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LAND USE COMMISSION
STATE OF HAWAII

2019 MAY -8 P 2:10

Attorneys for
UNIVERSITY OF THE NATIONS, KONA,
INC.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition Of

U of N BENCORP

To Amend the Agricultural Land Use District
to the Urban Land Use District for
Approximately 62 Acres, Tax Map Key Nos.:
(3) 7-5-010:085 and 7-5-017:006 situated at
Wai'aha, North Kona, County and State of
Hawaii'i

DOCKET NO. A02-737

UNIVERSITY OF THE NATIONS,
KONA, INC.'S MOTION TO RESCIND
ORDER TO SHOW CAUSE OR TO
CONTINUE HEARING ON ORDER TO
SHOW CAUSE; MEMORANDUM IN
SUPPORT OF MOTION; VERIFICATION
OF JULIE B. ANJO; CERTIFICATE OF
SERVICE

**UNIVERSITY OF THE NATIONS, KONA, INC.'S MOTION TO RESCIND ORDER TO
SHOW CAUSE OR TO CONTINUE HEARING ON ORDER TO SHOW CAUSE**

University of the Nations, Kona, Inc., a Hawai'i nonprofit corporation ("UNK"), as successor-in-interest to Petitioner U of N Bencorp ("UNB") to those certain parcels of land consisting of approximately 62 acres and currently identified by Tax Map Key Nos. (3) 7-5-010:85 and (3) 7-5-017:006 (the "Petition Area"), by and through its legal counsel, Carlsmith Ball LLP, hereby respectfully requests the Land Use Commission of the State of Hawai'i (the "Commission") to issue an order either: (a) rescinding the Order to Show Cause ("OSC"), filed

by the Commission on March 29, 2019 and presently scheduled to be heard on May 22, 2019 (the “**OSC Hearing**”); or (b) continuing the OSC Hearing for a period of one (1) year to allow UNK to file an amendment to the still pending Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order, filed on December 21, 2006 (the “**2006 Motion to Amend**”). If the Commission is unwilling to do either, UNK respectfully requests that it be granted sufficient additional time to prepare for and be heard on the OSC.

This Motion is made pursuant to Chapter 205, Hawai‘i Revised Statutes (“**HRS**”) and Title 15, Subtitle 3, Chapter 15 of the Hawai‘i Administrative Rules (“**HAR**”) §§ 15-15-42, 15-15-70 and 15-15-94, and other authorities and arguments contained in the attached Memorandum in Support of Motion, and the pleadings and files herein.

UNK hereby requests a hearing on this Motion pursuant to HAR § 15-15-70(c), and further requests that this Motion be heard at the Commission’s meeting on May 22, 2019.

DATED: Honolulu, Hawai‘i, May 8, 2019



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MEMORANDUM IN SUPPORT OF
MOTION

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I. INTRODUCTION

The Commission reclassified the Petition Area from the State Land Use (“**SLU**”) Agricultural District to the SLU Urban District by Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A02-737, filed on August 8, 2003 (the “**D&O**”). The original Petitioner in this Docket was UNB, who sought the reclassification of the Petition Area to allow for the development of the Hualalai Village condominiums, a multi-function Cultural Center, and a five-acre Education Facility (the “**Original Project**”). D&O at FOF ¶39. UNK took title to the Petition Area from an affiliated entity in 2018. *See* Petitioner Exhibit 19.

On December 21, 2006, prior to UNK taking title to the Petition Area, Aeko Hawaii, a Hawai'i nonprofit corporation (“**Aeko**”), filed the 2006 Motion to Amend. The 2006 Motion to Amend explained to the Commission that Aeko had determined that modifications to the Original Project were necessary so that it more closely aligned with UNK's institutional and faith-based values (the “**2006 Updated Project**”). The 2006 Updated Project proposed to abandon the Cultural Center (as being profit-driven) and instead expand its academic and

recreational facilities, and to replace the undeveloped, market-rate phases of Hualalai Village with much needed staff and student housing. The Commission held hearings on the 2006 Motion to Amend on May 1 and 2, 2007, but ultimately was unable to take final action after quorum was lost. To date, the Commission has not rendered a decision on the 2006 Motion to Amend and, thus, the 2006 Motion to Amend is still pending.

