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LAND USE COMMISSION
STATE OF HAWAII

2019 APR 26 P 2:12

Attorneys for OFFICE OF PLANNING,
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A02-737
)	
U OF N BENCORP)	STATEMENT OF POSITION OF THE
)	OFFICE OF PLANNING ON THE LAND
To Amend the Agricultural Land Use)	USE COMMISSION'S ORDER TO
District Boundary Into the Urban Land Use)	SHOW CAUSE; EXHIBIT A;
District for Approximately 62 acres, Tax)	CERTIFICATE OF SERVICE
Map Key Nos. (3) 7-5-002:010: 085 and 7-)	
5-017: 006, situated at Waiaha 1 st , North)	
Kona, County and State of Hawaii)	
)	

**STATEMENT OF POSITION OF THE OFFICE OF PLANNING
ON THE LAND USE COMMISSION'S ORDER TO SHOW CAUSE**

In response to the Land Use Commission's ("Commission") Order to Show Cause, dated March 29, 2019 ("OSC"), issued upon Petitioner U of N Bencorp, the Office of Planning, State of Hawaii ("OP"), provides this Statement of Position.

Hawaii Revised Statutes ("HRS") § 205-4 authorizes the Commission to impose conditions necessary to "uphold the intent and spirit of this chapter [205] or the policies and criteria established pursuant to section 205-17 or to assure substantial compliance with

representations made by the petitioner in seeking a boundary change” and “absent substantial commencement of use of the land in accordance with such representations, the [C]ommission shall issue and serve upon the party bound by the condition an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification.”

Based on the information provided by Petitioner thus far, and information provided to OP by State agencies, OP finds that Petitioner has failed to comply with certain representations and/or has not fulfilled certain conditions of the “Findings of Fact, Conclusions of Law, and Decision and Order For A State Land Use District Boundary Amendment,” dated August 8, 2003 (“D&O”), has not substantially commenced use of the land in accordance with representations made by Petitioner in seeking the boundary amendment, and has not demonstrated good cause to not revert. As the burden is on the Petitioner “to show cause”, unless Petitioner is able to provide additional information demonstrating compliance with D&O conditions, substantial commencement of use of the land, and/or good cause to not revert the land, OP would not object to the Commission’s reversion of the Petition Area to its original classification or more appropriate classification.

I. Petitioner Has Failed to Comply With Its Representations and Has Not Fulfilled Conditions of the D&O.

OP finds that Petitioner has failed to comply with and has not fulfilled the following conditions of the D&O or developed the land in compliance with representations made in seeking the district boundary amendment.

Finding of Fact No. 39 – Proposal for Reclassification.

Finding of Fact No. 39 states: *The Project comprises three separate developments: Hualalai Village, the Cultural Center, and the Educational Facility. Hualalai Village, a 400-unit condominium complex to be developed in four stages, with Phase I (103 units) already*

zoned and currently under construction, and therefore is not a part of the Petition and Petition Area. Phases II, III and IV of the Hualalai Village project comprise the remaining 297 units which are included in the Petition. The Cultural Center will comprise of a designed landscaped park that focuses upon the historical relationship of the native Hawaiian culture with Christianity and the establishment of Hawaii's multicultural mix.

At the Commission's status report hearing held on March 28, 2019, Petitioner presented a slideshow of the Project's status. Petitioner's Slide #21, titled "University of the Nations Kona and Adjacent Properties," includes an aerial photo of the Petition Area and adjacent properties owned by the Petitioner. Petitioner's Slide #21 states in part, "The undeveloped parcel next to the U of N Kona campus outlined in red is the Reclassified Area." The red-outlined Reclassified Area in the photo appears to include vegetation, a few dirt roads and two small buildings, but no significant development or development indicating construction of the Hualalai Village, the Cultural Center, or the Educational Facility.

On Petitioner's slide #12, titled, "U of N Kona Development Project, To be integrated with U of N Kona Campus but located in the Reclassified Area," Petitioner provides its "Revised Project" that includes the deletion of "the development of 297 market condo housing units in the Reclassified Area" as well as the deletion of "the development of a for-profit cultural center in the Reclassified Area."

