

LAND USE COMMISSION HEARING

STATE OF HAWAII

Proceedings held on March 28, 2019

Natural Energy Laboratory Hawai'i Authority

73-987 Makako Bay Drive

Kailua-Kona, Hawai'i 96740-2637

Commencing at 9:00 a.m.

AGENDA

VII. CALL TO ORDER

VIII. STATUS REPORT AND ACTION (IF NECESSARY)
A02-737 U of N Bencorp (HAWAI'I)

IX. STATUS REPORT AND ACTION (IF NECESSARY)
A06-770 The Shopoff Group, L.P. (Hawaii)

X. ACTION
A18-805 Church (Hawai'i)

XI. ADJOURNMENT

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 COMMISSIONERS:

3 JONATHAN SCHEUER, Chairperson
4 NANCY CABRAL, Vice Chair
5 AARON MAHI, Vice Chair
6 GARY OKUDA
7 EDMUND ACZON
8 ARNOLD WONG
9 LEE OHIGASHI

10 STAFF:

11 RANDALL S. NISHIYAMA, Deputy Attorney General
12 DANIEL E. ORODENKER, Executive Officer
13 RILEY K. HAKODA, Planner/Chief Clerk
14 SCOTT A.K. DERRICKSON, AICP-Planner
15 BERT SARUWATARI, Planner
16 RASMI AGRAHARI, Planner

17 DAWN APUNA, ESQ.
18 Office of Planning, State of Hawaii

19 RON KIM, ESQ.
20 Deputy Corporation Counsel
21 DUANE KANUHA, Deputy Planning Director
22 County of Hawai'i

23 A02-737 U of N Bencorp

24 JULIE ANJO, ESQ.
25 ALLEN ANJO, ESQ.
TONY CHING
PAUL CHILDERS

A06-770 The Shopoff Group

NOHEA BAPTISTA
ROBERT E. LEE, JR.
COLIN KEOLA CHILDS

A18-805

KENNETH STANLEY CHURCH
JOAN EVELYN HIDAL

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1 CHAIRPERSON SCHEUER: Aloha mai kakou, good
2 morning.

3 VICE CHAIR CABRAL: Good morning, aloha.

4 CHAIRPERSON SCHEUER: This is the March 28,
5 2019 scheduled portion of our next agenda item Docket
6 No. A06-767 Waikoloa Mauka to Approve the form of the
7 order in this matter is deferred and a new meeting
8 date will be provided to the parties pending the
9 securing of a venue.

10 A02-737 U of N Bencorp

11 Following that, our next agenda item is a
12 status report on Docket No. A02-737 U of N Bencorp,
13 and for the Commission to take action if appropriate.

14 Will the parties please identify themselves
15 for the record?

16 MS. ANJO: Good morning, Mr. Chair and
17 Commissioners. My name is Julie Anjo, and I
18 represent the University of Nations Kona and general
19 counsel's office.

20 I have brought with me today Mr. Tony
21 Ching, and we have engaged his services as a plan
22 design and project manager development; and Paul
23 Childers is the chief operating officer of the
24 University of Nations Kona.

25 Then at the end is Allen Anjo, who is also

1 another attorney in the general counsel's office with
2 me.

3 We are here today --

4 CHAIRPERSON SCHEUER: Just for now just
5 appearance. County.

6 MR. KIM: Good morning, Chairperson and
7 Commissioners, Deputy Corporation Counsel, Ronald Kim
8 representing the County of Hawai'i, and appearing
9 with me is Deputy Planning Director Duane Kanuha.

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

13 CHAIRPERSON SCHEUER: Let me update the
14 record.

15 On February 4th, 2019 the Commission
16 received Petitioner's Motion to Substitute Petitioner
17 and Withdraw Land Use Commission Approvals and Revert
18 Land Use District Boundary Classification to
19 Agricultural.

20 On March 15th, the Commission received
21 Petitioner's Notice of Withdrawal of its Motion.

22 On March 18, 2019, the Commission mailed an
23 agenda notice letter to the Parties and to Hawaii
24 County mailing lists advising of the March 27-28,
25 2019 meeting.

1 For any members of the public, please be
2 reminded that the Commission will not be considering
3 today the merits of the A02-737 U of N Bencorp
4 Petition; rather, the Commission is interested in
5 learning about the current state of the activities
6 related to this docket, including compliance with
7 conditions.

8 Are there any individuals who are planning
9 to testify today on this docket? I don't see any
10 individuals planning to testify, so I'm going to
11 dispense with reading through our procedures on
12 public testimony.

13 Following any public testimony, if somebody
14 rushes in at the last minute, the Chair will call for
15 status report from Petitioner. I will then call on
16 the County of Hawaii for comments, followed by the
17 Office of Planning.

18 At the conclusion of presentations, and
19 after questions from the Commissioners and the
20 answers to those questions, the Commission will
21 conduct deliberation on this matter.

22 Are there any questions on our procedures
23 for today?

24 Again, nobody providing public testimony on
25 this matter.

1 So, Petitioner, you can proceed with your
2 presentation.

3 MS. ANJO: Thank you.

4 Good morning, Mr. Chair, and Commissioners.
5 Again, my name is Julie Anjo and I am from the Office
6 of General Counsel at University of Nations Kona.

7 We're here today to update the Commission
8 on the reclassified area that was subject of A02-737.

9 The reason that we came here, we wanted to
10 kind of share with you what we have been doing, and
11 there has been kind of a season of a little bit of
12 silence and we wanted to share with you.

13 We as a ministry, or as a university, we
14 seek to service community and we seek to serve Kona
15 and also the world in what we're doing.

16 So one way that we walk in this, or that
17 we're trying to do is, we just move where there's a
18 need and try to serve in the area. So something
19 we've been trying to join relief efforts or join in
20 the relief effort for Volcano victims and then
21 jumping straight in. We've done a lot of things to
22 try to serve this community based on where we are.

23 So we wanted to share with you what we're
24 doing, and just be open to hear how we can best walk
25 in this, serving the land in this area in Kona.

1 So today, as I've said, we're going to have
2 Mr. Tony Ching present for us, and we will have a
3 presentation. We have provided you with the copy of
4 the annual report, and update for you. And then also
5 we've given you a copy of the presentation so it's
6 easier for you to follow along with.

7 CHAIRPERSON SCHEUER: About how long do you
8 anticipate the presentation will be?

9 MS. ANJO: 25 minutes.

10 CHAIRPERSON SCHEUER: Okay. Tony, I'm
11 going to need to swear you in.

12 Do you swear or affirm that the testimony
13 you are about to give is the truth?

14 THE WITNESS: I do.

15 CHAIRPERSON SCHEUER: Thank you. Please
16 proceed.

17 TONY CHING

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

21 DIRECT EXAMINATION

22 THE WITNESS: Good morning. My name is
23 Anthony Ching. I'm a retired state employee and
24 currently a planning consultant. I was engaged by
25 the University of Nations a few weeks ago to help

1 them compile and present their annual report for
2 2019.

3 As a little bit of background, I would note
4 for you that I was fortunate to grow up in a time
5 after high school with my classmate member Mahi where
6 Hawaii experienced a Renaissance of all things
7 Hawaiian. We realized the joining of Peter Moon and
8 the Cazemiros, Mrs. Beamer's son produced iconic
9 music.

10 And I had an opportunity to work at the
11 University at Manoa as a lab assistant for the ethic
12 studies Hawaiian/American class. That perspective
13 that caused me -- or during that time of activism,
14 that there was one phrase that always caught my
15 attention. That is missionaries came to Hawai'i to
16 do good, and boy, did they do good.

17 Now, I'm going to present a report then
18 that describes the efforts of this missionary group,
19 the University of the Nations, in becoming a part of
20 the community, and becoming a training center for
21 missionaries going throughout the world.

22 I'll leave it to you at the end to
23 determine what type of good this particular
24 missionary organization has achieved.

25 On the screen before you, you see that the

1 Petitioner in Docket A02-737 has had a variety of
2 names, University of the Nations Bencorp was our
3 initial, AEKO, Ka Ohana Waiaha, and then most
4 recently University of the Nations Kona. I note for
5 you though that they are also known as Youth With a
6 Mission Kona, or YWAM Kona.

7 Because of that I give you very brief
8 background as to YWAM, again, there's a founding
9 group of University of the Nations. They're founded
10 by missionaries, Loren and Darlene Cunningham in
11 1960. And as you can see their mission is to a
12 mission training center in Kona, as well as sending
13 out good work to Asia, Pacific and beyond.

14 YWAM has a global reach. The bottom map
15 shows the YWAM ship ministry, which seeks to deliver
16 health care and compassionate service and care to
17 people around the world.

18 The other map that's almost completely
19 covered in red indicates their locations throughout
20 the world where they carry out their missions.

21 So the University of the Nations Kona,
22 their curriculum, as you can see, and this isn't all
23 there, but the cycle-ship training school shows, and
24 the type of subject, you see up there, shows that
25 they seek to equip and prepare individuals to go out

1 and provide particular service to Asia Pacific and
2 Pacific countries, as well as to allow them to take
3 their skills and capacities in areas where it can be
4 of benefit.

5 I note from a curriculum standpoint that
6 it's very interesting that they have implemented
7 since, I believe, 2014 if memory serves me correct,
8 the haleo Hawaiian language course.

9 Again, the slogan -- not the slogan, but a
10 driving philosophy is: Where God guides, he
11 provides; where he leads, he feeds. And that from a
12 missionary group should come as no surprise. They're
13 actually a faith-based mission.

14 Again, but despite, or with faith, they
15 also seek to serve the local community, as you can
16 see from this slide.

17 This graphic then shows, again, from a
18 faith-based standpoint, that they seek to again serve
19 the university through their Ship Program, as well as
20 through their community land trust that they have
21 created.

22 Local outreach ministries. Again, you'll
23 see time and time again, it includes an urgent care
24 clinic, includes a preschool, Hawaiian culture
25 classes and Hawaiian language support, as well as

1 very importantly, and as Julie mentioned, the notion
2 of kokua services to the community in times of need
3 such as the recent volcano eruption period.

4 So previous annual records that have been
5 provided by the University of the Nations occurred on
6 August 30th, 2006, and March 1st, 2007; and at that
7 time they indicated that while the docket had
8 represented perhaps a more business-oriented
9 developer base that they sought to pursue at that
10 time, they indicated that they were going through a
11 realignment, reexamination, that they perhaps should
12 be true and return to their course as a more
13 faith-based mission.

14 Again, so that was the essence of those
15 documents which are on file already with the
16 Commission. I do note that on March 1st, at the
17 March 1st hearing in Kona where a Motion to Amend the
18 Findings of Fact, Conclusions of Law and Decision and
19 Order in this docket was proposed, they also provided
20 the annual report and exhibits.

