

ORIGINAL

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now known as AEKO HAWAII

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2006 DEC 21 PM

DOCKET NO. A02-737

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) 7-5-10:85 and 7-5-17:06 situate at Waiaha
1st, North Kona, Island County and State of
Hawaii.

MOTION TO AMEND FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION
AND ORDER; MEMORANDUM IN
SUPPORT OF MOTION TO AMEND
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION AND ORDER;
VERIFICATION OF JENNIFER A. BENCK;
EXHIBITS "1" TO "5"; CERTIFICATE OF
SERVICE

**MOTION TO AMEND FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

Comes now the Petitioner herein, AEKO HAWAII (hereinafter "AEKO"), a Hawaii non-profit corporation, formerly known as U of N BENCORP, and respectfully requests the State Land Use Commission (hereinafter the "Commission") to grant the following relief:

1. That the Findings of Fact, Conclusions of Law, and Decision and Order dated August 8, 2003, granting reclassification of approximately 62 acres situate at Waiaha 1st, Kailua-Kona, District of North Kona, County and State of Hawaii, and designated by Tax Map

Key Nos.: (3) 7-5-10:85 and (3) 7-5-17:06 (hereinafter the "Property" or "Petition Area"), from the Agricultural Land Use District to the Urban Land Use District (hereinafter the "Original D&O"), a copy of which is attached hereto and incorporated herein as Exhibit "1", be amended to reflect the revised land use plan and development proposal described herein and shown on the Petitioner's revised master plan for the University of the Nations' Kona campus (hereinafter the "Revised Project"), attached hereto and incorporated herein as Exhibit "2", and as proposed in the First Amended Findings of Fact, Conclusions of Law, and Decision and Order for State Land Use District Boundary Amendment (the "Amended D&O"), attached hereto and incorporated herein as Exhibit "3".

2. That the time frame for development of the Property as set forth in the Original D&O be amended accordingly to allow the Petitioner ten years from the date of the Commission's approval of the Amended D&O to complete the development of the Revised Project.

This amendment is being requested in compliance with Condition Number 15 of the Original D&O which states:

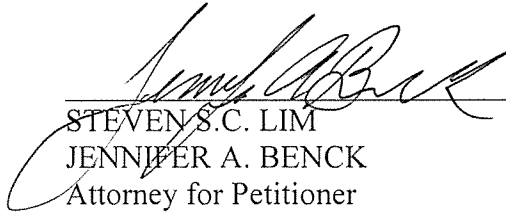
Petitioner shall develop the Reclassified Area in substantial compliance with the representations made by the Petitioner to the Commission in this Docket, as proposed in its Petition and in documentary evidence and testimony before the Commission. Failure to do so for any reason including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's expense, reversion of the Reclassified Area to its former classification, a change to a more appropriate classification, or any other legal remedies.

3. Such other and further relief as the Commission deems just and proper.

These amendments are being requested pursuant to Rules 15-15-70 and 15-15-94 of the Hawaii Land Use Commission Rules, and are supported by the Memorandum in Support of

Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order, attached hereto and incorporated herein. Petitioner hereby requests a hearing on this Motion to allow Petitioner the opportunity to present the Revised Plan to the Commission.

DATED: Honolulu, Hawaii, December 21, 2006.



STEVEN S.C. LIM
JENNIFER A. BENCK
Attorney for Petitioner
U of N BENCORP, now known as AEKO HAWAII

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) 7-5-10:85 and 7-5-17:06 situate at Waiaha 1st, North Kona, Island County and State of Hawaii.

DOCKET NO. A02-737

MEMORANDUM IN SUPPORT OF MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

MEMORANDUM IN SUPPORT OF MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

I. STATEMENT OF FACTS

On August 8, 2003 the State Land Use Commission (hereinafter the "Commission") issued its Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A02-737 (hereinafter the "Original D&O"), granting the reclassification of approximately 62 acres of land owned by the U of N Bencorp. A copy of the Original D&O is attached hereto and incorporated herein as Exhibit "1".