Based on the above, Petitioner represented under the D&O that it would develop the Hualalai Village, the Cultural Center, and the Educational Facility. However, at this time, none of the three have been built, and Petitioner indicated its plans were revised to no longer develop the 297 unit Hualalai Village and the Cultural Center. OP therefore finds that Petitioner has failed to develop the Hualalai Village, the Cultural Center, and the Educational Facility as Petitioner represented in Finding of Fact No. 39.

Finding of Fact No. 64 – Development Timetable.

Finding of Fact No. 64 states: *The Hualalai Village residential development is slated to run over a period of five years and will be completed during the Year 2007. Commencement of the Cultural Center is targeted to begin during the Year 2007 and the Educational Facility is being planned for commencement in 2005/2006.*

Petitioner represented to the Commission that the Hualalai Village would be completed in 2007 or within five years following the 2003 D&O, and the commencement of the Cultural Center and Educational Facility would be in 2007 and 2005/2006 respectively. The Petitioner has failed to complete the Hualalai Village by 2007, or commence construction of the Cultural Center and Educational Facility by 2007. OP therefore finds that Petitioner has not complied with its representations that it would complete or commence the three components of the project as scheduled.

Condition No. 1 – Affordable Housing.

Condition No. 1 states: *Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable housing requirements for the Project of the County of Hawaii. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Hawaii.*

Petitioner stated that it has provided community affordable housing through the rehabilitation of “Kama’aina Hale Apartments.” Petitioner indicates that they have renovated and managed 68 abandoned units at its own expense and currently manage the apartments under HUD’s affordable income and rent restrictions. These units are outside of the Petition Area.

Petitioner’s Annual Report, Dated March 28, 2019.

At the Commission’s status report hearing held on March 28, 2019, Petitioner maintained that the affordable housing condition was yet to be triggered, stating, “The affordable housing condition on the reclassified area would be triggered by the development of housing, which then on that area, which then triggers a commiserate response. In this particular case, as no housing

has been developed to date, we're compliant in the sense that, well, we haven't done – we haven't produced that trigger for housing from activity on the reclassified area.” *Page 31, lines 6-13, Transcript of Commission Status Hearing, March 28, 2019.*

With respect to Petitioner's satisfaction of the affordable housing condition, the County of Hawaii (“County”) indicated at the status hearing that Petitioner had yet to consult with the County on an affordable housing agreement but that some of Petitioner's affordable housing efforts potentially could be used in satisfying such an agreement. Following Petitioner's presentation at the status hearing, the County stated, “...it was interesting to hear about the affordable housing project from U of N, and that they my might be able to get some credit for that project actually per county code. But, again, we don't know what the requirements are going to be on the housing until... there's some concrete with what is proposed for development actually too. So I can't say whether or not they satisfied that or not.” *Page 48, lines 1-10, Transcript of Commission Status Hearing, March 28, 2019.*

While Petitioner may have made efforts towards providing affordable housing opportunities, and argues that the affordable housing condition has not been triggered, the terms of the affordable housing were not mutually agreed to by the County. OP therefore finds that Condition No. 1 has not been fulfilled.

Condition No. 2 – Drainage Improvements.

Condition No. 2 states: *Petitioner shall design and construct on-site and regional drainage improvements required as a result of the development of the Reclassified Area to the satisfaction of the State Department of Health, the Commission on Water Resource Management of the State Department of Land and Natural Resources, and the County of Hawaii. The Petitioner shall prepare a Drainage Study meeting with the approval of the County of Hawaii Department of Public Works. The Drainage Study shall consider regional drainage issues.*

Petitioner stated it has not designed and constructed on-site and regional drainage improvements, or prepared a drainage study. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Condition No. 2 has not been satisfied.

Condition No. 3 – Public School Facilities.

Condition No. 3 states: *Petitioner shall contribute to the development, funding, and/or construction of school facilities for the Project, on a fair-share basis, as determined by and to the satisfaction of the Department of Education. Terms of the contribution shall be agreed upon in writing by the Petitioner and the Department of Education prior to seeking building permits for any portion of the Reclassified Area.*

Petitioner stated that it has not finalized any agreements with the Department of Education. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Petitioner has not fulfilled Condition No. 3.

Condition No. 4 – Water Resources.

