

*Pre-decisional Document*

**DOCKET NO. A02-737**

**U of N Bencorp**

**Status Report 2022**

***STAFF  
REPORT***

**ACTION MEETING**

**November 2, 2022**



**Daniel E. Orodenker, Executive Officer**

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**Submitted: October 24, 2022**

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## **1. EXPLANATION OF PROCEEDING**

Status and Progress Report hearings provide the Petitioner an opportunity to update the Commission on progress or problems in compliance with the representations and conditions of the decision and order.

Any decisions by the Commission should be based on good cause (or lack of) shown by Petitioner for its lack of progress and evidence put on the record. If an Order to Show Cause (“OSC”) is to be scheduled, the Commission has reason to believe there has been failure to perform and there has not been substantial commencement.

## **2. AUTHORITY**

Pursuant to HAR 15-15-90(c) “The Commission may require the petitioner to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the commission.”

Pursuant to HRS 205 and HAR 15-15-79(a): “Petitioners granted district boundary amendments shall make substantial progress within a reasonable period, as specified by the commission, from the date of approval of the boundary amendment, in developing the property receiving the boundary amendment. The Commission may act to amend, nullify, change, or reverse its decision and order if the petitioner fails to perform as represented to the Commission within the specified time period.”

After hearing from the Petitioner and other parties, the Commission decides whether to allow additional time to move forward or that there is a reason to believe that Petitioner is non-compliant with representations and conditions in the D&O and set an Order to Show Cause hearing pursuant to HAR 15-15-79 and 15-15-93(b).

The Commission, for good cause shown, may act to modify or delete any of the conditions imposed or modify the Commission’s order pursuant to HAR 15-15-94(b).

## **3. BACKGROUND INFORMATION**

The proceeding before the Land Use Commission (“LUC”) is to hear a status report by THE UNIVERSITY OF NATIONS KONA, INC., (“UNK”), successor-in-interest to the original Petitioner U of N BENCORP, a Hawai’i nonprofit corporation.(“BENCORP”), on the development approved in Docket No. A02-737.

The (A02-737) docket involved the reclassification of approximately 62 acres of land from the State Land Use Agricultural District to the State Land Use Urban District at

North Kona, Island of Hawai‘i, identified as Tax Map Keys: (3) 7-5-010: 085 and (3) 7-5-017: 006, for the development of the Hualālai Village, a 400-unit condominium with approximately 26.5 acres dedicated to the multi-functional Cultural Center including parking that could accommodate 15 tour buses and up to 840 cars, and a five-acre Educational Facility (“Project”). Also proposed were a two to three-acre passive park between Hualālai Village and the Cultural Center, a wastewater treatment plant, individual wastewater systems, an offsite drinking water well, water storage reservoirs, water transmission lines, an internal roadway circulation system, and offsite roadway connections. No Environmental Assessment was done at that time.

The following chronology represents the significant events in Docket No. A02-737/ U of N Bencorp:

August 8, 2003

The Commission issued its [Decision and Order](#) and granted the Petition subject to 19 conditions.

***2004-2006 Annual Reports***

September 6, 2006

Received a late Annual Report filed for 2004, 2005, and 2006.

September 20, 2006

The Commission sent letter to the attorney for Bencorp stating it had not complied with certain conditions in the Findings of Fact, Conclusions of Law, and Decision and Order (The “D&O”).

***2006 Motion to Amend***

December 21, 2006

The Commission received [Motion](#) to Amend Findings of Fact, Conclusions of Law, and Decision and Order and Motion to Change Petitioner’s Name.

March 1, 2007

The Commission held a meeting to consider Petitioner’s “Motion to change Petitioner’s name and Amend Findings of Facts, Conclusions of Law, and Decision and Order”. No decision was rendered pending Petitioner returning to Land Use Commission (“LUC”) with additional information.

2007- 2019

No activity or correspondence from Petitioner.

***2019 Motion to Substitute***

February 4, 2019

Petitioner filed [Motion](#) to Substitute Petitioner and Withdraw Land Use Commission Approval And to Revert Land Use District Boundary Classification to Agricultural.

March 15, 2019

Petitioner request to Withdraw Motion to Substitute Petitioner and Withdraw Land Use Commission Approval And to Revert Land Use District Boundary Classification to Agricultural.