21 Unfortunately, that hearing was adjourned
22 on the second day when the Commission lost quorum
23 from amongst its members, so no action was taken.

24 Again, Petitioner's history, as you can
25 see, notably in the existing 45-acre university site,

1 which was the former Pacific Empress Hotel, was
2 purchased for \$1.8 million.

3 And then subsequently in 2000, adjacent
4 68 acres, which is the reclassified area, was
5 purchased from Frank Gomes for \$2.5 million. You can
6 see then that U of N Bencorp was actually a 501(c)(3)
7 nonprofit which was the University of the Nations.

8 Again, subsequently in the course of
9 realignment and adjusting -- let me call it that some
10 boxes might have shift, some names might have
11 changed, but the purpose and the ownership and the
12 direction for the University of the Nations remained
13 with the University of Nations Kona, which is the
14 current iteration or name that is in place.

15 So in a sense U of N Bencorp from
16 December 2003, because as under a developer's model,
17 I have quickly learned that they approved \$27 million
18 in trying to -- in debt -- trying to pursue
19 development of the Hualalai Village Development which
20 is outside of the Petition Area.

21 I'll note just really quickly that a
22 business developer model calls for soft costs, 10 to
23 20 percent of the total project cost, which is
24 entirely at risk and with no basis. You have to use
25 your own money. Then you proceed with marketing and

1 pre-sales after you receive entitlement, and then you
2 can proceed to a construction loan.

3 Government financing is a lot different.
4 You assemble the project, the total resources that
5 you need before you turn dirt.

6 A faith-based model might be in a sense a
7 hybrid, or much different in a sense, or certainly
8 departure from the business and government model as
9 you seek to proceed in faith to develop your property
10 and achieve your goals, and sometimes faith requires
11 that we are patient. And I would suggest that this
12 is the case.

13 Anyway, again, I note with the asterisk on
14 the right column that all of the entities that have
15 been named and are indicated are really instruments
16 of the YWAM Kona, as well as the University of
17 Nations Kona, and it was simply, again, changes of
18 convenience, ministerial changes to reflect some of
19 the alignment or the structure at that particular
20 point.

21 So I noted for you that -- and this was a
22 very interesting part when this docket originally
23 came to the Commission in 2003 -- that there was some
24 activity and precursor development outside of the
25 Petition Area soon to become reclassified, and that

1 was the Hualalai Village. So that was, again, as
2 indicated, just north of the campus and north of the
3 reclassified area, and it sought to create some seed
4 development money. That didn't work.

5 And the bottom line was that early phase of
6 the development outside of the Petition Area was --
7 it turned into two part series where, again, the
8 first part included three buildings. And it sought
9 to create some -- it was sold on the market fee
10 simple.

11 And the second part, the remaining five
12 buildings, which were finally completed in 2016, were
13 put into trust such that University of Nations' staff
14 could affordably purchase equity in housing units,
15 but the trust maintained that inventory for the
16 limited use of the Nation's staff.

17 And so, again, there was an original
18 project description that called for real estate
19 development for the open market to help subsidize the
20 work of the University of the Nations. The revised
21 project, that which is specific to the reclassified
22 area, deletes the notion of doing "for sale" market
23 condominiums, as well as the notion of a commercial
24 cultural center similar to the Polynesian Cultural
25 project, where the students would staff the cultural

1 center, generate income, and allow that to benefit
2 the university activities.

3 Those portions have been deleted from the
4 revised project.

5 The revised project does, though, continue
6 to look to preserve the historic sites within the
7 reclassified area, including the great wall of
8 Kuakini. It looks to, again, retain commitment to
9 data recovery, preservation and burial plans that
10 have already been submitted and approved, and instead
11 seeks to offer staff housing of up to 100 units,
12 again, through the community land trust mechanism to
13 U of N staff.

14 Also provides for up to 300 student dorm
15 units. And the development of preschool and K to 12
16 facilities and campus within the reclassified area.

17 And also, again, to provide additional
18 learning and sports training facilities for the
19 university in the reclassified area.

20 And, of course, to maintain compliance with
21 the LUC conditions of approval.

22 I note for you that in the time since the
23 docket was heard before the Commission and the order
24 issued, that with respect to affordable housing, that
25 YWAM family took a project next door, Kamaaina Hale,

1 which was a HHFDC project. It rehabbed it. It was
2 something rendered inhabitable, and it was a drug
3 den, quite frankly, and suffered much from poor
4 reputation as well as facility.

5 They invested their own money. It's
6 independent of the University of Nations, but the
7 board is made up of YWAM members.

8 They've successfully rehabbed this
9 particular 128 two bedroom, 800-square foot units;
10 returned it to the Kona housing inventory at what
11 would be very low income, 50 percent AMI, and low
12 income 80 percent AMI rental units to the Kona
13 community.

14 They have done that not having yet built,
15 and in triggering the affordable housing condition
16 from the docket.

17 With respect to the commitment to the haleo
18 Hawaiian language program. Again, a very innovative
19 class is offered at the University of the Nations
20 Kona with respect to Hawaiian language. It utilizes
21 this method, which I frankly could have benefitted
22 from. When I was at the University Manoa and taking
23 classes from Larry Kimura, I did very poorly because
24 of memorization, and in terms of language, sort of
25 didn't work for me. And this particular technique

1 seeks to create a conversational or relational
2 understanding of how language fits and put it out.

3 I would note for you that scholarships at
4 this particular language class were offered and have
5 been offered since it started, and it sat over 397
6 students since 2011. Scholarships are available to
7 Native Hawaiian students who seek to take this
8 course. The scholarship is that it's free for them.
9 97 percent of those students have been Native
10 Hawaiian learners.

11 With respect to operation of a preschool,
12 again, a preschool that I would note is ranked as the
13 best preschool in West Hawaii; that, again, they
14 serve the community in that of the current enrollment
15 of 72 children. 39 percent of enrollment are from
16 the Kona community.

17 With respect to the provision of health
18 care and urgent operation of an urgent care clinic
19 largely by YWAM health care facilities, and talent
20 that staff this clinic which uniquely provides the
21 only urgent care response on the Big Island after
22 7:00 p.m.

23 It's, again, a notion that even though
24 health care as a condition or requirement for the
25 community is not a condition of the docket and the

1 Decision and Order, that the university has been
2 since 2015 -- since 2015 providing this service.

3 In the reclassified area there are five
4 particular historic sites of note. Two of them are
5 for preservation and include the great wall of
6 Kuakini, as well as an agricultural heiau or shrine
7 on the northern portion of the site which is of some
8 significance.

9 There are also three burials which can be
10 classified as interment with platforms over them
11 indicating that there was habitation, as well as the
12 interment taking place.

13 Again, these are the sites that have been
14 identified in the docket and have been documented.
15 These are pictures of the individual sites relative
16 to the location and the reclassified area.

17 Again, I note for you that -- and as the
18 slide shows, the archaeological inventory survey, the
19 data recovery plan, preservation plan and burial
20 treatment plans have all been reviewed and approved
21 by DLNR/SHPD.

22 Here's pictures of the Kuakini wall where
23 you note interpretive signs have been placed along
24 the wall, along with the interim measure of coning
25 off or having orange fencing to ensure preservation

1 of these particular -- of the site.

2 And that even as an interim measure, the
3 University of Nations has taken steps to the
4 appropriate in its treatment for these historic
5 resources.

6 Here you have an aerial view of the campus
7 and adjacent lands. I'm going to note for you that
8 to the left in magenta you have Kamaaina Hale, 128
9 affordable units. In the middle in blue you have the
10 University of Nations campus. In yellow you have the
11 Hualalai Village Phase I development, eight
12 buildings. Then you have the reclassified area
13 outlined in red.

14 You know, I'll note -- and I think it's an
15 appropriate time with this aerial in front of you --
16 I'll note for you that with respect to what might be
17 the appropriate classification for this, the
18 reclassified area, given its surrounding by
19 residential development, I would suggest to you that
20 Urban would appear to be the logical classification
21 as the Petition is shown.

22 Little ag value, and ag within residential
23 area can be very -- considered incompatible. Rural
24 where you would be limited to half-acre house lots
25 would also not necessarily be consistent with the

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

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

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

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

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

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

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

25 THE WITNESS: Yes, sir.

1 CHAIRPERSON SCHEUER: Please proceed.

2 PAUL CHILDERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 THE WITNESS: My name is Paul Childers.

7 PAUL CHILDERS

8 DIRECT EXAMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 CHAIRPERSON SCHEUER: Thank you.

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

17 COMMISSIONER WONG: Thank you, Chair.

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

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

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

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

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

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

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

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

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

2 CHAIRPERSON SCHEUER: No, please proceed.

3 COMMISSIONER WONG: I'm just concerned.

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

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

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

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

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

25 COMMISSIONER WONG: So shouldn't you have

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

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

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

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

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

25 COMMISSIONER WONG: Thank you for taking a

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

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

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

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

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

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

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

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

1 it, pretty much fallow.

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

7 Thank you, Chair.

8 CHAIRPERSON SCHEUER: Commissioners?
9 Commissioner Aczon.

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

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

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

25 COMMISSIONER ACZON: So we are here now

1 just for annual report?

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

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

14 COMMISSIONER ACZON: Thank you, Mr. Chair.

15 CHAIRPERSON SCHEUER: Commissioner
16 Ohigashi.

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

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

24 Is that your -- that was essentially --

25 MR. CHING: In broad strokes there is

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

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

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

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

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

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

25 COMMISSIONER OHIGASHI: So technically

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 COMMISSIONER ACZON: As if --

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

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

1 reversion, then file again for reclassification?

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

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

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

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

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

25 My question is basically this: Because we

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

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

16 Do you agree that -- I mean, I'm not saying
17 that, you know, your answer stipulates to a reversion
18 or to an order to show cause, and your answer is not
19 to be deemed as a waiver of any objections to
20 whatever the Commission might look forward. But just
21 looking at that question, do you agree that -- let me
22 ask you first -- that there's at least some evidence
23 that shows there has not been performance according
24 to the representations made in obtaining the original
25 reclassification?

1 MR. CHING: Commissioner, I would
2 respectfully disagree with that representation that
3 Petitioner has failed to deliver on LUC conditions.

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

9 MR. CHING: Yes, it is.

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

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

14 (Recess taken.)

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

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

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

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

25 MR. CHILDERS: We believe we want to move

1 forward with this in a way for education to serve the
2 community locally, as well as to extend our mission
3 here on the Big Island and abroad.

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

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

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

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

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

25 CHAIRPERSON SCHEUER: This is not directed

1 to the last person. Everyone please silence your
2 phones.