The Commission's issuance of the OSC without first addressing the 2006 Motion to Amend is premature, inappropriate, and without justification. Moreover, the conditions imposed under the D&O (the "**D&O Conditions**") neither require "substantial commencement," as mandated by HRS § 205-4(g) for the Commission to exercise its reversionary powers, nor set forth a deadline for the Petition Area to be developed. Therefore, the Commission is without authority to order a reversion and the OSC is an invalid exercise of the Commission's enforcement power. UNK respectfully requests that the OSC be rescinded.

If the Commission is unwilling to rescind the OSC, UNK respectfully requests that the OSC Hearing be continued for one (1) year to allow UNK to file an amendment to the 2006 Motion to Amend (the "**Amended Motion to Amend**"). As discussed in detail in UNK's Statement of Position and Rebuttal to the Statement of Position of the Office of Planning on the Order to Show Cause Issued by the State of Hawai'i Land Use Commission, filed May 3, 2019 ("**UNK's SOP**"),¹ while UNK and its predecessors fully intended on returning to the Commission for final action on the 2006 Motion to Amend, a series of unfortunate and largely unforeseeable events precluded them from doing so. Now that those obstacles have been cleared, UNK is committed to continuing its development of the Petition Area under a revised Project concept similar to the 2006 Updated Project. In order to do so, however, UNK will need

¹ UNK hereby incorporates by references UNK's SOP in its entirety.

sufficient time to update Project plans, studies and reports as necessary, and to consult with members of the community and other stakeholders, including lineal descendants of the Petition Area. Through this Motion, UNK seeks nothing more than to secure the time necessary to do so.

II. BACKGROUND

A. THE 2006 MOTION TO AMEND

As discussed in UNK's SOP, UNB filed the 2006 Motion to Amend in hopes of revising the Original Project to more closely align with its institutional and faith-based values, and to allow for the 2006 Updated Project to proceed while remaining in compliance with the D&O. After holding the first day of hearing on the 2006 Motion to Amend, the Commission lost its quorum and ultimately no action was taken. With no action having been taken on the 2006 Motion to Amend, it remains pending before the Commission.

B. 2019 STATUS HEARING AND ISSUANCE OF THE OSC

On March 28, 2019, the Commission held a status hearing on this Docket. At the status hearing, Julie Anjo, Anthony Ching, and Paul Childers appeared on behalf of UNK and presented the Commission with UNK's 2019 Annual Report and a PowerPoint presentation. At the conclusion of UNK's presentation, the Commission voted to issue the OSC. One day later, on March 29, 2019, the Commission filed the OSC and set the OSC Hearing for May 22, 2019.

C. UNK'S REQUESTS FOR SUFFICIENT TIME TO PREPARE FOR THE OSC HEARING WERE DENIED DESPITE THE SIGNIFICANT PROPERTY AND ECONOMIC INTERESTS AT STAKE

On March 29, 2019, the very next day after the Commission voted to issue the OSC, UNK requested by way of telephone call to the Commission's Executive Officer that a pretrial hearing for the OSC be set for May 22, 2019, and that the Commission's hearing on the OSC be scheduled approximately one month later in order to provide the Parties with sufficient time to prepare to respond to the OSC. However, the Executive Officer declined UNK's request, and

instructed UNK to confer with State of Hawai‘i (“**State**”) Office of Planning and the County of Hawai‘i (“**County**”) Planning Department to determine an appropriate timeline for the Parties’ various submissions in advance of the OSC Hearing.

UNK followed up on its March 29th verbal request with a letter to the Commission filed on April 8, 2019. *See* Petitioner Exhibit 20. In its letter, UNK reiterated its request that the Parties be given adequate time to prepare for the OSC Hearing, and further requested that the Parties be given until April 19, 2019 to establish a schedule and timeline that was agreeable. UNK justified its request on the grounds that: (1) given the scope and nature of the OSC, UNK must consult and interact with numerous parties, some of whom are traveling and/or unavailable upon such short notice; (2) UNK needs to consult with lineal descendants of the Petition Area, local native Hawaiian leaders, and others in the community on the development plan for the Petition Area; (3) UNK needs to consult with State and County agencies and other interested parties to present its development plan; and (4) OP generally requires thirty (30) days to review and respond to any filing.