March 28, 2019

The Commission held a Status hearing and the parties provided background information, history on how UNK was attempting to re-establish itself to fulfill its mission and move forward. LUC received an Annual Report covering 2008-2019 on March 28, 2019 and copy of a PowerPoint Presentation.

***Order to Show Cause***

At the March 2019 status hearing, Petitioner admitted it had failed to meet conditions in the D&O. The record therefore, supported a motion for an Order to Show Cause (“OSC”). The Commission voted to set an OSC hearing to address why the Petition Area should not revert to its former Agricultural land use classification or be changed to a more appropriate classification. There was reason to believe that the Petitioner had failed to perform according to the conditions imposed in the docket and to the representations or commitments made to the Commission.

March 29, 2019

LUC issued an Order to Show Cause for A02-737 U of N Bencorp, on the grounds that there was a reason to believe that Petitioner had failed to perform according to conditions imposed and representations and commitments made to the LUC in obtaining reclassification of the Petition Area. At that time the LUC set a hearing date of May 22-23, 2019 (approximately 54 days in advance) to be held in Kona, Hawai`i.

May 8, 2019

University of the Nations, Kona, Inc.'s [Motion to Rescind](#) Order to Show Cause or to Continue Hearing on Order to Show Cause; Memorandum in Support of Motion; Verification of Julie B. Anjo; Certificate of Service

An OSC hearing was held on May 22, 2019. At the hearing the Commission deferred making a final decision on the OSC and ordered UNK to appear before the Commission in 6 months time with an update on the status of the project and its efforts to comply with the original Decision and Order of August 8, 2003.

October 7, 2019

The Commission issued its [Decision and Order](#) and Granted UNK's Motion to Continue Order to Show Cause Hearing with conditions.

The Decision and Order adopted pursuant to the Motion for Order to Show Cause hearing stated:

*“Petitioner shall come before the Commission within six (6) months of this Decision and Order to present a status report **with specific plans for moving the project forward**. If at that time the Petitioner has not shown or made significant progress on its **plans for financing and developing the Petition Area** or the Commission feels that the Petitioner will not meet the one-year deadline for **filing an amendment to the 2006 Motion to Amend or the 2003 Decision and Order** then the OSC proceedings will be reinstated”.*

***Motion to Reconsider***

October 14, 2019

Petitioner filed [Motion to Reconsider](#) Order to [sic] Granting United Nation [sic] of Kona's Motion to Continue Hearing On Order to Show Cause.

November 13, 2019

UNK filed Status Report in compliance with Order Granting UNK's Motion to Continue Hearing on Order to Show Cause, Filed on Oct 7, 2019

December 24, 2019

Petitioner filed “[Status Report](#) Pursuant to order to Granting United Nation of Kona's Motion to Continue Hearing on OSC, supplement Information-Financial”

January 8, 2020

The Commission met in Kailua-Kona and voted to deny U of N Bencorp's Reconsideration of Order to [sic] Granting United Nation [sic] of Kona's Motion to Continue Hearing On Order to Show Cause and to only allow typographical corrections, date changes to Petitioner's Corporate name change, and associated amendments and corrections to the caption

***Withdrawal of Motion to amend and 2020 Motion to Amend***

March 23, 2020

Petitioner filed [Withdrawal of its Motion](#) to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated December 21, 2006, COS

March 23, 2020

Petitioner filed [Motion to Amend](#) Findings of Fact, Conclusions of Law, and Decision and Order Dated 3-23-2020, Memorandum in Support of Motion, Declaration of Maria F. Fagerstrom-Rydet, Petitioner's Exhibits 1-20, Verification of Julie B. Anjo, COS

July 23, 2020

The Commission dismissed the Order to Show Cause without prejudice, but encouraged the Petitioner to proceed with Hawai'i Revised Statutes Chapter 343 compliance.

***Motion requesting LUC be Accepting authority of EIS***

January 21, 2021

Petitioner filed its [Motion](#) Requesting the Land Use Commission to A) Be the Accepting Authority for an EIS and B) Determine that the Proposed Action Warrants the Preparation of an EIS, to be Initiated with the Preparation of an EISPN, Memorandum

February 10, 2021

The Commission held a meeting and voted to grant the Petitioners Motion.

