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UNIVERSITY OF THE NATIONS, KONA,
INC.

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
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

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 HAWAI'I LAND USE
COMMISSION ON MARCH 29, 2019;
EXHIBITS "19" – "28B"; VERIFICATION
OF JULIE B. ANJO; DECLARATION OF
DEREK B. SIMON; CERTIFICATE OF
SERVICE

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**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 HAWAI‘I LAND USE COMMISSION ON MARCH 29, 2019**

I. INTRODUCTION

Pursuant to Hawai‘i Administrative Rules ("**HAR**") § 15-15-55 and Executive Officer Daniel E. Orodenker's April 5th, 2019 directive, the University of the Nations, Kona, Inc., a Hawai‘i nonprofit corporation ("**UNK**"), as successor-in-interest to U of N Bencorp ("**UNB**") to those certain parcels of land consisting of approximately 62 acres and currently identified by Tax Map Key Nos. (3) 7-5-010:085 ("**Parcel 85**") and (3) 7-5-017:006 ("**Parcel 06**"),¹ together with Parcel 85, the "**Petition Area**", by and through its legal counsel, Carlsmith Ball LLP, hereby respectfully submits its Statement of Position and Rebuttal to the Statement of Position of the Office of Planning on the Order to Show Cause (the "**OSC**") issued by the State of Hawai‘i Land Use Commission (the "**Commission**") on March 29, 2019.² The OSC is presently scheduled to be heard by the Commission on May 22, 2019 (the "**OSC Hearing**").

The Commission reclassified the Petition Area from the State Land Use ("**SLU**") Agricultural District to the SLU Urban District by Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A02-737, filed on August 8, 2003 (the "**D&O**"). The original Petitioner in this Docket was UNB, who sought the reclassification of the Petition Area to allow for the development of the Hualalai Village condominiums, a multi-function Cultural Center, and a five-acre Education Facility (the "**Original Project**"). D&O at FOF ¶39. UNK took title to the Petition Area from an affiliated entity in 2018.³

¹ At the time of the D&O, Parcel 06 was already within the SLU Urban District and split-zoned RD-3.75 and R-7.5 by the County of Hawai‘i. *See* D&O at FOF ¶70.

² Pending the outcome of the OSC, UNK will return to the Commission to request formal recognition as the petitioner in Docket No. A02-737 and leave to amend the caption to reflect the same.

³ UNK took title to the Petition Area pursuant to two (2) Warranty Deeds recorded in the State of Hawai‘i Bureau of Conveyances (the "**Bureau**") on June 14, 2018 as Regular System Doc. Nos. A-67390372 and A-67390373 on June

UNK's campus, the University of Nations-Kona (the "**University**"), is a non-profit mission based educational facility that was founded in Kona in 1978. Through the University, UNK fulfills its commitment to Christ by equipping men and women with spiritual, cultural, intellectual and professional training and inspiring them to continually grow in their personal relationship to God, while also seeking to make God known among all people in all nations. UNK is a branch of the University of the Nations, which has similar branches in 650 locations throughout 160 countries. Students come to UNK to grow in their faith in Jesus Christ, learn how to share it throughout the world, and to serve the poor and needy in Kona and abroad.

On December 21, 2006, prior to UNK taking title to the Petition Area, Aeko Hawaii, a Hawaii nonprofit corporation ("**Aeko**"),⁴ filed its Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order (the "**2006 Motion to Amend**"). The 2006 Motion to Amend explained to the Commission that Aeko had determined that modifications to the Original Project were necessary so that it more closely aligned with the University's institutional and faith-based values (the "**2006 Updated Project**"). The 2006 Updated Project proposed to abandon the Cultural Center (as being profit-driven) and instead expand its academic and recreational facilities, and to replace the undeveloped, market-rate phases of Hualalai Village with much needed staff and student housing. The Commission held hearings on the 2006 Motion to Amend on May 1 and 2, 2007, but ultimately was unable to take final action after quorum was lost. To date, the Commission has not rendered a decision on the 2006 Motion to Amend and, thus, UNK believes that the 2006 Motion to Amend is still pending.

14, 2018. UNK provided notice of this transfer in ownership of the Petition Area to the Commission in its 2019 Annual Report and again by way of letter dated May 1, 2019.

⁴ As noted in UNK's 2019 Annual Report and its May 1, 2019 letter to the Commission's Executive Officer, on May 18, 2005, UNB formally changed its name to Aeko Hawaii. See **Petitioner Exhibit 19**, attached hereto.

While Aeko, and later UNK, fully intended to return to the Commission for action on the 2006 Motion to Amend, internal reorganization and a series of unfortunate and unforeseeable events prevented them from doing so. If given the opportunity, UNK will return to the Commission and file an Amended Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order (the "**Amended Motion to Amend**") so that the Petition Area can be developed as presently envisioned, while remaining in compliance with the D&O, as amended. To initiate that process, UNK will file a motion to stay the OSC Hearing until an Amended Motion to Amend can be filed, but in no event later than one (1) year from the OSC Hearing or, in the alternative, to extend the hearing on the OSC to provide UNK sufficient time to fully respond to the OSC.

Nevertheless, in the event that the Commission is unwilling to provide UNK with the opportunity to file its Amended Motion to Amend before resolving the OSC, the Commission should not order a reversion of the Petition Area.

First, UNK has substantially commenced its use of the Petition Area. Petitioner has: (1) substantially, if not fully, satisfied its extensive obligations to protect the archaeological resources within the Petition Area; (2) provided significant affordable housing to the Kona community; (3) developed educational facilities, including the creation of an agriculture, science, and aquaponics lab, within the Petition Area; (4) processed a well permit application through the appropriate agencies to secure water for the Petition Area; and (5) created and trained a Community Emergency Response Team "CERT" with the guidance of the Hawai'i County (the "**County**") Civil Defense Agency and County Fire Department.

Second, even assuming *arguendo* that the Commission determines that UNK has failed to substantially commence its use of the Petition Area, good cause exists to excuse that failure

and maintain the Petition Area's SLU Urban District classification. Since the time of the D&O, UNK and its predecessors suffered through the severe impacts of the Great Recession, underwent a significant internal reorganization, were defrauded of millions of dollars, and were forced to fight out-of-state litigation. All of these events significantly and adversely affected UNK's ability to timely proceed with all aspects of its development of the Petition Area.

Third, the conditions imposed under the D&O (the "**D&O Conditions**") neither require "substantial commencement," as mandated by Hawaii Revised Statutes ("**HRS**") § 205-4(g) for the Commission to exercise its reversionary powers, nor set forth a deadline for the Petition Area to be developed. For these reasons, the Commission is without authority to order a reversion.

Fourth, the SLU Urban District is the only appropriate classification for the Petition Area. The Petition Area is surrounded almost entirely by existing SLU Urban District lands, much of which has already been developed, and all relevant County planning documents have the Petition Area designated for urban development. Moreover, as the Commission has already found, the Petition Area's poor soils and limited rainfall make it very poorly suited for intensive agriculture. Therefore, even if the Commission finds that UNK has not substantially commenced its use of the Petition Area and that good cause has not been established, the Commission nevertheless still should not revert the Petition Area back to the SLU Agricultural District.

II. PRELIMINARY MATTERS

A. THE MARCH 28, 2019 STATUS HEARING AND ISSUANCE OF THE OSC

On March 28, 2019, the Commission held a status hearing on this Docket. At the status hearing, Julie Anjo, Anthony Ching, and Paul Childers appeared on behalf of UNK and presented the Commission with UNK's 2019 Annual Report and a Powerpoint presentation. At the conclusion of UNK's presentation, the Commission voted to issue the OSC. One day later, on March 29, 2019, the Commission filed the OSC and set the OSC Hearing for May 22, 2019.

B. UNK'S REQUESTS FOR SUFFICIENT TIME TO PREPARE FOR THE OSC HEARING WERE DENIED DESPITE THE SIGNIFICANT PROPERTY AND ECONOMIC INTERESTS AT STAKE

On March 29, 2019, the very next day after the Commission voted to issue the OSC, UNK requested by way of telephone call to the Commission's Executive Officer that a pretrial hearing for the OSC be set for May 22, 2019, and that the Commission's hearing on the OSC be scheduled approximately one month later in order to provide the Parties with sufficient time to prepare to respond to the OSC. However, the Executive Officer declined UNK's request, and instructed UNK to confer with State of Hawai'i ("State") Office of Planning ("OP") and the County Planning Department to determine an appropriate timeline for the Parties' various submissions in advance of the OSC Hearing.

UNK followed up on its March 29th verbal request with a letter to the Commission filed on April 8, 2019. *See **Petitioner Exhibit 20***, attached hereto. In its letter, UNK reiterated its request that the Parties be given adequate time to prepare for the OSC Hearing, and further requested that the Parties be given until April 19, 2019 to establish a schedule and timeline that was agreeable. UNK justified its request on the grounds that: (1) given the scope and nature of the OSC, UNK must consult and interact with numerous parties, some of whom are traveling and/or unavailable upon such short notice; (2) UNK needs to consult with lineal descendants of the Petition Area, local Native Hawaiian leaders, and others in the local community on the development plan for the Petition Area; (3) UNK needs to consult with State and County agencies and other interested parties to present its development plan; and (4) OP generally requires thirty (30) days to review and respond to any filing.

