

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. A02-737
)	
U OF N BENCROP)	DECISION ON 2022 STATUS REPORT
)	HEARING
To Amend the Agricultural Land Use District)	
Boundary to the Urban Land Use District for)	
Approximately 62 Acres, Tax Map Key Nos.:)	
(3) 7-5-10:85 and 7-5-17:06 situated at)	
Wai'aha 1 st , North Kona, Island of Hawai'i,)	
State of Hawai'i.)	
_____)	

DECISION ON 2022 STATUS REPORT HEARING

AND

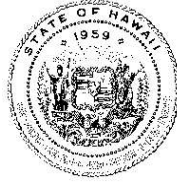
CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

Dec 8, 2022

BY 

 DANIEL E. ORODENKER
 Executive Officer



BEFORE THE LAND USE COMMISSION

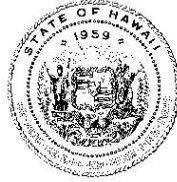
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DECISION AND ORDER REGARDING 2022 STATUS REPORT HEARING

U of N Bencorp submitted a Petition for Land Use District Boundary Amendment on November 21, 2002. On August 8, 2003, the State Land Use Commission (“Commission”) approved the Petition for Land Use District Boundary Amendment filed by the U of N Bencorp amending approximately 62 Acres, Tax Map Key Nos.: (3) 7-5-10:85 and 7-5-17:06 situated at Wai'aha 1st, North Kona, Island of Hawai'i, State of Hawai'i. The approval for reclassification was subject to nineteen (19) conditions; among those was a requirement to provide annual reports in connection with the status of the subject project and progress in complying with conditions.

On November 2, 2022, the Commission held an In-Person meeting at the University of Hawai‘i at Hilo, Campus Center Facility - Room 301 for the current landowner United Nations of Kona (“Petitioner” or “Organization”) to provide a Status and Progress Report and take action (if necessary) to address any compliance issues.

The Commission, having heard and examined the testimony, exhibits, evidence, and argument of counsel and parties presented during the status report hearing, along with the pleadings filed herein, hereby makes the following Findings of Fact and Decision and Order.

PROCEDURAL MATTERS

1. On August 8, 2003, The Commission issued a Decision and Order granting the Petition subject to nineteen (19) conditions.
2. On March 29, 2019, The Commission issued an Order to Show Cause as the Commission had reason to believe the Petitioner failed to perform according to the conditions imposed and to the representations and commitments made to the Commission in obtaining reclassification of the Subject Area.
3. On October 7, 2019, The Commission issued an Order Granting United Nations of Kona’s Motion to Continue Hearing on Order to Show Cause, Exhibit “A” and Certificate of Service.
4. On March 23, 2020, Petitioner filed the 2020 Motion to Amend and Withdrawal of the 2006 Motion. Petitioner’s 2020 Motion to Amend requested that the Commission issue an order modifying its 2003 Decision and Order to reflect Petitioner’s, revised project which expands on the educational facility component of the prior project and deletes the for-profit development and approve its thirty-year full buildout timetable [Petitioner’s Motion

to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated 3-23-2020; pgs. 1-2].

5. During the July 23, 2020, hearing Petitioner indicated that the change in scope of the Project uses State and County lands, therefore, requiring Chapter 343 compliance through an EA or EIS [Tr. 07/23/2020; pg. 64]. The Petitioner stated that a motion will be made requesting the Commission to be the approving agency that accepts the EIS under Hawai'i Administrative Rules 11-200.1 and be the accepting authority for the EIS, will be forthcoming [Tr. 07/23/2020; pg. 68]. The Petitioner represented the EIS would take nine to ten months to complete [Tr. 07/23/2020; pg. 69]
6. The Commission voted to dismiss the Pending Order to Show Cause without prejudice [Tr. 07/23/2020; pg. 116].
7. On January 21, 2021, Petitioner filed its Motion Requestion the LUC to be the accepting authority for EIS.
8. On February 18, 2021, The Commission issued an Order Determining (1) That the Land Use Commission Agrees to be the Accepting Authority Pursuant to Chapter 343, Hawai'i Revised Statutes; and (2) That the Proposed Action May Have a Significant Impact Upon the Environment to Warrant Proceeding Directly to the Preparation of an Environmental Impact Statement; and Certificate of Service.
9. On February 23, 2021, the Commission sent The State of Hawai'i's Office of Environmental Quality Control, now known as The State of Hawai'i Environmental Review Program ("ERP") Agency Publication form for the Environmental Impact Statement Preparation Notice ("EISPN").
10. On March 2, 2021, the ERP published the EISPN in the Environmental Notice.