February 18, 2021

LUC order granting University of the Nations, Kona, Inc.'s Motion Requesting the Land Use Commission to (A) Be the

Accepting Authority for an Environmental Impact Statement and (B) Determine that the Proposed Action Warrants the Preparation of an Environmental Impact Statement, to be initiated with the Preparation of an Environmental Impact Statement Preparation Notice to Parties.

August 8, 2022

[Annual Report](#)

September 12, 2022

[Supplemental Annual Report](#)

September 26, 2022

LUC emailed Petitioner that Status Report hearing was being scheduled

#### 4. STAFF NOTES

The latest [Annual Report](#) raises questions about the changing scope of the Project, the status of Applicants Environmental Impact Statement, financial fitness of the Petitioner, and the housing credits negotiated with the County housing agency.

There is no documentation in the record to show that substantial commencement has occurred.

Specific points of concern:

*Affordable Housing and Housing Credits*

The 2022 Annual Report mentions working with the County of Hawai‘i to confirm that all affordable housing obligations related to its predecessor’s development of Hualālai Village have been satisfied, and to determine if UNK is entitled to any additional affordable housing credits. The 2022 Annual Report mentions that at that point in time discussion with the County of Hawai‘i’s Office of Housing and Community Development (“OHCD”) were ongoing.

The Supplemental Annual Report has no mention of the additional affordable housing credits.

*The LUC Staff is particularly concerned about the legitimacy of any agreements discussed with OHCD.*

*Therefore, the Commission should question the*



*Petitioner on the status of discussions with OHCD regarding any affordable housing agreements, the status of additional housing credits, and if needed the integrity of any arrangements made.*

The Supplemental Annual Report states “Ka ‘Ohana Wai‘aha was transferred title to a number of the units in Hualālai Village, and currently retains a ground lease interest for units within buildings C, D, F, G and H, which are sold on a priority basis to staff and persons affiliated with UNK.”

The Commission should question the Petitioner on the number of units being provided to staff and persons affiliated with UNK.

The Affordable Housing Condition reads:

Petitioner shall provide affordable housing opportunities for residents of the State of Hawai‘i in accordance with applicable housing requirements for the Project and the County of Hawai‘i. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Hawai‘i.

The report makes mention of staff and students leaving and returning to the State of Hawai‘i in response to the COVID-19 Pandemic. However, it is unclear how this relates to the affordable housing requirements. *At prior hearings a representation was made that the affordable housing was to be for residents of the State of Hawaii.*

**The Commission should ask the Petitioner to explain how the current affordable housing scenario provides affordable housing for the residents of the State of Hawai‘i.**

*No Apparent Progress on Environmental Impact Statement (“EIS”)*

The Annual Report indicates the Draft EIS will be published in the first quarter of 2023.

*The Commission should ask the Petitioner to explain*

*what the status of the EIS is, and which technical studies have been completed to date.*

*Change in Project Plan*

The Annual Report indicates that University of the Nations Kona (“UNK”) revisited the scale and scope of the master plan from what was originally presented to the Commission in the 2020 Motion to Amend.

If the Commission allows the Petitioner to move on without an OSC, staff believes the priority of the Petitioner should be to finish the EIS process, to describe the new scope of the Project, its impacts, proposed mitigation measures, and the financial ability of the Petitioner to complete the Project. When the EIS is completed, the Petitioner should then come before the Commission with a Motion to Amend to reflect the new scale and scope of the Project.

*Funding*

Both the Annual Report and Supplemental Annual Report indicate that UNK has experienced/ is experiencing a decrease in enrollment, which causes a “significant reduction in funding and revenue (Annual Report, pg.1 )”.

*The LUC Staff is particularly concerned about the financial status of the Petitioner, and funding of the Project – specifically the duration needed to meet funding goals. This project is unusual in that the Commission allowed the project to move forward without a showing that funds were available to undertake the venture. The project was to be self funded through “fundraising” within the church population. Progress in this area is unclear.*

**The Commission should ask the Petitioner for a clear statement of financial standing. In particular where they are in their fundraising goals and how the Petitioner plans to fund the Project development. The petitioner be specific as to the length of time that is needed to reach funding goals.**