere in my notes I show Phase I is going to be
7 \$14 million dollar cost, and that would be certainly
8 something that needs to be a piece of the puzzle at
9 some point to moving forward. I'm concerned about
10 that.

11 And clearly affordable housing, housing is
12 my thing. So I think that those are both issues that
13 somewhere down the road we need to make sure we
14 address, because those are questions that are always
15 looming in my brain.

16 I don't know if you have any answers now
17 but we will need them if we keep moving.

18 MS. GARSON: On, the affordable housing
19 issue, we have a whole -- we can present to you the
20 financial plan. I mean it is as it was in January
21 with a combination of bank loan, fund raising,
22 donation and the volunteer labor. So that has stayed
23 the same.

24 With respect to affordable housing, one of
25 the attachments to Motion to Amend, was we met with

1 housing department, Office of Housing Community
2 Development, and OHCD confirmed that for the
3 University campus and dorms, they're not considered
4 residential use, so that they don't trigger an
5 affordable housing requirement.

6 So to that degree, and philosophically I'm
7 sure it's because dorms are housing students, and
8 that is affordable housing even though it's not
9 really considered a residential use.

10 So the other issue, I think that Mr.
11 Ohigashi was bringing up was how this seems like a
12 different -- completely different plan. But one
13 thing I'll say is that the old -- that 2003 plan did
14 contemplate students and staff living in some of the
15 housing, so there is that similarity, in addition to
16 educational component being the same for both --
17 there was a five-acre portion that was meant to be an
18 educational facility there.

19 So the financial -- again, we have people
20 on standby, they can do their presentation. I think
21 you have heard it previously, affordable housing we
22 do have confirmation that the revised plan would not
23 trigger as long as there's not a need for zoning
24 requirements.

25 Just before I forget. We have somebody

1 also on standby to talk to you about a project that
2 the University of Nations has done called Kamaaina
3 Hale. And what they have done is they have taken
4 affordable housing facility and renovated, completely
5 renovated it. They manage it. There were 68 units,
6 I believe, that were totally uninhabitable and people
7 came in and renovated it, and now it's at 98 percent
8 occupancy.

9 Again, we have someone here who can
10 probably more articulately and completely explain
11 that to you. But even though -- so they've done
12 those. They have provided affordable housing for the
13 community in the interim. And that's to answer Mr.
14 Ohigashi's question why all this time there has been
15 that affordable housing.

16 VICE CHAIR CABRAL: Thank you very much for
17 addressing those concerns. Thank you.

18 CHAIRPERSON SCHEUER: Commissioner Cabral,
19 are you done?

20 VICE CHAIR CABRAL: I'm done. Thank you
21 very much, Chair.

22 CHAIRPERSON SCHEUER: Other Commissioners?
23 Commissioner Wong.

24 COMMISSIONER WONG: Chair, thank you.

25 I guess the question will be for OP. I

1 need just a hypothetical.

2 In terms of, we got through the status
3 report. We got information that they're planning to
4 change their, I guess, what they're going to do or
5 build on that site from the first iteration to now.

6 What is your feelings on, you know,
7 amendment, amendment, amendment in terms of just
8 starting from scratch?

9 MS. APUNA: I think that -- there might
10 have been some missteps in the beginning as far as I
11 think they asked for reversion, but they had some
12 guidance since then, and they have gotten their ducks
13 in a row, and they have a new plan.

14 As far as amendment after amendment, this
15 has happened before just recently, whether it's
16 Pulelehua or Ka'ono'ulu, you know, maybe they hadn't
17 done the right thing in the beginning, but I think
18 they have gotten their stuff together, and they have
19 this Motion to Amend that's pending that what we have
20 looked at, and we do believe that there is good cause
21 to not revert and to allow them to present their
22 Motion to Amend and work towards a successful
23 project.

24 COMMISSIONER WONG: So I want to ask you
25 the same question that the Chair just asked about the

1 public notice issue for the EIS.

2 What would your opinion of that be?

3 MS. APUNA: I mean, I think that the
4 Petitioner -- their witness kind of explained -- I
5 think they have a lot of the information that would
6 go into the review document, and they would
7 supplement and do everything to make it, you know,
8 enough for environmental review.

9 As far as the notice, I think we are in a
10 different stage of the project. We're not at the
11 very beginning, but I don't think that there's any
12 kind of violation or notice, you know. I don't think
13 they're doing things in the wrong order, necessarily.

14 COMMISSIONER WONG: That is all for me.
15 Thank you, Chair. Thank you OP.

16 CHAIRPERSON SCHEUER: Thank you.
17 Commissioner Ohigashi.

18 COMMISSIONER OHIGASHI: I just wanted to
19 clarify. I don't think I mentioned anything about
20 housing. I think it was Arnold, you made the mistake
21 of mixing me up with Arnold, but I don't think it's
22 right. I think it was Arnold.

23 MS. GARSON: I'm sorry.

24 COMMISSIONER WONG: No problem. It was me,
25 Chair. And I am better looking than Commissioner

1 Ohigashi, but thank you.

2 CHAIRPERSON SCHEUER: I'm willing to
3 entertain a motion on that matter. We can put this
4 to a vote, which one of you is better looking.

5 Anything further at this time,
6 Commissioners?

7 Ms. Garson, I appreciate the update. I
8 certainly appreciate a much better explanation of the
9 design considerations of this new master plan, which
10 really reflect its presence in Hawaii and its
11 particular presence in this area of North Kona.

12 I certainly have appreciated over the
13 course of these proceedings knowing more about
14 University of the Nations, its mission. How it
15 operates. It's certainly increased my knowledge of
16 and respect for the Applicant.

17 But I have to say, and maybe I'm making
18 some comments you can either respond to them now, or
19 when we go onto the next agenda item after lunch, but
20 I guess I disagree in my mind at this point with OP's
21 contention that the withdrawal of the Motion to
22 Remand was a misstep.

23 I never understood why that was not pursued
24 and I thought the only possible reason that might
25 have been given by a consultant to your client that

1 it shouldn't rescind and apply for a new thing, is
2 that you would have to go through 343.

3 But now there is this admission that 343 is
4 triggered anyway. This is a brand new project,
5 totally different in so many respects than the
6 original docket proposed and approved by the Land Use
7 Commission, and that's not to say that what's
8 proposed isn't worthy, that we don't want to see
9 things going forward, or saying that this land isn't
10 better suited in the Urban District.

11 But we have these processes by which we go
12 through to ensure that public interest is protected.
13 And I continue to be confused by what the course of
14 action that is being pursued, and I'm sort of
15 reminded that some of the early pandemic watching
16 Season 2 of West Valley, these Canadians guys who
17 take hold of the hotrod, they can fix them up again.
18 And every once in a while there's somebody that comes
19 in, I was going to fix up this car with my daughter,
20 but she died. Can you fix it up now. They bring it
21 in, and they look at the car, say, you know what, the
22 frame is trashed. No way I can take this car all the
23 way through without costing you so much money, but
24 you know what, let's start with a new frame and I'll
25 restore your car. The guy said, okay, let's go with

1 it.

2 But instead we seem to be clinging to this
3 old rusted out frame of a former approval that has
4 almost nothing to do with what we want to drive home.

5 So you can respond to that now or respond
6 in later proceedings, but that's what I'm struggling
7 with. How do we all move together successfully and
8 in a straight forward way that complies with the law.

9 So way is -- I don't hear anybody saying
10 it's not a good end that you're trying to get.

11 MS. GARSON: And, again, so the 2003 plan
12 had expansion of the University component on it.
13 That was a five-acre portion of the Petition Area
14 that was going to be an educational facility. The
15 focus whether it be for commercial purposes or
16 otherwise, it was always for educational purposes.

17 I can go through the Findings of Facts and
18 also, again, say that a portion of the condominiums
19 that were supposed to be built were meant for staff
20 and students similar to the dorms that are being
21 built now.

22 You know, I think a Motion to Amend is
23 appropriate like this, and you have done things like
24 this in the past in other documents, I think Emmanuel
25 Lutheran, there was campus type thing that was

1 basically took up the whole Petition Area, and then
2 was reduced to half of that, and the rest of it was
3 affordable housing. So it's almost the opposite of
4 what we're asking you to do now.