By way of letter dated April 5, 2019, the Commission’s Executive Officer instructed the Parties to file, no later than April 26, 2019, the following: (1) a list identifying all witnesses to be called at the OSC Hearing; (2) a list identifying all exhibits that will be submitted at the OSC Hearing; and (3) all exhibits so identified. *See* Petitioner Exhibit 21. The Executive Officer further instructed the Parties to file, no later than May 3, 2019, their respective rebuttal witness list, rebuttal exhibit list, and copies of all rebuttal exhibits. *See id.* Therefore, UNK was given less than a month to make its initial filings and just over a month to make its rebuttal filings.

III. DISCUSSION

A. THE OSC SHOULD BE RESCINDED

1. The OSC Does Not Comply with HRS § 205-4(g)

The Commission's authority to order a reversion is derived **solely** from HRS § 205-4(g); the Commission does not have **any** authority to issue an OSC **to order a reversion** separate and apart from HRS § 205-4(g).² As the Hawai'i Supreme Court has explained, HRS § "205-4(g) represents a **limited exception** to the general principles set forth in HRS Chapter 205[.]" *DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC.*, 134 Haw. 187, 212, 339 P.3d 685, 710 (2014) (emphasis added).

HRS § 205-4(g) provides that:

The commission **may provide by condition that absent substantial commencement of use of the land in accordance with such representations, the commission 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.** Such conditions, **if any**, shall run with the land and be recorded in the bureau of conveyances.

(Emphases added). By including the operative language of "**may**" and "**if any**," HRS § 205-4(g) allows the Commission to impose, but does not in and of itself automatically impose, a condition providing the Commission with potential future authority to order a reversion if certain circumstances exist. Under a plain reading of HRS § 205-4(g), however, in order for the Commission to exercise its reversionary authority, the condition must comply with HRS § 205-4(g), including the requirement that the condition "provide . . . that absent **substantial**

² To the extent that HAR §§ 15-15-90(e)(1) and 15-15-93(b) do not expressly require finding the absence of substantial commencement before the Commission can require a showing of good cause to prevent a reversion, those provisions exceed the Commission's authority and any condition imposed thereunder that does not comply with HRS § 205-4(g) (*i.e.*, without the express requirement of substantial commencement) is invalid. *See Asato v. Procurement Policy Bd.*, 132 Hawai'i 333, 346, 322 P.3d 228, 241 (2014) ("[A] public administrative agency possesses only such rulemaking authority as is delegated to it by a state legislature and may only exercise this power within the framework of the statute under which it is conferred.").

commencement of use of the land” an OSC may be issued. *See id.* (emphasis added). Such a condition was not imposed under the D&O.

Indeed, none of the D&O Conditions state that absent **substantial commencement** of the use of the Petition Area in accordance with the representations made to the Commission would UNK (or its predecessors) be subject to an OSC. D&O Condition No. 15 only refers to “substantial compliance” with representations made, not substantial commencement of the use of the land:

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.

(Emphasis added). Moreover, D&O Condition No. 15 also includes questionable statements regarding the Commission’s purported authority to levy fines and order the razing of improvements. *See, e.g., Lanai Co., Inc. v. Land Use Comm’n*, 105 Haw. 296, 318, 97 P.3d 372, 394 (2004);³ *DW Aina Lea Dev., LLC*, 134 Haw. at 210, 339 P.3d at 708 (2014).⁴

In *Lanai Co., Inc.*, the Hawai’i Supreme Court made clear that the Commission cannot enforce a condition that it did not expressly impose, or somehow rewrite conditions previously imposed to achieve a desired outcome:

³ “Pursuant to their enforcement duties under § 205–12, counties have the responsibility to take necessary action against violators. Such enforcement covers all land use district classifications and land use district regulations. *Id.* Thus, looking to the express language of HRS § 205–12, it is clear and unambiguous that enforcement power resides with the appropriate officer or agency charged with the administration of county zoning laws, namely the counties, and not the LUC.” *Lanai Co., Inc.*, 105 Haw. at 318, 97 P.3d at 394 (citations omitted).

⁴ “In other words, HRS § 205–4(g) gives the LUC broad authority to impose conditions on boundary amendment petitions. In general, however, enforcement of these conditions is left to the counties under HRS § 205–12, and not the LUC.” *DW Aina Lea Dev., LLC*, 134 Haw. at 210, 339 P.3d at 708 (citations omitted).