The Commission currently classifies the Property in the State Land Use Urban District. The Property is currently zoned by the County of Hawaii as A-1a. The Petitioner intends to seek a change of zone to multiple-family residential (RM-4), or possibly Residential-Commercial Mixed Use (RCX) or Village Commercial (CV) to facilitate development of the Revised Plan. The County of Hawaii General Plan, in its Land Use Pattern Allocation Guide (LUPAG) Map, designates the Property as Medium Density Urban. This designation includes "village and neighborhood commercial and residential and related functions (3-story commercial; residential -

- up to 35 units per acre)." The Property is not within the Special Management Area established by the County of Hawaii pursuant to Chapter 205A, Hawaii Revised Statutes. Under the Kona Regional Plan, adopted by the Planning Commission of the County of Hawaii as Resolution No. 184 in April 1984, the Property is designated as Medium Density Urban RES 6 (6 units per acre). Under the West Hawaii Regional Plan developed by the Office of State Planning in November 1989, the Property is within the Keahole-Keauhou Resort Destination Node. Under the Kailua-Kona Master Plan adopted in 1994, the Property is designated as low-density residential.

The proposed development approved by the Commission in the Original D&O (hereinafter the "Original Project"), consisted of three main components: 1) the 400 unit Hualalai Village condominiums; 2) an approximately 26 acre Cultural Center; and 3) an Educational Facility, all of which are generally described below. The Revised Project envisions the development of: 1) a Staff Housing Community, 2) three Student Villages, and 3) expanded Academic and Recreational Facilities.

A. THE ORIGINAL PROJECT

HUALALAI VILLAGE CONDOMINIUMS

The Hualalai Village Condominiums were planned for sale as a profit making residential development to provide financial support to the University of the Nations' Kona campus (hereinafter "U of N-Kona"). It was to have 400 high quality condominiums with a recreation center, exercise facilities, and pool. 103 of the 400 condominium units were not included in the Petition Area because those units were already zoned and under construction at the time of the Original D&O. The Hualalai Village Condominiums were to serve two distinct market segments, those being (1) U of N-Kona affiliates, including donors and friends, faculty, staff, and

some students, and (2) the general public. The units were to range in size from one to four bedrooms, and in price from approximately \$167,500 to \$502,500.

THE CULTURAL CENTER

The Cultural Center was planned to be a popular tourist attraction. Some 500 to 1,100 visitors were expected to visit the Cultural Center daily. It was planned that the Cultural Center would hold on-going daytime performances, and was to include an outdoor water feature, museum complex, restaurant, and shops. Profits from the Cultural Center were to flow back to U of N-Kona to support educational activities. Approximately 26.5 acres of the Petition Area were devoted to the Cultural Center, which included a parking lot to accommodate 15 tour buses and up to 840 cars.

EDUCATIONAL FACILITY

Under the Original Project, the plans for the educational facility were minimal. It was anticipated that some 5-acres would be utilized for the expansion of the U of N-Kona educational facilities. The exact site plan and configuration had not been determined as of the date of the Original D&O.

B. THE REVISED PROJECT

The site plan for the Revised Project is shown on Exhibit "2", attached hereto. The Revised Project proposes to develop subsidized housing for the students and staff of U of N-Kona through the development of a Staff Housing Community and Student Villages. Up to approximately 400 housing units are planned within the Revised Project, of which up to six may be single family homes available for purchase by leaders in the University of the Nations, and the remaining multi-family units will be a mixture of rental units for students and some U of N-Kona staff, and units available for purchase by U of N-Kona staff. The Revised Project will also

include Expanded Academic and Recreational Facilities. A summary of the components of the Revised Project is stated below.