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

8 MR. CHING: Yes, Chair.

9 CHAIRPERSON SCHEUER: My last set of
10 questions for now have to do with what happened in
11 2007.

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

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

20 MR. CHING: Chair, at the time on
21 March 1st, 2007, I was the Executive Officer for the
22 Land Use Commission. I was a part of that hearing
23 that took place. There was very much interest from
24 the Commission with respect to Petitioner's
25 intentions and capacity to move on.

1 I think just before we lost quorum, it's my
2 recollection that there was a comment made to the
3 Petitioner to don't come back to us until you have
4 all your ducks in a line and financing and ready to
5 go. That was an off-the-record comment that I offer
6 not substantiated, just by my testimony.

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

12 MR. CHING: Yes.

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

18 MR. CHING: Yes.

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

22 MR. KIM: Thank you, Chair.

23 Initially Deputy Director Kanuha would like
24 to make a comment.

25 CHAIRPERSON SCHEUER: Do you swear or

1 affirm that the testimony you're about to give is the
2 truth?

3 THE WITNESS: I do.

4 CHAIRPERSON SCHEUER: Please continue
5 Commissioner -- former Commissioner.

6 DUANE KANUHA
7 Was called as a witness by and on behalf of the
8 County of Hawaii, was sworn to tell the truth, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 THE WITNESS: Thank you, Mr. Chairman,
12 members of the Commission. My name is Duane Kanuha,
13 currently Deputy Director for Hawaii County Planning
14 Department.

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

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

25 So just for the record, at this point in

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

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

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

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

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

24 MR. KIM: Just add a few more comments from
25 the county.

1 The first one is it was very interesting to
2 hear about the affordable housing project from U of
3 N, and that they might be able to get some credit for
4 that project actually per county code. But, again,
5 we don't know what the requirements are going to be
6 on the housing until, you know, there's something
7 more concrete with what is proposed for development
8 actually too.

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

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

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

25 Those are my comments.

1 CHAIRPERSON SCHEUER: Thank you.

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

4 Office of Planning, Ms. Apuna.

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

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

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

17 CHAIRPERSON SCHEUER: Thank you.

18 Commissioners, are there any questions for
19 Ms. Apuna?

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

23 VICE CHAIR CABRAL: Here on the Big Island
24 I appreciate the efforts particularly in your
25 affordable housing efforts and that. And I think

1 that from all I can hear, the project's potential and
2 what you do is positive in so many areas, housing,
3 cultural, language and that, and I would encourage
4 you to work with all parties to try and bring the
5 appropriate use of this land to its best use under
6 the current circumstances. So I encourage you folks
7 to move forward. Thank you.

8 CHAIRPERSON SCHEUER: Commissioner Wong.

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

15 COMMISSIONER ACZON: I would like to second
16 it.

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

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

25 (Executive session.)

1 CHAIRPERSON SCHEUER: We're back in
2 session.

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

5 If not, Commissioners we're going to now
6 enter deliberations on this matter. As a reminder,
7 pursuant to Hawaii Administrative Rules Section
8 15-15-93(b), quote, "whenever the Commission shall
9 have reason to believe that there has been a failure
10 to perform according to the conditions imposed, or
11 the representations or commitments made by the
12 Petitioner, the Commission shall issue and serve upon
13 the party or person bound by the conditions,
14 representations or commitments, an order to show
15 cause why the property should not revert back to its
16 former land use classification or be changed to a
17 more appropriate classification," and set the matter
18 for hearing.

19 So we may deliberate on this matter.

20 Commissioner Wong.

21 COMMISSIONER WONG: Go ahead, Commissioner
22 Aczon.

23 CHAIRPERSON SCHEUER: Excuse me,
24 Commissioner Aczon.

25 COMMISSIONER ACZON: Mr. Chair, I would

1 like to make a motion. I kind of waited for the Big
2 Island member.

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

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

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

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

12 VICE CHAIR CABRAL: And I will second that.

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

16 Anybody want to speak towards the motion?
17 Commissioner Aczon.

18 COMMISSIONER ACZON: I made a motion. The
19 discussions today, and also previous motion which was
20 withdrawn, I just kind of -- because of that motion,
21 the Petitioner admitted that they're not in
22 compliance with all or some of the conditions. And I
23 just for myself, I don't want to take -- I don't want
24 to have a blind side on those noncompliance, and just
25 to get this project going. So perhaps if you do an

1 order to show cause, more of the information that we
2 needed would come up. And I'm hoping that, you know,
3 if this motion is approved, then the Petitioner can
4 come back with a better plan, better financial plan,
5 better plan to move this project along.

6 CHAIRPERSON SCHEUER: Commissioner Cabral.

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

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

17 CHAIRPERSON SCHEUER: Commissioner Wong.

18 COMMISSIONER WONG: So, Chair, thank you.

19 So listening to the status report and also
20 when you asked the question about the 2007 request
21 and it wasn't -- there was no quorum, and nothing
22 came out of that that the Petitioner didn't say I
23 want to come back and have that hearing again to have
24 something done. So it wasn't the Land Use's fault,
25 but it was up to the Petitioner to come back to us.

1 And also that it seems like when the county
2 said that there's no permits have been issued,
3 nothing has been issued yet, that it would be great
4 to hear what is the real plan for this parcel.
5 Because it seemed like there's going to be housing on
6 there but it's for the students or something, but in
7 the original docket, it said for something else.

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

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Wong.

12 Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you, Mr. Chair.

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

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

1 believe the standard has been met.

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

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

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

12 Thank you.

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

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

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

24 So I think there's clarity on the record
25 that moving to an order to show cause is justified.

1 I think it's also appropriate, given the
2 duties of the Land Use Commission, we are supposed to
3 facilitate development, not sometimes stop
4 development, or modify development where it's
5 inappropriate or harmful to public trust values, but
6 facilitate where it is appropriate, and holding
7 parties to deadlines is part of that.

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

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

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

23 So in that sense, while there is a burden
24 to the process, I believe it actually can be of
25 service to the Petitioner as well.

1 Are there any further deliberations on the
2 motion before us? If not, Mr. Orodenker, would you
3 please poll the Commission?

4 EXECUTIVE OFFICER: Thank you, Mr. Chair.
5 The motion is to schedule an Order to Show Cause in
6 this matter.

7 Commissioner Aczon?

8 COMMISSIONER ACZON: Aye.

9 EXECUTIVE OFFICER: Commissioner Cabral?

10 VICE CHAIR CABRAL: Yes.

11 EXECUTIVE OFFICER: Commissioner Mahi?

12 VICE CHAIR MAHI: Aye.

13 EXECUTIVE OFFICER: Commissioner Ohigashi?

14 COMMISSIONER OHIGASHI: Aye.

15 EXECUTIVE OFFICER: Commissioner Okuda?

16 COMMISSIONER OKUDA: Yes.

17 EXECUTIVE OFFICER: Commissioner Wong?

18 COMMISSIONER WONG: Yes.

19 EXECUTIVE OFFICER: Chair Scheuer?

20 CHAIRPERSON SCHEUER: Aye.

21 EXECUTIVE OFFICER: Thank you, Mr. Chair.
22 The motion passes.

23 CHAIRPERSON SCHEUER: Thank you very much.
24 We look forward to working with you on this matter.

25 MS. ANJO: Thank you.

1 CHAIRPERSON SCHEUER: Commissioner Wong.

2 COMMISSIONER WONG: Did you want to
3 schedule a meeting?

4 CHAIRPERSON SCHEUER: The staff will work
5 on it with the parties.

6 We will take a couple moments for the next
7 parties, the parties in the next docket to come
8 forward.

9 (Recess taken.)

10 A06-770 The Shopoff Group

11 CHAIRPERSON SCHEUER: It's 10:45.

12 The next agenda item is a status report on
13 Docket A06-770 the Shopoff Group and for Commission
14 to take action if appropriate.

15 Will the parties please identify
16 themselves?

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

19 MR. LEE: Robert E. Lee, Jr.

20 MR. CHILDS: Colin Keola Childs.

21 CHAIRPERSON SCHEUER: And you're here --

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

24 CHAIRPERSON SCHEUER: Thank you.

25 MR. KIM: Good morning, Chair and

1 Commissioners, Deputy Corporation Counsel Ronald Kim
2 representing the County of Hawaii, and with me is
3 Deputy Director of the Planning Department Duane
4 Kanuha.

5 MS. APUNA: Good morning, Deputy Attorney
6 General Dawn Apuna on behalf of State Office of
7 Planning.

8 CHAIRPERSON SCHEUER: Commissioner Okuda.

9 COMMISSIONER OKUDA: Chair, I had asked if
10 I can ask a fast question to determine if I have to
11 make disclosures.

12 If I can ask the Petitioners, are you
13 related to Mr. Wade Lee of Hilo or of Kona?

14 MS. BAPTISTA: Not to my knowledge.

15 COMMISSIONER OKUDA: Thank you, Mr. Chair.
16 I don't need to make any disclosures then.

17 CHAIRPERSON SCHEUER: Let me update the
18 record.

19 On December 4th and 8th, 2017, the
20 Commission received correspondence from successor
21 Petitioner Kula Nei Partners LLC stating that it did
22 not have the financial capabilities to meet the
23 requirements previously represented to the Commission
24 by its predecessor and would not be able to comply
25 with the conditions and deadlines set forth in the

1 October 16, 2008 LUC Decision and Order.

2 On January 2nd, 2018, the Commission staff
3 acknowledged Petitioner's correspondence and advised
4 that on January 24, 2018 the Commission would
5 consider whether to issue an Order to Show Cause
6 based on the correspondence and related matter.

7 On January 16, 2018, an LUC meeting agenda
8 notice for the January 24, 2018 meeting was sent to
9 the Parties and the Statewide, Hawai'i, Kaua'i and
10 Maui and Oahu mailing lists.

11 On January 22nd, 2018, the Office of
12 Planing also requested additional information and
13 clarification regarding the Petitioner's
14 communication with the Commission.

15 On February 11, 2019, the Petitioner
16 provided supporting documentation to update the
17 Commission with correspondence, a site plan and
18 annual report for the years 2014-2018.

19 On March 18, 2019, the Commission mailed an
20 agenda notice to the parties and to the Hawaii County
21 mailing lists advising of the March 27-28, 2019
22 meeting.

23 For the members of the Public, please be
24 reminded that the Commission here will not be
25 considering the merits of AO6-770 Petition; but

1 rather the Commission is interested in learning about
2 the current state of the activities relating to this
3 docket, including compliance with the conditions.

4 I will briefly run over our procedure.

5 First, I will call for any individuals
6 desiring to provide public testimony on this matter.
7 After testimony, if any, I will call for status
8 report from the Petitioner. Then we will call on
9 County of Hawaii and finally the Office of Planning,
10 the same procedure as with the last docket.

11 At the conclusion of presentations and
12 after questions from the Commissioners and answers to
13 those questions, the Commission will conduct
14 deliberation on this matter.

