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UNIVERSITY OF THE NATIONS, KONA,  
INC.

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

2020 MAY 27 A 10:03  
LAND USE COMMISSION  
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  
Hawai'i

DOCKET NO. A02-737

UNIVERSITY OF THE NATIONS,  
KONA, INC., STATE OF HAWAII  
OFFICE OF PLANNING AND COUNTY  
OF HAWAII, PLANNING  
DEPARTMENT'S JOINT STIPULATION  
RE SCHEDULING OF MOTION TO  
AMEND; ORDER; CERTIFICATE OF  
SERVICE

**UNIVERSITY OF THE NATIONS, KONA, INC., STATE OF HAWAII OFFICE OF  
PLANNING AND COUNTY OF HAWAI'I, PLANNING DEPARTMENT'S  
JOINT STIPULATION RE SCHEDULING OF MOTION TO AMEND**

Petitioner University of the Nations, Kona, Inc., a Hawai'i nonprofit corporation  
("UNK"), State of Hawai'i Office of Planning, and County of Hawai'i, Planning Department  
(together, the "Parties"), by and through their respective counsel of record, hereby stipulate  
pursuant to Chapter 205, Hawai'i Revised Statutes and Hawai'i Administrative Rules § 15-15-

93(c) (providing that any procedure in an order to show cause hearing may be modified or waived by stipulation of the parties), as follows:

1. Whereas, the State of Hawai'i Land Use Commission ("**Commission**") filed an *Order to Show Cause* in this Docket on March 29, 2019 (the "**OSC**");
2. Whereas, on May 20, 2019, the Parties filed with the Commission their *Joint Stipulation to Stay Hearing on Order to Show Cause and Reservation of Rights* (the "**Joint Stipulation**"). The Joint Stipulation sought to stay or continue any hearing or other proceedings on the OSC for one (1) year to allow UNK to file a motion to amend the Commission's *Findings of Fact, Conclusions of Law, and Decision and Order*, filed August 8, 2003, to authorize the development of the Petition Area as an expansion of UNK's existing campus (the "**Revised Project**");
3. Whereas, on May 22, 2019, the Commission held hearing on and orally granted the Joint Stipulation, subject to certain additional conditions (the "**Continuance**");
4. Whereas, on October 7, 2019, the Commission filed its *Order Granting United Nations [sic] of Kona' Motion to Continue Hearing on Order to Show Cause* ("**Continuance Order**"), which set forth the terms of the Continuance as voted upon by the Commission at the May 22, 2019 hearing;
5. Whereas, the Parties understood the purpose and intent of the Continuance was to allow UNK to file a motion to amend and potentially obviate the need for the Commission to hold any proceedings or take any action on the OSC;
6. Whereas, on December 24, 2019, UNK filed its *Status Report Pursuant to Order Granting United Nations [sic] of Kona' Motion to Continue Hearing on Order to Show*

*Cause* (“**Status Report**”), which outlined the components of the Revised Project and set forth UNK’s progress towards filing its motion to amend;

7. Whereas, on January 9, 2020, UNK presented its Status Report to the Commission;
8. Whereas, on March 23, 2020, UNK timely filed its *Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order* (the “**2020 Motion to Amend**”) as required under the terms of the Continuance;
9. Whereas, on April 8, 2020, the Commission’s Executive Officer held a prehearing conference to discuss the scheduling of the OSC, the 2020 Motion to Amend, and related filing deadlines for the Parties;
10. Whereas, at the prehearing conference, the Executive Officer indicated that the Commission would schedule a hearing on the OSC prior to the 2020 Motion to Amend. The Executive Officer further indicated that during its hearing on the OSC, the Commission would consider whether, “on its face,” the 2020 Motion to Amend provided good cause for the Commission to dismiss the OSC;
11. Whereas, during the prehearing conference, the Parties indicated their understanding that, in granting the Continuance, the Commission had intended to hold a hearing on the 2020 Motion to Amend prior to the OSC, thereby potentially obviating the need for any hearing or action on the OSC;
12. Whereas, in response to the Parties’ comments, the Executive Officer stated that the Commission would reconsider scheduling its hearing on the 2020 Motion to Amend before the OSC based upon further argument and agreement from the Parties;
13. Whereas, the OSC provides that, pursuant to HRS § 205-4, UNK is required “to show cause why” the Petition Area “should not revert to its former land use classification or be

changed to a more appropriate classification.” UNK’s 2020 Motion to Amend provides significant evidence towards its “cause” as to why the Petition Area should not be reverted, including its plans and ability to timely carry forward development of the Petition Area, as well as why the Petition Area is not suitable or appropriate for a State Land Use Agricultural designation. UNK’s 2020 Motion to Amend is directly relevant to the OSC proceedings and should not be considered subsequent to the OSC proceedings;