The LUC cannot now enforce a construction of Condition 10 that was not expressly adopted. This court has mandated that, in issuing a decision, an “agency must make its findings reasonably clear. The parties and the court should not be left to guess, with respect to any material question of fact, or to any group of minor matters that may have cumulative significance, the precise finding of the agency.”

Parties subject to an administrative decision must have fair warning of the conduct the government prohibits or requires, to ensure that the parties are entitled to fair notice in dealing with the government and its agencies. **In this light, the 1991 Order cannot be construed to mean what the LUC may have intended but did not express.** An administrative agency, such as the LUC, has the responsibility of stating with ascertainable certainty what is meant by the conditions it has imposed.

Lanai Co., Inc., 105 Hawai‘i at 314, 97 P.3d at 390 (emphases added) (citations omitted).

Based on the foregoing, there is nothing in the D&O Conditions that require substantial commencement and, therefore, the D&O Conditions do not comply with HRS § 205-4(g). The Commission cannot now rewrite the D&O Conditions to say otherwise, and the OSC should be rescinded.

2. There is No Time Limitation in the D&O Conditions

There is also no time limitation to complete the Original Project in the D&O Conditions.

D&O Condition No. 11 is the only condition that specifies a time limit, and states that: “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 requirements of this Condition.” Aeko returned to the Commission with the 2006 Motion to Amend to discuss an alternative plan for the Cultural Center, and while a hearing was commenced, the Commission did not rule on the 2006 Motion to Amend. D&O Condition No. 11 did not require the Commission to take any specific action upon UNB’s return. Therefore, UNK has complied with D&O Condition No. 11.

The Commission's Rules also do not, on their own, impose a time limitation on the development of the Petition Area. HAR § 15-15-79(a) provides that: "Petitioners granted district boundary amendments shall make substantial progress within a reasonable period, **as specified by the commission**, from the date of approval of the boundary amendment[.]" (Emphasis added). Because no such reasonable period of time was specified by the Commission, the Commission has no authority to revert the Petition Area for an alleged lack of substantial progress within in some unspecified, indeterminate period of time.

Finally, although the D&O includes a "Development Timeline," the plain and unambiguous language of the D&O also makes clear that the development timeline was intended to be tentative and not certain:

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.

(Emphases added). To conclude otherwise would mean that the Commission could have issued an OSC as early as 2007 or 2008 – a mere four (4) or five (5) years after the D&O was issued – when Hualalai Village was slated to be completed, but was not. For all of these reasons, the OSC should be rescinded.

B. GOOD CAUSE EXISTS TO CONTINUE THE OSC HEARING FOR ONE (1) YEAR TO ALLOW UNK TO FILE THE AMENDED MOTION TO AMEND

If the Commission refuses to rescind the OSC, then, at a minimum, good cause exists for the Commission to defer any hearing or action on the OSC for a period of one (1) year to allow UNK to file the Amended Motion to Amend.

HAR § 15-15-94(a) provides that: "If a petitioner . . . desires to have a modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70."

HAR § 15-15-94(b) provides that the Commission may grant such a motion to modify the Commission's order upon a showing of good cause. HAR § 15-15-42(a) also allows the Commission to grant an extension of time "for good cause shown[.]" Therefore, upon a showing of good cause, the Commission can grant the deferral of hearing and action on the OSC requested by this Motion.

Fundamentally, the concept of good cause is not rigid or formulaic; rather, it is necessarily intended to be flexible to address the facts and circumstances of each particular case. As the Hawai'i Supreme Court has explained "'good cause' has been defined to mean 'a substantial reason amounting in law to a legal excuse[.]'" *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981) (citations omitted). "'Good cause' also depends upon [the] circumstances of [the] individual case, and [a] finding of its existence lies largely in [the] discretion of [the] officer or the court to which [the] decision is committed.'" *Miller v. Tanaka*, 80 Haw. 358, 262, 910 P.2d 129, 134 (Ct. App. 1995) (citation omitted).