5 There is precedence. This is a Motion to
6 Amend type of action that I think the Commission has
7 approved before. And we're also talking about
8 basically you're not flipping it to somebody else who
9 is trying to do a different project. Same ownership.
10 I would say (undecipherable) and that is what a
11 motion to amend is for.

12 CHAIRPERSON SCHEUER: Would a Motion to
13 Amend allow for the phasing of the project under 205?

14 MS. GARSON: Would it involve --

15 CHAIRPERSON SCHEUER: Allow for every -- I
16 might not be using the exact right phrase, but we
17 have projects which have much longer than a decade
18 time horizon. We have a process by which we allow
19 phasing. Can a Motion to Amend accomplish that same
20 end?

21 MS. GARSON: So whether incremental
22 redistricting is something that comes up when you're
23 dealing with district boundary amendment, not
24 necessarily a motion to amend. So that's incremental
25 redistrict. As far as phasing is concerned, there's

1 nothing preventing you from allowing the Petitioner
2 to phase their project. And one the things we are
3 trying to show you that Mr. Overton (indecipherable)
4 was that Phase I infrastructure improvements are
5 really substantial commencement of the property.

6 So within the first ten years the
7 infrastructure will be built to satisfy that
8 requirement. And I think, again, that's something
9 that you have been doing with other projects where
10 the infrastructure is within the ten years, then you
11 have approved those types of projects.

12 CHAIRPERSON SCHEUER: Commissioner Cabral.

13 VICE CHAIR CABRAL: Thank you. I'm trying
14 to come up with a motion, and I'm not a lawyer, you
15 know, but --

16 CHAIRPERSON SCHEUER: Commissioner Cabral,
17 this is just a status report right now.

18 VICE CHAIR CABRAL: Right, but -- okay.
19 Then I don't need to make a motion yet. Okay, then
20 let's move on. Thank you.

21 CHAIRPERSON SCHEUER: Is there anything
22 further at this time that you want to say, Ms.
23 Garson?

24 MS. GARSON: No. You know, the
25 Petitioner -- I think you have seen from the time

1 coming before you until now just a tremendous amount
2 of work that has been done to move forward, and there
3 is momentum. And they are committed, and also
4 committed to doing the right thing in this process
5 for the community and, you know, we wanted to be
6 up-front by even pointing out to you what we saw in
7 the conceptual infrastructure master plan, and we
8 want to continue to move forward.

9 It's a viable project. I think we've shown
10 that to you in the Motion to Amend now. I don't
11 think that there would be any skipping of steps in
12 the process, as Mr. Overton said, we can update any
13 studies to incorporate any of the comments or any
14 kind of scoping or any public comments.

15 I feel like we're -- the University is
16 basically ahead of square one. There's no reason to
17 go back to square one at all.

18 This property is in the general plan, Kona
19 Community Development Plan as Urban, it is in the
20 Urban area. This Urban is the proper district
21 classification. And so it doesn't really make sense
22 to revert it and start all over again when we really
23 have come this far.

24 The Petitioner has demonstrated to you how
25 committed they are to the project. They've shown you

1 what a good project it is, and we just want to be
2 allowed to move forward.

3 CHAIRPERSON SCHEUER: Thank you.

4 Since I think there's nothing further, I'm
5 going to check in with our Executive Officer, but I
6 think it would be a good time to take a break for
7 lunch, perhaps reconvene at 12:45, and then we would
8 take up the Order to Show Cause motion.

9 We have until 3:00 o'clock today, then we
10 loose Commissioner Giovanni, and we have one other
11 Hawaii Island matter to address as well.

12 Is this acceptable?

13 EXECUTIVE OFFICER: Yes, Mr. Chair.

14 CHAIRPERSON SCHEUER: It's 11:47. We will
15 reconvene at 12:45. Thank you very much.

16 (Noon recess taken.)

17 CHAIRPERSON SCHEUER: It's 12:48 P.M.,
18 we're out of recess.

19 The Commission will move on to the next
20 agenda item, Hearing and Action meeting on the Order
21 to Show Cause issued March 29, 2019.

22 A02-737 U of N Bencorp OSC:

23 A02-737 University of Nations Bencorp
24 (Hawaii). We are here to hear evidence, deliberate
25 and take action on the Order to Show Cause.

1 Let me briefly run over our procedure for
2 today.

3 First, it will be similar to our previous
4 items. First, I'll recognize anybody from the public
5 who wishes to provide testimony on this matter.

6 Then the Chair will allow for Petitioner's
7 presentation on this matter.

8 We will allow comments from County of
9 Hawaii and OP on the respective presentations.

10 Then after the presentations, the
11 Commission will deliberate.

12 The record for this docket was updated
13 earlier today. Will the parties please identify
14 themselves for the record?

15 MS. GARSON: Good morning, Katherine Garson
16 and Derek Simon for Petitioner University of Nations.
17 Also present Julie Anjo and Allen Anjo general
18 counsel for University.

19 CHAIRPERSON SCHEUER: Good afternoon.

20 MS. MELLON-LACEY: Good afternoon. This is
21 Diana Mellon-Lacey, Corporation Counsel for County
22 Hawaii. Also present is Deputy Corporation Counsel
23 John Mukai, and from the Planning Department Jeff
24 Darrow and April Suprenant is present. Michael Yee
25 may be joining us later.

1 MS. APUNA: Deputy Attorney General Dawn
2 Apuna on behalf of State Office of Planning, and with
3 me is Rodney Funakoshi and Lorene Maki.

4 CHAIRPERSON SCHEUER: Ms. Garson, you can
5 proceed with your presentation.

6 MS. GARSON: You want us to call our first
7 witness?

8 CHAIRPERSON SCHEUER: You may. Sorry, I
9 went out of order of what I said was going to do. I
10 apologize.

11 Anybody who's in the audience as an
12 attendee who wishes to provide public testimony in
13 this matter prior to Ms. Garson's case? If so, raise
14 your hand, using the raise-hand function.

15 I'm not seeing anybody, Mr. Garson, we can
16 now call -- oh, Mr. Roger Hamilton will be admitted.
17 If you will enable your audio and video. Can we hear
18 you?

19 THE WITNESS: Are you able to hear me right
20 now?

21 CHAIRPERSON SCHEUER: That's better, yes.

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

24 THE WITNESS: I do.

25 CHAIRPERSON SCHEUER: Please proceed. You

1 have two minutes.

2 ROGER HAMILTON

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

6 DIRECT EXAMINATION

7 THE WITNESS: Aloha, my name is Roger
8 Hamilton. I work for the Department of Education. I
9 oversee the English Language Learner Program at the
10 19 schools in West Hawaii.

11 This program serves students who speak
12 English as a second language. I've worked with the
13 University of the Nations as a community partner for
14 the past six years.

15 A few projects we have collaborated on
16 during this time include the tutoring from the YWAM
17 volunteers, Mr. Murakami spoke about that earlier.
18 But they are in numerous (indecipherable) throughout
19 West Hawaii, and they are a valuable asset as we do
20 not have extra funding to provide the tutors to these
21 kids.

22 We have also partnered -- recently our
23 demographics have changed. We've had an influx of
24 students from China and Vietnam, so we were not set
25 up for translation service in the Cantonese, Mandarin

1 and Vietnamese, and they have helped us with the
2 communication for the teachers, the parents and
3 administration, so it's been a very valuable
4 partnership.

5 And then the other big item that we have
6 partnered on is the University of Nations, our West
7 Hawaii multi-cultural speech festival on their
8 campus. That's an event a lot of our students look
9 forward to all year long. It's been held at
10 University of Nations since 2015 and keeps growing
11 bigger and bigger each year. Last year we had over
12 140 students from ten different schools
13 participating.

14 Prior to that, we were in a windowless band
15 room in Kealakehe High campus, so quite the upgrade
16 for our students.

17 As soon as our students set foot on the
18 University of the Nations campus, they immediately
19 felt welcomed and valued. Banners are displayed
20 welcoming the students in different languages. These
21 festivals are opened by a representative of
22 University of Nations.

23 CHAIRPERSON SCHEUER: Two minutes. If you
24 could summarize, please.

25 THE WITNESS: Moving forward, we hope to

1 partner with the University of the Nations in
2 creating an outreach program to service our at-risk
3 students providing at the eight separate low income
4 housing communities throughout Kona.

5 The University of the Nations is a valuable
6 asset to our keiki and our community. Without
7 reservation, I fully support the University of
8 Nations (indecipherable.)