Condition No. 4 states: *Petitioner shall provide adequate water supply facilities and improvements or equivalent funding to accommodate the Project. The water supply facilities, improvements and/or equivalent funding shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources, and the County of Hawaii Department of Water Supply.*

The Department of Health, Safe Drinking Water Branch (“DOH”), submitted a letter to the Office of Planning, dated April 24, 2019, which indicates that the Petitioner has been working with the County Department of Water Supply (“DWS”). *See Exhibit A.* The DWS has confirmed water availability for existing uses, and indicated that future uses may require a new water source. *Id.* The DOH indicates that a new water source would require approval from the DOH, prior to its use. *Id.* Petitioner stated that they are applying for a well permit. *Petitioner's Annual Report, dated March 28, 2019.*

While there has been some effort by Petitioner to work with DWS, OP finds that Condition No. 4 remains unfulfilled.

Condition No. 5 – Wastewater Facilities.

Condition No. 5 states: *Petitioner shall provide adequate wastewater treatment, transmission, and disposal facilities for the Project as determined by the State Department of Health and the County of Hawaii Department of Environmental Management.*

Petitioner stated that it has yet to work with the Department of Health and County Department of Environmental Management to provide wastewater treatment, transmission, and disposal facilities. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Condition No. 5 remains unfulfilled.

Condition No. 6 – Archaeology.

Condition No. 6 states: *Petitioner shall submit a complete inventory survey report of the Reclassified Area for the review and approval of the State Historic Preservation Division of the Department of Land and Natural Resources ("DLNR-SHPD")...*

Petitioner stated that the inventory survey was completed and approved in 2003; an archaeological inventory survey and burial treatment plan were both approved in 2003; a monitoring plan has not been developed and approved; and a data recovery plan was completed in 2007. *Petitioner's Annual Report, dated March 28, 2019.* OP finds that Petitioner has made substantial progress in fulfilling Condition No. 6. However, with the Petitioner's proposed change in plans for the development of the Project, the approved and plans may need to be revisited.

Condition No. 7 – Cultural, Historical, Customary and Traditional Rights and Resources.

Condition No. 7 states: *Petitioner shall initially establish and annually provide reasonable operating and capital expenditure costs or facilities through revenues from the Project, the [Kahu Wai'aha Committee] composed of: (1) a person of Native Hawaiian ancestry who is a lineal descendent and knowledgeable regarding the type of cultural resources and practices within the Reclassified Area, as selected by the Executive Officer of the Commission from a list of three names based on a review of their resumes, and (2) a management member knowledgeable regarding the type of cultural resources and practices within the Reclassified Area, as selected by the Petitioner. The individuals making up the KWC shall operate on an equal vote basis...*

Petitioner stated that it has been in close contact with the lineal descendants of the property and sought their input on numerous occasions, but has yet to formally set up the KWC. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Petitioner has not complied with Condition No. 7.

Condition No. 8 – Soil Erosion and Dust Control.

Condition No. 8 states: *Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health.*

Petitioner stated it is committed to fulfilling this Condition. *Petitioner's Annual Report, dated March 28, 2019.* As Petitioner has yet to begin development of the project, Condition No. 8 has not been triggered.

Condition No. 9 – Transportation.

Condition No. 9 states: *Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT) and County of Hawaii Department of Public Works (DPW). Agreement between the Petitioner and the DOT and DPW as to the level of funding and participation shall be obtained prior to the Petitioner obtaining County zoning, or prior to the Petitioner securing County building permits if County zoning is not required.*

Petitioner stated that it has not finalized the local and regional transportation programs. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Petitioner has not fulfilled Condition No. 9.

Condition No. 10 – Traffic.

Condition No. 10 states: *Petitioner shall, prior to the Petitioner obtaining County zoning, submit a revised Traffic Impact Analysis Report (TIAR) for the review and approval of the DOT and DPW, which shall include an analysis of the entire development of the existing/proposed University of the Nations-Kona, Hualalai Village project, and the Cultural Center, as well as existing and potential future developments in the immediate area as required by the DOT and DPW.*

Petitioner stated it will submit a revised TIAR. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Petitioner has not fulfilled Condition No. 10.

Condition No. 11 – Cultural Center.