By way of letter dated April 5, 2019, the Commission's Executive Officer instructed the Parties to file, no later than April 26, 2019, the following: (1) a list identifying all witnesses to be called at the OSC Hearing; (2) a list identifying all exhibits that will be submitted at the OSC

Hearing; and (3) all exhibits so identified. *See* **Petitioner Exhibit 21**, attached hereto. The Executive Officer further instructed the Parties to file, no later than May 3, 2019, their respective rebuttal witness list, rebuttal exhibit list, and copies of all rebuttal exhibits. *See id.* Therefore, UNK was given less than a month to make its initial filings and just over a month to make its rebuttal filings.

As members of this Commission have previously acknowledged, a reversion by the Commission is widely considered to be the "death penalty" for a development project in Hawai'i. Therefore, UNK again reiterates its strong belief that it was not provided sufficient time to prepare its response to the OSC, particularly given the significant property, economic, and business interests at stake. *See, e.g., Bridge Aina Le 'a, LLC v. Hawaii Land Use Comm'n*, No. CV 11-00414 SOM-KJM, 2018 WL 3149489, at *21 (D. Haw. June 27, 2018) (noting that "testimony at trial indicated that the 1,060-acre property was 'worth \$40 million' if 'in the [SLU] urban district' and '\$6.63 million' if 'in the [SLU] agricultural district.' ***That represents an 83.5% diminution in value***[.]") (Emphasis added). As of the time of this filing, UNK, its counsel, and consultants are still actively gathering the information necessary to adequately respond to the OSC.

In light of the foregoing, UNK hereby reserves its right to submit further evidence of substantial commencement of its use of the Petition Area and of good cause to maintain the Petition Area's SLU Urban District classification, and any other documents or information relevant to supporting UNK's position on the OSC.

III. BACKGROUND

A. THE PETITION AREA

The Petition Area consists of approximately 62 acres of land. D&O at FOF 29. The Petition Area is located approximately one mile south of the town center of Kailua-Kona, on the

lower western slopes of Hualalai at an elevation ranging from approximately 100 to 325 feet. *Id.* at FOF 26. The Petition Area is bounded by Kuakini Highway on the west, Queen Ka'ahumanu Highway and Hualalai Road on the east, the University of Nations-Kona campus on the North, and the Kona Hillcrest subdivision on the south. *Id.* at FOF 27.

The potential for agricultural activity for Petition Area is low. *See id.* at FOF ¶¶32-33. The soil in the Petition Area is classified with an "E" rating by the Land Study Bureau's ("LSB") land classification system, which means that it is very poorly suited for agricultural activity. *Id.* at FOF ¶34. The entire Petition Area is unclassified under the Agricultural Lands of Importance to the State of Hawai'i ("ALISH") classification system. *Id.* at FOF 33. The Petition Area is located on the leeward side of the Island of Hawai'i, at a low elevation, and thus receives relatively little precipitation. *Id.* at FOF 35.

Parcel 85 is zoned A-1a and Parcel 06⁵ is zoned RS-7.5 and RD 3.75 by the County. *See* D&O at FOF ¶70; **Petitioner Exhibit 22**, attached hereto. The Petition Area is designated as Medium Density Urban in the County's General Plan Land Use Pattern Allocation Guide Map ("LUPAG"), *see* D&O at FOF ¶71, and Urban on the Kona Community Development Plan ("Kona CDP"). *See* **Petitioner Exhibit 23**, attached hereto. The Petition Area is not located within the Special Management Area. *Id.* FOF at ¶72.

B. RECLASSIFICATION OF THE PETITION AREA FOR THE ORIGINAL PROJECT

As discussed, UNB sought reclassification of the Petition Area from the SLU Agricultural District to the SLU Urban District to allow for the development of the Original

⁵ The reference in D&O FOF ¶70 to "a narrow parcel owned by Petitioner is in the Urban District and split-zoned RD-3.75 and R-7.5" appears to be to Parcel 06, which is included in the 62 acres making up the Petition Area.

Project. D&O at FOF 44. The Original Project was to be composed of the Hualalai Village condominiums, the Cultural Center, and the Education Facility. *Id.* at FOF ¶39.

Hualalai Village, a 400-unit market-rate condominium complex, was to be developed in four (4) phases. At the time of the D&O, Phase I (103 units) was already zoned and under construction, and is not included within the Petition Area or subject to the D&O. Phases II, III and IV were to comprise the remaining 297 units and were to be located within the Petition Area. *Id.* at FOF 39.

The Cultural Center was to be a design landscaped park that would focus on the historical relationship of the native Hawaiian culture with Christianity and the establishment of Hawai'i's multicultural mix. *Id.* The Educational Facility was to be located adjacent to the University of the Nations-Kona campus, and was to utilize approximately five (5) acres of the Petition Area, with the majority of the remainder dedicated to Hualalai Village and the Cultural Center. *Id.* at FOF 40.

C. 2006 MOTION TO AMEND AND PLANS FOR THE UPDATED PROJECT

As discussed *supra*, UNB filed the 2006 Motion to Amend in hopes of revising the Original Project to more closely align with its institutional and faith-based values, and to allow for the 2006 Updated Project to proceed while remaining in compliance with the D&O. After holding the first day of hearing on the 2006 Motion to Amend, the Commission lost its quorum and ultimately no action was taken.

As explained *infra*, necessary internal reorganization and a series of unfortunate and largely unforeseeable events prevented UNK (and its predecessors) from returning to the Commission for action on the 2006 Motion to Amend, but technically the 2006 Motion to Amend is still pending. Now that these hurdles have been cleared, UNK is ready, willing and

able to proceed with developing an updated Project on the Petition, which will be set forth in detail in the Amended Motion to Amend.

D. CHANGES IN THE ORGANIZATION AND BOARD OF DIRECTORS

In 2003, Youth With A Mission's ("YWAM"), the parent organization of the University, *see* **Petitioner Exhibit 24** (Corporate Structure), attached hereto, international leaders contacted Loren and Darlene Cunningham, the founders of YWAM, and asked them to step into UNK to avert a financial crisis and re-align the mission after it had drifted to a business model, rather than the faith-based mission model. When Loren and Darlene Cunningham returned to UNK as the new Base Directors, they found that the Hualalai Village project was \$27 million in debt and that the land had been placed as collateral for a \$20 million debt at a 10-14% interest rate to a bonding company. UNK and all of its property in Kona, including the Petition Area, were at risk of being taken by the bonding company and a bank. Under the direction of Loren and Darlene Cunningham, UNK returned to its faith-based mission model. Within sixty (60) days, \$5.5 million was donated to relieve the immediate stress on UNK.

By January 2006, another \$13.6 million was donated to relieve the debt from the bonding company completely. Ka 'Ohana Wai'aha, a Hawai'i nonprofit corporation and land trust ("**KOW**") was formed in 2008 as a community land trust to hold title to the Petition Area for UNK (as a mechanism to reduce the purchase price of the Hualalai Village units so that they could be afforded by staff) and began to work through the sale of the condominiums as affordable housing to repay the remaining debt to the bank. After KOW took title to the Petition Area, UNK loaned money to KOW to provide affordable mortgages to UNK staff. Through the sales of units to staff, KOW was able to pay off the bank loan and clear the remaining encumbrances on the Petition Area, and subsequently transferred the Petition Area to UNK in satisfaction of the money lent to KOW for the mortgages.

E. 2010 CALIFORNIA LITIGATION

In 2010, UNK⁶ was sued in the United States District Court for the Eastern District of California in *Van Maanen v. Youth With a Mission-Bishop*, No. 1:10-CV-00493 AWI (the "**Bishop Case**"), where the plaintiff was seeking \$25 million in damages. *See Van Maanen v. Youth With a Mission-Bishop*, 852 F. Supp. 2d 1232 (E.D. Cal. 2012). Unsure of the outcome of the Bishop Case, UNK was hesitant to incur more debt for the development of the Petition Area. Litigation in the Bishop Case stretched on for approximately two (2) years until summary judgment was granted in favor of UNK as to all of the plaintiff's claims. The District Court's grant of summary judgment was subsequently upheld by the Ninth Circuit Court of Appeals. *See Van Maanen v. Univ. of the Nations, Inc.*, 542 F. App'x 581 (9th Cir. 2013).

Despite the successful defense of the lawsuit, substantial attorneys' fees and costs were incurred by UNK, further jeopardizing its financial well-being.

F. 2014-2017 FRAUD COMMITTED UPON UNK

In January 2017, UNK became aware of certain financial irregularities in its finance office, which caused UNK to commence an immediate audit. The results of that audit revealed that a volunteer in its finance office, named Pablo Rivera, had allegedly been submitting doctored invoices to UNK since 2014, which resulted in UNK being defrauded out of millions of dollars. After the local police and Federal Bureau of Investigation were notified, Mr. Rivera was arrested and charged. Mr. Rivera eventually pled guilty and was sentenced to serve 115 months in prison and ordered to pay restitution to UNK. Mr. Rivera is currently serving his sentence.

After the years of strain from the Great Recession, the litigation of the Bishop Case, and the financial pressure due to the theft by Mr. Rivera, from 2014-2017, UNK instituted cost-

⁶ At the time, UNK went by the name University of the Nations, Inc.

cutting measures which curtailed its operations. With such a significant amount of financial stress to keep the ministry viable, the idea of developing the Petition Area was postponed. UNK has spent the last year getting its finances in order and putting safeguards in place to protect UNK from future similar vulnerabilities. UNK is now ready, willing and able to proceed with developing the Petition Area.