9 CHAIRPERSON SCHEUER: Are there questions
10 for the witness starting with the Petitioner, Ms.
11 Garson?

12 MS. GARSON: No questions, thank you.

13 CHAIRPERSON SCHEUER: County?

14 MS. MELLON-LACEY: Diana Mellon-Lacey
15 speaking for the County. Thank you, Mr. Hamilton,
16 for your testimony. We have no questions.

17 CHAIRPERSON SCHEUER: Thank you. OP?

18 MS. APUNA: No questions.

19 CHAIRPERSON SCHEUER: Commissioners, any
20 questions? Thank you very much, Mr. Hamilton, for
21 your testimony today. We appreciate it.

22 Anybody else in the audience wishing to
23 testify on this matter? Otherwise we will proceed
24 with Ms. Garson's presentation. Seeing none.

25 Ms. Garson, you have a witness to call?

1 MS. GARSON: We're going to call Leina'ala
2 Fruean.

3 CHAIRPERSON SCHEUER: I see her. I will
4 promote her to be a panelist. I'm going to step away
5 from my camera for one moment.

6 Do you swear or affirm the testimony you're
7 about to give is the truth?

8 THE WITNESS: I do.

9 CHAIRPERSON SCHEUER: Thank you. Please
10 proceed, Ms. Garson.

11 LEINA'ALA FRUEAN

12 Was called as a witness by and on behalf of the
13 Petitioner, was sworn to tell the truth, was examined
14 and testified as follows:

15 DIRECT EXAMINATION

16 THE WITNESS: My name is Leina'ala Fruean.
17 I reside here in Kailua-Kona, Hawaii. Address is
18 73-4541 Kukui Street.

19 BY MS. GARSON:

20 Q Can you explain your connection to the
21 University of Nations Kona?

22 A My connection actually started in '86 as a
23 young girl, and I believe I was about eight years old
24 with my affiliations and did many of the different
25 youth training courses. As a young child went into

1 youth, did many of their mentorship programs, as well
2 as serve the community in that capacity. And moved
3 along and did many of their courses. And today I
4 would say I have a masters degree in intercultural
5 studies through University of Nations.

6 Q Do you have responsibilities with the
7 University of Nations campus? I understand that you
8 are the Director of Haleo Hawaiian language program?

9 A So my responsibilities first and foremost
10 is Hawaiian cultural as well as advising and
11 monitoring. And we have a program called the Haleo
12 Hawaiian language class that was developed in 2009,
13 and started this first course for the community. And
14 that course started actually from the desire of a
15 kupuna that presented the program to University of
16 the Nations and her name is Kupuna Mary Boyd
17 Kamahele. And she was one that proposed to
18 University of Nations how University of Nations could
19 allow Hawaiian language to be taught, but allow
20 Hawaiian natives to learn their language for free,
21 and how this program would assist with many natives
22 who desire to learn the language.

23 And some of them might not want to go to
24 university or school, but these are a course that
25 they could use the language for free. And since 2011

1 we have been successfully running courses at
2 University of Nations. And many Hawaiians that have
3 come to the program and learned Hawaiian language,
4 and out of that, several of the teachers are in the
5 program that actually graduated, speak fluent now,
6 and also emergent language speakers.

7 So one of the schools (indecipherable) said
8 their teachers who haven't spoken and are working on
9 their teaching degree, they sent them over to us at
10 University of Nation to learn through that program,
11 because what they found was many of the students and
12 people from the community that came was actually
13 speaking faster, and it was successful to integrate
14 this through their campus.

15 Q At some point did the University of Nations
16 reach out to the University of Hawaii to talk about
17 perpetuating the Hawaiian language by providing these
18 distinct learning opportunities?

19 A I believe in 2002, May, I was one of them
20 that actually went to University of Hilo in
21 Ke'elikolani College and was learning Hawaiian at
22 that time. And I reached out to Dr. Kalena Silva and
23 asked how we could have Hawaiian language be taught
24 at the University of the Nations and allow for
25 University of Hawaii Hilo to provide distant learning

1 for those that were interested in the community. And
2 what I found is many of the people in our community,
3 the youngest was 14, and the oldest that would
4 actually take the course that was provided would have
5 been about 79 years old.

6 So at that time the university advised me
7 to go ahead and find people in the community that had
8 the AA degree, and when they get the AA degree, to
9 come back and see what kind of programs they could
10 offer in helping with distant learning --

11 Q So was.

12 CHAIRPERSON SCHEUER: If I may, at this
13 time if -- I thought that we were not doing evidence
14 today, but really presenting argument.

15 MS. GARSON: Sorry, that's why I asked
16 should I call my first witness, and you said, yes,
17 call your first witness. And so I'm calling my first
18 witness. I misunderstood.

19 CHAIRPERSON SCHEUER: So what is the
20 relevance of this witness towards the OSC proceedings
21 in front of us?

22 MS. GARSON: Actually, it is about the
23 establishment of the Waiaha, the Waiaha Community
24 Advisory Committee, which was the Ka Ohana Advisory
25 Committee. It's about reaching out to the university

1 regarding the College of Hawaiian Language. It goes
2 to the conditions in the 2003 amendment, 2003 D&O.

3 CHAIRPERSON SCHEUER: So, please -- when
4 you say you have witnesses, you have multiple
5 witnesses you were hoping to call today?

6 MS. GARSON: Yes. If we are in the OSC
7 proceedings, then, yes, we do.

8 CHAIRPERSON SCHEUER: We are in the OSC
9 proceeding. Please give me an outline of what you're
10 planning to do, because if the intention is to call
11 witnesses and present evidence, I'm not sure that we
12 have the time scheduled today for what was
13 anticipated to be primarily argument.

14 MS. GARSON: Okay. I apologize to Ms.
15 Fruean for calling her then, because -- I'm sorry, I
16 misunderstood, Chair. I thought you called the OSC
17 and we were proceeding with the OSC.

18 CHAIRPERSON SCHEUER: We are indeed on the
19 Order to Show Cause.

20 MS. GARSON: Okay. And so we're presenting
21 evidence on the Order to Show Cause, or you just want
22 an opening statement?

23 CHAIRPERSON SCHEUER: What is the outline
24 of what you were hoping to present today under your
25 understanding?

1 MS. GARSON: We have Paul Childers
2 available. He's the COO. He's going to explain the
3 history of the United Nations, what they --
4 University of Nations. He's going to explain what
5 has happened between 2003 and today.

6 We have our financial officer Martin
7 Rediger available to testify as to the financials up
8 to this point.

9 We have -- who else? We have Peter Harris
10 who can talk about the affordable housing project,
11 which is the Kamaaina Hale.

12 We have Jeff Overton again to talk about
13 what is in the Motion to Amend, and all the work that
14 has been done with the Motion to Amend to further
15 establish good cause not to be reverted.

16 Paul Rechtman to talk about the
17 archaeological work that has been done on the
18 property.

19 Or we would entertain --

20 CHAIRPERSON SCHEUER: One moment. Mr.
21 Okuda, Commissioner Okuda.

22 COMMISSIONER OKUDA: Thank you, Mr. Chair.

23 If it's appropriate, I would like to make a
24 Motion to Bifurcate these Proceedings. In other
25 words, to deal first with the question whether or not

1 the Order to Show Cause proceeding should continue
2 forward or not.

3 And if, No. 2, a decision is made to move
4 forward with the Order to Show Cause proceeding,
5 whether it would be then appropriate to schedule a
6 time when there could be, you know, more fuller
7 record presented. But that would be my either motion
8 or suggestion. I leave up to you.

9 CHAIRPERSON SCHEUER: Thank you,
10 Commissioner Okuda.

11 Commissioner Wong.

12 COMMISSIONER WONG: Chair. Before we
13 entertain Commissioner Okuda's motion, I would like
14 to move to executive session to talk to our legal
15 counsel about the rights, responsibilities and issues
16 of, you know, legal issues regarding this docket.

17 CHAIRPERSON SCHEUER: There is a motion in
18 front of us to go into executive session. Is there a
19 second?

20 VICE CHAIR ACZON: I will second.

21 CHAIRPERSON SCHEUER: Commission Aczon -- a
22 motion has been made by Commissioner Wong and
23 seconded by Commissioner Aczon to move into executive
24 session to consult with our attorney regarding this
25 matter.