Condition No. 11 states: *The Petitioner shall develop the Cultural Center with sensitivity to the host native Hawaiian culture, and provide for outreach and educational opportunities for the children of Hawaii. The Petitioner shall consult with the KWC and the Ka Haka 'Ula O Ke'elikolani, College of Hawaiian Language at University of Hawaii- Hilo to promote cultural sensitivity in the development of programs for the Cultural Center. Petitioner shall, prior to commencement of operations for the Cultural Center, submit a status report to the Commission for its approval on the Petitioner's traffic mitigation efforts for development of the Reclassified Area. If, for any reason, the Cultural Center does not commence operations by January 1, 2008, the Petitioner shall return to the Commission for a hearing to review compliance with the requirements of this Condition.*

As discussed *supra*, Petitioner has yet to develop the Cultural Center. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Petitioner has not fulfilled Condition No. 11.

Condition No. 12 – Ka Haka 'Ula O Ke'elikolani, College of Hawaiian Language at University of Hawai'i- Hilo.

Condition No. 12 states: *Petitioner shall cooperate with the College of Hawaiian Language at University of Hawaii-Hilo in promoting the perpetuation of the Hawaiian language by providing distance learning opportunities for teaching the native Hawaiian language, as well as cooperating in activities that promote Hawaiian cultural authenticity.*

Petitioner stated that it discussed possible partnerships with the University of Hawaii at Hilo in 2004. However, Petitioner has instituted its own Hawaiian language programs. *Petitioner's Annual Report, dated March 28, 2019.* OP finds that Petitioner has made efforts toward but has not fulfilled Condition No. 12.

Condition No. 13 – Civil Defense.

Condition No. 13 states: *Petitioner shall fund and construct adequate civil defense measures serving the Reclassified Area as determined by the State of Hawaii Department of Defense-Office of Civil Defense, and the County of Hawaii Civil Defense Agency.*

Petitioner stated that it will comply with this Condition. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Petitioner has yet to fulfill Condition No 13.

Condition No. 14 – Solid Waste.

Condition No. 14 states: *Petitioner shall develop a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes. Petitioner's Solid Waste Management Plan shall be approved by the County of Hawaii Department of Environmental Management, Solid Waste Division. The Plan shall address and encourage an awareness of the need to divert the maximum amount of waste material caused by developments away from the County's landfills.*

Petitioner stated that it will comply with this Condition. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Petitioner has yet to fulfill Condition No 14.

Condition No. 16 – Notice of Change to Ownership Interests.

Condition No. 16 states: *Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.*

Petitioner stated that it notified the Commission of initial changes in ownership via the 2006 Annual Report and at the March 1, 2007 hearing. *Petitioner's Annual Report, dated March 28, 2019.* However, Petitioner failed to notify the Commission of the transfer of interest in the Petition Area to Ka Ohana Wai'aha in 2011, and the subsequent transfer of interest to U of N Kona in 2014. *See Petitioner's Slide #9, titled "Universality of the Nations Kona, Evolution of the U of N Kona Back to a Faith Based Mission Model."* OP therefore finds that Petitioner has not fully complied with Condition No 16.

Condition No. 17 – Annual Reports.

Condition No. 17 states: *Petitioner shall timely provide without prior notice, annual reports to the Commission...*

Petitioner filed annual reports for 2004, 2005 and 2007 on August 30, 2006. Petitioner filed annual reports for years 2008 through 2019 on March 28, 2019. *Petitioner's Annual*

Report, dated March 28, 2019. While Petitioner filed annual reports, they were not timely filed on an annual basis. OP therefore finds that Petitioner has not fully complied with Condition No 17.

Condition No. 19 – Recording of Conditions.

Condition No. 19 states: *Within seven (7) days of the issuance of the Commission's D&O for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances and/or the Assistant Registrar of the Land Court...a statement that the Reclassified Area is subject to conditions imposed by the Commission....*

Petitioner stated that it filed with the State Bureau of Conveyances on August 18, 2003, as Document No. 2003-171988. *Petitioner's Annual Report, dated March 28, 2019.* OP therefore finds that Petitioner fulfilled Condition No 17.

Condition No. 15 – Compliance with Conditions.

Petitioner's failure to comply with or non-fulfillment of Condition Nos. 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, 14, and 17 of the D&O, demonstrates Petitioner's failure to develop the Reclassified Area in substantial compliance with Petitioner's representations made to the Commission. Consequently, Petitioner has also not complied with Condition No. 15 – Compliance with Representations to the Commission, which states:

Petitioner shall develop the Reclassified Area in substantial compliance with the representations made by the Petitioner to the Commission in this Docket, as proposed in its Petition and in documentary evidence and testimony before the Commission. Failure to do so for any reason including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Reclassified Area to its former classification, a change to a more appropriate classification, or any other legal remedies.

