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Attorneys for COUNTY OF HAWAI'I PLANNING DEPARTMENT

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of

U of N BENCORP

To Amend the Agricultural Land Use District  
Boundary 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

POSITION STATEMENT OF THE  
COUNTY OF HAWAI'I PLANNING  
DEPARTMENT ON THE LAND USE  
COMMISSION'S ORDER TO SHOW  
CAUSE AND PETITIONER'S MOTION  
TO AMEND; CERTIFICATE OF SERVICE

**POSITION STATEMENT OF THE COUNTY OF HAWAI'I PLANNING  
DEPARTMENT ON THE LAND USE COMMISSION'S ORDER TO SHOW  
CAUSE AND PETITIONER'S MOTION TO AMEND**

The County of Hawai'i Planning Department ("County"), by and through its undersigned attorneys, hereby provides its Position Statement regarding the Land Use Commission's Order to Show Cause ( the "OSC") as to why that certain land situated at Waiaha 1<sup>st</sup>, North Kona, County and Island of Hawai'i, Tax Map Key Nos. (3) 7-5-010:085 and 7-5-017:006, consisting of approximately 62 acres of land ("Subject Area") should not revert to its former land use classification or be changed to a classification that is more appropriate.

On May 20, 2019, the County filed its position statement in this case, a position which it continues to maintain as appropriate. In that statement, the County noted that the Subject Area had been reclassified from Agricultural to Urban in the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order for a State Land use District Boundary Amendment, dated August 8, 2003 ("D&O"), and the County's position remains that this Urban classification of the Subject Area is the most appropriate classification for this land. As previously noted, the urban classification is consistent with the County's General Plan, the Kona Community Development Plan, and the zoning for surrounding properties. Therefore, the previous recommendation made by the County, that the Land Use Commission not revert the subject Area to its former Agricultural land use classification or change to some other classification, remains the County's present position.

In its previous position statement of May 20, 2019, the County provided a justification for the urban classification, and this reasoning remains accurate at the current time. As previously noted, the County's Land use Pattern Allocation Guide Map in its General Plan designates the subject area as being appropriate for Medium Density Urban land uses, such as village and neighborhood commercial and single and multiple family residential and related functions (Multiple family residential – up to 35 units per acre. This position is further supported by the fact that the surrounding properties are primarily classified as State Land Use Urban and are zoned by the County as Residential or Commercial Village Districts. Thus, it is the County's position that the present Urban classification remains the most appropriate State Land Use classification.

On or about May 27, 2020, Petitioner filed its Joint Stipulation Rescheduling of Motion to Amend. In that document, it is noted that on May 20, 2019, the parties had previously filed a joint stipulation to stay or continue any hearing or other proceeding on the OSC for one (1) year to allow petitioner to file a motion to amend the Commission's Findings of Fact, Conclusions of Law, and Decisions and Order, filed August 8, 2003. The purpose of this Joint Stipulation was to give the petitioner an opportunity to revise the previous project. The Commission granted the Joint Stipulation on May 22, 2019 and the Petitioner timely filed its Motion to Amend on March 23, 2020.

In the Joint Stipulation filed on May 27, 2020, the County supported Petitioner's revised plan and, concurs that the plan presented by Petitioner demonstrates both a workable

development and provides justification as to why reversion to an agricultural designation is inappropriate. Therefore, the County respectfully requests that this Honorable Commission hold a hearing and take action on the 2020 Motion to Amend and either withdraw the Order to Show Cause hearing altogether, or hold the OSC hearing subsequent to the hearing on the 2020 Motion to Amend.

Dated: Hilo Hawai'i, June 22, 2020.

COUNTY OF HAWAI'I PLANNING  
DEPARTMENT

By *Diana M. Mellon-Lacey*  
DIANA M. MELLON-LACEY  
Deputy Corporation Counsel  
Its attorney

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CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing document was served upon the  
following by the method indicated below, on June 22, 2020:

	<u>U.S. MAIL</u>	<u>HAND-DELIVERY</u>
STEVEN S.C. LIM, Esq. Carlsmith Ball, LLP ASB Tower, Suite 2100 1001 Bishop Street Honolulu, Hawai'i 96813 Attorney for Petitioner University of the Nations, Kona, Inc., as successor-in-interest to U of N Bencorp	X	
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Dated: Hilo, Hawai'i, June 22, 2020.

  
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