11. On March 15, 2021, the Commission received the Letter form Petitioner stating the EISPN was made publicly available for public review and comment on March 8, 2021.
12. On April 8, 2021, the Commission received a public comment letter from the National Park Service (“NPS”) regarding the EISPN for the University of the Nations, Kona Inc. 2020 Master Plan Update.
13. On August 8, 2022, the Commission received the Petitioner’s 2022 Annual Report.
14. On September 12, 2022, the Commission received the Petitioner’s 2022 Supplemental Annual Report.
15. On September 26, 2022, the Commission staff sent an email to the attorney for the Petitioner requesting that it appear to provide the Commission with a status report on November 2, 2022.
16. On October 21, 2022, the Commission staff mailed and emailed the agenda and meeting notice for the November 2, 2022, Land Use Commission meeting to the Parties, Statewide, and County of Hawai‘i mailing and email lists.
17. On October 24, 2022, the Commission staff Report was made publicly available.
18. On November 1, 2022, the Commission staff posted Public Comments received via email from Cory Harden, Janice Palma-Glennie, and the Boys & Girls Club of the Big Island.
19. On November 2, 2022, the Commission held an in-person meeting at the University of Hawai‘i at Hilo, Campus Center Facility - Room 301 where Petitioner provided a Status and Progress Report on its compliance with conditions; and for the Commission to take any action (if necessary) on issues of compliance.

20. Present at the hearing were: David Hamilton, Jeffrey Overton, Derrick Simon, Esq., and Kathrine Garson, Esq., on behalf of the Petitioner; Jeff Darrow, Suzanna Tiapula, Esq. on behalf of the County of Hawai‘i; and Lorene Maki, Katia Balassiano, Bryan Yee, Esq. on behalf of the State of Hawai‘i Office of Planning and Sustainable Development (“OPSD”).
21. An initial opportunity for public testimony was provided prior to the Petitioner’s case. Daniel Kikawa provided public testimony in support of the Project. [Tr. 11/02/2022; pgs. 14-16]
22. Petitioner provided a progress report on the organizational overview, collaboration with the community, past difficulties they faced and how they had been addressed, project funding, development plans, and the progress of the Draft Environmental Impact Assessment (“DEIS”).
23. The County of Hawai‘i testified in support of the Project parcel remaining in the State Land Use Urban District. Commissioners then asked questions to clarify the County’s position.
24. OPSD testified that they were satisfied by the status report and progress update. Commissioners asked questions to clarify the position of State agencies.
25. The Commission provided a second opportunity for public testimony prior to decision-making. At that time, there were no members of the public that wished to provide public testimony.
26. On November 3, 2022, the Commission staff posted a public comment received via email from Kimmy McMichael.

27. On November 14, 2022, the Commission received a copy of the status report slideshow and Youth With A Mission (“YWAM”) U of N locations slideshow that were presented at the November 2, 2022, meeting in Hilo.

FINDINGS BY THE COMMISSION

28. Petitioner exhibited good cause that the 2022 Annual Report and the 2022 Supplemental Annual Report satisfy the condition for a yearly annual report on the status of compliance with the conditions stated in the Decision and Order.