STAFF HOUSING COMMUNITY

Proposed housing within the Revised Project includes the Staff Housing Community, which may eventually have up to 100 residential units available for purchase by the staff of the U of N-Kona. The Staff Housing Community will include a range of units, from studios to three bedroom units. In addition to the multi-family units planned for the Staff Housing Community, up to six single-family residences are proposed for sale to key leaders within the University of the Nations. The Staff Housing Community should accommodate the needs of more senior staff, and those staff members with families who wish to plant roots in the Kona-Kailua area. The Petitioner does not intend to offer units within the Staff Housing Community as rental units.

Units within the Staff Housing Community will be offered to U of N-Kona staff at prices approximately thirty percent (30%) below market. The Petitioner is able to offer units at a subsidized rate in part because it does not have the land acquisition costs faced by most commercial residential developers. Although some units within the Staff Housing Community may be offered at market price, at a minimum, the number of below market units to be offered will comply with the Affordable Housing requirements of the County of Hawaii.

Currently, approximately twenty-five percent (25%) of the staff live on the U of N-Kona campus. As additional, subsidized housing is constructed within the Staff Housing Community, those staff members currently living off campus will be able to move into the Staff Housing Community, thus freeing housing in the surrounding community for use by local families. By providing below market housing to U of N-Kona staff, the Revised Project will reduce the

impact on the local housing that may be caused by members of the U of N-Kona staff now, and in the future, as additional staff join the U of N-Kona.

STUDENT VILLAGE APARTMENTS

Three Student Villages are planned to provide rental housing for U of N-Kona students and some staff. The Student Villages are planned to be clustered in three autonomous Villages, providing a total of up to 300 low-cost rental housing units. In addition to housing, each Student Village cluster will contain various classrooms, offices, and a library. It is anticipated that the current level of student housing will be insufficient to meet the needs of the growing student body. The Student Villages will benefit Kailua-Kona by providing low cost rental housing for U of N-Kona students, thereby keeping off-site, low cost rental housing available for local families.

Both the Staff Housing Community and the Student Village Apartments will help meet the strong demand for owner-occupied and rental housing in the Kailua-Kona area, particularly at the lower income levels. On September 7, 2006, Pacific Business News reported that the August median price for existing single family homes in Kailua-Kona was \$611,500. The median price for condominiums was \$401,450. *See Exhibit "4"*. Clearly there is a strong demand for low cost housing in the Kailua-Kona area. The Staff Housing Community and Student Villages will free up the pool of off-site affordable housing options provided by private development, and result in more housing becoming available to the local community.

ACADEMIC AND RECREATIONAL FACILITIES

The Expanded Academic and Recreation Facilities consist of four components: (1) the College of Arts and Communications; (2) the College of Education; (3) a Commons with Multi-Purpose Gymnasium; and (4) additional Sports Facilities.

1. College of Arts and Communications

The College of Arts and Communications is proposed as a two story building containing a performance arts complex with seating capacity for 800 - 1,000 people. The College of Arts and Communications will also have a stage, studios, and offices. The performance theater is planned to provide a place for arts and entertainment for the staff and students of the U of N-Kona, as well as for members of the surrounding Kailua-Kona communities.

2. The College of Education

The College of Education is planned to include a model Education Center with a teaching laboratory, as well as a library, science room, shop room, administrative offices, playground areas, and green courtyards. Most of the students in the Education Center will be children of U of N-Kona staff, with a number of students from the community. An Education Center has long been desired on the U of N-Kona campus to provide teaching education to U of N-Kona students, as well as a coherent and continuous learning environment for children of staff, and those children who have attended the existing Early Childhood Learning Center located on campus.

3. Commons Area with Multi-Purpose Gymnasium

The proposed Commons Area with Multi-Purpose Gymnasium is planned as a one-story building with mezzanine. The Multi-Purpose Gymnasium will have two courts, a stage, backstage, seating for approximately 1,200, classrooms, offices, lockers, restrooms, and lobbies. The Commons Area with Multi-Purpose Gymnasium will serve the U of N-Kona campus in general, and will be available to the surrounding community for special events.