G. PROJECT MANAGEMENT TEAM

UNK's efforts to develop the Petition Area are now spearheaded by its Development Advisory Committee, which is composed of Loren Cunningham (UNK President), Martin Rediger (UNK Chief Financial Officer), Warren Israelson (developer with KJ Walk), Ken Van Bergen (commercial developer), Paul Childers (UNK's Chief Operating Officer), Bruce Logan (architect), Julie Anjo (UNK General Counsel), Allen Anjo (UNK General Counsel), David Matsuura (business advisor), Philip Ward (UNK construction), and Chong-ho Won (UNK Chief Information Officer).

UNK has also hired a full-time Construction Management Advisor, named Tom Waddle. Mr. Waddle has managed over 200 projects, with a combined value exceeding \$250 million, over the course of his 45 year career in construction and construction-management. Tasked as UNK's Construction Superintendent, Mr. Waddle supervises and oversees projects to ensure all deadlines and budgets are met. Mr. Waddle is also in charge of coordinating and scheduling, reviewing constructability, cost estimating, allocating of construction activities among contractors, and overseeing contractors and subcontractors to ensure performance and work quality. UNK's other construction superintendents on campus include Philip Ward (10 plus years in construction and industrial pipe fitting), Jim Brown (10 plus years in construction and structural steel welding), and Craig Percy (10 plus years in construction and plumbing).

UNK's primary development firm/general contractor is KJ Walk, a real estate development firm with over 20 years' experience and a Class A contractor license. KJ Walk's completed projects for UNK include Hualalai Village Phase I and the University's Aloha Cafeteria, a \$9 million project.

UNK's outside development consultants include the G70 planning firm, archaeologist Robert B. Rechtman, Ph.D. of ASM Affiliates, architect Walter Fullerton (of Walter Stewart Fullerton), and civil engineer David Ross.

With this robust development team in place, UNK is well equipped to advance the development of the Petition Area.

H. UNK'S FINANCIAL ABILITY TO PROCEED WITH THE DEVELOPMENT OF THE PETITION AREA

After the D&O, UNB began to face financial difficulties to complete Phase I of the Hualalai Village project. Originally, in the strength of the economy, the projections had the Hualalai Village generating \$27 million toward development of the existing campus and Petition Area. However, the economy began to decline. UNB built three buildings for Phase I of Hualalai Village, but the units were not selling to allow continued development of the remainder of the project. As the economy worsened, UNB was not able to contribute the projected \$27 million profit from Phase I for development of the Petition Area; instead, UNB was left with a \$27 million debt. In order to finish Phase I of Hualalai Village, UNB still needed to build buildings C, D, F, G, and H of Phase I, which it was no longer in a position to do.

Once the leadership changed and realigned the mission with the faith-based mission model rather than a traditional business model, it was discovered that the Petition Area had been used as collateral for the loans. At this point, all attention turned to paying off the debt to save the Petition Area (and other land), rather than continuing development. Under the faith-based

mission model, from January 2004 to February 2006, over \$19 million of the debt was repaid. In 2010, the debt was cleared and the land released to KOW. By 2016, the buildings of Hualalai Village Phase I were complete.

With having paid the \$27 million debt from the original Hualalai Village project, resolving the risk of losing the property in the Bishop Case, discovering and stopping Mr. Rivera's fraud, and heightening the level of protection of all operating and development funds, UNK has returned to positive cash flow and is capable and committed to begin financing the development of the Petition Area.

To finance the development, UNK will continue with its faith-based mission model. This model will raise funds for the development of the Petition Area by utilizing volunteer specialists and laborers; specialized fundraising and donations; allocation of funds from the general UNK budget, which is funded through general donations and tuition income; and bank loans, if needed.

UNK is also uniquely equipped to internalize a significant amount of its development costs. First, UNK has many skilled, specialized volunteers. These specialized volunteers include a civil engineer, architect, developer, and journeymen. Additionally, UNK will use its Kokua Crew and mission builder programs for most of the labor. This is estimated to cover approximately 40% of the construction costs.

Second, for the soft costs, materials, and labor where volunteers are not available, UNK will have specialized fundraising for these needs, and will also utilize the allocation of funds from the general UNK budget and, if needed, bank loans. UNK's development of the Petition Area will be broken down into three phases in order to raise the funds and manage the Project in a timely manner.

I. THE OSC

On March 28, 2019, the Commission held a status hearing on this Docket, and the Commission ultimately voted to issue the OSC. The Commission filed the OSC the very next day on March 29, 2019, and set the OSC Hearing for less than two (2) months later on May 22, 2019.

The OSC states that the Commission determined that there was reason to believe that the following D&O Conditions have been violated and/or not met:

- Condition 1 – Affordable Housing
- Condition 2 – Drainage Improvements
- Condition 3 – Public Transit Facilities
- Condition 4 – Water Resources
- Condition 5 – Wastewater Facilities
- Condition 6 – Archaeology
- Condition 7 – Cultural, Historical, Customary and Traditional Rights and Resources
- Condition 8 – Soil Erosion and Dust Control
- Condition 9 – Transportation
- Condition 10 – Traffic
- Condition 11 – Cultural Center
- Condition 12 – Ka Haka ‘Ula O Ke‘elikolani College of Hawaiian Language at University of Hawai‘i -Hilo
- Condition 13 – Civil Defense
- Condition 14 – Solid Waste
- Condition 15 – Compliance with Representations to the Commission
- Condition 16 – Notice of Change of Ownership
- Condition 17 – Annual Reports
- Condition 18 – Release of the Conditions Imposed by the Commission

IV. DISCUSSION

A. UNK HAS SUBSTANTIALLY COMMENCED ITS USE OF THE PETITION AREA

1. Substantial Commencement Under Hawai'i Law

The Commission may revert a property to its prior or a more proper SLU classification *without* following the procedures set forth in HRS § 205-4 *only if* the petitioner has not "substantially commenced [its] use of the land." *DW Aina Le'a Dev., LLC v. Bridge Aina Le'a, LLC*, 134 Hawai'i 187, 213, 339 P.3d 685, 711 (2014) ("*Aina Le'a*") ("Thus, where the petitioner has substantially commenced use of the land, the LUC is required to follow the procedures set forth in HRS § 205-4 that are generally applicable when boundaries are changed."). HRS § 205-4(g) does not define "substantial commencement"; however, "[i]n drafting HRS § 205-4(g), the legislature did not require that the use be substantially *completed*, but rather that it be substantially *commenced*." *Id.* at 214, 339 P.3d at 712 (emphases in original). "[A] determination of whether a party has substantially commenced use of the land *will turn on the circumstances of each case, not on a dollar amount or percentage of work completed*." *Id.* at 214, 339 P.3d at 712 n.16 (emphasis added).

2. UNK Has Substantially Commenced its Use of the Petition Area and is in Substantial Compliance with the D&O Conditions to the Extent They Have Been Triggered

As explained *infra*, UNK has substantially commenced its use of the Petition Area.

a. Condition No. 1 – Affordable Housing

UNK has substantially complied with both the letter and spirit of D&O Condition No. 1, which provides that:

Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable housing requirements for the Project of the County of Hawaii. 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 Hawaii.

Since the Commission's issuance of the D&O, UNK, and its predecessors, have provided significant opportunities for affordable housing in the County. In 2014, UNK provided the community with affordable housing through the Kama'aina Hale Apartments. Until 2014, the State of Hawai'i, Hawai'i Housing Finance & Development Corporation ("**HHFDC**") maintained and managed the Kama'aina Hale Apartments. At that time, 68 of the 128 units had been completely uninhabitable for over a decade.

HHFDC issued a Request for Proposals for private developers to take over the complex at no-cost, but unfortunately the request did not attract any interest. Thereafter, UNK set up Kama'aina Hale Apartments, a non-profit entity ("**KHA**"), to rehabilitate and manage the apartment units under United States Department of Housing and Urban Development's affordable income and rent restrictions. HHFDC's board, after thorough consideration, and with the approval of the Governor, transferred ownership of the Kama'aina Hale Apartments to KHA in 2014.⁷

Since 2014, KHA has fully refurbished the 68 abandoned units⁸ at its own expense (*i.e.*, with no government subsidy), and these units have been placed into the rental housing pool for working families in the County. General services along with other neighborhood events have also been set up to build a community environment.

The affordability requirements for KHA comply with the State affordable housing requirements. Hawaii Affordable Properties Inc. has been engaged as the management company and certifies people's eligibility. As of 2019, KHA's policy requires 42 of the 128 units to be set

⁷ The Kamehameha Schools Bishop Estate, as the fee owner of the land underlying the complex, conducted its due diligence and consented to the transfer.

⁸ Each a duplex is approximately 800 sq. ft., with two (2) bedrooms and large living spaces.

aside for applicants earning 50% or less of the area Annual Median Income ("AMI"), and the remaining 84 units set aside for applicants earning 80% or less of the AMI, with two (2) units reserved for resident-managers. Presently over 50 units are inhabited by applicants with 50% or below AMI. The 50% AMI units are presently rented at \$940 per month and the 80% AMI units at \$1,276 per month. There is currently a 98% occupancy rate. No preference is given to any segment of the population and the units are fully accessible to the general public.