- a. Petitioner uses nonprofit type fundraising to fund the Organization and its individual projects, including for this Project [Tr. 11/02/2022; pgs. 41-44]. Nonprofit type fundraising is the ongoing process of soliciting donations or voluntary funds. Fundraising for the Petition Area has not begun by the United Nations of Kona [Tr. 11/02/2022; pgs. 80- 81]. When the Petitioner accumulates enough donations and revenue generated, the Petitioner will then enter contracts for construction [Tr. 11/02/2022; pg. 63]. Construction will proceed incrementally, and three phases will be proposed by the Petitioner. A timetable including financing will be included in the Petitioner’s Master Plan [Tr. 11/02/2022; pgs. 64-65, 127].
- b. Petitioner will utilize donated labor from volunteers to construct and renovate

preexisting housing in the Kailua-Kona area [Tr. 11/02/2022; pg. 54].

Petitioner represented that all of the staff including faculty, operational staff, and administrative staff on the United Nations of Kona Campus are volunteers that serve as members of Youth With A Mission (“YWAM”). David Hamilton, president of UNK, stated that he does not have a salaried position [Tr. 11/02/2022; pgs. 135-136].

- c. G-70 has completed the beginnings of an EIS with an EISPN which was made available for public comment on March 8, 2021 (available on the LUC record), the civil engineering division is working on the infrastructure studies, and is working with several different consultants for technical studies [Tr. 11/02/2022; pgs. 111-113].
- d. Mobility Analysis Report and Water Supply Study need to be updated [Tr. 11/02/2022; pgs. 113].
- e. Petitioner represented that a virtual public scoping meeting for the EISPN was held on March 25, 2021, and there were about a dozen participants including a few neighbors [Tr. 11/02/2022; pg. 116].
- f. A Noise Study is to be added [Tr. 11/02/2022; pgs. 116].
- g. The Petitioner represented that it has faced significant challenges but that the timetable is back on track and G-70 is targeting the second quarter of 2023 for the publication of the Draft EIS [Tr. 11/02/2022; pgs. 118]. The Petitioner anticipates coming before the Commission with a Motion to Amend in the near future [Tr. 11/02/2022; pgs. 172].
- h. Petitioner agreed to include a Greenhouse Gas Analysis in the EIS as

required by law [Tr. 11/02/2022; pgs. 146].

- i. The Petitioner represented that the Project’s Master Plan does not trigger affordable housing requirements under the Hawai‘i County Code, based on the dormitory uses and the anticipated zoning [Tr. 11/02/2022; pg. 51]. Hawai‘i County Code Chapter 11 does not identify dormitories as a type of housing [Tr. 11/02/2022; pgs. 151].

RULINGS ON FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Hawai‘i Revised Statutes (“HRS”) Chapter 205 and the Commission Rules under Hawai‘i Administrative Rules (“HAR”) Chapter 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.”

DECISION AND ORDER

Based on good cause shown, a motion was made and seconded to accept the current status report and supplemental status report as satisfactory but would like the Draft Environmental Impact Statement to be submitted to the Commission in the first half of 2023. Following discussion by the Commission a vote was taken on this motion. There being a vote tally of 6 ayes, 0 nays, and 3 excused, the motion carried.

The motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion, this Commission ORDERS that the Petitioner submit the Draft Environmental Impact Statement to the Commission in the first half of 2023 and continue with status reports on a yearly as-scheduled basis to provide evidence that, the Petitioner is making adequate progress on the Environmental Impact Statement as presented in the Decision and Order dated February 18, 2021.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER on Dec 8, 2022. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this day of Dec 8, 2022, per motion on November 2, 2022.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I

REAVIS
Deputy Attorney General

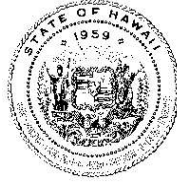
By *Dan V. Giovanni*
DAN GIOVANNI
Chairperson and Commissioner

Filed and effective on:

Dec 8, 2022

Certified by:


DANIEL ORODENKER
Executive Officer



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I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER ON THE 2022 STATUS REPORT HEARING 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 Dec 8, 2022

Honolulu, Hawai'i.



DANIEL E. ORODENKER
Executive Office