1 COMMISSIONER WONG: Chair, when we move
2 into executive session, can we ask staff to work out
3 the details of how, you know, we go into executive
4 session ZOOM room, or whatever we have to do. I
5 mean, do we do it like last time?

6 CHAIRPERSON SCHEUER: So if the motion
7 before us succeeds, I would ask Mr. Orodenker to send
8 a ZOOM meeting invitation to a separate ZOOM room.
9 All the Commissioners would exit this room, and then
10 follow the instructions to enter into a new ZOOM room
11 with our Deputy Attorney General Ms. Julie China.

12 This meeting would continue in recess until
13 we are done with executive session.

14 EXECUTIVE OFFICER: Thank you, Mr. Chair.
15 I just sent out an email link for that ZOOM.

16 CHAIRPERSON SCHEUER: Is there discussion
17 on the motion, Commissioners? If not, Mr. Orodenker,
18 will you do a vote for those who have not
19 participated since we moved into ZOOM, so it's clear
20 what our votes are? Do a roll call vote on this, Mr.
21 Orodenker.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.
23 Commissioner Wong?

24 COMMISSIONER WONG: Aye.

25 EXECUTIVE OFFICER: Commissioner Giovanni?

1 COMMISSIONER GIOVANNI: Aye.

2 EXECUTIVE OFFICER: Commissioner Aczon?

3 VICE CHAIR ACZON: Yes.

4 EXECUTIVE OFFICER: Commissioner Chang?

5 COMMISSIONER CHANG: Yes.

6 EXECUTIVE OFFICER: Commissioner Ohigashi?

7 COMMISSIONER OHIGASHI: Yes.

8 EXECUTIVE OFFICER: Commissioner Okuda?

9 COMMISSIONER OKUDA: Yes.

10 EXECUTIVE OFFICER: Commissioner Cabral?

11 VICE CHAIR CABRAL: Yes.

12 EXECUTIVE OFFICER: Chair Scheuer?

13 CHAIRPERSON SCHEUER: Aye.

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

16 CHAIRPERSON SCHEUER: As I described
17 earlier, Commissioners will be leaving this room,
18 going into a different room for executive session.
19 This room will remain open and we will return to this
20 room.

21 (Executive session.)

22 CHAIRPERSON SCHEUER: It is 1:47 P.M. We
23 are out of executive session.

24 Ms. Fruean, I know you are on the stand as
25 a witness right now, but I'm going to actually ask

1 you to step down and move you into the audience
2 temporarily.

3 I'm going to first assess where we are in
4 our proceeding.

5 Just for everybody's benefit, including the
6 benefit of people who are listening in as attendees,
7 based on the Commission's action on October 7 of
8 2019, the LUC issued Findings of Fact, Conclusions of
9 Law and Decision and Order in this matter extending
10 the Order to Show Cause proceedings. The Petitioner
11 agreeing to not conduct any development activities
12 that essentially might be construed as substantial
13 commencement, agreeing that substantial commencement
14 has not occurred.

15 They agreed to come before us within six
16 months of that proceeding with a status report which
17 they have done. And at that status conference, we
18 asked for additional information which we have
19 received today, substantial new information.

20 Because of the history, that is why we
21 first heard the status conference, the OSC process
22 will continue until this moment which brings us to
23 where we are, if we were to continue, if we were to
24 choose to continue as LUC with this OSC hearing, we
25 would actually schedule this for evidentiary

1 procedures. We have been briefed by the County, OP
2 and the Petitioner on this matter.

3 So I just wanted to overview and assess
4 where we are in our proceedings today.

5 Commissioner Okuda.

6 COMMISSIONER OKUDA: Thank you, Mr. Chair.

7 Based on the Chair's summary, which I agree
8 on what the situation is, I withdraw the prior motion
9 I made or suggestion to bifurcate. I don't believe
10 it was seconded.

11 So I withdraw that, and instead I make a
12 motion to dismiss the pending Order to Show Cause
13 without prejudice.

14 CHAIRPERSON SCHEUER: Commissioner Cabral,
15 are you seconding?

16 VICE CHAIR CABRAL: Yes. I would like to
17 second Commissioner Okuda's motion so elegantly put.
18 Thank you.

19 CHAIRPERSON SCHEUER: There's a Motion to
20 Dismiss the OSC proceedings without prejudice. It's
21 been made by Commissioner Okuda and seconded by
22 Commissioner Cabral.

23 We are in discussion. Do you wish to speak
24 to your motion, Mr. Okuda?

25 COMMISSIONER OKUDA: Mr. Chair, thank you.

1 I would like to say that we take orders to
2 show cause very seriously. We take very seriously
3 the conditions that are set forth in Land Use
4 Commission orders, decisions and orders, that deal
5 with boundary amendments.

6 We take very seriously the admonition of
7 the Hawaii Supreme Court in a number of cases, which
8 I believe in Bridge Aina Lea which makes clear that
9 one of the functions of the Land Use Commission is to
10 prevent people from simply getting boundary
11 amendments, for example, Agriculture to Urban and
12 then not carrying out their responsibilities, but
13 instead speculating on the value of land which
14 frankly does not help our community.

15 We take those admonitions, those duties
16 very seriously.

17 We also take very seriously testimony that
18 is given, especially when the testimony comes across
19 from people who have commitments to the community,
20 who come across as credible, and who have the
21 background to give that testimony.

22 And I believe that we heard from Mr. Oda,
23 from educators in the community, grounds to indicate
24 that, given the present situation, at this point in
25 time, an order to show cause may not be in the best

1 interest of land use or the community. And for those
2 reasons, and other good reasons in the record, I have
3 made this motion.

4 Thank you, Mr. Chair.

5 CHAIRPERSON SCHEUER: Thank you, Mr. Okuda.
6 We are in discussion.

7 Commissioner Cabral?

8 VICE CHAIR CABRAL: I would speak to my
9 second of that motion and agree with my fellow
10 Commissioner Okuda; and further I would like to thank
11 the Petitioner, the University of Nations as well as
12 attorney Garson and the various experts and community
13 people for coming forward, because it's clear as our
14 Chair Scheuer just reiterated that we met with them
15 earlier in this year, and we gave them clear
16 instruction as to what we needed, and they've come
17 forward. So I totally appreciate their willingness
18 to participate in our duties.

19 So I second this motion, and I'll be voting
20 in favor. Thank you.

21 CHAIRPERSON SCHEUER: Commissioners --
22 Commissioner Wong.

23 COMMISSIONER WONG: Chair, I'll be speaking
24 in favor of this motion. I just do have some
25 concerns of the status report, and hopefully the

1 staff can meet with the Petitioner on some of the
2 issues that came up during the status report. And I
3 don't know if we should direct the staff, or how we
4 should do this, because I just had some concerns on
5 those things.

6 CHAIRPERSON SCHEUER: Do you want to
7 elaborate?

8 COMMISSIONER WONG: You know, there were
9 some issues regarding -- there's a possible 343 out
10 there. The EIS issue, and a possible amendment
11 issue. And, you know, how to do the process on
12 dealing with this? What comes first? How do we get
13 everything done properly so we don't have another
14 Bridge Aina Lea case?

15 CHAIRPERSON SCHEUER: Thank you.

16 Commissioners? Commissioner Chang.

17 COMMISSIONER CHANG: Thank you, Mr. Chair.

18 I, like Commissioner Wong, do have some
19 concern.

20 Quite frankly, I was very pleased with the
21 presentation today, as it gave me greater reassurance
22 that the University is committed to this new project.

23 However, there are some outstanding issues
24 before us, Motion to Amend, the 343 question, and to
25 avoid sort of a situation like today where witnesses

1 were brought, but we weren't prepared to proceed with
2 them. And then closer coordination with perhaps
3 amongst the parties themselves and then with LUC
4 staff, that that would help to facilitate any future
5 proceedings before us.

6 But I am inclined to vote in favor of this
7 motion. Thank you.

8 CHAIRPERSON SCHEUER: Commissioner
9 Giovanni.

10 COMMISSIONER GIOVANNI: Thank you, Chair.

11 So I'm the newest Commissioner on this
12 Commission and this case was very difficult for me to
13 understand with its long history. But I think the
14 Commission's notice to show cause has served a great
15 purpose to bring clarity and a path forward that I
16 think makes a lot more sense to me. And I'm going to
17 speak in favor of the motion, because I think it
18 served its purpose, and all parties can go forward
19 together with a lot less confusion and history.
20 Thank you.