14. Whereas, the Commission should not foreclose UNK’s opportunity to establish a full and complete record of UNK’s “cause” by hearing the OSC prior to or without first considering the 2020 Motion to Amend;

15. Whereas, Condition 1 of the Continuance Order provided UNK with one year “to either file an amendment to their December 21, 2006 motion to amend or withdraw their 2006 Motion to Amend and file a new motion to amend the conditions of the August 8, 2003 Decision and Order.” In compliance with Condition 1, UNK withdrew its December 21, 2006 Motion to Amend and filed the 2020 Motion to Amend on March 23, 2020. Although not specified in the Continuance Order, it logically follows and was presumed by the Parties that, upon filing of the 2020 Motion to Amend, the Commission would hear and consider the Motion to Amend prior to reinstating the OSC. In other words, the Parties were to look forward to what could be done, rather than look back at what was or was not done;

16. Whereas, procedurally, the OSC was stayed as a result of an evidentiary hearing, deliberations and affirmative order by the Commission that included a showing of “good cause” that UNK had a path forward for the development of the Petition Area and would put forth a motion to amend further detailing that path. The record indicates that the

Commission would need to make a motion to reinstate the OSC proceedings, rather than simply placing it on the agenda for continued hearing. At the January 8, 2020 status hearing, Chair Jonathan Scheuer stated: "I'm not sensing from the membership the desire to make a motion at this time to resume the order to show cause proceedings." 1/8/20 Trans. at 181:6-8. Rather than agendizing the OSC for continued proceedings, the Commission must equally provide for deliberative and affirmative action by an order or motion showing cause for the reversal or lifting of the Continuance. The 2020 Motion to Amend serves not only as the "cause" to not revert the Petition Area under the OSC, but also as the continued "good cause" to maintain the Continuance.

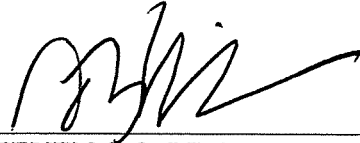
17. Whereas, the Commission would maintain its authority to revert the Petition Area as leverage over UNK by scheduling hearing on the OSC *after* the 2020 Motion to Amend. If, on other hand, the Commission hears the OSC prior to the 2020 Motion to Amend and finds good cause not to revert, it will have relinquished its ability to revert the Petition Area should the 2020 Motion to Amend be denied; and
18. Whereas, the order to show cause in Docket No. A94-706 (Ka'ono'ulu Ranch) provides recent precedent that the Commission has considered a motion to amend during a stay of an order to show cause (<http://luc.hawaii.gov/wp-content/uploads/2012/10/A94-706-mtn-to-stay1.pdf>). In that Docket, a motion to amend was requested and timely filed, and the Commission then considered the motion prior to proceeding with the order to show cause. For fairness and consistency, UNK should be afforded the same opportunity to have the 2020 Motion to Amend to be heard prior to the OSC.

IT IS HEREBY STIPULATED AND AGREED that:

- A. Based on the terms, purpose, and intent of the Continuance, and in light of the substantial time, money, and resources expended by UNK to prepare the 2020 Motion to Amend, UNK shall be afforded an opportunity to be fully heard on the 2020 Motion to Amend, including, without limitation, the submission of additional legal memoranda and exhibits, and the presentation of witness testimony; and
- B. The Commission hold a hearing and take action on the 2020 Motion to Amend prior to holding any hearings or taking any action on the OSC.

*[remainder of page intentionally left blank; signatures to follow on next page]*

DATED: Honolulu, Hawai'i, May 27, 2020.



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Attorneys for  
COUNTY OF HAWAI'I, PLANNING  
DEPARTMENT

APPROVED AND SO ORDERED:

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DATED: Honolulu, Hawai'i, May 27, 2020.

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CERTIFICATE OF SERVICE

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I hereby certify that a filed copy of the foregoing document 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:

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DATED: Honolulu, Hawai'i, May 27, 2020.




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