15 Any questions on our procedures today?

16 MS. BAPTISTA: (Shakes head from side to
17 side.)

18 CHAIRPERSON SCHEUER: Just for the record,
19 if you could orally respond.

20 MS. BAPTISTA: No questions.

21 MR. KIM: No questions from the county.

22 MS. APUNA: No questions.

23 CHAIRPERSON SCHEUER: Is there anybody
24 desiring to provide public testimony on this matter?
25 I see none, so we can go ahead and proceed with the

1 presentation of the Petitioner.

2 Normally Petitioners are represented by
3 counsel, but I believe none of you are counsel. Just
4 for clarity, I'm going to swear you in prior to your
5 presentation.

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

8 MS. BAPTISTA: I do.

9 CHAIRPERSON SCHEUER: Would you state name
10 once again for the record and then proceed?

11 MS. BAPTISTA: My name is Nohea Baptista.

12 NOHEA BAPTISTA

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

16 MS. BATISTA: I'm the daughter of Robert
17 Lee who is one of the co-managers and owners of the
18 project we refer to as Kula Nei.

19 To ask for your patience, I don't have any
20 accolades to my name, so should I divert from what I
21 should be doing, kindly push me back into my lane.

22 We are here to give status update on Docket
23 A06-770, which is what the Commission knows as the
24 Shopoff project. The property was reacquired by my
25 dad and his partner -- by Robert and his partner in

1 December 2014. This was land that was formerly owned
2 by my great grandparents, and they actually lived and
3 farmed on that land.

4 So to be able to reacquire that property
5 was a huge accomplishment for the family. With that
6 said, it's not our intention to go forward with the
7 plan submitted to the Commission by the Shopoff Group
8 previously, partially in part because of the
9 financial cost that that project would entail; and
10 second being, once we were able to reacquire that
11 land, the significant cultural and archaeological
12 sites that are on that property have a very personal
13 meaning to us as lineal descendants of that area.

14 So it's not our intention to go and remove
15 or dissolve or desecrate any of the things that are
16 on there, being that we do have direct ties to that
17 land.

18 Being that we aren't planning to go forward
19 with the project that Shopoff presented to the
20 Commission, we do request that the Commission give us
21 directions as to how to proceed from this point going
22 forward.

23 We do have plans that we have been working
24 with. We do have some advisors that we have been
25 with that have been trying to help us put together a

1 PUD that would create a very low density
2 agricultural -- or whatever the Commission deems as
3 appropriate for that area -- project that would allow
4 the archaeological sites to remain intact, but give
5 the people in Kona the opportunity to own a good
6 piece of land where they could grow with their
7 family. We live on my parents' property. There are
8 four siblings, and three of us all reside on the same
9 property with him.

10 To say that my children have been blessed
11 is an understatement. Having the area to grow up in
12 where it's safe, there's people close by. That's
13 what we want to provide with this Kula Nei project to
14 other families in this area.

15 CHAIRPERSON SCHEUER: Is that it for now?

16 MS. BAPTISTA: That's it unless you have
17 questions.

18 CHAIRPERSON SCHEUER: I will ask my fellow
19 Commissioners if there are any questions for the
20 Petitioners?

21 I will say at the beginning, and sort of
22 building on Commissioner Okuda's questioning, I've
23 had the good fortune of interacting with Mr. Lee over
24 the years. I think his mother was a renowned weaver
25 and treasure -- actually for all of Hawai'i, but

1 particularly for this area of Hawai'i.

2 MR. LEE: Our families' connection to the
3 property --

4 CHAIRPERSON SCHEUER: Kala mai. Happy to
5 have you speak.

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

8 MR. LEE: Yes.

9 CHAIRPERSON SCHEUER: So please proceed,
10 Mr. Lee.

11 ROBERT E. LEE, JR.

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 THE WITNESS: Our family connection to the
16 property goes back to the 1920s, and it's not only my
17 mom's side. Residing in the area is my dad's side
18 too, you know. So our connection goes back, you
19 know, generations, you know. And to get this
20 property back the way it came back to us was a
21 blessing.

22 CHAIRPERSON SCHEUER: Commissioners, other
23 questions for the Petitioner? Commissioner Okuda.

24 COMMISSIONER OKUDA: Thank you, Mr. Chair.
25 I would just like to say this -- and might

1 not be a question, but I think the fact that you've
2 made these statements, we're able to evaluate your
3 credibility, because you folks are in front of us
4 here, I think it says something very positive to the
5 community and the state that you're willing to
6 continue on this family commitment to the property
7 and, you know, we have to follow the law until the
8 legislature, supreme court tells us to do
9 differently.

10 But I think you'll find a commitment not
11 only from the Commission, but its very professional
12 staff, that to facilitate the things which the
13 Hawai'i Constitution imposes a duty on us basically
14 to preserve and protect Hawaiian cultural resources
15 and the natural resources of the public trust wards
16 the community, you will find a commitment I believe
17 from not only the Commission, but from the
18 professional staff here.

19 So that's basically my comment to you.
20 It's not to make any special promises or you're not
21 going to get any special break any different than
22 anyone else, because we try to treat everyone equally
23 under the law, but we do recognize the constitution
24 imposes on us a public trust document to preserve
25 Hawaii's natural resources which includes it's

1 resources of culture and history. Thank you.

2 CHAIRPERSON SCHEUER: You may respond.

3 MS. BAPTISTA: So with that in mind, the
4 way that we have been trying to work out our PUD is
5 to create a large area where there is a lot of buffer
6 in between the existing community.

7 CHAIRPERSON SCHEUER: For our fellow
8 Commissioners, can you remind us what PUD is?

9 MS. BAPTISTA: Planned unit development.
10 We have been working on conceptuais to try
11 to ensure that not only do those archaeological sites
12 stay intact, but we're able to preserve as much of
13 the native plants that are there, and not destroy.

14 We don't want to come in and do like a big
15 mass excavation and get rid of everything. We want
16 to ensure that the native plants not only remain
17 there but thrive. And we want to bring it back full
18 circle where it was. It can't always be what it was
19 when my great grandparents were there, but we want to
20 always keep in mind that we are the stewards of that
21 area. And our commitment is, of course, to everybody
22 in the community of Kona, but also to them.

23 CHAIRPERSON SCHEUER: Commissioners?

24 Commissioner Aczon.

25 COMMISSIONER ACZON: Can you be more

1 specific of what you want to do with the Petition
2 Area?

3 MS. BAPTISTA: Our hopes are, should the
4 Commission revert the property from Urban to
5 something that they feel is more appropriate, to
6 create 26 lots. That's it, in that whole area.

7 The lower portion of the property, did I --
8 I'm sorry, I don't have a beautiful presentation like
9 that. I felt like I came in --

10 CHAIRPERSON SCHEUER: That might be
11 preferred.

12 MS. BAPTISTA: I did provide one of these
13 site maps for the Commission to see. I hope everyone
14 got one. Where the two units are here, these two top
15 parcels, we do want to do 26 lots.

16 CHAIRPERSON SCHEUER: So I don't believe
17 that was filed with the Commission or received by the
18 Commissioners. As long as you can ensure --

19 MS. BAPTISTA: -- with the annual report.

20 CHAIRPERSON SCHEUER: It's part of the
21 annual report?

22 MS. BAPTISTA: Yeah.

23 CHAIRPERSON SCHEUER: Please proceed.

24 MS. BAPTISTA: As you can see, the lower
25 portion here, all of these are archaeological sites.

1 Our plan is to not touch this section. We may use a
2 small portion of the top for either a cultural
3 center, we haven't decided yet, but there's not going
4 to be any development of that lower area. We plan to
5 leave it intact because so many different
6 archaeological features and geographical features are
7 there that we don't want disturbed at all.

8 The former owner of this property had taken
9 a bulldozer to it years ago before there was all the
10 rules, so this one doesn't have as many, but we are
11 just planning to develop these two top parcels with
12 just 26 lots. That will depend on what the
13 Commission decides.

14 CHAIRPERSON SCHEUER: Does that map have a
15 figure number or page number so when we have -- when
16 anybody is reviewing the transcript of this hearing
17 we will have --

18 MS. BAPTISTA: I apologize, it does not.
19 Just says "site plan".

20 CHAIRPERSON SCHEUER: Included with the
21 last annual report?

22 MS. BAPTISTA: Yes.

23 CHAIRPERSON SCHEUER: Thank you, that's
24 sufficient. Commissioner Aczon --

25 MR. LEE: How we get 26 lots is zone Ag-5,

1 it was zoned Ag-5. And five divided into 130 acres,
2 you get 26.

3 CHAIRPERSON SCHEUER: I think we can follow
4 that.

5 MS. BAPTISTA: I said ours was much
6 simpler.

7 CHAIRPERSON SCHEUER: Commissioner Aczon.

8 COMMISSIONER ACZON: Just follow up.

9 Are there any plans on selling any of these
10 lots outside of your ohana?

11 MS. BAPTISTA: Yes, our hearts are big, but
12 our pockets are not all full. So we will have to
13 sell some of these lots in order to be able to fund
14 the project and the infrastructure.

15 But with that in mind, all of these lots
16 that we will have to sell, will have the conditions
17 that these sites, this area is not do to be developed
18 in these certain area spots.

19 COMMISSIONER ACZON: Did you have any
20 specific number?

21 MS. BAPTISTA: We have 126 -- oh, that
22 we're going to sell? We don't. We want it all to go
23 to family. If we could, we would do it that way.
24 But it will be offered to the family first for those
25 that can come in and qualify.

1 CHAIRPERSON SCHEUER: Commissioners?
2 Commissioner Cabral.

3 VICE CHAIR CABRAL: It appears -- so first
4 off, you're doing a fabulous job. I would like to
5 feel that you're the public and you're the client and
6 our customer, so I would like to think that we're not
7 so overwhelming, but I know there is a lot of lawyers
8 in the room. I get it. I'm not one.

9 So but your vision, if you make them into
10 these five-acre parcels that you sell off, what is it
11 that you're thinking that you're going to have, that
12 people are going to do with those five acres? What
13 is your vision? That they could farm them? That
14 they're going to build many mansions on them? What's
15 your vision.

16 MS. BAPTISTA: We're hoping that they will
17 be two to five-acre lots. Not sure yet exactly how
18 it's going to be done, but our hope is that -- the
19 area is not -- the farming that can be done there is
20 a lot of sweet potato. Being that the family had a
21 lot of history with what was done there. That would
22 be our hopes.

23 I think it's really -- our main goal
24 besides keeping the archaeological sites in place, is
25 to allow the people of our community to have a space

1 where they can call theirs, that they can have pride
2 in the ownership of the land that has history to it.
3 And be able to steward it in the way that they best
4 feel is meant for that area.