21 CHAIRPERSON SCHEUER: Commissioner
22 Ohigashi.

23 COMMISSIONER OHIGASHI: I just wanted to
24 indicate that I believe that we are in our position
25 today because of a failure over the years of

1 following these various projects. I am very pleased,
2 and I give our staff tremendous credit that we are
3 able to now bring these issues to light.

4 I am reluctant in supporting this motion
5 because I believe that this is a totally new dba,
6 unlike Petitioner's counsel has indicated, I was
7 trying to calculate what the actual percentage of
8 use, what you call that, educational purpose was
9 originally, it was ten percent. That's what my
10 figures come out, about ten percent, maybe 15, maybe
11 17. A large portion of it was as a money maker for
12 the University so that they can rely on a dedicated
13 source of income.

14 However, given the fact of the disclosure
15 that this matter may fall within Chapter 343, and the
16 fact that that disclosure is now on record, and
17 whether or not a determination is made by the
18 Petitioners to not go forward under 343, because they
19 don't feel that it applies, it is on the record and
20 will be subject to review. The determination will be
21 subject to further review.

22 Given that fact, I think, and the scope of
23 the -- I think that a motion to amend hearing will
24 encompass almost all the issues that would be
25 necessary in issuing an additional dba.

1 Therefore, reluctantly, I will support this
2 motion.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Ohigashi.

5 Commissioners, is there anything further?
6 Commissioner Aczon.

7 VICE CHAIR ACZON: Mr. Chair, like
8 Commissioner Ohigashi, I will be reluctantly
9 supporting this motion. I have a major concern about
10 this project. There is from 2003 up to a couple
11 years ago, nothing happened, and still I still have
12 some real concerns on how this project is going to be
13 moving forward.

14 But maybe after this, in a motion the
15 Petitioner can -- the foregoing proceedings can
16 convince me that I was wrong. So just to kind of get
17 this project moving along with the proceedings, I
18 would be reluctantly supporting this motion.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Aczon.

21 Commissioners, is there anything further?

22 The Chair, I really share in what I thought
23 was a very articulate expression by Commissioner
24 Ohigashi. I'm reluctant to support this motion, but
25 probably the best path forward at this time.

1 For me it's really necessary to note we're
2 just living in unprecedented times right now, global
3 pandemic, global economic depression, and incredible
4 civil unrest. Personally for me, this is a time in
5 which I try to retreat into the law to make our
6 procedures and everything we do as clear and as by
7 the book as possible, because it's sort of the
8 bedrock that we have to turn to in uncertain times.

9 So I've heard great things about this new
10 plan. I'm really counting on the Petitioner to
11 follow through to do full disclosure, to take
12 seriously the comments I and other Commissioners have
13 made about impact, a meaningful analysis, so we can
14 fulfill our duties given to us by the people of
15 Hawaii to ensure that land use entitlements are done
16 with the thought that not only advances the goals of
17 the State, but protects the public trust resources
18 (indecipherable).

19 The comfort I have in the motion is that it
20 is without prejudice, so that should this not occur,
21 I will have no problem going forward with another OSC
22 motion, if there is not meaningful timely progress on
23 this matter.

24 Anything further, Commissioners, on this
25 motion? If not, Mr. Orodener, please poll the

1 Commission.

2 EXECUTIVE OFFICER: Thank you, Mr. Chair.
3 The motion is to dismiss the pending Order to Show
4 Cause without prejudice.

5 Commissioner Okuda?

6 COMMISSIONER OKUDA: Yes.

7 EXECUTIVE OFFICER: Commissioner Cabral?

8 VICE CHAIR CABRAL: Yes.

9 EXECUTIVE OFFICER: Commissioner Aczon?

10 VICE CHAIR ACZON: Aye.

11 EXECUTIVE OFFICER: Commissioner Ohigashi?

12 COMMISSIONER OHIGASHI: Yes.

13 EXECUTIVE OFFICER: Commissioner Chang?

14 COMMISSIONER CHANG: Yes.

15 EXECUTIVE OFFICER: Commissioner Giovanni?

16 COMMISSIONER GIOVANNI: Aye.

17 EXECUTIVE OFFICER: Commissioner Wong?

18 COMMISSIONER WONG: Aye.

19 EXECUTIVE OFFICER: Chair Scheuer?

20 CHAIRPERSON SCHEUER: Aye.

21 EXECUTIVE OFFICER: Mr. Chair, the motion
22 passes unanimously.

23 CHAIRPERSON SCHEUER: As suggested by the
24 Commissioners in deliberation, Ms. Garson, I would
25 (indecipherable).

1 MS. GARSON: Thank you very much for your
2 time today. We really appreciate it.

3 CHAIRPERSON SCHEUER: It's 2:03. We will
4 do a five minute recess to 2:08 to allow the next
5 party to come in on DR20-69 and DR20-70, Rosehill, et
6 al.

7 (Recess taken.)

8 CHAIRPERSON SCHEUER: Reconvening at 2:09,
9 and we have to finish our proceedings today at 3:00
10 o'clock. We'll see how far we get.

11 VICE CHAIR CABRAL: I have a hurricane
12 heading towards me.

13 COMMISSIONER GIOVANNI: Chair, I'm
14 confirming I have a hard stop at 3:00 o'clock.

15 CHAIRPERSON SCHEUER: Got it. Thank you
16 very much.

17 (Recess.)

18 DR20-69 DR20-70

19 CHAIRPERSON SCHEUER: It's 2:10 P.M. Our
20 next agenda item are the continued proceedings on the
21 consolidated Declaratory Orders, DR20-69 County of
22 Hawaii, and DR20-70 Rosehill et al.

23 Before we begin, I would like again take a
24 moment to explain what these proceedings are about
25 and how certain things have to be handled in order to

1 ensure we are in compliance with Subchapters 5 and 14
2 of our rules, as well as all of the relevant
3 statutory requirements with regard to public
4 meetings.

5 First, I ask everyone to keep in mind that
6 this is a request for a Declaratory Ruling. That
7 means the Commission is being asked to interpret a
8 statute, rule or document and not to make a
9 determination on a factual dispute.

10 While certain facts may be important to
11 making an interpretation of law, in this type of
12 proceeding the facts are not really in dispute. The
13 Commission is taking the basic facts as undisputed.
14 What we are here to decide is the very limited issues
15 presented by the Petitioner County of Hawai'i and the
16 Petitioners Rosehill, et al.

17 Therefore, this is not, nor can it be, a
18 contested case hearing where evidence is presented,
19 where witnesses are provided and allowed to be
20 cross-examined. I would remind everyone of that.

21 Again, the facts are not in dispute. The
22 application of law to accept facts is being heard
23 today.

24 Next, I would like to impress upon everyone
25 that under Subchapter 14 of our rules, the only true

1 parties to these proceedings are the declarants or
2 Petitioners, the County of Hawai'i and Rosehill, et
3 al.

4 Everyone else, including the Office of
5 Planning, are in effect public witnesses. After the
6 witness has completed their testimony, the County of
7 Hawai'i, Rosehill, et al, and the Commissioners will
8 be given the opportunity to ask questions.

9 Also, after all public witnesses have had a
10 chance to speak, including OP, the representatives
11 for County of Hawai'i and Rosehill, et al, will be
12 given as much time as they reasonably need to
13 complete their cases.

14 Let me just say, due to the late time and
15 the hard stop at 3:00 o'clock, I expect that we will
16 have to continue this proceeding yet again to
17 August 12th.

18 Upon completion of all testimony, the
19 Commission will ask questions and come to a decision.

20 Will the petitioning parties for Docket
21 DR20-69 and DR20-70 please identify themselves for
22 the record?

23 MR. MUKAI: Good afternoon, John Mukai,
24 Deputy Corporation Counsel on behalf of County of
25 Hawai'i. Also present is Diana Mellon-Lacey, Deputy

1 Corporation Counsel, also Planning Director Michael
2 Yee and April Suprenant, Deputy Director.

3 CHAIRPERSON SCHEUER: Thank you, Mr. Mukai.

4 MR. CHIPCHASE: Good afternoon, Chair,
5 Commissioners, Cal Chipchase, and off camera is the
6 ever present Chris Goodin for the Rosehill
7 Petitioners.