During the March 28, 2019 annual report to the Commission, the County indicated that UNK may be able to receive affordable housing credits for the Kama'aina Hale Apartments. UNK intends to immediately begin discussions with the County on this matter.

b. Condition No. 2 – Drainage Improvements

D&O Condition No. 2 provides that:

Petitioner shall design and construct on-site and regional drainage improvements required as a result of the development of the Reclassified Area to the satisfaction of the State Department of Health, the Commission on Water Resource Management of the State Department of Land and Natural Resources, and the County of Hawaii. The Petitioner shall prepare a Drainage Study meeting with the approval of the County of Hawaii Department of Public Works. The Drainage Study shall consider regional drainage issues.

As UNK further refines its revised Project concept, UNK will consult with the State Department of Health ("**DOH**"), the State Department of Land and Natural Resources, Commission on Water Resource Management ("**CWRM**"), and the County to insure that all drainage improvements are designed to the satisfaction of each agency. UNK will prepare and receive County approval for a Drainage Study that will take regional drainage issues into consideration.

UNK is not aware of any existing runoff issues on the Petition Area. Since the D&O was filed, neither UNK nor its predecessors have been cited by the County for runoff issues.

c. Condition No. 3 – Public School Facilities

D&O Condition No. 3 provides that:

Petitioner shall contribute to the development, funding, and/or construction of school facilities for the Project, on a fair-share basis, as determined by and to the satisfaction of the Department of Education. Terms of the contribution shall be agreed upon in writing by the Petitioner and the Department of Education prior to seeking building permits for any portion of the Reclassified Area.

UNK has not yet reached the point of applying for building permits for the Petition Area and, therefore, has not finalized any agreements with the State Department of Education ("DOE"). When building permits are sought, UNK will meet with DOE and take the appropriate actions necessary to fulfill its obligations under D&O Condition No. 3.

In addition, UNK remains committed to providing early childhood education through preschools and schools from K-through-12 as a part of its development of the Petition Area, which UNK will also discuss with the DOE. Notwithstanding those commitments, UNK acknowledges that it may be required to make further contributions to public educations, including through the payment of impact fees.

d. Condition No. 4 – Water Resources

UNK has been working with the County Department of Water Supply ("DWS") to secure water for the Petition Area. Currently, UNK is in the process of applying for a well permit and is also in discussions with the County Water Board about a possible Water Development Agreement. See **Petitioner Exhibit 25** (Well Permit Application and Maps), attached hereto. UNK will continue to work CWRM and DWS as development of the Petition Area proceeds.

e. Condition No. 5 – Wastewater Facilities

D&O Condition No. 5 provides that:

Petitioner shall provide adequate wastewater treatment, transmission, and disposal facilities for the Project as determined

by the State Department of Health and the County of Hawaii
Department of Environmental Management.

At the appropriate time, UNK will provide adequate wastewater treatment, transmission, and disposal facilities to the satisfaction of the DOH and the County Department of Environmental Management. There is currently no wastewater being generated by or on the Petition Area.

f. Condition No. 6 – Archaeology

UNK has substantially, if not fully, complied with D&O Condition No. 6.

D&O Condition No. 6(a) provides that:

Petitioner shall submit a complete inventory survey report of the Reclassified Area for the review and approval of the State Historic Preservation Division of the Department of Land and Natural Resources ("DLNR-SHPD"). Petitioner shall prepare and implement a data recovery plan, a preservation plan, a burial treatment plan, and a monitoring plan to be reviewed and approved by the DLNR-SHPD. The submittal of these plans shall be accompanied by the design plans for the Project to facilitate the development of appropriate mitigation measures.

An Archaeological Inventory Survey ("**AIS**") was completed and approved by the Department of Land and Natural Resource, State Historic Preservation Division ("**DLNR-SHPD**") in 2003. *See* Petitioner Exhibit 3 (2003 AIS) & Petitioner Exhibit 4 (DLNR-SHPD 11/17/03 Approval Letter).⁹

The Preservation Plan was completed in August 2013 and approved by DLNR-SHPD. A copy of the Preservation Plan was filed as Petitioner Exhibit 6, and a copy of DLNR-SHPD's approval letter was filed as Petitioner Exhibit 7.

The Burial Treatment Plan was completed in September 2003 and approved by the Hawaii Island Burial Council ("**HIBC**") on November 20, 2003. *See* Petitioner Exhibit 8 (11/03

⁹ Petitioner Exhibits 1 through 18 were filed with the Commission on April 26, 2019.

Burial Treatment Plan) & Petitioner Exhibit 9 (HBIC 11/20/03 Minutes). While the Project development plans are still in progress, UNK understands the importance of and will ensure that the Project plans include appropriate mitigation measures. DLNR-SHPD has not required a Monitoring Plan at this time.

D&O Condition No. 6(b) provides that:

Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the DLNR-SHPD shall be notified immediately. The significance of these finds shall then be determined and approved by the DLNR-SHPD. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that mitigative measures have been implemented to its satisfaction. Petitioner shall also comply with all applicable statutory provisions and administrative rules regarding inadvertent burial finds within the Reclassified Area. Any mitigation and preservation shall be monitored by the KWC as described below.

No such remains have been found to date within the Petition Area. UNK will continue its ongoing compliance with D&O Condition No. 6(b).

D&O Condition No. 6(c) provides that:

The proposed mitigation commitments for all identified sites with burials shall be submitted to the DLNR-SHPD for review and comment. A burial treatment plan for those sites, to include without limitation Sites 23683, 23684 and 23685, shall then be approved by DLNR-SHPD, and a certified copy of said plan shall be filed with the Commission prior to any land alteration in the vicinity of these sites. Mitigation commitments shall be monitored by the Kahu Wai'aha Committee ("KWC").

The Burial Treatment plan for the Petition Area was completed in 2003 and accepted by the HIBC. See **Petitioner Exhibit 8** & **Exhibit 9**.

D&O Condition No. 6(d) provides that:

For all sites approved by the DLNR-SHPD to undergo archaeological data recovery, an archaeological data recovery plan

(scope of work) shall be prepared by Petitioner. This plan shall be approved by the DLNR-SHPD and a certified copy of said plan shall be filed with the Commission prior to any land alteration in the vicinity of these sites. The approved plan shall be monitored by the KWC.

The Archaeological Data Recovery Plan was completed by Rechtman Consulting and submitted and accepted by DLNR-SHPD in October 2007. *See **Petitioner Exhibit 5***. The plan included the following ten (10) sites from where data was recovered: SIHP Sites 23670, 23671, 23672, 23673, 23674, 23675, 23676, 23677, 23678, and 23686. *See id.*

D&O Condition No. 6(e) provides that:

For all sites approved for preservation by the DLNR-SHPD, to include without limitation the Great Wall of Kuakini (Site 6302), the papamu or rough square game board (Site 23682), the agricultural heiau (Site 23681), and after completion of the finished grade for the area, at least one of the alignments for the ancient trails (Site 23679 or Site 23680), a preservation plan shall be prepared by Petitioner. (Burial sites are covered under the burial treatment plan.) This plan shall include buffer zones/interim protection measures during construction, and long-range preservation (including public access and interpretation, where appropriate). The plan shall include input from the KWC and relevant Hawaiian groups. The plan shall be approved by the DLNR-SHPD and a certified copy of said plan shall be filed with the Commission prior to any land alteration in the vicinity of these sites. The approved preservation plan shall be monitored by the KWC.

The Preservation Plan was completed by Rechtman Consulting in October 2013. *See **Petitioner Exhibit 6***. DLNR-SHPD approved the Preservation Plan by way of letter dated June 19, 2014. *See **Petitioner Exhibit 7***.

g. *Condition No. 7 – Cultural, Historical, Customary and Traditional Rights and Resources*

D&O Condition No. 7 provides that:

a. Petitioner shall initially establish and annually provide reasonable operating and capital expenditure costs or facilities through revenues from the Project, the KWC composed of: (1) a

person of Native Hawaiian ancestry who is a lineal descendent and knowledgeable regarding the type of cultural resources and practices within the Reclassified Area, as selected by the Executive Officer of the Commission from a list of three names based on a review of their resumes, and (2) a management member knowledgeable regarding the type of cultural resources and practices within the Reclassified Area, as selected by the Petitioner. The individuals making up the KWC shall operate on an equal vote basis.

b. The KWC shall be established by Petitioner no later than six months from the issuance of this Decision and Order. Upon establishment of the KWC, Petitioner shall provide a written report to the Commission, the Office of Planning, and the County of Hawaii with details as to its composition, structure, operating costs and compensation for members and staff, procedures, and plan of action.

c. The KWC shall jointly decide, on an equal vote basis, monitoring and dispute resolution decisions related to the protection of native Hawaiian practitioners' exercise of customary and traditional practices and rights within the Reclassified Area; the availability of natural and cultural resources for present and future generations; and appropriate access within the Reclassified Area to the extent that these rights are protected by PASH vs. Hawaii County Planning Commission, 79 Haw. 425 (1995), in perpetuity. In the event that the two person KWC cannot agree on a specific decision, they shall jointly select a third person to break the tie. A certified description of any action requiring selection of a third member of the KWC shall be filed with the Commission.

d. The KWC shall monitor the quality of the Petitioner's actions to provide access to and/or preserve and maintain traditional and customary native Hawaiian practices and cultural resources. The KWC shall provide recommendations consistent with this Decision and Order to the Commission with respect to maintenance and/or preservation of those traditional and customary native Hawaiian practices and cultural resources.

e. The KWC shall provide reports to the Commission on an annual basis describing items and issues covered in their deliberations and any other findings and recommendations.

f. Petitioner shall preserve and protect rights to gathering for cultural purposes, including religious practice, by providing appropriate access to burial sites and other archaeological sites within the Reclassified Area consistent with this Decision and Order. Petitioner shall adhere to prevailing and/or published protocols of the DLNR-SHPD where these sites are found to exist, as monitored by the KWC

In the time since the Commission filed the D&O, UNK has worked closely with the lineal descendants of the Petition Area and sought their input on numerous occasions, as well as other native Hawaiians such as Kupuna Mary Kamahele Boyd. UNK remains fully committed to establishing the Kahu Waiaha Committee ("**KWC**") to continue its demonstrated history of working closely with the lineal descendants of the Petition Area. The two-member KWC is proposed to be composed of lineal descendant Leina'ala Fruean and UNK Campus Director Paul Childers.