5 VICE CHAIR CABRAL: Are you working with
6 anyone else? I'm from Hilo, so water is not an
7 issue. God brings it every day. But you probably
8 have to bring up water and all kinds of things.

9 Are you working with anyone to develop what
10 your cost is going to be for developer?

11 MR. LEE: We're working with DWS. They
12 confirmed that we have the 26 units there.

13 VICE CHAIR CABRAL: Good. Thank you.

14 MR. LEE: And the planned unit development
15 allows us to do different size lots, not just five
16 acre. We're looking at two acres, maybe up to five
17 acres, ten acres, between the two TMKs.

18 VICE CHAIR CABRAL: Because this is a big
19 shift from what was going to be.

20 MR. LEE: We will have a plan and map maybe
21 on our next session meeting.

22 MS. BAPTISTA: Huge shift from what was
23 previously presented to the Commission.

24 VICE CHAIR CABRAL: Good. Thank you.

25 CHAIRPERSON SCHEUER: Commissioners,

1 further questions for the Petitioner at this time?

2 Commissioner Aczon.

3 COMMISSIONER ACZON: Just one more
4 question.

5 Do you have a timeline on development?

6 MR. LEE: ASAP.

7 MS. BAPTISTA: As soon as we get approval
8 from you.

9 COMMISSIONER ACZON: So no time of how many
10 years to completion?

11 MR. LEE: We're hoping right away. As soon
12 as we get the word from you guys on redesignation.
13 We already have the plans that we have made, we
14 submitted to the county. And we have got to do a few
15 more things, but we have to get over this hurdle
16 first.

17 COMMISSIONER ACZON: Thank you.

18 CHAIRPERSON SCHEUER: Commissioners,
19 further questions?

20 So I guess to clarify, I heard from the
21 first witness that you're waiting for direction from
22 us. But I heard from you just now, Mr. Lee, that
23 there is a specific request, specific action you're
24 hoping we will take?

25 MS. BAPTISTA: Yes. We're hoping that the

1 Commission will revert the Petitioned Area to either
2 Ag or Rural, whatever they deem the most appropriate
3 for that area.

4 CHAIRPERSON SCHEUER: Thank you for that
5 clarification. Are there further questions?

6 COMMISSIONER ACZON: I just want to hear
7 from the county and OP.

8 CHAIRPERSON SCHEUER: That will come next.

9 COMMISSIONER ACZON: Probably I will ask
10 questions.

11 CHAIRPERSON SCHEUER: Okay. If there is no
12 further questions now, we will hear from County of
13 Hawaii.

14 MR. KIM: Deputy Director Kanuha would like
15 to make some comments.

16 CHAIRPERSON SCHEUER: You're still under
17 oath.

18 MR. KANUHA: Thank you, again, Mr. Chairman
19 and members of the Commission. We don't have any
20 specific comments on this status report. We are
21 aware of what they're proposing.

22 What I would also like to add is, again,
23 this property still retains its original zoning, real
24 similar to the petition that you just heard before
25 that.

1 However, I would like to clarify that the
2 approach they're planning to use, this planned unit
3 development concept can be done under the existing
4 zoning that they have right now.

5 CHAIRPERSON SCHEUER: Under the existing
6 county zoning?

7 MR.KANUHA: Under the existing county
8 zoning.

9 CHAIRPERSON SCHEUER: Anything more, Mr.
10 Kim?

11 MR. KIM: No, thank you.

12 CHAIRPERSON SCHEUER: Are there questions
13 for the county? Commissioner Ohigashi.

14 COMMISSIONER OHIGASHI: So is it the
15 position of the county then that they're supporting
16 the reversion?

17 MR. KANUHA: That's an interesting
18 question. Let's put it this way. When the property
19 was converted from the Agricultural District to the
20 Urban District, that was based on the County General
21 Plan, the Community Development Plans, a long-range
22 development plan for that area.

23 And they indicated a trend towards more
24 urbanized development, which is why the county
25 supported that dba back then when it was done.

1 So to say that we could support a
2 reversion, I would have to say that trends, plans,
3 things of that nature have changed, and they haven't.

4 COMMISSIONER OHIGASHI: Would the county be
5 able to stipulate there's sufficient facts to support
6 a finding by the Commission that it should revert?

7 MR. KANUHA: We would be comfortable based
8 on what we've heard from the proposal, we would be
9 comfortable in stipulating to the reversion to Rural
10 rather than Agriculture, because we think it kind of
11 blends what the long-range plans talk about. But it
12 also, you know, takes it out of the Urban District.

13 My understanding is that the main reason
14 for requesting this reversion is that just the
15 development cost for that urbanized project was just,
16 you know, way too much. I don't know if anybody
17 would do that today.

18 So the answer is yes. We would support a
19 reversion to Rural which we think would be a fairly
20 good land use compromise.

21 COMMISSIONER OHIGASHI: I'm one of those
22 many lawyers over here, sorry.

23 CHAIRPERSON SCHEUER: Commissioners,
24 further questions for the county? Commissioner
25 Cabral.

1 VICE CHAIR CABRAL: So based on the
2 information you just gave us -- so hearing what, or
3 picturing now what we're hearing, is that if they go
4 to Rural, that would allow them to still have --
5 break up their lots, but give them more potential
6 freedom in the future as opposed to going back to
7 being Agriculture?

8 MR. KANUHA: That's part of it.

9 The PUD concept would allow them to mix and
10 match now all the way down -- well, they couldn't get
11 into half acre if they weren't Rural, so the smallest
12 they could go to would be one acre. But I think
13 because what they represented, and I think it's also
14 some of the findings in the dba is that the
15 Agricultural potential for this land is very, very
16 limited. I mean there's a lot of topography. Again,
17 there is a lot of archaeological sites.

18 So to put it -- have it reverted back to
19 Agriculture, knowing that there's no real feasible
20 way that agriculture would be done, that's why I'm
21 stating we would be more comfortable with a Rural
22 designation.

23 VICE CHAIR CABRAL: Thank you for that
24 clarification.

25 CHAIRPERSON SCHEUER: Are there any further

1 questions for the county? Commissioner Okuda.

2 COMMISSIONER OKUDA: Thank you, Mr. Kanuha.
3 If I can just ask a follow-up clarification.

4 So is it your testimony then that Rural
5 would actually give the Lees more flexibility than
6 Agriculture, but they still could do what they
7 described at least in this hearing?

8 MR. KANUHA: Somewhat. I think the
9 position I just articulated balances the county
10 support based on our long-range plan, which is for
11 more Urban for that area. But given that the
12 property itself is really not conducive to
13 agriculture, to have it revert back to Agriculture,
14 we feel the Rural designation is more in line with
15 the county's position from a land use planning
16 standpoint, besides giving them the flexibility to
17 the PUD.

18 COMMISSIONER OKUDA: And one final
19 question, Mr. Chair.

20 Would the Lees be able to conduct, let's
21 say, for example, sweet potato farming under Rural
22 designation?

23 MR. KANUHA: Absolutely.

24 COMMISSIONER OKUDA: Thank you very much.

25 CHAIRPERSON SCHEUER: Anything further for

1 the county, Commissioners?

2 If not, Office of Planning.

3 MS. APUNA: Office of Planning doesn't have
4 any comments. Thank you.

5 CHAIRPERSON SCHEUER: Threw me off.

6 Are there further questions for any of the
7 parties, Commissioners?

8 Commissioner Wong, then Commissioner Okuda.

9 COMMISSIONER WONG: So I just wanted to
10 clarify and hopefully the Petitioner understands that
11 this is just a status report. If we do make a
12 motion, it would have to be the future, hopefully
13 sooner than later to do whatever we want to do.

14 So just for your information, we can't say,
15 oh, you can do it now today. I just wanted to say
16 that whatever motion is being laid on the table is
17 for future. Thank you.

18 CHAIRPERSON SCHEUER: Commissioner Okuda.

19 COMMISSIONER OKUDA: Chair, similar to the
20 question asked by Mr. Ohigashi.

21 Would the Office of Planning be willing to
22 stipulate to some type of reversion whether it's,
23 let's say, for example, to a Rural designation?

24 MS. APUNA: I think that it's possible.
25 It's something I would have to take back to my client

1 and ask for them to do their own analysis, but that's
2 certainly a possibility.

3 COMMISSIONER OKUDA: So it's not out of the
4 question?

5 MS. APUNA: No, I don't think it's out of
6 the question at all.

7 COMMISSIONER OKUDA: Okay, thank you very
8 much.

9 CHAIRPERSON SCHEUER: Commissioner Wong,
10 you wanted to say something? Or are we ready to
11 proceed?

12 COMMISSIONER WONG: I think we're ready to
13 proceed, Chair.

14 CHAIRPERSON SCHEUER: Any final comments
15 from the Petitioner?

16 So, Commissioners, we can now enter
17 deliberations on this matter.

18 As a reminder, pursuant to Hawai'i
19 Administrative Rules section 15-15-93(b):

20 "Whenever the Commission shall have reason
21 to believe there has been a failure to perform
22 according to the conditions imposed, or the
23 representations or commitments made by the
24 petitioner, the commission shall issue and serve upon
25 the party or person bound by the conditions, the

1 representations or commitments, an order to show
2 cause why the property should not revert back to its
3 former land use classification or be changed to a
4 more appropriate classification," end quote, and set
5 the matter for a hearing of which we have tentatively
6 set aside May 22nd.

7 Commissioners, we can deliberate on this
8 matter. Commissioner Cabral.

9 VICE CHAIR CABRAL: You know, I'm not a
10 lawyer, so I'll fumble along here.

11 CHAIRPERSON SCHEUER: We will try not to
12 hold that against you.

13 VICE CHAIR CABRAL: Neither are you.
14 (Laughter.)

15 So should I -- I want to -- may I make a
16 motion?

17 CHAIRPERSON SCHEUER: You may make a
18 motion.

19 VICE CHAIR CABRAL: I'm going to make a
20 motion to show cause so that this body can consider
21 their motion to change the zoning -- I mean change to
22 revert the property -- not revert it necessarily, but
23 to alter the requirements of the property.

24 VICE CHAIR MAHI: I'll second.

25 CHAIRPERSON SCHEUER: So a motion has been

1 made by Commissioner Cabral and seconded by
2 Commissioner Mahi.

3 Would you like to speak to the motion,
4 Commissioner Cabral?

5 VICE CHAIR CABRAL: I'm trying to leave
6 that very open-ended so that the Petitioner can work
7 with the county and state if necessary, and come back
8 to us with an absolute plan as to what they would
9 like to request so that we could consider it in a
10 proper manner, as opposed to us dictating to them
11 what they're going to have to do. Thank you.