As discussed *supra*, and in greater detail UNK's SOP, UNK and its predecessors fully intended to return to the Commission for action on the 2006 Motion to Amend. *See* UNK's SOP at 9-11. However, a series of unfortunate and largely unforeseeable events precluded them from doing so. Since the time of the D&O, UNK and its predecessors: (1) suffered through the severe impacts of the Great Recession; (2) underwent a significant, but necessary internal reorganization; (3) were defrauded out of millions of dollars; and (4) were forced to fight out-of-state litigation with tens of millions of dollars at stake. *See id.* Individually and collectively, these events threatened UNK's and its predecessors' viability, and also significantly affected their ability to be in a position to return to the Commission for further hearing and action on the 2006 Motion to Amend.

UNK only recently recovered from impacts of these events, and has since been working diligently towards taking the necessary steps to move development of the Petition Area forward. These efforts predate, and were not triggered by, the Commission's calling of the March 28, 2019 status hearing and subsequent issuance of the OSC. UNK remains ready, willing, and able to proceed with the 2006 Motion to Amend, but because of the passage of time, UNK needs to continue its ongoing update of the Project master plans and studies, which may take up to one (1) year to complete. As discussed in UNK's SOP, UNK has a robust team of internal leaders and development- and construction-oriented consultants in place, and this team is fully competent and committed to seeing the timely development of the Petition Area. *See* UNK's SOP at 11-12. UNK simply needs more time to complete revisions to the 2006 Updated Project, review project studies, and consult with community leaders and other stakeholders, including lineal descendants of the Petition Area.

For these reasons, UNK has established good cause to continue the OSC Hearing for a period of one (1) year to allow UNK to prepare and file an Amended Motion to Amend. Therefore, UNK respectfully requests that the Commission prudently exercise its discretion and defer further proceedings on the OSC to allow UNK to modify the master plans for the Petition Area and initiate and/or update any studies necessary to file the Amended Motion to Amend.

C. UNK MUST BE AFFORDED REASONABLE NOTICE SO THAT IT CAN MEANINGFULLY PREPARE TO RESPOND TO THE OSC

At a minimum, UNK should be afforded sufficient time to prepare for and respond to the OSC.

The outcome of the OSC Hearing could significantly and adversely affect UNK's business, economic, and property interests. *See, e.g., Bridge Aina Le 'a, LLC v. Hawaii Land Use Comm'n*, No. CV 11-00414 SOM-KJM, 2018 WL 3149489, at *21 (D. Haw. June 27, 2018)

(noting that “testimony at trial indicated that the 1,060-acre property was 'worth \$40 million' if ‘in the [SLU] urban district’ and ‘\$6.63 million’ if ‘in the [SLU] agricultural district.’ ***That represents an 83.5% diminution in value***[.]”) (Emphasis added). Accordingly, UNK must be afforded sufficient time to prepare for and respond to the OSC. See *Mauna Kea Anaina Hou v. Bd. of Land & Natural Res.*, 136 Hawai‘i 376, 391, 363 P.3d 224, 239 (2015) (“Once a contested case hearing is mandated, ***due process requires that the parties be given a meaningful opportunity to be heard***.”) (emphasis added) (citing *Application of Hawai‘i Elec. Light Co.*, 67 Haw. 425, 430, 690 P.2d 274, 278 (1984)).

The Hawai‘i Supreme Court recently observed that

A contested case hearing is similar in many respects to a trial before a judge: the parties have the right to present evidence, testimony is taken under oath, and witnesses are subject to cross-examination. ***It provides a high level of procedural fairness and protections to ensure that decisions are made based on a factual record that is developed through a rigorous adversarial process.***

Mauna Kea Anaina Hou, 136 Hawai‘i at 380, 363 P.3d at 228 (2015) (emphases added). HRS § 91-9(a) also requires that “in any contested case, all parties shall be afforded an opportunity for hearing ***after reasonable notice***.” (Emphasis added.) The mandates of HRS § 91-9 are satisfied where “***all parties ha[ve] been given ample opportunity to obtain and present all their evidence***, to present testimony, both written and oral, to cross examine witnesses, and to argue the issues on the merits[.]” *Lanaians for Sensible Growth v. Lanai Resorts, LLC*, 137 Hawai‘i 298, 369 P.3d 881 (Ct. App. 2016), as corrected (Mar. 24, 2016) (emphases added) (citing *Application of Kauai Elec. Div. of Citizens Utils. Co.*, 60 Haw. 166, 182, 590 P.2d 524, 536 (1978)). If the Commission proceeds with holding the OSC Hearing on May 22, 2019, UNK will be deprived of the procedural and substantive protections that are to be guaranteed under HRS Chapter 91 and Hawai‘i Supreme Court precedent.