II. Petitioner Has Not Substantially Commenced Use of the Land In Accordance with Its Representations to the Commission.

Petitioner has not substantially commenced use of the land in accordance with its representations made to the Commission in seeking the boundary amendment.

By the plain language of the statute, Petitioner is required to demonstrate that the commencement of the Project is “substantial”. HRS §205-4(g). In *DW Aina Le‘a Development, LLC v. Bridge Aina Le‘a, LLC*, 134 Hawaii 187, 339 P.3d 685 (2014) (“*Aina Le‘a*”), the Hawaii Supreme Court recognized that with regard to substantial commencement, “substantial” is “considerable in amount or value; large in volume or number.” *Id.* at 213, 339 P.3d at 712. Therefore, Petitioner must demonstrate, not simply that it has commenced the Project, but that Petitioner’s commencement of the Project was considerable in amount or value and large in volume or number.

Petitioner is also required, by the plain language of the statute, to demonstrate that the substantial commencement is of the “*use of the land*”. HRS § 205-4(g). The statute and case law are not explicit on how to interpret “use of the land”, but it is reasonable to believe that “use of the land” means physical land activities such as construction or grading. Through HRS § 205-4(g), the Legislature intended to address the undesirable consequences of land left untouched or “vacant”, even with appropriate county land use designation. The Senate Committee on Energy and Natural Resources specifically noted that “[v]acant land with the appropriate state and county land use designation is often subject to undesirable private land speculation and uncertain development schedules.” *Aina Le‘a* at 211; 339 P.3d 709, quoting S. Stand. Comm. Rep. No. 2116, in 1990 S. Journal, at 915.

For the following reasons, OP believes Petitioner has not demonstrated substantial commencement of use of the land.

Petitioner admits that it has not developed and no longer plans to develop the Petition Area as represented in the D&O. Petitioner’s Slide #21 clearly depicts a vacant lot with no physical grading or development of the Petition Area.

Over the past fifteen (15) years, Petitioner's commencement of the Project can be characterized as minimal rather than substantial. Petitioner has built affordable housing but not under mutual agreement by the County under Condition No. 2, and not on the Petition Area. Petitioner has worked with DWS and applied for a well permit but has not built adequate water supply facilities and improvements or provided equivalent funding to accommodate the Project under Condition No. 4. Petitioner has completed archaeological surveys and plans under Condition No. 6, but those plans may need to be reviewed by SHPD again based on its proposed revised Project plans. Petitioner has instituted its own Hawaiian language program though not in cooperation with the University of Hawaii-Hilo under Condition No. 12. Petitioner has thus made some progress that can be characterized as preliminary to development of the land, but not actual development or use of the land in a large or considerable amount.

For context, in *Aina Le'a*, the Hawai'i Supreme Court determined that the developer substantially commenced use of the land as a result of: constructing sixteen townhouses with completed exteriors and interiors, cabinets and appliances installed and electrical and plumbing ready to hook up; twenty-four townhouses constructed up to the roof; thirty-two townhouses constructed in various stages of completion; mass grading for the affordable housing sites, foundation slabs for eight buildings; and immediate access and internal roadways graded. *Aina Le'a* at 214; 339 P.3d at 712. The developer had invested more than \$20,000,000 for plans and construction work on the project. *Id.* While the Court acknowledged that "a determination of whether a party has substantially commenced use of the land will turn on the circumstances of each case," it is evident that the extensive list of construction, moving of land, and financial investment in *Aina Le'a*, that amounted to "substantial commencement of use of the land", is in stark contrast to the lack of progress made by Petitioner in this Project. *Id.* at Footnote 16.

Petitioner has not commenced construction on the Petition Area, and provides no evidence of financial investment or comparable effort amounting to substantial commencement. Therefore, OP finds that Petitioner has not substantially commenced use of the land.

III. Petitioner Has Failed to Show Good Cause Why the Petition Area Should Not Revert to Its Former Classification or Be Changed to a More Appropriate Classification.

Petitioner has failed to show good cause why the Petition Area should not revert to its former classification or be changed to a more appropriate classification.