12 CHAIRPERSON SCHEUER: Commissioner Wong.

13 COMMISSIONER WONG: Just wanted -- I'll be
14 supporting motion.

15 Just wanted to reiterate what Commissioner
16 Okuda said to the Petitioner. There is nothing
17 you're doing wrong or anything. It's just we have to
18 do it procedurally by the law. So we have to do a
19 motion order to show cause to possibly revert the
20 land. That's not saying you're doing anything wrong.

21 MS. BAPTISTA: Thank you.

22 CHAIRPERSON SCHEUER: Commissioner Okuda.

23 COMMISSIONER OKUDA: Yes, Mr. Chair.

24 I would like to speak in favor of the
25 motion, and the reason why is my understanding is the

1 motion gives like a framework that if the Commission
2 has to issue an order, for example, if for some
3 reason, and it could be very good legal reasons, one
4 of the parties cannot stipulate or agree to
5 something, at least there's a hearing where all
6 parties will have a right to make a presentation and
7 ask the Commission to do what they believe is
8 necessary.

9 Again, we are not prejudging anything here.
10 This is more procedural framework number one.

11 Number two, the motion, as I understand it,
12 is not only to allow reversion back to an
13 Agricultural designation, but also to a more
14 appropriate designation which very well may be Rural
15 based on what the evidence is presented at that point
16 in time.

17 So for those reasons and other good cause
18 in the record, I would be voting for the motion.

19 CHAIRPERSON SCHEUER: Commissioners,
20 further deliberations on this matter?

21 MR. CHILDS: Point of order.

22 CHAIRPERSON SCHEUER: I'm going to swear
23 you in which I haven't done.

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

1 THE WITNESS: Yes.

2 Please state your name for the record and
3 then proceed.

4 COLIN KEOLA CHILDS

5 Was sworn to tell the truth, and testified as
6 follows.

7 MR. CHILDS: Colin Keola Childs.

8 Commissioner Cabral's motion stated in part
9 that it was to be able to provide an opportunity to
10 support the Petitioner's motion. And I think as a
11 point of order I want to point out that the
12 Petitioner is not making a motion.

13 I'm sensitive to that term because I think
14 it has a different context, a legal context. They
15 made a request, or they have suggested things, but
16 they have not made a motion before you.

17 CHAIRPERSON SCHEUER: Thank you.

18 Commissioners we are in deliberation on the
19 motion. Commissioner Okuda.

20 COMMISSIONER OKUDA: Mr. Chair, taking into
21 account the statement, I think the understanding is
22 that we are -- the motion was made as a motion by the
23 Commission for an issuance of an order to show cause,
24 and so it's a motion by the Commission.

25 CHAIRPERSON SCHEUER: Further comments from

1 the Commissioners? I'm going to largely --
2 Commissioner Mahi.

3 VICE CHAIR MAHI: This is a rare occurrence
4 when we can see this particular amount of land
5 falling back into the hands of, you know, the kupa
6 aina. I'll use that term "kupa aina". And it's
7 exciting. I wish it could happen more often.

8 And so coming before us, and having us take
9 the kinds of procedures that needs to be done, so
10 that you can -- we can further enable you to see the
11 land use in terms of your ancestors and how it was
12 used in their past.

13 I think it's important, so that's why I
14 seconded the motion which is really our operational
15 process.

16 So I just want to exert my support for your
17 now kuleana return to you.

18 CHAIRPERSON SCHEUER: If there is nothing
19 further, Commissioners, I'll restate my understanding
20 of the motion and why I support it.

21 My understanding of the motion is that we
22 do have reasonable -- reason to believe, based on the
23 representation by the Petitioner, that there's, in a
24 strict legal sense, a failure to comply with the
25 conditions of the Decision and Order in this matter

1 because there's an intent to have more appropriately
2 developed the property to preserve the archaeological
3 sites and develop the land in a manner which will
4 provide multigenerational living sites and farming
5 sites for this family and other members of this
6 community.

7 And I'll just briefly restate the same four
8 reasons that I used in the last docket why I'll vote
9 in favor of this docket.

10 First, I do believe it's clear, based on
11 the record that there has been a failure to comply
12 with the conditions, I do believe it's our duty to
13 follow the law as it's written, and take these kinds
14 of action.

15 I do believe it's fair to other dockets,
16 including the last docket, that we take the same kind
17 of action in similar situations, but it provides an
18 opportunity, and really in this case where you guys
19 are poised to take advantage of the opportunity that
20 can be provided by this procedure, I think it's the
21 appropriate action.

22 With that, if there's nothing further from
23 the Commissioners, I will call on Mr. Orodener for
24 roll call.

25 EXECUTIVE OFFICER: Thank you, Mr. Chair.

1 The motion is to schedule a motion for
2 Order to Show Cause.

3 Commissioner Cabral?

4 VICE CHAIR CABRAL: Yes.

5 EXECUTIVE OFFICER: Commissioner Mahi?

6 VICE CHAIR MAHI: Aye.

7 EXECUTIVE OFFICER: Commissioner Wong?

8 COMMISSIONER WONG: Aye.

9 EXECUTIVE OFFICER: Commissioner Okuda?

10 COMMISSIONER OKUDA: Yes.

11 EXECUTIVE OFFICER: Commissioner Ohigashi?

12 COMMISSIONER OHIGASHI: Yes.

13 EXECUTIVE OFFICER: Commissioner Aczon?

14 COMMISSIONER ACZON: Aye.

15 EXECUTIVE OFFICER: Chair Scheuer?

16 CHAIRPERSON SCHEUER: Aye.

17 EXECUTIVE OFFICER: Thank you, Mr. Chair,
18 the motion passes with seven.

19 CHAIRPERSON SCHEUER: Commissioner Okuda.

20 COMMISSIONER OKUDA: Can I just say one
21 thing. I apologize for talking so much.

22 But I just want to direct this about fancy
23 presentations. The most precise presentations come
24 from the heart. Thank you.

25 CHAIRPERSON SCHEUER: It's 11:25. We're

1 going to take a ten-minute recess, then take up the
2 final docket for the day.

3 (Recess taken.)

4 A18-805 Church (Hawaii)

5 CHAIRPERSON SCHEUER: Good morning. Our
6 next agenda item is an action meeting on Docket
7 A18-805, Petition of Kenneth Stanley Church and Joan
8 Evelyn Hildal to Amend the Conservation Land Use
9 District Boundary into the Agricultural Land Use
10 District for Approximately 3.4 Acres of Land at
11 Wailea, Island of Hawaii, Tax Map Keys: (3)2-9-003,
12 Parcel 29, and Parcel 60 to Consider a draft EA to
13 Support the Petition.

14 Will the parties please identify themselves
15 for the record?

16 MS. HILDAL: My name is Joan Evelyn Hildal.

17 MR. CHURCH: My name is Kenneth Church.

18 CHAIRPERSON SCHEUER: Thank you. County.

19 MR. KIM: Good morning, Chair and
20 Commissioners, Deputy Corporation Counsel Ronald Kim
21 representing the County of Hawaii, and with me is
22 Deputy Director of the Planning Department Duane
23 Kanuha.

24 MS. APUNA: Deputy Attorney General Dawn
25 Apuna on behalf of State Office of Planning.

1 CHAIRPERSON SCHEUER: Let me update the
2 record.

3 On January 23, 2019, the Commission voted
4 seven in favor, none against, and one excused to
5 grant the Motion to Deny Petitioner's Request that
6 the Commission accept the previous EA/FONSI without
7 prejudice;

8 On March 13 of 2019, the Commission
9 received Petitioner's Draft EA and Exhibits 1-23.

10 On March 18th, 2019, the Commission mailed
11 an LUC meeting agenda notice for the March 27-28
12 meeting to the Parties and the Statewide and Hawai'i
13 mailing lists.

14 Let me briefly go over our procedures for
15 today.

16 I can visually tell there's no one desiring
17 to provide public testimony, so there will be no
18 public testimony.

19 Then the Commission can begin proceedings
20 on considering the Draft EA starting with Petitioner
21 presenting its case, followed by the County Planning
22 Department and Office of Planning.

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

1 Any questions for our procedures?

2 MR. CHURCH: (Shakes head from side to
3 side.)

4 CHAIRPERSON SCHEUER: If you could say that
5 allowed.

6 MR. CHURCH: No.

7 MS. HIDAL: No questions.

8 MR. KIM: No questions.

9 MS. APUNA: No questions.

10 CHAIRPERSON SCHEUER: From time to time I
11 will be calling on short breaks, but hopefully this
12 will be a very quick matter.

13 There's nobody desiring to provide public
14 testimony, so, Mr. Church, you can please proceed
15 with your presentation.

16 MR. CHURCH: I'm going to take Commissioner
17 Okuda's statement that the Commission is favorably
18 sensitive to personally presented petitions, and I
19 want to confirm that ours is personally presented.

20 And we have today a little different
21 format. I asked my wife to give a brief
22 presentation, and I have about a five-minute one
23 following that. Thank you.

24 CHAIRPERSON SCHEUER: Please proceed. I
25 guess I should swear both of you in since you are not

1 attorneys.

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

4 MR. CHURCH: I do.

5 MS. HILDAL: I do.

6 KENNETH STANLEY CHURCH

7 Was sworn in to tell the truth, and testified as
8 follows:

9 JOAN EVELYN HILDAL

10 Was sworn in to tell the truth, and testified as
11 follows:

12 CHAIRPERSON SCHEUER: Please proceed

13 MS. HILDAL: I think I reiterated a little
14 bit on would what I spoke about before, but I'll go
15 ahead and do this.

16 We are a simple retired couple that have
17 decided to live our final years on a property in
18 Hawai'i. We believe in sustainability and felt that
19 after doing our research, Hawai'i laws and our
20 constitution support this, even with our Conservation
21 property.

22 So we put a lot of time, money and effort
23 into establishing and confirming our rights to grow
24 food with the DLNR for the last five years. To this
25 day, the DLNR/OCCL has not given us the determination

1 needed to practice food production without the
2 constant threat of fines, even though they have sort
3 of acknowledged our rights to practice nonconforming
4 use, which is Ag.

5 What I mean by this is formerly they
6 allowed us to grow sugarcane, which is actually not
7 in use, and seemed like a slap in the face at the
8 time considering all the hoops we had to jump through
9 to get to that point.

10 All of this has resulted in endless
11 communications and applications, wasting time, money
12 and effort, not just for us, but for them also to get
13 nowhere in establishing our rights to simply grow
14 food without the consent of threat of fines.

15 Hawai'i imports most of its food. Why? We
16 have some of the most fertile soils and the best
17 climate for growing food. Growing food is dynamic.
18 Farmers are constantly changing crops, soil to
19 improve its efficacy.