The Commission held a status conference on this Docket on March 28, 2019, and voted to issue the OSC. The Commission then filed the OSC **the very next day** on March 29, 2019. At the instruction of the Commission's Executive Officer, UNK was given only until April 26, 2019 to file its List of Witnesses, List of Exhibits, and Exhibits, and until May 3, 2019 to file its Rebuttal List of Witnesses, Rebuttal List of Exhibits, and Rebuttal Exhibits. Accordingly, UNK has been given approximately **one (1) month** to make all of its pre-hearing filings and **less than two (2) months** total to prepare for the OSC Hearing.

Under some circumstances, the Commission's ordered timeline may provide a sufficient opportunity to prepare for and respond to an OSC. For example, at a status conference held on May 9, 2018 for Docket No. A05-755, Hale Mua Properties, Inc., the Commission voted to issue an OSC. The Commission subsequently issued the OSC on June 4, 2018, and set the hearing thereon for July 25, 2018, thereby providing more time (from the date of the Status Hearing) than UNK has been granted to prepare.

There is, however, a critical distinction between the Docket No. A05-755 and the present Docket: The successor petitioner to Hale Mua Properties, Inc. is not opposing and, in fact, is **supporting** the Commission's reversion. *See generally* Successor Petitioner Southwest 7, LLC's Position Statement on Order to Show Cause, filed July 18, 2018. Under these circumstances, however, less than two months' notice is simply not reasonable. Unlike the successor petitioner in Docket No. A05-755, UNK is opposed to a reversion of the Petition Area.

As members of this Commission have previously acknowledged, a reversion is tantamount to the "death penalty" for a development project in Hawai'i. Proceedings with such high stakes should not be conducted on an unnecessarily rushed timeline or upon an incomplete

record. No justification has been provided to UNK for the need to continue upon the timeline currently ordered by the Commission.

IV. CONCLUSION

For the foregoing reasons, UNK hereby respectfully requests that the Commission rescind the OSC or, in the alternative, stay any further hearing or action on the OSC for one (1) year to allow UNK sufficient time to file the Amended Motion to Amend. If the Commission is unwilling to either rescind the OSC or continue the OSC Hearing for one (1) year, at a minimum, UNK should be granted sufficient additional time to prepare for and be heard on the OSC.

DATED: Honolulu, Hawai'i, May 8, 2019



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VERIFICATION OF JULIE B. ANJO

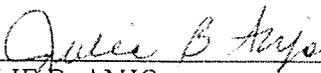
VERIFICATION OF JULIE B. ANJO

I, JULIE B. ANJO, declare as follows:

1. I am an attorney in Petitioner UNIVERSITY OF THE NATIONS, KONA, INC.'s ("UNK") Office of General Counsel;
2. I have read UNK's Motion to Rescind Order to Show Cause or to Continue Hearing on Order to Show Cause to which this verification is attached, and know the contents thereof; and the contents therein contained are true to the best of my knowledge, information and belief.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Kailua-Kona, Hawaii, May 8, 2019.



JULIE B. ANJO

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a filed copy of the Motion to Rescind Order to Show Cause or to Continue Hearing on Order to Show Cause was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted:

<p>MICHAEL YEE, DIRECTOR Department of Planning, County of Hawai'i Aupuni Center 101 Pauahi Street, Suite 3 Hilo, HI 96720</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>
<p>JOSEPH K. KAMELAMELA, ESQ. Corporation Counsel Department of the Corporation Counsel County of Hawai'i Hilo Lagoon Centre, 101 Aupuni Street, Unit 325 Hilo, HI 96720</p> <p>Attorneys for County of Hawai'i Department of Planning</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>

Mary Alice Evans Director Office of Planning, State of Hawai'i 235 S. Beretania Street, Suite 600 Honolulu, HI 96813	HAND DELIVERY
DAWN TAKEUCHI APUNA, ESQ. Deputy Attorney General Department of the Attorney General, State of Hawai'i 425 Queen Street Honolulu, HI 96813 Attorneys for Office of Planning, State of Hawai'i	HAND DELIVERY

DATED: Honolulu, Hawai'i, May 8, 2019.



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