8 CHAIRPERSON SCHEUER: Let me update record
9 on this matter.

10 On June 25th, 2020, the Commission agreed
11 with the Stipulation to Consolidate signed by the
12 representatives of the Hawaii County and Rosehill, et
13 al, and began proceedings to hear the argument of the
14 Petitioners.

15 During the proceedings, additional
16 information was requested for the Petitioners by the
17 Commission.

18 Between June 26 until this morning, the
19 Commission received the County of Hawaii's
20 Supplemental Submission and Petitioner Rosehill, et
21 al's proposed Findings of Fact, Conclusions of Law,
22 and Decision and Order.

23 Written public testimony from Kurt
24 Wollenhaupt.

25 The Office of Planning's Supplemental

1 Response to County's and Petitioner Rosehill, et al's
2 Petitions for Declaratory Order.

3 Response by Petitioners in Docket No.
4 DR20-70 to the County of Hawaii's Supplemental
5 Submission filed July 10, 2020, and other filings
6 which we received again as late as this morning, and
7 have been posted to our web.

8 The Commission mailed the July 22 and 23,
9 2020 Notice of Agenda to the Parties, to the
10 Statewide, O'ahu and Hawai'i regular and email
11 mailing lists.

12 Sorry, one moment while I look at
13 something. Thank you.

14 I will now note, as I did before, that
15 there was written testimony received from Kurt
16 Wollenhaupt. And then I believe we're going to
17 proceed with presentations starting with the County.

18 Is that right, Mr. Orodenger?

19 EXECUTIVE OFFICER: That's correct.

20 CHAIRPERSON SCHEUER: Go ahead, Mr.

21 Orodenger.

22 EXECUTIVE OFFICER: That is correct, Mr.

23 Chair.

24 CHAIRPERSON SCHEUER: Mr. Mukai, are you
25 ready?

1 MR. MUKAI: Yes. Thank you, Mr. Chair.

2 The County of Hawaii has petitioned this
3 Commission for Declaratory Order that farm dwellings
4 may not be used as short-term vacation rentals.
5 Initially, the County would like to first clarify
6 something.

7 The County agrees with the State that there
8 must be agricultural use or activities within the
9 confines of a farm dwelling, should the agriculture
10 be related to the farm dwelling. And a farm dwelling
11 can only be operated in connection with agricultural
12 use, and not simply for residential use as outlined
13 in HRS Section 205-4.5.

14 The County would urge the Commission to
15 simply look at whether farm dwellings to be occupied
16 exclusively by a single family which obtains income
17 from agricultural activities on a farm, that the same
18 family owns in fee or leasehold, and a determination
19 that farm dwellings may not be used as short-term
20 vacation rentals pursuant to HRS Section 205-2,
21 Section 205-4.5, and Section 15-15-03 of the Hawaii
22 Administrative Rules.

23 A short-term vacation rental is defined in
24 Chapter 25-1.5 of the Hawaii County Code as a
25 dwelling unit where the owner or operator does not

1 reside on the building site, has no more than five
2 bedrooms for rent on the building site, and is rented
3 for a period of 30 consecutive days or less.

4 The County is not arguing about the
5 duration of the farm dwellings being rented for
6 30 days or less, or whether the owner of the farm
7 dwelling not needing to reside in the dwelling, but
8 the use, we would stress the use of the farm dwelling
9 is essential in determining whether the Rosehill
10 Petitioners may use their farm dwellings as vacation
11 rentals.

12 Hawaii Revised Statute 205D(7) specifically
13 defines farm dwellings as an agricultural with
14 accessory. And in turn farm dwellings as defined in
15 HRS Section 205-4.5(a)(4) notes that is within the
16 Agricultural District, A) Section 4, farm dwelling is
17 defined as follows:

18 It's defined as employee housing, farm
19 buildings, or activities or uses related to farming
20 and animal husbandry.

21 Farm dwelling, as used in this paragraph
22 means a single-family dwelling located on and used in
23 connection with a farm, including clusters of single
24 family farm dwellings permitted within agricultural
25 parks developed by the State where agricultural

1 activity provides income to the family occupying the
2 dwelling.

3 A farm dwelling's purpose is to be a bona
4 fide agricultural service and use which supports and
5 is an accessory to agriculture activities.

6 The purpose of a short-term vacation rental
7 is to grow transient accommodations or housing that
8 will be temporarily rented for a period of 30 days or
9 less.

10 A short-term vacation rental is equivalent
11 of like a resort or hotel accommodation which
12 provides lodging for visitors or transients for the
13 purposes of tourism or vacation.

14 We have also reviewed the Office of
15 Planning's Supplemental Submission, and we would
16 direct the Commission to page 5, the first full
17 paragraph which reads:

18 If the Petitioners are able and willing to
19 provide facts demonstrating or acknowledging that
20 their dwellings meet all of the STVR elements, and at
21 least one of the farm dwelling options, then the
22 Commission could determine that Petitioners were
23 operating their farm dwellings as STVRs pursuant to
24 HRS 205-4.5(a)(4).

25 We can assume that the Petitioners meet the

1 three elements of the STVR rental, but the Petitioner
2 failed to demonstrate that their farm dwellings are
3 either located on and used in connection with a farm,
4 or are located where agricultural activity provides
5 income to the family occupying the farm dwelling.

6 It's the County's position that under a
7 scenario where a farm dwelling on agriculturally
8 zoned property can qualify for a vacation-type
9 rental, that it would be governed by the short term
10 overnight accommodations as agricultural tourism as
11 defined pursuant to HRS Section 205-2(d)(12). The
12 County believes that the Commission should not or
13 cannot combine the definitions of short-term vacation
14 rentals and farm dwellings as they are, we believe,
15 separate and distinct uses.

16 And we would -- after this, we would ask
17 Ms. Apuna if she could clarify the Office of
18 Planning's position on this matter. But based on our
19 submissions and the law, we submit that the County
20 requests that the State Land Use Commission uphold
21 the intent of its State Land Use law by finding in
22 favor of the County of Hawaii, and declaring that a
23 short-term vacation rental is not a permitted use of
24 a farm dwelling in the Agricultural District.

25 Thank you.

1 CHAIRPERSON SCHEUER: Thank you, Mr. Mukai.
2 Commissioners, questions for Hawaii County?
3 Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you very much,
5 Mr. Chair. Thank you, Mr. Mukai.

6 Mr. Mukai, can I call your attention to the
7 response filed by the Rosehill Petitioners, which was
8 filed July 21, 2020, at 6:42 A.M., and specifically
9 calling your attention to Footnote 1 on page 3 which
10 quotes or recites from the transcript, which was
11 attached, I believe, to that filing as Exhibit 1,
12 which was the colloquy that I had between -- or with
13 your Planning Director Michael Yee.

14 Do you see that Footnote 1?

15 MR. MUKAI: Yes, Commissioner. And in
16 fact, at this time I would -- if you wish, I can have
17 Mr. Yee, who is here, clarify the position.

18 COMMISSIONER OKUDA: Can I ask an initial
19 foundational question?

20 Was that testimony, which was given under
21 oath, was that accurate testimony, or was that not
22 accurate testimony?

23 MR. MUKAI: We believe it is accurate. In
24 fact, I can have Mr. Yee explain in context what was
25 being said and his responses.

1 COMMISSIONER OKUDA: I'll leave it to the
2 Chair whether that's --

3 CHAIRPERSON SCHEUER: Is it necessary at
4 this time, Commissioner Okuda, for your purposes?

5 COMMISSIONER OKUDA: Yeah, maybe, because I
6 just want to find out -- let me just say this.

7 It seems like what the County is stating
8 now is contradicted by that statement, which is laid
9 out in Footnote 1.

10 CHAIRPERSON SCHEUER: So narrowly, let's
11 allow Mr. Yee to qualify. He was sworn in earlier.

12 MICHAEL YEE

13 Having been previously called as a witness on behalf
14 of the County of Hawai'i, was previously sworn to
15 tell the truth, was examined and testified as
16 follows:

17 EXAMINATION

18 MR. YEE: Michael Yee, Planning Director.

19 When you look at that citation, you can see
20 that I clearly stated that we consider it to be a
21 farm dwelling unit. And so, you know, we're
22 committed to the agricultural activity that has to
23 occur, but as I had said that day, that
24 administratively it's problematic to try to have
25 every property with the first farm dwelling unit to

1 show they have ag activity when they're ready to
2 build their first home on it.