Petitioner attributes the delay in the Project to the \$27 million debt incurred by the construction of Phase I of the Hualalai Villages outside of the Petition Area, a fraud perpetrated upon the U of N Kona in January 2017, and 2010 litigation. *Petitioner's Slides #9 and \$27.* However, there is a lack of evidence to substantiate how these incidents directly affected or prevented the Project's progress.

Petitioner has also failed to demonstrate its ability to move forward with the Project if given the opportunity. Petitioner has not submitted a motion to amend conditions to complete the Project as it has proposed, Petitioner has not presented a detailed development plan or documentation of its financial ability to move forward, and generally, has not demonstrated to the Commission that the Project will be timely completed.

IV. Conclusion.

Based on the foregoing, Petitioner has failed to comply with or has not fulfilled D&O Conditions and representations, and failed to provide sufficient evidence of substantial commencement of use of the land. Petitioner has also failed to show good cause why the Petition Area should not be reverted to its prior classification or other appropriate classification. Unless Petitioner is able to put forth additional evidence to demonstrate compliance with

conditions and representations, substantial commencement, and/or good cause not to revert, OP would not object to the Commission's reversion of the Petition Area to its former classification.

DATED: Honolulu, Hawai'i, April 26, 2019.

CLARE E. CONNORS
Attorney General of Hawai'i



DAWN T. APUNA
Deputy Attorney General

Attorney for the OFFICE OF PLANNING,
STATE OF HAWAII

Re: Docket No. A02-737; In the Matter of the Petition of U of N Bencorp; STATEMENT OF POSITION of the Office of Planning ON THE LAND USE COMMISSION'S ORDER TO SHOW CAUSE; Certificate of Service

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 25, 2019

State of Hawaii
DBEDT - Office of Planning
Land Use Division
Attention: Ms. Lorene Maki, Planner
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

via email: lorene.k.maki@hawaii.gov

Dear Ms. Maki:

SUBJECT: Annual Report by the **University of the Nations, Kona** regarding Compliance of Conditions of the Findings of Fact, Conclusions of Law, and Decision and Order filed on August 2, 2003 regarding Land Use Commission Docket No. A02-737, In the matter of the Petition of UofN Bencorp. located at Kailua-Kona, Island of Hawaii; TMK: (3) 7-5-010:085 and (3) 7-5-017:006

Thank you for the opportunity to review and comment on the subject matter. The Land Division of the Department of Land and Natural Resources (DLNR) distributed or made available a copy of your request pertaining to the subject matter to DLNR's Divisions for their review and comments.

At this time, enclosed are comments from the (a) Engineering Division and (b) Commission on Water Resource Management on the subject matter. Should you have any questions, please feel free to call Darlene Nakamura at (808) 587-0417. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Land Administrator

Enclosures
cc: Central Files

EXHIBIT A

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 18, 2019

MEMORANDUM

RECEIVED
LAND DIVISION
2019 APR 23 AM 10:51
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

TO:
FROM

- DLNR Agencies:
- Div. of Aquatic Resources
 - Div. of Boating & Ocean Recreation
 - Engineering Division
 - Div. of Forestry & Wildlife
 - Div. of State Parks
 - Commission on Water Resource Management
 - Office of Conservation & Coastal Lands
 - Land Division – Hawaii District
 - Historic Preservation

FROM:
SUBJECT:

Russell Y. Tsuji, Land Administrator
Annual Report by the **University of the Nations, Kona** regarding
Compliance of Conditions of the Findings of Fact, Conclusions of Law, and
Decision and Order filed on August 2, 2003 regarding Land Use
Commission Docket No. A02-737, In the matter of the Petition of UofN
Bencorp.

LOCATION: Kailua-Kona, Island of Hawaii; TMK: (3) 7-5-010:085 and (3) 7-5-017:006
APPLICANT: Office of Planning, Land Use Division

The Office of Planning is requesting any information, verification, and/or updates your division can provide on the conditions for the subject Petition. We apologize for the short notice; however, we would appreciate your expedited review and response by **Noon on Wednesday, April 24, 2019.**

If no response is received by this date and time, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417 or by email at darlene.k.nakamura@hawaii.gov. Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: _____

Print Name: Carty S. Chang, Chief Engineer

Date: Apr 18, 2019

Attachments
cc: Central Files

**DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION**

LD/Russell Y. Tsuji

Ref: Annual Report by the University of the Nations, Kona Regarding Compliance of Conditions of the Findings of Fact, Conclusions of Law, and Decision and Order Filed on August 2, 2003 regarding Land Use Commission Docket No. A02-737, In the Matter of the Petition of UofN Bencorp.

