

ORIGINAL

LAND USE COMMISSION
STATE OF HAWAII

2020 JUN 23 P 2:30

OFFICE OF PLANNING

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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)	OFFICE OF PLANNING'S AMENDED
)	STATEMENT OF POSITION ON THE
To Amend the Agricultural Land Use)	LAND USE COMMISSION'S ORDER
District Boundary into the Urban Land Use)	TO SHOW CAUSE; CERTIFICATE OF
District for Approximately 62 acres, Tax)	SERVICE
Map Key Nos. (3) 7-5-010: 085 and 7-5-)	
017: 006, situated at Waiaha, North Kona,)	
County and State of Hawaii)	
)	

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

The Office of Planning, State of Hawaii ("OP"), provides the following *Amended Statement of Position on the Land Use Commission's ("Commission") Order to Show Cause*.

In its *Statement of Position of the Office of Planning on the Land Use Commission's Order to Show Cause*, filed April 26, 2019 ("Statement of Position"), OP determined that, based on the information available at the time, Petitioner had failed to comply with certain representations and/or had 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"), had not substantially commenced use of the land in accordance with representations made by Petitioner in seeking the boundary amendment, and had not

demonstrated good cause to not revert such that, unless Petitioner was 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.

Since OP's filing of its Statement of Position, Petitioner has provided additional information that demonstrates good cause to not revert the Petition Area. Good cause or cause not to revert is authorized under § 205-4(g)¹, Hawaii Revised Statutes. Petitioner has provided evidence that: (1) certain events prevented or limited Petitioner from moving forward with the originally approved project; (2) Petitioner's Revised Project presents its vision and capability to effectively move forward in developing the Petition Area; and (3) the Petition Area is best suited to remain in the Urban District.

A. Petitioner Was Unable to Develop the Project Due to Circumstances Beyond Its Control.

On May 3, 2019, Petitioner filed *University of the Nations, Kona, Inc.'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 Hawaii Land Use Commission on March 29, 2019*, which documents how Petitioner and its predecessors suffered through impacts of the Great Recession, underwent a significant internal organization, were frauded of millions of dollars, and were entangled in costly out-of-state litigation.

In 2003, the Hualalai project was found to be \$27 million in debt under the prior management of the Petitioner, which required the new base directors to reorganize Petitioner's

¹ HRS § 205-4(g) states in pertinent part, "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." (Emphasis added).

entity as a faith-based mission model. In 2010, Petitioner was unable to move forward with the original project because it was sued for \$25 million. Ultimately the suit was decided in favor of Petitioner, however, substantial attorneys' fees and costs were incurred in its defense. The Great Recession of 2008 added strain to the existing problems of Petitioner, requiring Petitioner to postpone the development of the original project. And in 2017, an audit revealed a volunteer defrauded millions of dollars from Petitioner, which also turned Petitioner's efforts away from the development.

B. Petitioner's Revised Project Establishes Its Vision and Ability to Move Forward.

On March 23, 2020, Petitioner filed its *Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order*, which sets forth a Revised Project focused on greatly expanding educational and housing opportunities for its University of the Nations, Kona Inc.'s faculty and students, and preserving the significant archaeological resources within the Petition Area.

Petitioner commissioned a 2020 Master Plan Update for the Revised Project, a comprehensive Environmental Planning Report, and a Conceptual Infrastructure Master Plan in support of its Motion to Amend. In comparison to the originally approved Project, the Revised Project is a "downsizing" by refocusing on expanding the adjacent educational campus and facilities into the Petition Area and eliminating the for-sale condominium village and the cultural center tourist attraction. The Revised Project also includes the preservation and restoration of significant cultural resources within the Petition Area. A reduction in impacts is anticipated with the Revised Project, and the ownership and management of the Petition Area will continue indefinitely with the Petitioner to see the project through and beyond.

Petitioner has updated or added pertinent studies for the Revised Project, including an updated flora and fauna study, a traffic impact assessment, archaeological data studies, and a preliminary infrastructure assessment. Petitioner has worked with the County of Hawaii to confirm that the County's affordable housing requirements would not be triggered and has demonstrated its record of contributing to the housing stock of the Kona community. OP believes that student dormitories are a form of affordable housing, as they will relieve housing that would otherwise need to be provided in the surrounding community and are generally affordable to its students.

Petitioner has demonstrated its financial capability to develop the Revised Project through traditional financing, tuition funds, fundraising and volunteers. While the fundraising and volunteers are not a conventional means of project financing, it is part of a mix of more traditional means.

Petitioner's 30-year phased build-out is reasonable under a financing structure that allows the allocation of student tuition towards the Revised Project as student enrollment increases and the campus can further accommodate the increasing student population. Petitioner's construction and infrastructure plans under Phase I of the Revised Project, scheduled to be completed within the first five to ten years following approval from the Commission, anticipates construction of the roadway/utility corridor, a chapel, instruction building, student dormitory, gymnasium, and maintenance/storage warehouse, parking areas, athletic field, and archaeological preservation sites. OP believes that the completion of these components during Phase I would be sufficient to comply with the substantial commencement standard of HRS § 205-4(g).

OP believes that the Commission can hold Petitioner accountable to its phased development representations through Condition 15 of the original Decision and Order, which

provides for fines, removal of improvements by Petitioner at Petitioner's own expense, reversion to the former state land use classification, or any other legal remedies for failure to comply with such representations.

C. The Petition Area is Best Suited to Remain in the Urban District.

Even if the Commission is unable to find good cause not to revert the Petition Area based on Petitioner's past difficulties and its Revised Project to move forward, the Petition Area is not suitable for reversion to the Urban District, or any other state land use district classification. The land itself has little to no agricultural value. The LSB classification system classifies the Petition Area's soil with an "E" rating, which is considered "very poor" for agricultural production and is only marginally suitable for agricultural uses." There is very little precipitation in the Petition Area due to its location on the leeward side of the Big Island and at a low elevation.

Additionally, County plans envision the area as urban, and adjacent properties are in the Urban District.

In sum, Petitioner has demonstrated its past hardships limiting its ability to move forward with the original project as well as its ability to move forward with its Revised Project if given the opportunity, and that the Petition Area is best suited for the Urban District. For these reasons, OP believes that there is good cause not to revert the Petition Area to its prior or other classification and to allow Petitioner to move forward. Consequently, the Order to Show Cause should be dismissed.

DATED: Honolulu, Hawaii, June 23, 2020.

Mary Alice Evans

MARY ALICE EVANS
Director for the OFFICE OF PLANNING,
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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U OF N BENCORP)	CERTIFICATE OF SERVICE
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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)	
Hawaii)	
_____)	

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, Hawaii, June 23, 2020.

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