4. Sports Facilities

The planned Sports Facilities include a soccer field, football field, track, bleachers, softball diamond, tennis courts, volleyball courts, a walking or running "vita course" with exercise stations around the campus, and an Olympic swimming pool with showers and lockers. The fields, track, and bleacher seating can replace the temporary soccer field that is currently on the U of N-Kona campus.

II. JUSTIFICATION FOR MOTION

The University of the Nations is a Hawaii 501(c)(3) non-profit corporation and mission-based educational institution founded in Kona in 1977, and is now actively involved in equipping men and women in more than 140 nations through field-driven course work within its seven colleges and focused centers. Unique in the field of higher education, this non-traditional, globally networked university offers viable university-level learning opportunities for emerging leaders in 140 nations and over 500 locations worldwide.

The Original Project, approved in the Original D&O, was conceived under the guidance of the previous board of the U of N's benefit corporation, U of N Bencorp. The Original Project included commercial components such as the Hualalai Village condominium units to be offered for sale to the general public, and the Cultural Center. The Petitioner has reevaluated the development proposed in the Original Project, and in light of the mission of the U of N-Kona, Petitioner has replaced the market sales components of the Original Project with facilities that are more in keeping with the mission and purpose of the U of N-Kona. The Revised Project will provide housing for students and staff, as well as additional educational and recreational facilities that will enhance the educational programs at the U of N-Kona. The Revised Project will be

implemented under the new board of the U of N-Kona's benefit corporation, which has been renamed to AEKO HAWAII.

The new board members of AEKO HAWAII are experienced land developers. The Board members are: Dwayne Betsill, President of Betsill Brothers Holding Company in Maui; Warren Israelson, President of Progress Land Company, Inc., based in Savage, Minnesota; Wes Reinheller, President of Medican, a large construction company based in Medicine Hat, Alberta, Canada; and Ernie Wouters, V.P. of Medican. The board members, in collaboration with top University of the Nations officials, have worked together to develop the Revised Project. Their collective experience in development and commitment to the U of N Kona and the Revised Project should ensure that the Revised Project is a success.

AEKO will provide the necessary financial statements to assist in the procurement of financing for the Revised Project. Initial capital monies may be raised by donations, private investors, and/or conventional financing. AEKO will file a current balance sheet and income statement with the Commission.

The "live, learn and work" environment for staff and students planned for the Revised Project fits the mission of the U of N-Kona. That mission is to equip leaders in the seven spheres of society: education, family, business/science and technology, government, media, religion, and arts and entertainment. At the U of N-Kona, students will learn from example, and both students and staff will benefit from the Student Villages community of learners.

The Revised Project, which does not include the previously planned Cultural Center, will have significantly less impact on the surrounding area than the Original Project. Without the Cultural Center, tour buses will not come on the Property, and the associated traffic concerns

will not arise. In addition, development the Revised Project will not result in the performance related noise that was anticipated as a byproduct of the Cultural Center in the Original Project.

Traffic impacts are also reduced under the Revised Project because, unlike the Original Project which had 400 condominium units to be offered for sale to the *general public*, the housing to be offered under the Revised Project will be for staff and students of the U of N-Kona. By providing on-campus housing to students and staff, the Revised Project will not contribute to commuter traffic, and will very likely reduce current traffic levels, as staff who currently live off campus and commute to the U of N-Kona will be able to move on campus and walk to school or work. *See* Traffic Impact Analysis Report for the University of the Nations Master Plan ("TIAR"), dated December, 2006, attached hereto as Exhibit "5". The planned Education Center will further reduce the number of trips to and from the U of N-Kona campus, as the children of staff will be able to attend school on-campus.