In addition, with respect to D&O Condition No. 7(f), UNK has complied, and will continue to comply, with its obligation to preserve and protect the traditional and customary rights of native Hawaiians within the Petition Area, including adherence to DLNR-SHPD's protocols with respect to burial and other archaeological sites.

h. Condition No. 8 – Soil Erosion and Dust Control

D&O Condition No. 8 provides that: "Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health."

At the appropriate time, UNK will implement efficient soil erosion and dust control measures to the satisfaction of the DOH.

i. Condition No. 9 – Transportation

D&O Condition No. 9 provides that:

Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT) and County of Hawaii Department of Public Works (DPW). Agreement between the Petitioner and the DOT and DPW as to the level of funding and participation shall be obtained prior to the Petitioner obtaining County zoning, or prior

to the Petitioner securing County building permits if County zoning is not required.

At the appropriate time and prior to obtaining a rezoning or building permit from the County, UNK will contribute its pro-rata funding and construction of local and regional transportation improvements and programs necessitated by its development of the Petition Area with designs and schedules accepted by the State Department of Transportation ("**DOT**") and County Department of Public Works ("**DPW**"). UNK will finalize an agreement with DOT and DPW prior to UNK either obtaining a rezoning from the County or securing County building permits.

Based on revisions to the Original Project presented in the 2006 Motion to Amend and further revisions currently being made, UNK anticipates that the nature of the improvements and programs necessitated by its development of the Petition Area may differ from those that would have been necessitated by the Original Project. One significant modification that may impact the traffic improvements and programs necessitated by the development of the Petition Area is UNK's abandonment of the Cultural Center, which was anticipated to generate higher levels of regional traffic because it was intended to be a commercial operation that attracted both tourists and the general public. UNK believes that the revisions to its development plans for the Petition Area will reduce impacts to regional traffic improvements and programs.

j. Condition No. 10 – Traffic

D&O Condition No. 10 provides that:

Petitioner shall, prior to the Petitioner obtaining County zoning, submit a revised Traffic Impact Analysis Report for the review and approval of the DOT and DPW, which shall include an analysis of the entire development of the existing/proposed University of the Nations-Kona, Hualalai Village project, and the Cultural Center, as well as existing and potential future developments in the immediate area as required by the DOT and DPW.

At the appropriate time and before UNK obtains a rezoning from the County, UNK will submit a revised Traffic Impact Analysis Report ("**TIAR**") for the review and approval by DOT and DPW. UNK's revised TIAR will fully comply with the requirements of D&O Condition No. 10, and will include an analysis of the existing and potential future developments within and in the immediate vicinity of the Petition Area, as required by DOT and DPW.

k. Condition No. 11 – Cultural Center

D&O Condition No. 11 provides that:

The Petitioner shall develop the Cultural Center with sensitivity to the host native Hawaiian culture, and provide for outreach and educational opportunities for the children of Hawaii. The Petitioner shall consult with the KWC and the Ka Haka ‘Ula O Ke’elikolani, College of Hawaiian Language at University of Hawaii-Hilo to promote cultural sensitivity in the development of programs for the Cultural Center. Petitioner shall, prior to commencement of operations for the Cultural Center, submit a status report to the Commission for its approval on the Petitioner's traffic mitigation efforts for development of the Reclassified Area. If, for any reason, the Cultural Center does not commence operations by January 1, 2008, the Petitioner shall return to the Commission for a hearing to review compliance with the requirements of this Condition.

As discussed *supra*, Aeko appeared before the Commission on March 1 and 2, 2007, for hearing on the 2006 Motion to Amend. The 2006 Motion to Amend was filed, in part, to comply with D&O Condition No. 11 and to notify the Commission that Aeko was abandoning the Cultural Center as a component of its development of the Petition Area. This revision to the Original Project was the result of a significant change in leadership that returned Aeko (and later UNK) to the foundational and faith-based values of the University.

UNK remains fully committed to developing the Petition Area (as a part of the University campus) as an area of cultural understanding and to preserving the Hawaiian culture and language. One component of UNK's updated Project is the Hawaiian Learning Center, and, while the exact scope and nature of the Hawaiian Learning Center is still being finalized, UNK

does not intend to pursue a commercially-based Cultural Center as an economic engine (as was previously proposed and approved under the D&O). Instead, UNK will continue developing programs committed to outreach to the community and children of the Island of Hawai‘i, as well as educating all the students of the University, members of various organizations, and the local community about the historical and cultural importance of the native Hawaiian culture.

Some examples of the current projects and outreach programs include: the creation of Uniskript for the Hawaiian language, which aids in reading and correct pronunciation of the Haleo; Hawaiian language courses, *see* **Petitioner Exhibit 26a** (2/20/19 Letter from DOE re Haleo language program) & **Petitioner Exhibit 26b** (4/25/19 Letter from DOE re Haleo language program), attached hereto; Holoholo ministries; summer immersion programs for children; and a preschool. These projects currently operate outside the Petition Area, but they are growing and will be an extension of the Hawaiian Learning Center upon completion.

As the Petition Area is developed, UNK will maintain its long-standing commitment to providing outreach and educational opportunities for the children of Hawai‘i, as well as educating all the students of the University, members of various organizations, and the local community about the historical and cultural importance of the native Hawaiian culture.

1. *Condition No. 12 – Ka Haka ‘Ulu O Ke ‘elikolani, College of Hawaiian Language at University of Hawai‘i-Hilo*

D&O Condition No. 12 provides that:

Petitioner shall cooperate with the College of Hawaiian Language at University of Hawaii-Hilo in promoting the perpetuation of the Hawaiian language by providing distance learning opportunities for teaching the native Hawaiian language, as well as cooperating in activities that promote Hawaiian cultural authenticity.

In 2004, the University of Hawai‘i-Hilo ("UHH") came to Kona to discuss a possible partnership related to the College of Hawaiian Language. At that time, it became apparent that

UHH was interested primarily in the development of the Cultural Center and resulting funding. There was discussion regarding creating a distance learning opportunity for teaching the native Hawaiian language, but UHH's interest appeared minimal. As discussed *supra*, through the 2006 Motion to Amend, UNK's predecessor (Aeko) informed the Commission that the Cultural Center would no longer be pursued.

UNK has since started its own Hawaiian language programs on the Kona side of the Island of Hawai'i. At this time, UNK's program remains the only Hawaiian language program where native Hawaiians are welcomed to learn their native language on a 100% scholarship through UNK. *See* Petitioner Exhibit 26a & Petitioner Exhibit 26b.

m. Condition No. 13 -- Civil Defense

D&O Condition No. 13 provides that: "Petitioner shall fund and construct adequate civil defense measures serving the Reclassified Area as determined by the State of Hawaii Department of Defense-Office of Civil Defense, and the County of Hawaii Civil Defense Agency."

UNK remains fully committed to its compliance with the requirements of D&O Condition No. 13. UNK believes that D&O Condition No. 13 was satisfied by its creation of the Community Emergency Response Team ("**CERTeam**") training program and the establishment of UNK's CERTeam ("**OfN-CERTeam**") under the guidance of the Hawai'i County Civil Defense Agency and Fire Department. The CERTeam program trains students, faculty and community members in disaster preparedness for hazards that are likely to impact their community, and equips them in basic disaster response skills such as fire suppression, light search and rescue, team organization, and disaster medical operations. Graduates of the CERTeam program may apply to join the UofN-CERTeam, or other teams on the island and across the country (there are thousands). Its first members were trained in 2009, and it has since

grown to 60 active members, as well as another 15 associate members with University campus medical staff and student resident managers.

The UofN-CERTeam has and will continue to make meaningful contributions to the region's disaster preparedness and response. For example, when the 2011 tsunami struck Kailua-Kona, the UofN-CERTeam became one of the first teams ever mobilized by the State to help mitigate injuries and property loss in downtown Kona. In December 2011, the UofN-CERTeam was invited to train with local emergency medical services and fire personnel during the Tri-annual Kona Airport Disaster Simulation. The team was again mobilized by the County Civil Defense Agency in February 2012 when a large (52 acre) wildfire threatened the University and several residential neighborhoods.

n. Condition No. 14 – Solid Waste

D&O Condition No. 13 provides that:

Petitioner shall develop a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes. Petitioner's Solid Waste Management Plan shall be approved by the County of Hawaii Department of Environmental Management, Solid Waste Division. The Plan shall address and encourage an awareness of the need to divert the maximum amount of waste material caused by developments away from the County's landfills.