3 So it's not to say that agricultural
4 activity isn't important, but equally we feel like
5 somebody should be able to build their house first on
6 a property.

7 So I don't see it being in conflict,
8 because the use as a farm dwelling as for somebody
9 residing in it is much different than trying to have
10 people reside in it or occupy it as vacation rental
11 24/7.

12 COMMISSIONER OKUDA: My question to you, I
13 was telling you up-front, I have no intention on
14 conducting any farm activity. I'm going to build my
15 McMansion on the property. I'm not going to farm.
16 There's not going to be any agricultural activity.
17 Will you still allow me to build my mansion when I'm
18 telling you absolutely not, there will be no
19 agricultural activity?

20 And when -- let me clarify, when I say will
21 you let me build, I'm asking, what is the County's
22 position?

23 MR. YEE: I'm still going to say that it's
24 still a farm dwelling unit. And people right now
25 have to sign a Farm Dwelling Agreement with us on

1 that unit.

2 And although they may say that they're
3 going to not perform agricultural activities, it
4 doesn't necessarily take away from residing in that
5 house.

6 When you place a use like a vacation
7 rental, you certainly eliminate that option.

8 COMMISSIONER OKUDA: So even if I tell you
9 straight up-front that there will be no agricultural
10 activity, you will still grant me the permit to build
11 the dwelling?

12 MR. YEE: It's still going to be a farm
13 dwelling unit.

14 COMMISSIONER OKUDA: And even if I told you
15 I'm putting some deed restrictions on my deed to say
16 there will be no farming activity on this property,
17 you would still give me a permit, you, meaning the
18 County, to build the dwelling?

19 MR. MUKAI: No, you cannot do that, because
20 by ag, by it's very nature, it would have to have
21 agricultural activities connected to the property.
22 This is John Mukai, sorry.

23 COMMISSIONER OKUDA: I understand that,
24 but -- okay. Thank you very much. I heard your
25 responses. Thank you. Thank you, Mr. Chair.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioner Chang.

3 COMMISSIONER CHANG: Thank you, Mr. Chair.

4 Mr. Mukai, Mr. Yee, I have the same line of
5 questioning as Commissioner Okuda.

6 Mr. Yee, as I understand your explanation,
7 you are of the opinion that they can build the farm
8 dwelling first before they actually start a farming
9 activity. Is that correct? Is that what you're
10 saying?

11 MR. YEE: That is correct. But right now
12 people fill out a Farm Dwelling Agreement when they
13 want to build that first one.

14 COMMISSIONER CHANG: Is there a time period
15 upon which you have to do the farming, according to
16 you?

17 MR. YEE: Realistically, no, we don't.

18 COMMISSIONER CHANG: So I guess the
19 question I have for you is:

20 Couldn't the plaintiffs come forward and
21 say we're going to -- we're planning on doing
22 farming, we haven't started it yet. And it's -- I
23 mean, how can you then deny that that's not a farm
24 dwelling? Because you have no time period if they
25 tell you, they complete the form, and they say, oh,

1 but we're going to do farming in the future. Not
2 just yet. That's just --

3 I'm having a really difficult time
4 understanding your chronology of the use of the land.

5 When I read 205, it would appear as if the
6 farming comes first. And there needs to be some
7 agricultural activity, and that the dwelling is
8 associated -- is connected to that, not that there's
9 a dwelling first, because what is the guarantee that
10 they'll ever do farming or agriculture?

11 MR. YEE: One way I take a look at this is,
12 we're also looking at the uses that occur on an
13 agricultural lot. So somebody could build a farm
14 dwelling unit, their first one. And they can say we
15 are doing X, Y, Z. As long as it's not a use that's
16 unrestricted, they can proceed. So it may not be a
17 vacation rental.

18 Say somebody takes up another activity on
19 their agriculture that is not a permitted use. We
20 would go in and say this is not a permitted use, and
21 issue a violation. That's why we're asking for
22 Declaratory Ruling on this to understand is this a
23 permitted use, just like we wouldn't allow a junkyard
24 to occur on ag land, we would site someone for that,
25 and if not, then there's a problem.

1 illegal use, but there's still no farming, no
2 agricultural use five years, 10 years, 15 years, but
3 there is no other illegal activity, but there is a
4 dwelling on it, but they never use it for
5 agricultural purposes?

6 MR. YEE: I'll keep going back that it's
7 still a farm dwelling unit though.

8 COMMISSIONER CHANG: I think your
9 explanation is -- that's your explanation, all right.
10 Thank you.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Chang. Commissioner Ohigashi.

13 COMMISSIONER OHIGASHI: I think I
14 understand what you're trying to say. Correct me if
15 I am wrong. You're trying to say that, look, we're
16 going to authorize the building of single family
17 dwelling or a dwelling on the property. And they're
18 going to sign this agreement and say it's a farm
19 dwelling.

20 So the only use on that property is an
21 agricultural type of use. The only use that the
22 dwelling has is that allowed use, your question is,
23 whether or not a STVR is allowed use like
24 agriculture?

25 MR. YEE: That is correct.

1 COMMISSIONER OHIGASHI: I understand your
2 position. You're going to allow dwellings on there,
3 so long as they sign this dwelling agreement, that's
4 it. It's up to them to pursue what is legal on the
5 property. And the question is, is agricultural use
6 legal, yes. So they can do it. Is STVR legal on the
7 property? That's what you're asking, whether or not
8 an agricultural zone is legal to do?

9 MR. YEE: That's correct, is that use
10 allowable.

11 COMMISSIONER OHIGASHI: I just wanted to
12 understand your position. Thank you.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Ohigashi.

15 Commissioners, I would note -- I would note
16 for Mr. Yee, that his counterpart on Maui County
17 actually thinks a junkyard is an allowable use on
18 agricultural lands according to our proceedings two
19 weeks ago, even on important agricultural land.

20 Is there anything further right now from
21 the Commissioners, questions for the County?

22 If not, Mr. Chipchase, there's time for you
23 now. You could use some of it now. I don't know how
24 much time you want or need. We are not going to get
25 through all our proceedings today during the extended

1 conversations we have had on all of our agenda items.

2 What is your preference?

3 MR. CHIPCHASE: My preference would be to
4 reserve the comments for the meeting on August 12th.
5 We timed out my presentation today without the
6 additional things I have to say now in response to
7 County. I was at 30 minutes this morning, I'm
8 probably at 35 minutes now, so that takes us just
9 past 3:00 o'clock and, of course, there will be more
10 time for questions.

11 CHAIRPERSON SCHEUER: I would rather not
12 have to remember all the things that I wanted to ask
13 you over the next few week's time.

14 MR. CHIPCHASE: You can ask now, so I have
15 two weeks to prepare them.

16 CHAIRPERSON SCHEUER: I could, but I will
17 not.

18 My preference, Commissioners, is to close
19 this hearing.

20 We have one agenda item, Agenda V, that was
21 on our agenda to talk about continued operations
22 during the COVID-19 pandemic, which was -- Sorry,
23 Commissioner Ohigashi, you raised your hand.

24 COMMISSIONER OHIGASHI: Just for procedural
25 concerns, I hope everyone remembers it's going to be

1 Mr. Chipchase's turn. He starts off the meeting the
2 next time.

3 CHAIRPERSON SCHEUER: That will be correct.
4 There will be time for closing arguments by the
5 County and Mr. Chipchase after hearing from OP.
6 Commissioner Cabral.

7 VICE CHAIR CABRAL: Yes, I would like to
8 just ask everybody. I know everybody is working
9 until the last minutes, just if you are going to get
10 us information that you want me to read before I'm
11 sitting here, get it to me at least 24 hours ahead.
12 I'll do everything at midnight and 2:00 A.M., but
13 it's hard if something gets sent to me 8:30 in the
14 morning and no time to read the information.

15 So it really, really -- I think you have a
16 good point, anybody involved at any time, get it to
17 us so we can absorb it before we have to act like we
18 read it. Thank you.