20 Needing to apply for OCCL for every change
21 is unnecessary work, and delays not to mention the
22 constant threat of fines. An example of this is when
23 applying for our first permit for 13 trees, our
24 permit was delayed with requirement to answer the
25 question: What will you do with a shovel full of

1 dirt when you plant the trees?

2 We were not allowed to use emails at the
3 time, so our correspondence had to be done all by
4 post. You can imagine the delay. But that was just
5 the beginning.

6 We're not here before you to complain about
7 our experience, or the DLNR, we simply want to
8 establish our rights under HAR and Hawai'i
9 Constitution to simply grow food, which seems to be
10 stated over and over again to be of the highest,
11 greatest priority to be protected under Hawai'i law.

12 At this point we believe the best solution
13 would be to rezone into the zone most appropriate to
14 the current and longstanding Ag use since 1850s.

15 We don't understand, considering the law,
16 why property that was actually being used intensively
17 for ag at the time of zoning, and has the highest
18 potential to be used for ag, was in Conservation.

19 Similar coastal properties, not even two
20 miles up the coast, were zoned into Ag. At this
21 point the actual reason for land being zoned into
22 Conservation seems to have been lost.

23 Hawai'i law and Hawai'i Constitution states
24 over and over again that properties with ag
25 potential, should be give again the greatest

1 protection. As far as we can see, good and well
2 intentioned people are now afraid to buy, use or even
3 attempt to permit Conservation lands because of the
4 huge misunderstandings, misinterpretations, and
5 burdens of application process.

6 From the top down, lawyers, land planners,
7 our own government officials and simple owners of
8 Conservation lands are missing out on the joys of
9 growing food when our government officials should
10 actually be required to encourage and promote these
11 protections by law.

12 Hawaiians have problems of fire ants, rats,
13 lungworms, mongoose, invasives, leptospirosis which
14 could be helped if more people were not afraid to use
15 their property without fear of fine and this
16 interpretation of our laws.

17 Coastal and conservation lands are now
18 laying fallow, taken over by pests, overgrown to the
19 extent that they now may never enjoy again except for
20 major excavation, not protected and enjoyed by the
21 rightful owners. That's really sad.

22 As far as this EA goes, this will be the
23 fourth EA considered for these relatively small
24 properties. Each EA is slightly different as to its
25 specific land use, but the content in all of them has

1 remained basically the same, describing the same
2 general ag use. All of the previous EA's haven't
3 resulted in FONSI's, so we hope that this one will
4 also.

5 We hope that you can understand now our
6 motives and our reasoning for rezoning our property
7 to its rightful and appropriate use.

8 Thank you for listening.

9 CHAIRPERSON SCHEUER: Mr. Church, you
10 wanted to followup?

11 MR. CHURCH: And for the benefit of the
12 court reporter, I'll give you my pages. I have five
13 pages to read. They're in big print, so I won't take
14 more than five minutes.

15 CHAIRPERSON SCHEUER: Thank you for that
16 assurance. And, again, I very much appreciate the
17 heartfelt of this testimony, but procedurally where
18 we are today is on this particular EA and whether or
19 not to believe that it will result in a FONSI.

20 MR. CHURCH: And I believe I've captured
21 that in my remarks.

22 CHAIRPERSON SCHEUER: Thank you. Please
23 proceed.

24 MR. CHURCH: The property is now fully
25 developed, a fully developed agricultural use

1 property with field crops, considerable orchard
2 species plantings, a potted plant nursery, and ag use
3 storage and processing structure and a residence.
4 Yesterday we just saw the roof going on.

5 I want to emphasize that because I sensed
6 earlier, as I said at the last hearing, that there's
7 some misconception. No new use is contemplated nor
8 is likely, whether this Petition is allowed or not.

9 It seems to us that the lawmakers
10 substantially designed the EA process to assess the
11 impact of intended new uses. As no new use is
12 contemplated, nor is likely, we believe a finding of
13 no significant impact is likely to result.

14 The EA and the Petition described very
15 clearly that the state provided in its laws that we
16 may expect to reasonably use our property for
17 agriculture without administrative review or
18 regulation by state and county administrative
19 authority. But that is not what has happened.

20 The EA and the Petition described, and the
21 evidence that DLNR administration of uses of our
22 property has added an inordinate level of burden and
23 delay that was never intended by the lawmakers when
24 the property was zoned into the Conservation
25 District.

1 Either the DLNR does not have a clear
2 evenly applied nonconforming use policy regarding its
3 rule HAR 13-5-7, or our use of the property was being
4 resisted without explanation. We have come to
5 believe the latter. That resulted in our Petition to
6 rezone the property as the DLNR's resistance causes
7 us considerable concern.

8 Here we find ourselves again today simply
9 trying to correct a problem that was not created by
10 us and was not intended by the lawmakers. Not only
11 have we had to advance a \$5000 filing fee with the
12 Land Use Commission, but we're being charged \$7 a
13 page just to record our testimony. I think our last
14 hearing cost us \$700.

15 We are not pretending to describe to the
16 Commission that a large agricultural use exists. The
17 property is very small. Any personal or economic
18 benefit that we will gain from this agricultural use
19 is similarly small. Our investment in this Petition
20 is a disproportionate burden if measured against any
21 benefit that we may receive if the Petition and the
22 EA is favorably found.

23 Nonetheless, we have determined to continue
24 to invest in this process as the burden and stress of
25 securing our property's ag use through the DLNR's

1 administration is too great for us to bear.

2 Not only do we suffer this uncertainty, but
3 there also exists the possibility, as my wife
4 explained, called fines. When we sought informal
5 discussions with the OCCL, which is the gateway into
6 the DLNR, in order that our land uses, that our uses
7 of our land not conflict with its rules, discussions
8 were repeatedly denied. They required that we put
9 everything in writing. Then they complained that we
10 wrote too many letters, and that's exhibited in one
11 of the exhibits to this, to the EA.

12 Written requests also did not clarify or
13 bring certainty. The Petition describes and
14 evidences that we have used more than a reasonable
15 effort regarding same. The EA even evidences a
16 letter where we requested the DLNR's comments
17 regarding our planned Petition that land be rezoned.
18 The DLNR did not provide comments.

19 We have provided very clear evidence in the
20 Petition and the EA that agricultural use of our
21 property is protected in state law. Particularly it
22 is now very clear to us that the state never intended
23 to interfere in the agricultural use of the lands
24 along the Hamakua Coast when it overlaid the
25 Conservation District on some of them.

1 I refer to Exhibit 6 to the EA, which is
2 the State Auditor General's review of Conservation
3 District regulations. Therein the Auditor described
4 a dual use concept of land use. Effectively the
5 state intended that uses of lands like ours that were
6 zoned into Conservation were intended to continue, as
7 the Auditor describes, to be fully used.

8 His report states the land use law speaks
9 of protecting, preserving, conserving. It also
10 speaks of uses not detrimental to a multiple use
11 conservation concept. In multiple use, land is used
12 for two or more purposes. For example, water
13 conservation, timber production and foraging in order
14 to increase the benefits derived from an area. In
15 our case I'm describing agriculture use.

16 The Auditor's report states that the
17 references made to a document that he describes as
18 Hawai'i Legislative Reference Bureau Public Land
19 Policy in Hawai'i: The Multiple-Use Approach, Report
20 No. 1, 1965 (revised 1969), Honolulu, page 7.

21 I emphasize from what I just quoted the law
22 requires the DLNR -- in quotation marks -- to allow
23 and encourage the highest economic use of our
24 property.

25 The auditor also describes on page 30 of

1 the Exhibit 6 report, the first statutory definition
2 of nonconforming use is consistent with usual
3 regulatory practice. It grandfathers uses that
4 existed prior to the enactment of the law.

5 The DLNR has not, I quote the auditor,
6 allowed and encouraged the property's highest
7 economic use, and specifically its agricultural use,
8 despite our exhaustive attempts to secure same since
9 we first purchased it in 2014. The Petition
10 describes that the DLNR resisted, delayed and
11 strongly discouraged us from our uses of our land
12 that are clearly provided for in law.

13 Yes, we did know that the property was
14 zoned in the Conservation District when we bought it.
15 We also believed that we would be reasonably allowed
16 ag use of it. The previous ag use of the property
17 was not interfered with in the slightest by the DLNR
18 for decades, yet our use has been. The laws and the
19 rules have not changed particularly, but the
20 administration of same apparently has.

21 The auditor's report also describes that
22 the dual land use policy can also be found in the
23 Constitution of the State of Hawaii.

24 The Petition and the EA described that the
25 property has many characteristics, but none that are

1 so unique that Conservation District zoning is
2 required to protect same. Particularly now the
3 property is fully developed. No new use is planned,
4 nor is likely. I emphasize the property's most
5 significant physical characteristic is that it is
6 prime agricultural land under the ALISH
7 classification system, and has had same use for over
8 150 years.

9 Yes, it is a property that lays very close
10 to the shoreline, but there also exists many other
11 similar ag properties in the area that are not zoned
12 in Conservation.

13 At your January meeting, Mr. Darrow
14 suggested -- the county representative Mr. Darrow
15 suggested for your consideration that with the egress
16 of time a new landowner may not continue to use the
17 property for agriculture. We think it unlikely that
18 the orchard plantings will be eliminated.

19 We point out also that the right to resume
20 more intense agricultural use by another subsequent
21 owner exists anyway in current law.

22 The property is also located in the
23 county's SMA, and its uses will always be reviewed
24 and protected by same. Also there exists a lot of
25 agriculture zoned properties throughout the county

1 including coastal properties that are not
2 particularly used for agriculture anyway.

3 So we would ask why this be a limiting
4 consideration. The state laws and the rules and the
5 Draft EA before you today describes that it is not
6 just our opinion, but the state auditor's report also
7 strongly evidences that when the Conservation
8 District was overlaid on some of the Hamakua Coast
9 sugarcane properties, it was never intended to
10 interfere with the continuing agricultural use of
11 same, nor was it intended that if sugarcane farming
12 ended, the lands would cease to be allowed
13 agricultural use.

14 The Draft EA describes, however, that today
15 everyone including the state, the county
16 administrator, at all levels, are confused by this
17 seemed contradiction of the property zonings and its
18 statute allowed use.

19 Finally, as an incentive to the reviewers
20 of the EA and the Petition, we described that we have
21 offered an improvement over the current statute,
22 rule -- statute and rule allowed use of our property.
23 This will result in a permanent use restriction that
24 will run with the land specifically of the ag use
25 along the coastal pali.

1 A buffer zone is offered in order to reduce
2 the intensity of the allowed agricultural use in the
3 entire area immediately adjacent to the coastal pali
4 which will reduce the potential for erosion of soils,
5 fertilizer and the like oceanward. Thank you.