At the appropriate time, UNK will fully comply with D&O Condition No. 13, including obtaining the County Department of Environmental Management, Solid Waste Division's approval of its Solid Waste Management Plan. UNK's Solid Waste Management Plan will address and encourage the need to divert the maximum amount of solid waste generated by the development of the Petition Area away from the County's landfill. UNK's commitment to reducing waste is demonstrated by its recycling program and its use of food scraps for pig food or compost.

o. Condition No. 15 – Compliance with Representations to the Commission

D&O Condition No. 15 provides that:

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 own expense, reversion of the Reclassified Area to its former classification, a change to a more appropriate classification, or any other legal remedies.

Under the circumstances that have developed since the D&O was filed, UNK and its predecessors have made a good faith effort to comply with and fulfill their representations and commitments to the Commission. For example, the Original Project was to include an Education Facility. D&O FOF ¶63 states that the Educational Facility was to be developed as part of UNK's programming. Since the D&O was filed, UNK has developed educational facilities within the Petition Area, including the creation of an agriculture, science, and aquaponics lab.

UNK again reaffirms its commitment to complying with its representations to the Commission.

p. Condition No. 16 – Notice of Change of Ownership Interests

D&O Condition No. 16 provides that: "Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property." UNK has substantially complied with D&O Condition No. 16 and will continue to do so moving forward.

On May 5, 2005, the original Petitioner, UNB, changed its name to Aeko. Aeko provided notice to the Commission of this change through the 2006 Motion to Amend. Due to the financial hardship experienced by Aeko (and all of the its affiliated entities) in the wake of the

Great Recession and other events threatening its financial viability, Aeko transferred title to the Petition Area to KOW, by way of Warranty Deeds recorded in the Bureau on December 29, 2011 as Regular System Document Nos. A-43800694 and A-43800695. KOW transferred the Petition Area to UNK by way of Warranty Deeds recorded in the Bureau on June 14, 2019 as Regular System Document Nos. A-67390372 and A-67390373. All of these transactions were between University-related entities that share and further the same values, objectives, and purpose. UNK provided the Commission with further notice of these conveyances both in its 2019 Annual Report and by way of letter dated May 1, 2019. *See* Petitioner Exhibit 19.

Since the issuance of the D&O, there has not been a material change in ownership of the Petition Area.

q. Condition No. 17 – Annual Reports

D&O Condition No. 17 provides that:

Petitioner shall timely provide without prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawaii Planning Department in connection with the status of the development proposed for the Reclassified Area, and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval of the Petition.

On August 30, 2006, Aeko submitted its Annual Reports for 2004, 2005 and 2006 to the Commission. After several years without Annual Reports being filed while UNK and its predecessors dealt with the impacts of the Great Recession, a significant internal reorganization, litigation, and the discovered fraud, on March 29, 2019, UNK filed its Annual Report for 2018 and 2019. Therefore, while there was a lapse in compliance with D&O Condition No. 17, UNK is now back in compliance and will continue to submit its Annual Reports on a timely basis moving forward.

r. Condition No. 19 – Recording of Conditions

D&O Condition No. 17 provides that:

Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with Bureau of Conveyances and/or the Assistant Registrar of the Land Court of State of Hawaii, as applicable, a statement that the Reclassified Area is subject to conditions imposed by the Commission in the reclassification of the Reclassified Area, and (b) file a copy of such recorded statement with the Commission. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances and/or the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, pursuant to Section 1 5-1 5-92, Hawaii Administrative Rules

On August 18, 2003, UNB recorded with the Bureau a Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban as Regular System Document No. 2003-171988. See **Petitioner Exhibit 27**, attached hereto.

B. GOOD CAUSE EXISTS TO MAINTAIN THE PETITION AREA'S CURRENT SLU URBAN DISTRICT CLASSIFICATION

Good cause exists to maintain the Petition Area's SLU Urban District classification.

"The term 'good cause' has been defined to mean 'a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.'" *Miller v. Tanaka*, 80 Hawai'i 358, 363, 910 P.2d 129, 134 (Ct. App. 1995) (citation omitted). "'Good cause' also 'depends upon [the] circumstances of [the] individual case, and [a] finding of its existence lies largely in [the] discretion of [the] officer or court to which [the] decision is committed.'" *Id.* at 363-64, 910 P.2d at 134-35 (citation omitted). "As a general rule, 'good cause' means a substantial reason; one that affords a legal excuse." *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981) (citations omitted).

First, as explained *supra*, because UNK has substantially commenced use of the land in the Petition Area in accordance with its representations to the Commission, good cause exists to maintain the SLU Urban District classification of the Petition Area.

Second, as explained in detail *supra*, good cause also exists because UNK's ability to timely develop Petition Area was significantly hindered by: (1) a necessary internal reorganization and realigning of UNK's business model; (2) the Great Recession; (3) out-of-state litigation in which the plaintiff sought \$25 million in damages from UNK; and (4) a multi-million fraud scheme perpetuated upon UHK by one of its volunteers. UNK has since taken significant corrective and preventative actions to ensure that similar incidents do not pose a threat to its viability in the future.

C. NEITHER UNK NOR ITS PREDECESSORS-IN-INTEREST SAT ON THE PETITION AREA FOR SPECULATIVE LAND-BANKING PURPOSES

In *Aina Le 'a*, the Hawai'i Supreme Court explained that the legislative intent behind HRS § 205-4(g) was to "deter speculators who obtained favorable land-use rulings and then sat on the

land for speculative purposes." *Aina Le 'a*, 134 Hawai'i at 214, 339 P.3d at 712. Turning a financial profit on land speculation is not UNK's mission: UNK's mission to equip men and women with spiritual, cultural, intellectual and professional training to inspire them to grow in their personal relationship to God. Neither UNK nor any of its predecessors have attempted to sell the Petition Area since it was reclassified by the Commission. All conveyances of the Petition Area since the D&O have been amongst UNK-affiliated entities and were done for valid and necessary business and legal reasons.

Accordingly, under these circumstances, reversion of the Petition Area to the SLU Agricultural District would not be consistent with the legislative intent behind HRS § 205-4(g) -- as explicitly explained by the Hawai'i Supreme Court -- and, would therefore be inappropriate. *See Kanahale v. Maui Cnty. Council*, 130 Hawai'i 228, 244, 307 P.3d 1174, 1190 (2013), as corrected (Aug. 30, 2013) ("An agency's interpretation of a statute is palpably erroneous when it is inconsistent with the legislative intent underlying the statute.") (emphasis added) (citing *Gillan v. Gov't Emps. Ins. Co.*, 119 Hawai'i 109, 119, 194 P.3d 1071, 1081 (2008)); *Methven-Abreu v. Hawaiian Ins. & Guar. Co., Ltd.*, 73 Haw. 385, 392, 834 P.2d 279, 284 (1992) ("[P]rimary duty in interpreting and applying statutes is to ascertain and give effect to the legislature's intention to the fullest degree.") (quoting *Kang v. State Farm Mut. Auto. Ins. Co.*, 72 Haw. 251, 254, 815 P.2d 1020, 1022 (1991)).

D. LACK OF A SPECIFIC TIME LIMITATION FOR COMPLIANCE

There is no time limitation to complete the project in the D&O Conditions. D&O Condition No. 11 is the only condition that specifies a time limit, and states: "If, for any reason, the Cultural Center does not commence operations by January 1, 2008, the Petitioner shall return to the Commission for a hearing to review compliance with requirements of this Condition."

UNK returned to the Commission with the 2006 Motion to Amend to discuss an alternative plan for the Cultural Center, and while a hearing was commenced, the Commission did not rule on the Motion. Therefore, UNK has complied with D&O Condition No. 11.

HAR § 15-15-79 states: "(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[.]" (Emphasis added). As no such reasonable period was specified by the Commission, the Commission has no authority to revert the Petition Area for lack of substantial progress.

While the D&O includes "development timeline," the plain and unambiguous language of the D&O makes clear that the timeline was intended to be tentative and not certain:

The Hualalai Village residential development is **slated** to run over a period of five years and will be completed during the Year 2007. Commencement of the Cultural Center is **targeted** to begin during the Year 2007 and the Educational Facility is being **planned** for commencement in 2005/2006.

(Emphases added).

Furthermore, HRS § 205-4(g), the statute upon which this Commission obtains its authority to issue Orders to Show Cause, states:

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. Such conditions, **if any**, shall run with the land and be recorded in the bureau of conveyances.

(Emphasis added).¹⁰ By including the operative language of "**may**" and "**if any**," HRS § 205-4(g) allows the Commission to impose, but does not in and of itself automatically impose, a condition providing the Commission with the future authority to order a reversion if certain circumstances exist. Under a plain reading of HRS § 205-4(g), in order for such a condition to be imposed and allow for the Commission to exercise its reversionary authority, that condition must comply with HRS § 205-4(g), including the requirement that the condition "provide . . . that absent substantial commencement of use of the land" an OSC may be issued. Such a condition was not imposed under the D&O.

Indeed, none of the D&O Conditions state that absent **substantial commencement** of the use of the land in accordance with representation made would UNK be subject to an OSC. D&O Condition No. 15 only refers to "substantial compliance" with representations made, not substantial commencement of the use of the land:

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 own expense, reversion of the Reclassified Area to its former classification, a change to a more appropriate classification, or any other legal remedies.