By expanding the educational facilities available at the U of N-Kona, the Revised Project is in keeping with the U of N-Kona's vision of providing essential skills to its students, and sending out thousands of men and women who value God's love for all people, and who demonstrate His ways through providing educational humanitarian projects that include primary health care, community development, disaster relief, crisis counseling, and sports and other youth programs.

The residential market sales character of the Original Project was inconsistent with the important mission and vision of the U of N-Kona. The Revised Project is closer to the true purpose of the U of N-Kona in that it is focused on providing directly for the needs of its students and staff, and enhancing the measured and deliberate expansion of the U of N-Kona campus facilities.

A. TIMELINE FOR THE REVISED PROJECT

The development timeline for the Revised Project will be affected by a number of factors, including market conditions and student enrollment at the U of N-Kona. Current student enrollment at the U of N-Kona is approximately 400, and there are approximately 300 staff members. The following projected timeline is based upon the growth in student enrollment now occurring (*i.e.*, twelve percent (12%) per annum), projected into the future. Thus, subject to the foregoing, the following is the anticipated development timeline for the Revised Project. These years should be seen as a best estimate guideline rather than as a strict construction agenda. As a growing educational institution, the U of N-Kona must prioritize the expansion of its facilities with due consideration to the needs to its students and staff.

1. Staff Housing Community. It is anticipated that the phased development of the Staff Housing Community will begin in 2008, and is scheduled to be completed in 2014.
2. Student Villages. It is anticipated that the phased development of the three Student Villages will begin in 2010, and is scheduled to be completed by 2016.
3. Academic and Recreational Facilities. The Academic and Recreational Facilities will be built in phases starting in 2007, and should be completed by 2016. It is anticipated that the volleyball courts, soccer, football and softball fields, track and bleachers will be completed first, followed by the tennis courts, College of Education and Olympic swimming pool, and next the Multipurpose Gymnasium, with the final phase including the construction of the College of Arts and Communications.

B. PARKING ARRANGEMENTS

The Revised Project will include ample parking, which will be implemented pursuant to requirements of the County of Hawaii. It is anticipated that not all U of N-Kona facilities will be

in use at the same time, and that most U of N-Kona students and staff will take advantage of the pedestrian friendly design of the campus, thus minimizing their use of automobiles. *See generally* Exhibit "5".

C. AMENDED CONDITIONS

For the reasons set forth above, the Petitioner hereby seeks to amend the Original Project approved in the Original D&O, and is returning to the Commission in compliance with Condition Number 15 of the Original D&O, which requires the Petitioner to develop the Petition Area in substantial compliance with the representations made to the Commission. This Motion is being submitted to maintain compliance with Condition 15, by allowing the Petitioner to revise the development concept approved in the Original D&O. Additionally, Petitioner is requesting the deletion of certain conditions of approval for the Original Project, which have been rendered moot by the removal of the proposed Cultural Center from the Revised Project.

Condition 6. Petitioner is seeking the deletion of those sections of Condition 6(a), (b), (c), (d), and (e) (Archaeology) of the Original D&O that pertain to the Kahu Wai'aha Committee ("KWC"). The establishment of the KWC was required under the Original D&O for the monitoring of the Hualalai Village and the Cultural Center. Those components are not part of the Revised Project, and for that reason the Petitioner respectfully requests that the Commission delete all references to the KWC in Condition 6.

Condition 7. Petitioner seeks the deletion of those portions of Condition 7 (Cultural, Historical, Customary and Traditional Rights and Resources) of the Original D&O that pertain to the KWC; *i.e.*, all of Condition 7(a), (b), (c), (d), (e), which were placed in the Original D&O due to the inclusion of the Hualalai Village and Cultural Center within Petitioner's Original Project. Condition 7 provides for the establishment of the KWC and sets forth its purpose. In

light of the Cultural Center and Hualalai Village no longer being a part of the plans of the U of N-Kona campus, Petitioner respectfully requests that the Commission delete Condition 7(a), (b), (c), (d), (e) in their entirety.