6 CHAIRPERSON SCHEUER: Thank you, Mr.
7 Church, Ms. Hildal.

8 Commissioners, any questions? Commissioner
9 Aczon.

10 COMMISSIONER ACZON: Thank you, Mr. Church,
11 for your testimony.

12 What I want to hear is the Draft EA,
13 because we are here about the Draft EA. Can you kind
14 of summarize the process approvals of the certain
15 agencies so we can determine our course of action?

16 MR. CHURCH: I believe you're speaking
17 about the pre-consultation process?

18 COMMISSIONER ACZON: The Draft EA, how you
19 came up with the process.

20 MR. CHURCH: Again, on page 156 of our --

21 COMMISSIONER ACZON: Can you summarize for
22 me?

23 MR. CHURCH: Well, we talked to the county
24 elected representative for our district about this,
25 and she supported that, what we described to her.

1 We have spoken a number of times to Mr.
2 Darrow about this.

3 We asked Sam Lemmo, the administrator of
4 the Office of Coastal Land, for his comments. He
5 declined. He said he would answer questions that the
6 Commission asks him, but not us.

7 We sent out, through your mailing list,
8 250-odd interested parties.

9 Let me just look at my page 256 because I
10 had several -- no, 156.

11 We have talked to our neighbors about this.
12 We're in a seven-lot subdivision. It was discussed
13 at our last annual meeting. We offered two avenues
14 of discussion. We said they could bring up any
15 issues with us collectively. We also referred them
16 to the Land Use Commission office with a phone number
17 and contact person.

18 CHAIRPERSON SCHEUER: Does that answer your
19 question, Commissioner Aczon?

20 COMMISSIONER ACZON: Yeah, that's fine.
21 Thank you.

22 CHAIRPERSON SCHEUER: Any other questions
23 for the Petitioner?

24 MR. CHURCH: If I may, we also talked to
25 Tom Eisen of the Hawai'i Office of Environmental

1 Quality Control.

2 CHAIRPERSON SCHEUER: Thank you.
3 Commissioner Cabral.

4 VICE CHAIR CABRAL: Thank you.

5 So your environmental assessment, who
6 prepared that? You yourselves prepared that?

7 MR. CHURCH: That's correct.

8 VICE CHAIR CABRAL: And you're referencing
9 that there is no difference in land use than what
10 you're doing now, so you did your assessment based on
11 what you've already developed on the land, so you're
12 saying it's already a developed land because you have
13 your residency being built on it, and you have a food
14 processing facility on it, and you have your
15 agricultural use on it; is that correct?

16 MR. CHURCH: If I can elaborate a little.
17 During the previous landowners, or there has been
18 three landowners since it was put in Conservation,
19 the sugarcane company, the McCullys and us.

20 The McCullys petitioned this same
21 Commission in 2005 and that went through the full
22 process and it was denied. And the two Commissioners
23 out of the seven that voted against it stated
24 concerns that the development of structures on the
25 property would be best administered by the continuing

1 administration of the DLNR because they were
2 concerned about pali erosion and issues like that.

3 So they wanted to be sure that anything was
4 located as far from the pali as possible.

5 Another reason that was that soil erosion
6 into the ocean was also a major issue. There is some
7 subtle concerns about land speculation as the
8 McCullys had developed the entire subdivision. And I
9 could go into it, but those were subtle things.

10 So the essence of what we are saying now,
11 and in fact, the administrator of the Office of
12 Conservation and Coastal Lands, Sam Lemmo, also
13 described his concerns, and said if the Commission
14 allowed it, that they allow it with a buffer zone.

15 So we feel now that the -- and at that time
16 it was just an open field of grasses that were
17 regularly mowed.

18 So we feel now that with the DLNR's
19 participation, the property has been combined and
20 resubdivided. We eliminated three railway lots that
21 crossed the three lots that we bought and
22 reconfigured the lines.

23 There were no new -- we didn't create new
24 lots. We are not land speculators. And indeed, we
25 sold one of the lots because it was surplus to our

1 needs.

2 So we felt that the DL -- given that -- now
3 that we understand that agriculture is an allowed use
4 without consulting with the DLNR or anything, which
5 took a long time for us to understand the laws and
6 read them, because the DLNR was not forthcoming. No
7 matter how often we asked, we got evasive answer.

8 Joanie mentioned that when we asked for a
9 determination that agriculture was an allowed use,
10 they came back and said you can grow sugarcane. We
11 never asked them if we could grow sugarcane. That
12 was their response.

13 CHAIRPERSON SCHEUER: I'm going to just ask
14 you. There is a long and complicated history, and a
15 lot of blood, sweat and tears by multiple parties
16 into this.

17 MR. CHURCH: Bottom line is that every
18 concern that was raised in the McCully's hearing has
19 now been addressed.

20 VICE CHAIR CABRAL: I did not read their
21 hearing notes. Your residential structure is now
22 built on the Conservation zoned land; is that
23 correct?

24 MR. CHURCH: That's correct. And there is
25 no swimming pool, by the way.

1 VICE CHAIR CABRAL: And you were able to
2 get permits with the county and permission from DLNR
3 to do that?

4 MR. CHURCH: Yes.

5 VICE CHAIR CABRAL: As well as your
6 processing plant or structure is permitted also with
7 both the county and approved by DLNR?

8 MR. CHURCH: It was definitely permitted by
9 DLNR. And perhaps Mr. Darrow can explain the concept
10 of -- the county's representative. We went through
11 the process.

12 CHAIRPERSON SCHEUER: If I may, where we
13 are focused right now, Commissioners, directed to my
14 fellow Commissioners, we are trying to determine
15 whether or not there is likely a significant impact,
16 in which case we would ask Mr. Church to proceed with
17 preparation of an EIS; or if there is not likely
18 significant impact, in which case we can cause a
19 FONSI to be issued, and then we could actually
20 proceed at a later hearing as to whether or not we
21 find the EA acceptable.

22 So that's narrow decision-making in this
23 very long process with many more hearings to go that
24 we have.

25 Are there any questions for the Petitioner

1 about the specific decisionmaking that we're going
2 through today? Hearing none, county.

3 MR. KIM: No comments or questions from
4 county.

5 CHAIRPERSON SCHEUER: Questions for the
6 county from the Commissioners? Commissioner
7 Ohigashi.

8 COMMISSIONER OHIGASHI: No, you said they
9 finished their case, so he's just asking questions.
10 I don't know.

11 CHAIRPERSON SCHEUER: They finished. We
12 asked questions. We're done with asking questions at
13 this time.

14 COMMISSIONER OHIGASHI: I don't have any
15 comments.

16 CHAIRPERSON SCHEUER: Any questions for the
17 county? No.

18 Office of Planning, do you have anything to
19 share?

20 MS. APUNA: Nothing to share, thank you.

21 CHAIRPERSON SCHEUER: Are there any
22 questions for the Office of Planning?

23 Seeing none, Mr. Church, Ms. Hildal, any
24 final statements you want to make before we proceed
25 to decisionmaking?

1 MR. CHURCH: No.

2 MS. HILDAL: No comments.

3 CHAIRPERSON SCHEUER: Commissioners, what
4 is your pleasure? Commissioner Okuda.

5 COMMISSIONER OKUDA: I would like to make a
6 motion. I would like to move that the Commission
7 make a determination, or the determination of an
8 anticipated finding of no significant impact for the
9 Petitioner's submitted Draft Environmental
10 Assessment.

11 And related to that I would request as part
12 of this motion, that if the motion is approved, the
13 Petitioner work with the Land Use Commission's
14 professional staff to prepare and put together
15 whatever necessary documents are required by the
16 OEQC, and under the applicable administrative rules
17 for further actions necessary under the rules,
18 including publication and public review for an
19 environmental assessment.

20 CHAIRPERSON SCHEUER: Motion has been made
21 by Commissioner Okuda.

22 COMMISSIONER ACZON: Second.

23 CHAIRPERSON SCHEUER: It has been seconded
24 by Commissioner Aczon.

25 Is there any discussion or deliberation on

1 the motion? Commissioner Okuda.

2 COMMISSIONER OKUDA: Thank you, Mr. Chair.

3 The reason for this motion is, as the Chair
4 pointed out, this is a very narrow procedural issue.
5 This doesn't prejudge the outcome one way or the
6 other. It is simply the step that's necessary to get
7 the input and review that's required by the law. And
8 so by making this motion, at least for me, I don't
9 prejudge anything here, including what might arise
10 out of the further process of the environmental
11 assessment, any further public review, or in fact the
12 underlying Petition.

13 So, again, this is just a simple
14 procedural, but very important and necessary step.
15 So for those reasons I am asking that the motion be
16 approved.

17 CHAIRPERSON SCHEUER: Thank you. Is there
18 further deliberation on the motion? Commissioner
19 Aczon.

20 COMMISSIONER ACZON: Mr. Chair, based on
21 the Petitioner's submittals such as 2019 Draft EA,
22 2016 and 2005 EA, FONSI submittals, and proposed
23 actions, it does not appear that there's a
24 significant impact on the environment. And there's
25 no additional uses, proposed uses on the property,

1 beyond the property.

2 And this motion will also allow the
3 Petitioner to move forward to publication and public
4 review period and the latest EA as previously
5 requested by the Commission. Therefore, I will vote
6 in favor of the motion.

7 CHAIRPERSON SCHEUER: Any further
8 deliberation? If not, Mr. Orodener, please poll the
9 Commission.

10 EXECUTIVE OFFICER: Thank you, Mr. Chair.
11 The motion is to have the Commission find that --
12 make an anticipated finding of no significant impact,
13 that the Petitioner work with staff to put together
14 the necessary document required under Chapter 343 for
15 further processing.

16 Commissioner Okuda?

17 COMMISSIONER OKUDA: Yes.

18 EXECUTIVE OFFICER: Commissioner Aczon?

19 COMMISSIONER ACZON: Yes.

20 EXECUTIVE OFFICER: Commissioner Mahi?

21 VICE CHAIR MAHI: Aye.

22 EXECUTIVE OFFICER: Commissioner Wong?

23 COMMISSIONER WONG: Aye.

24 EXECUTIVE OFFICER: Commissioner Cabral?

25 VICE CHAIR CABRAL: Yes.

1 EXECUTIVE OFFICER: Commissioner Ohigashi?

2 COMMISSIONER OHIGASHI: Yes.

3 EXECUTIVE OFFICER: Chair Scheuer?

4 CHAIRPERSON SCHEUER: Aye.

5 EXECUTIVE OFFICER: Thank you, Mr. Chair.

6 The motion passes unanimously with seven votes.

7 CHAIRPERSON SCHEUER: Thank you,

8 Commissioners.

9 Are there any other matters that need our
10 attention? Seeing none, there being no further
11 business, I declare this meeting adjourned.

12 (The proceedings adjourned at 12:07 p.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on March 28, 2019, at 9:00 a.m., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 28th day of March, 2019, in
Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156