In *Lanai Co., Inc. v. Land Use Comm'n*, 105 Hawai'i 296, 314, 97 P.3d 372, 390 (2004),

the Hawai'i Supreme Court made clear that the Commission cannot enforce a condition that it did not expressly impose, or somehow rewrite conditions previously imposed to achieve a desired outcome:

¹⁰ To the extent that HAR § 15-15-93(b) does not expressly require finding the absence of substantial commencement before the Commission can require a showing of good cause to prevent a reversion, HAR § 15-15-93(b) exceeds the Commission's authority and any condition imposed thereunder (without the express requirement of substantial commencement). See *Asato v. Procurement Policy Bd.*, 132 Hawai'i 333, 346, 322 P.3d 228, 241 (2014) ("[A] public administrative agency possesses only such rulemaking authority as is delegated to it by a state legislature and may only exercise this power within the framework of the statute under which it is conferred." (emphases added)).

The LUC cannot now enforce a construction of Condition 10 that was not expressly adopted. This court has mandated that, in issuing a decision, an "agency must make its findings reasonably clear. The parties and the court should not be left to guess, with respect to any material question of fact, or to any group of minor matters that may have cumulative significance, the precise finding of the agency."

Parties subject to an administrative decision must have fair warning of the conduct the government prohibits or requires, to ensure that the parties are entitled to fair notice in dealing with the government and its agencies. **In this light, the 1991 Order cannot be construed to mean what the LUC may have intended but did not express.** An administrative agency, such as the LUC, has the responsibility of stating with ascertainable certainty what is meant by the conditions it has imposed.

(Emphases added).

Based on the foregoing, there is nothing in the D&O Conditions that require substantial commencement, and the D&O Conditions do not provide for a completion date. The Commission cannot now rewrite the D&O Conditions to say otherwise.

E. THE SLU URBAN DISTRICT IS THE MOST APPROPRIATE DISTRICT FOR THE PETITION AREA

Even assuming *arguendo* that the Commission finds that the Petition Area's SLU Urban District classification should be reverted under the circumstances, it nevertheless should not be reverted back to the SLU Agricultural District because the SLU Urban District is the most appropriate District.

First, virtually all of the lands surrounding the Petition Area are within the SLU Urban District. See **Petitioner Exhibit 28a** (SLU District Map for Parcel 85 showing lands neighboring the Petition Area) **Petitioner Exhibit 28b** (SLU District Map for Parcel 06 showing lands neighboring the Petition Area), attached hereto. The County's vision for the Petition Area is also the SLU Urban District, *see* D&O at FOF ¶71 (noting LUPAG Medium Density Urban designation); Petitioner Exhibit 23 (Kona CDP Map); Petitioner Exhibit 22 (County Zoning

Map), and that vision should be afforded weight. *See* HRS § 205-2 ("In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.").

The Commission's primary role is to ensure sound, comprehensive land use planning throughout the State; its enforcement powers are necessarily incidental to that role. The Commission should not abdicate its duties by ordering a reversion without regard to the actual planning and land use implications of doing so.

Second, the Petition Area is not suitable for intensive agricultural uses, as demonstrated by its various soil classifications and low annual rainfall. The LSB classification system¹¹ classifies the Petition Area's soil with an "E" rating; Class E soils are considered "very poor" for agricultural production and are only marginally suitable for agricultural uses. *See* D&O at FOF 34. The Petition Area is "unclassified" under the classification system; unclassified soils are not considered agriculturally important lands.¹² *Id.* at FOF ¶33. In addition, as this Commission has already found, the Petition Area "is located on the leeward side of the Big Island, at a low elevation, and thus receives relatively little precipitation." *Id.* at FOF ¶35.

Indeed, based on these characteristics, the Commission has already found that the Petition Area is not suited for intensive agricultural uses. *Id.* at FOF ¶32 ("The potential for agricultural productivity is low."); *Id.* at FOF ¶33 ("The agricultural potential for the [Petition Area] is

¹¹ The LSB rating system is based on the agricultural productivity of soils throughout the State, accounting for characteristics such as texture, slope, salinity, erodibility, and rainfall. The productivity ratings are used to designate each area as Class A, B, C, D, or E, with Class A representing the most productive soils and Class E representing the least productive soils.

¹² The State of Hawai'i Department of Agriculture established three ALISH categories: Prime; Unique; and Other. Lands that do not fall into one of the three ALISH categories are listed as Unclassified. "Prime" land is the best suited for the production of food, feed, forage, and fiber crops. "Unique" land is used for the production of specific high-value food crops. "Other" land does not qualify as Prime or Unique, but is still of Statewide or local importance for the production of food, feed, fiber, and forage crops. Soils without any ALISH classification are not considered agriculturally important lands.

generally poor because of the shallow, rocky soil type."). And the Commission has already acknowledged that the "Petition Area historically has not been used for active agricultural production." D&O at COL ¶37.

While UNK recognizes that the SLU Agricultural District can include lands of marginal agricultural value, *see* HAR § 15-15-19(3), that does not make it the most appropriate SLU District for the Petition Area. The County appears to agree, as it has designated the Petition Area as Medium Density Urban in the LUPAG and Urban in the Kona CDP. *See* D&O at FOF ¶71; Petitioner Exhibit 23.

The Commission has the burden to make independent findings that the Petition Area is more appropriately designated SLU Agricultural. The standard for a reversion is that the Petition Area must be reverted either to its previous classification or to a more appropriate classification. The Commission has no justification for a reversion to the SLU Agricultural District other than to punish UNK. For the reasons discussed *supra*, such a drastic measure is not warranted under the circumstance before the Commission.

V. CONCLUSION

For the foregoing reasons, UNK respectfully requests that the Commission find that UNK has substantially commenced its use of the Petition Area and good cause exists to not revert the Petition Area to its former SLU Agricultural District classification. UNK reserves the right to file supplemental statements of position and supporting evidence as needed.

DATED: Honolulu, Hawai'i, May 3, 2019



STEVEN S.C. LIM
KATHERINE A. GARSON
DEREK B. SIMON

Attorneys for
UNIVERSITY OF THE NATIONS, KONA, INC.

**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) 7-5-010:085 and 7-5-017:006 situated at
Wai'aha, North Kona, County and State of
Hawai'i

DOCKET NO. A02-737

VERIFICATION OF JULIE B. ANJO

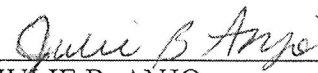
VERIFICATION OF JULIE B. ANJO

I, JULIE B. ANJO, declare as follows:

1. I am an attorney in Petitioner UNIVERSITY OF THE NATIONS, KONA, INC.'s Office of General Counsel;
2. I have read UNK'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 Hawai'i Land Use Commission on March 29, 2019 to which this verification is attached, and know the contents thereof; and the contents therein contained are true to the best of my knowledge, information and belief.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Kailua-Kona, Hawaii, May 2, 2019.



JULIE B. ANJO

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
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

DECLARATION OF DEREK B. SIMON

DECLARATION OF DEREK B. SIMON

I, DEREK B. SIMON, declare and state as follows:

1. I am an attorney with Carlsmith Ball LLP, attorneys for University of the Nations, Kona, Inc. (“UNK”), successor-in-interest to U of N Bencorp, the original Petitioner in Docket No. A02-737.
2. Attached hereto as **Exhibit 19** is a true and correct copy of a letter from UNK to the State of Hawai'i Land Use Commission (“**Commission**”) regarding Notice of Representation of Counsel and Change in Ownership of Petition Area dated May 1, 2019, prepared by Carlsmith Ball on behalf of UNK.
3. Attached hereto as **Exhibit 20** is a true and correct copy of a letter from UNK to the Commission dated April 8, 2019, provided to Carlsmith Ball by UNK.
4. Attached hereto as **Exhibit 21** is a true and correct copy of a letter from the Commission to UNK dated April 5, 2019, provided to Carlsmith Ball by UNK.
5. Attached hereto as **Exhibit 22** is a true and correct copy of a map of County of Hawai'i's zoning for the Petition Area.

6. Attached hereto as **Exhibit 23** is a true and correct copy of a map of County of Hawai'i's vision for the Petition Area, obtained from the Kona Community Development Plan.

7. Attached hereto as **Exhibit 24** is a true and correct copy of the corporate structure of UNK, provided to Carlsmith Ball by UNK.

8. Attached hereto as **Exhibit 25** is a true and correct copy of UNK's Application for a Well Construction / Pump Installation Permit submitted to the State of Hawai'i Department of Land and Natural Resources Commission on Water Resource Management dated December 17, 2018, provided to Carlsmith Ball by UNK.

9. Attached hereto as **Exhibit 26a** is a true and correct copy of a letter from the State of Hawai'i Department of Education to UNK dated February 20, 2019, provided to Carlsmith Ball by UNK.

10. Attached hereto as **Exhibit 26b** is a true and correct copy of a letter from the State of Hawai'i Department of Education to UNK dated April 25, 2019, provided to Carlsmith Ball by UNK.

11. Attached hereto as **Exhibit 27** is a true and correct copy of a Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban, recorded with the State of Hawai'i Bureau of Conveyances as Regular System Document No. 2003-171988 on August 18, 2003.

12. Attached hereto as **Exhibit 28a** is a true and correct copy of a map showing the State of Hawai'i Land Use District classification for Tax Map Key No. (3) 7-5-010:085, which was generated by my office using Arc GIS.

13. Attached hereto as **Exhibit 28b** is a true and correct copy of a map showing the State of Hawai'i Land Use District classification for Tax Map Key No. (3) 7-5-017:006, which was generated by my office using Arc GIS.

I, DEREK B. SIMON, do declare under the penalties of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, May 3, 2019.