Petitioner respectfully requests the Commission replace Condition 7(f) of the Original D&O with the following, which incorporates all relevant protections for native Hawaiian customary and traditional practices and rights:

f. Petitioner shall, to the extent that these rights are protected by PASH vs. Hawaii County Planning Commission, 79 Haw. 425 (1995), preserve and protect in perpetuity: (i) rights related to the protection of native Hawaiian practitioners' exercise of customary and traditional practices and rights, including gathering for cultural and religious practices, by providing appropriate access to burial sites and other archaeological sites within the Reclassified Area; (ii) the availability of natural and cultural resources for present and future generations; and (iii) appropriate access within the Reclassified Area. Petitioner shall adhere to prevailing and/or published protocols of the DLNR-SHPD where burial sites and other archaeological sites are found to exist.

Condition 10. Petitioner seeks the deletion of Condition 10 (Traffic) of the Original D&O. Condition 10 required Petitioner, as a precondition to seeking County rezoning, to obtain approval from the State Department of Transportation of a traffic impact analysis report. This Condition 10 was included in the Original D&O because of concerns regarding the anticipated traffic impacts from the Cultural Center and the Hualalai Village project, neither of which are part of the Revised Project. In addition, Petitioner is submitting the TIAR for the Revised Project, attached hereto as Exhibit "5", which concludes that the Revised Project will result in few additional trips and is not expected to have an adverse impact on traffic in the area. In light of the deletion of the Cultural Center and Hualalai Village project, and the enclosed TIAR, Petitioner respectfully requests that the Commission delete Condition 10 in its entirety.

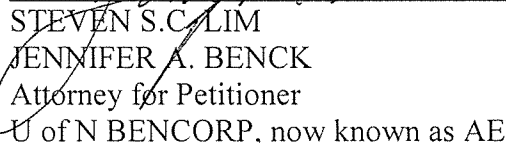
Condition 11. Petitioner seeks the deletion of Condition 11 (Cultural Center) of the Original D&O, in its entirety because the Cultural Center is not part of the Revised Project.

Condition 12. Petitioner seeks the deletion of Condition 12 (Ka Kaka 'Ula O Ke'elikolani, College of Hawaiian Language at University of Hawaii-Hilo), of the Original D&O in its entirety. Condition 12 of the Original D&O was added in connection with the formerly proposed Cultural Center.

Numerous items in the Original D&O are affected by the revisions that are being proposed. Therefore, concurrent with this Motion, the Petitioner submits a proposed First Amended Findings of Fact, Conclusions of Law, and Decision and Order, attached hereto as Exhibit "3".

This Motion, as well as the evidence that will be presented at the hearing on this Motion, will demonstrate that the Revised Project remains in conformance with Section 205-2, Hawaii Revised Statutes, is consistent with both the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes, and the policies and criteria established pursuant to Section 205-17 of Hawaii Revised Statutes, and conforms to Chapter 15-15 of Hawaii Administrative Rules. Therefore, the Petitioner respectfully requests that the Commission grant this Motion, and any further relief as appropriate under the circumstances.

DATED: Honolulu, Hawaii, December 21, 2006.



STEVEN S.C. LIM
JENNIFER A. BENCK
Attorney for Petitioner
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DOCKET NO. A02-737

VERIFICATION OF JENNIFER A. BENCK

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

JENNIFER A. BENCK, being duly sworn on oath, deposes and says that she is the attorney for Petitioner AEKO HAWAII, a Hawaii corporation, and as such is authorized to make this verification on behalf of AEKO HAWAII; that she has read the foregoing petition and exhibits and knows the contents thereof; and that the same are true to the best of her knowledge, information and belief.

Jennifer A. Benck

JENNIFER A. BENCK

Subscribed and sworn before me this 21st day of December, 2006.

Chris Laporte

Name: Chris Laporte

Notary Public, State of Hawaii

My commission expires: 11/13/09