19 And I have a hurricane coming towards me,
20 so I'm most happy to end as soon as possible. Thank
21 you.

22 MR. CHIPCHASE: If I may, Chair, just very
23 briefly on that point.

24 I totally respect that comment that
25 Commissioner Cabral just mentioned, fairly directed

1 at me. We filed it technically late yesterday, but
2 you didn't receive it until this morning. That was
3 because we hadn't received OP's supplemental public
4 testimony, and that was we didn't see it until
5 yesterday. We didn't receive a copy of it. We
6 noticed it on the website.

7 If I could ask everybody to, if you email
8 everyone a copy of it, as we have at the time we
9 submit it, that would help us respond as quickly as
10 possible so that no Commissioner is scrambling to
11 read and attend the hearing on the same day.

12 VICE CHAIR CABRAL: Duly noted. Thank you.

13 CHAIRPERSON SCHEUER: Thank you.

14 With that, Commissioners, if there's no
15 objection, what I would like to do is to end
16 discussion on this agenda item with the understanding
17 that on August 12th the same agenda we are also again
18 taking up Hawaiian Memorial Park, we will take up
19 this matter. And I would like to offer us, I believe
20 it is agenda item V, Mr. Orodener?

21 EXECUTIVE OFFICER: Thank you, Mr. Chair.

22 I would just like a couple things that I
23 would like to talk to the Commission about, our
24 operations.

25 One of them is that I think the staff would

1 request a little understanding on the part of the
2 Commissioners. The only reason that we're able to do
3 these ZOOM meetings is because of the governor's
4 emergency proclamation.

5 We don't know from month to month that
6 whether or not that emergency proclamation will
7 continue. Once that is lifted, we will no longer be
8 able to do these ZOOM meetings in the manner that we
9 are doing them.

10 I would also like to note for the
11 Commissioners that staff is in the office more often
12 now. We are pretty close to full-time, so that you
13 can reach us here if need be.

14 The only other issues that I have is that
15 with regard to COVID-19 operations is that my
16 intention, as long as the Commission is in agreement,
17 is to suggest for next legislative session that there
18 be an amendment to whatever chapter needs to be
19 amended to allow us to continue to do these ZOOM
20 meetings, rather than having to do the old fashion
21 videoconferences at the State offices with the
22 archaic system and all the rest.

23 I will be talking with you further about
24 that as time goes on, but that's my intention.

25 CHAIRPERSON SCHEUER: Are there questions

1 for Mr. Orodenker regarding our continued operation
2 during ment COVID-19 pandemic?

3 Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you, Mr. Chair.

5 So, Mr. Orodenker, did you want some
6 people -- of course, it wouldn't be me -- but people
7 who might be able to make inquiry to governor's staff
8 about doing something about this, that way the issue
9 doesn't slip through the cracks? In other words, we
10 don't have the ability going forward to do ZOOM
11 conferences when we need to.

12 EXECUTIVE OFFICER: I am in close
13 communication with the Attorney General's office, in
14 particular, Bill Wynthoff and his staff, and the other
15 attorneys with regard to this issue, so I'll be
16 working with him closely.

17 COMMISSIONER OKUDA: If I can just praise
18 you and the rest of the staff. I think you folks
19 have done a tremendous job with ZOOM. One of the
20 good things coming out of this pandemic, it shows
21 technology, which can help encourage public
22 participation, especially as the Chair pointed out,
23 we had two people in motor vehicles who were able to
24 give very important, insightful testimony, that
25 clearly wouldn't be able to be done under other

1 circumstances.

2 Thank you, Chair.

3 VICE CHAIR CABRAL: I would like to also
4 commended the staff, obviously Riley and Dan,
5 everybody for the opportunity of gathering together.
6 And I would like to commended our Chairman, because I
7 rarely give a compliment to Jonathan. But he's got
8 to be working so hard. It takes a lot for us to pay
9 attention when we don't have all of the personal body
10 language and the visual to really see who's talking
11 when.

12 And then every time the screen changes,
13 sometimes people change where they were sitting
14 before. I don't know, those type of things, and for
15 Jonathan to be tracking on that, I have to commended
16 you, Jonathan, and remind people to identify
17 themselves. Thank you, thank you.

18 And, Jean, I don't know if she's still on
19 board there, but the fact that she can even take
20 minutes. I'm exhausted just thinking about it.

21 So aloha to all of you folks for putting up
22 with this for the good of our government and our
23 State and our community. Thank you.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Cabral.

1 Commissioner Giovanni.

2 COMMISSIONER GIOVANNI: I want to add my
3 two cents to my fellow Commissioner in commending
4 staff and our Chair in making the ZOOM work
5 effectively. I greatly appreciate it. I don't think
6 we have diminished much at all, in fact, there's
7 actually been some efficiencies built from the whole
8 process.

9 I do have a question. I don't know if it
10 is appropriate, if inappropriate, I'll accept no
11 answer.

12 Mr. Orodener, have there been any formal
13 complaints on the record about the process of our
14 using Zoom? I've heard nothing but good things.
15 Have there been any negative things?

16 EXECUTIVE OFFICER: Haven't been any
17 complaints. In fact, the one thing we have gotten is
18 compliments.

19 COMMISSIONER GIOVANNI: That's what I would
20 have expected.

21 VICE CHAIR CABRAL: That would be so if we
22 don't vote in favor of somebody, then the complaints
23 will come.

24 CHAIRPERSON SCHEUER: Commissioner
25 Ohigashi.

1 COMMISSIONER OHIGASHI: I give my four
2 cents being Bo Checkers than Bobo.

3 I would like to commend Dan and the staff,
4 except for the unpaid one sitting next to him. I
5 would like to say that, Jonathan, your problem is
6 that they're going to be make you for life chairman
7 if you don't watch out.

8 And last thing I like to say is that I want
9 everybody to be safe because we have a hurricane
10 coming.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Ohigashi.

13 I was just going to share that I'm going to
14 vote for the presidential candidate who promises
15 drone strikes against high level cable executives
16 because they have been the biggest problem with ZOOM
17 for me.

18 So I think if you're promising drone
19 strikes against cable executives, I will endorse your
20 candidacy.

21 COMMISSIONER CHANG: I too will well echo
22 my fellow Commissioners. What I have really
23 appreciated about the opportunity to do ZOOM is just
24 looking at the attendees, it is more than those who
25 can physically come to the meetings. We have had

1 people coming from different islands. If anything I
2 think ZOOM has created a broader opportunity for
3 participation.

4 For me personally, it has raised my level
5 of comfort that I'm not having to travel, which has
6 been really reassuring, as well as tremendous amount
7 of saving time, half the time we'd be waiting at the
8 airport trying to get on an earlier flight.

9 But, indeed, Jonathan, you have
10 demonstrated great leadership and patience in these
11 proceedings and always being mindful and thoughtful
12 to the attendees. And I think, I know on behalf of
13 myself being as a member of the LUC Commission, you
14 have conducted with great professionalism, and the
15 staff likewise. Hats off to you, Dan, and all the
16 staff in keeping us going, and we haven't quite
17 missed a beat.

18 We've probably been able to do more, but
19 thank you very much to all of you who have
20 participated in asking us to keep up the hard work.
21 Thank you.

22 CHAIRPERSON SCHEUER: Thank you very much,
23 Commissioner Chang.

24 COMMISSIONER WONG: I just wanted to tell
25 us, because I do sit in other state agencies, other

1 ZOOM conferences, and they're not as proficient as
2 our staff, especially when they're using the mic.
3 And when they go into executive session, I still can
4 hear them.

5 So the way that our staff is doing it is
6 the correct way, you know, that we're doing it very
7 proper, and to me it's better for everyone involved
8 as well.

9 EXECUTIVE OFFICER: I would also note, Mr.
10 Chair, that the reason we are able to do that is
11 because of Arnold's comments here.

12 CHAIRPERSON SCHEUER: Thank you, Mr.
13 Orodanker.

14 If there is nothing further, want to thank
15 you all. I know that our dockets have been very long,
16 and I really thank the parties, Mr. Chipchase, Hawaii
17 County, OP, our Deputy Attorney General for their
18 assistance in these matters.

19 If there is nothing further, Commissioners,
20 we can adjourn and rush to Costco if you want to.

21 Anything further? If not, I am happy to
22 declare this meeting adjourned. Thank you everyone,
23 and be safe.

24 (The proceedings adjourned at 2:52 p.m.)

25

CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on July 23, 2020, at 9:03 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 23rd day of July, 2020, in Honolulu,
16 Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
21
22
23
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25