Location: Kailua-Kona, Island of Hawaii

TMK(s): (3) 7-5-010:085 and (3) 7-5-017:006

Applicant: Office of Planning, Land Use Division

COMMENTS


The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high risk areas). State projects are required to comply with 44CFR regulations as stipulated in Section 60.12. Be advised that 44CFR reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards.

The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM), which can be viewed on our Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiiinfip.org/FHAT>).

If there are questions regarding the local flood ordinances, please contact the applicable County NFIP coordinating agency below:

- o Oahu: City and County of Honolulu, Department of Planning and Permitting (808) 768-8098.
- o Hawaii Island: County of Hawaii, Department of Public Works (808) 961-8327.
- o Maui/Molokai/Lanai County of Maui, Department of Planning (808) 270-7253.
- o Kauai: County of Kauai, Department of Public Works (808) 241-4846.

Signed: _____


CARTY S. CHANG, CHIEF ENGINEER

Date: _____

Apr 18, 2019

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P O BOX 621
HONOLULU HAWAII 96809

SUZANNE D CASE
CHIEF CLERK
RECEIVED
LAND DIVISION
APR 23 2019 2:59 PM
KALEO MANUEL
DEPUTY DIRECTOR
LAND & NATURAL RESOURCES
STATE OF HAWAII

Apr 23, 2019

REF: RFD.5090.8

TO: Mr. Russell Tsuji, Administrator
Land Division

FROM: M. Kaleo Manuel, Deputy Director
Commission on Water Resource Management *Kaleo Manuel*

SUBJECT: Annual Report by the University of the Nations, Kona regarding Compliance of Conditions of the Findings of Fact, Conclusions of Law, and Decision and Order filed on August 2, 2003 regarding Land Use Commission Docket No. A02-737, In the matter of the Petition of UofN Bencorp

FILE NO.: RFD.5090.8
TMK NO.: (3) 7-5-010.006, (3) 7-5-010.085

Thank you for the opportunity to review the subject document. The Commission on Water Resource Management (CWRM) is the agency responsible for administering the State Water Code (Code). Under the Code, all waters of the State are held in trust for the benefit of the citizens of the State, therefore all water use is subject to legally protected water rights. CWRM strongly promotes the efficient use of Hawaii's water resources through conservation measures and appropriate resource management. For more information, please refer to the State Water Code, Chapter 174C, Hawaii Revised Statutes, and Hawaii Administrative Rules, Chapters 13-167 to 13-171. These documents are available via the Internet at <http://dlnr.hawaii.gov/cwrm>.

Our comments related to water resources are checked off below.

- 1. We recommend coordination with the county to incorporate this project into the county's Water Use and Development Plan. Please contact the respective Planning Department and/or Department of Water Supply for further information.
- 2. We recommend coordination with the Engineering Division of the State Department of Land and Natural Resources to incorporate this project into the State Water Projects Plan.
- 3. We recommend coordination with the Hawaii Department of Agriculture (HDOA) to incorporate the reclassification of agricultural zoned land and the redistribution of agricultural resources into the State's Agricultural Water Use and Development Plan (AWUDP). Please contact the HDOA for more information.
- 4. We recommend that water efficient fixtures be installed and water efficient practices implemented throughout the development to reduce the increased demand on the area's freshwater resources. Reducing the water usage of a home or building may earn credit towards Leadership in Energy and Environmental Design (LEED) certification. More information on LEED certification is available at <http://www.usgbc.org/leed>. A listing of fixtures certified by the EAP as having high water efficiency can be found at <http://www.epa.gov/watersense>.
- 5. We recommend the use of best management practices (BMP) for stormwater management to minimize the impact of the project to the existing area's hydrology while maintaining on-site infiltration and preventing polluted runoff from storm events. Stormwater management BMPs may earn credit toward LEED certification. More information on stormwater BMPs can be found at <http://planning.hawaii.gov/czm/initiatives/low-impact-development/>
- 6. We recommend the use of alternative water sources, wherever practicable.
- 7. We recommend participating in the Hawaii Green Business Program, that assists and recognizes businesses that strive to operate in an environmentally and socially responsible manner. The program description can be found online at <http://energy.hawaii.gov/green-business-program>.

