

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