- 8. We recommend adopting landscape irrigation conservation best management practices endorsed by the Landscape Industry Council of Hawaii. These practices can be found online at http://www.hawaiiscape.com/wp-content/uploads/2013/04/LiCH_Irrigation_Conservation_BMPs.pdf.
- 9. There may be the potential for ground or surface water degradation/contamination and recommend that approvals for this project be conditioned upon a review by the State Department of Health and the developer's acceptance of any resulting requirements related to water quality.
- 10. The proposed water supply source for the project is located in a designated water management area, and a Water Use Permit is required prior to use of water. The Water Use Permit may be conditioned on the requirement to use dual line water supply systems for new industrial and commercial developments.
- 11. A Well Construction Permit(s) is (are) required before the commencement of any well construction work.
- 12. A Pump Installation Permit(s) is (are) required before ground water is developed as a source of supply for the project.
- 13. There is (are) well(s) located on or adjacent to this project. If wells are not planned to be used and will be affected by any new construction, they must be properly abandoned and sealed. A permit for well abandonment must be obtained.
- 14. Ground-water withdrawals from this project may affect streamflows, which may require an instream flow standard amendment.
- 15. A Stream Channel Alteration Permit(s) is (are) required before any alteration can be made to the bed and/or banks of a stream channel.
- 16. A Stream Diversion Works Permit(s) is (are) required before any stream diversion works is constructed or altered.
- 17. A Petition to Amend the Interim Instream Flow Standard is required for any new or expanded diversion(s) of surface water.
- 18. The planned source of water for this project has not been identified in this report. Therefore, we cannot determine what permits or petitions are required from our office, or whether there are potential impacts to water resources.

- OTHER: Re: Condition 2, Drainage Improvements – The Commission on Water Resource Management (CWRM) defers to the Department of Health (DOH) and the appropriate county agency regarding the design of on-site and regional drainage improvements. However, CWRM recommends green infrastructure/low impact design elements be incorporated to reduce site runoff and potentially increase aquifer recharge and the integration of LEED sustainable design principles.

Re: Condition 4, Water Resources: The project area lies within the boundaries of the Keauhou Aquifer System Area (ASYA), which has a sustainable yield of 38 million gallons per day (mgd). The 2016 draft update of the County of Hawaii's Water Use and Development Plan for the Keauhou ASYA shows that anticipated water demands* would be 28.07 mgd, while zoning buildout projected water demand is 28.54 mgd. However, 2035 demand projections are estimated to be 22.94 mgd based on a medium growth scenario. To meet future needs, the plan identifies recycled water, water conservation, and the development of future high-level wells (generally between 1,500 and 1,800 foot ground elevation in the vicinity between the QLT Deepwell and the Haleki'i Deepwell in the Kealakekua ASYA). Recycled water, rainwater catchment, and water conservation are also identified as potential sources to meet future needs. Further, the applicant submitted applications to construct 2 wells in the within the Pua'a 2-3, Wai'aha 1 ahupua'a in the Keauhou ASYA. One well application, on another TMK (3) 7-5-010.003, specified 45 acres of lawn and landscape irrigation and domestic use and was considered complete for agency review. The other well application, on TMK (3) 7-5-010:085, has not been accepted as complete for review as it specified domestic use but did not specify the number of units for the demand nor if the well water would be treated and how that the reject water would be disposed. The basal aquifer in the area is usually brackish and may be suitable for irrigation but is usually unsuitable for domestic consumption without desalination or mixing with other higher quality water.

* "anticipated water demand", also known as "authorized planned use" under the State Water Code, is defined as the use or projected use of water by a development that has received the proper state land use designation and county development plan/community plan approvals.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. A02-737
)	
U OF N BENCORP)	CERTIFICATE OF SERVICE
)	
To amend the Agricultural Land Use District)	
Boundary Into the Rural Land Use District for)	
Approximately 62 acres, Tax Map Key Nos. (3))	
7-5-002:010: 085 and 7-5-017: 006, situated at)	
Wai'aha 1st, North Kona, County and State of)	
Hawai'i)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawai'i, April 26, 2019.



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