A handwritten signature in dark ink, appearing to read 'DS' followed by a stylized flourish.

DEREK. B. SIMON

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE

P.O. BOX 686

HILO, HAWAII 96721-0686

TELEPHONE 808.935.6644 FAX 808.935.7975

WWW.CARLSMITH.COM

SLIM@CARLSMITH.COM

LAND USE COMMISSION
STATE OF HAWAII

2019 MAY -1 P 2:37

May 1, 2019

VIA HAND DELIVERY

Daniel E. Orodener, Executive Officer
State Land Use Commission
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Re: Docket No. A02-737
Notice of Representation of Counsel and Change in Ownership of Petition Area

Dear Mr. Orodener:

This firm has been retained by the University of the Nations, Kona, Inc., a Hawai'i nonprofit corporation ("UNK"), in connection with Docket No. A02-737. We respectfully request that any further correspondence to the Petitioner in this Docket be addressed to our office, with a copy to UNK's Office of General Counsel, attention Julie B. Anjo, Esq.

By way of Findings of Fact, Conclusions of Law, and Decision and Order, dated August 8, 2003, in the above-referenced docket (the "D&O"), the State of Hawai'i Land Use Commission (the "Commission") reclassified approximately 62 acres of land situate at Waiaha 1st, North Kona, Island, County and State of Hawai'i, and identified as Tax Map Key Nos. (3) 7-5-010:85 and (3) 7-5-017:006 (collectively, the "Petitioner Area") from the State Land Use ("SLU") Agricultural District to the SLU Urban District. The reclassification was sought to allow for the development of the Hualalai Village condominiums, a multi-function Cultural Center, and a five-acre Education Facility.

At the time of the reclassification in 2003, the petitioner and fee owner of the Petition Area was U of N Bencorp, a Hawai'i nonprofit corporation ("UNB"). On or around May 18, 2005, UNB formally changed its name to Aeko Hawaii ("Aeko"). See Exhibit 1, attached hereto. By way of Warranty Deeds, dated October 14, 2011, Aeko conveyed the Petition Area to Ka 'Ohana Waiaha, a Hawai'i nonprofit corporation ("KOW"). See Exhibit 2a and Exhibit 2b, attached hereto. By way of Warranty Deeds, dated May 24, 2018, KOW conveyed the Petition Area to UNK, the current fee owner of the Petition Area. See Exhibit 3a and Exhibit 3b, attached hereto.

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

Dan Orodener
May 1, 2019

Page 2

To the extent the Commission was not previously notified of these conveyances, please accept this as UNK's formal notice of change in ownership of the Petition Area pursuant to Condition No. 16 of the D&O.

Thank you for attention to this matter. If you have any questions, please feel free to contact me.

Sincerely,



Steven S.C. Lim
Derek B. Simon

cc: Julie B. Anjo, Esq.
Leo R. Asuncion, Office of Planning, State of Hawai'i
Dawn T. Apuna, Esq., Deputy Attorney General
Michael Yee, Planning Department, County of Hawai'i
Joseph T. Kamelamela, Esq., Corporation Counsel, County of Hawai'i

Enclosures

4841-9148-5589.3.069428-00001



L-455 STATE OF HAWAII
 OFFICE OF ASSISTANT REGISTRAR
 RECORDED
 SEP 02, 2005 08:01 AM

L.C. Order No(s) 162969
 on Cert(s) 596,798

/s/ CARL T. WATANABE
 ASSISTANT REGISTRAR



20 1/1 Z4

Land Court

Regular System

Return by Mail (X) Pick up ()

LC

Wallace H. Gallup, Jr.
 75-5591 Palani Road, Ste 3007
 Kailua-Kona, HI 96740

TGA: 358655C
 Total Pgs: 6

Tax Map Key No. (3) 7-5-010-086

PETITION OF AKEO HAWAII TO
 NOTE CHANGE OF CORPORATE NAME

EXHIBIT 1

LAND COURT
STATE OF HAWAII
FILES

2006 AUG 31 AM 11:57

KATHLEEN HANAWAINE
REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL PICKUP

Wallace H. Gallup, Jr.
75-5591 Palani Road, Ste. 3007
Kailua-Kona, HI 96740

Tax Map Key No.: (3) 7-5-010-086

This Document has 5 pages

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of)	Application No. 1666
of)	
Roman Catholic Church in the State)	
of Hawaii)	
)	
to register and confirm title to land)	
situate at Puaa 3rd, North Kona,)	
Island and County of)	
Hawaii, State of Hawaii)	

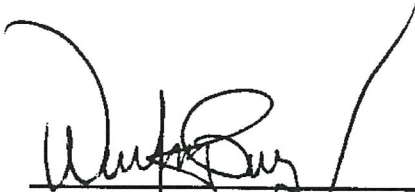
PETITION OF AEKO HAWAII TO NOTE CHANGE OF CORPORATE NAME

COMES NOW, AEKO HAWAII, a Hawaii nonprofit corporation, party in interest, and respectfully prays for an amendment of Land Court Certificate of Title No. 596,798, to show the following facts:

A TRUE COPY, ATTEST WITH
THE SEAL OF SAID COURT.

DAVID I.D. FONG
Clerk

1. The change of corporate name on May 18, 2005, of U OF N BENCORP to AEKO HAWAII, as evidenced by a true copy of the Filed Articles of Amendment to Change Corporate Name attached hereto and made a part hereof.



Wallace H. Gallup, Jr.
Attorney for Petitioner

Subscribed and sworn to before me
this 26th day of August, 2005



Notary Public, State of Hawaii

[Print name: Rose Ann Nash]

My commission expires: 7/20/2007



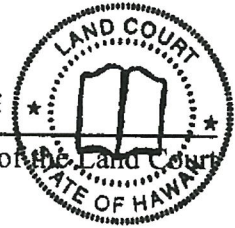
ORDER

Upon the record and the evidence herein, the prayer of the petition is hereby granted and the Registrar of this Court is so ordered.

Dated: Honolulu, Hawaii, AUG 31 2005

KATHLEEN HANAWAHINE

Registrar for the Judge of the Land Court



PETITION OF AEKO HAWAII TO NOTE CHANGE OF CORPORATE NAME ON LAND COURT CERTIFICATE OF TITLE NO. 596,798 AND ORDER

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



MARK E. RECKTENWALD
DIRECTOR

LAWRENCE M. REIFURTH
DEPUTY DIRECTOR

CORINNA M. WONG
COMMISSIONER OF SECURITIES

STATE OF HAWAII
BUSINESS REGISTRATION DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, P.O. BOX 40
HONOLULU, HAWAII 96810

WWW.BUSINESSREGISTRATIONS.COM

I, the undersigned Director of Commerce and Consumer Affairs of the State of Hawaii, hereby certify that the attached is a true and exact copy of:

The Articles of Amendment to Change Corporate Name changing its name from U OF N BENCORP to AEKO HAWAII, filed in this Department on May 18, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Commerce and Consumer Affairs, at Honolulu, Hawaii.

Dated: August 18, 2005

Mark E. Rechtenwald

Director of Commerce and Consumer Affairs

FILED 05/19/2005 08:51 AM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
335 Merchant Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810



ARTICLES OF AMENDMENT TO CHANGE CORPORATE NAME

(Section 414D-163, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, duly authorized officers of the corporation submitting these Articles of Amendment, certify as follows:

1. The present name of the corporation is:

U OF N BENCORP

2. The name of the corporation is changed to:

AEKO HAWAII

3. The amendment to change the corporation name was adopted on: May 1 2005

(Check one)

(Month)

Day

Year

at a meeting of the *members*:

Designation (class) Of membership	Total Number of Memberships (votes) outstanding	Total Number of Votes Entitled to be Cast By each Class	Number of Votes Cast by each class For Amendment	Number of Votes Cast by each class Against Amendment

OR

by written consent of the *members* holding at least eighty per cent of the voting power.

OR

by a sufficient vote of the *Board of Directors or incorporators* because member approval was not required.

4. Check one:

The written approval of a specified person or persons named in the articles of incorporation was obtained.

The written approval of a specified person or persons is not required.

The undersigned certifies under the penalties of Section 414D-12, Hawaii Revised Statutes, that the undersigned has read the above statements and that the same are true and correct.

Signed this 1st day of May, 2005

ERNIE WOUTERS, Secretary

(Type/Print Name & Title)

(Signature of Officer)

(Type/Print Name & Title)

(Signature of Officer)

SEE INSTRUCTIONS ON REVERSE SIDE. The articles must be signed by at least one officer of the corporation.

05/19/200520004

700



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

December 29, 2011 8:01 AM

Doc No(s) A-43800694



1 1/2 KKA
B-31990957

1st NICKI ANN THOMPSON
REGISTRAR

Conveyance Tax: \$1637.80

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return To:

By Mail (X)

Pickup ()

Jennifer L. Zelko, Esq.
Torkildson, Katz, Moore,
Hetherington & Harris
120 Pauahi Street, Ste. 312
Hilo, HI 96720

TITLE GUARANTY OF HAWAII HAS
FILED THIS DOCUMENT FOR RECORD
AS AN ACCOMMODATION ONLY. THIS
DOCUMENT HAS NOT BEEN
REVIEWED OR IN ANY WAY EXAMINED
AS TO ITS EFFECT ON REAL PROPERTY.

TGA: 4330870

Total Pages: 13

CAC

TAX MAP KEY NO.:
(3) 7-5-010:085

WARRANTY DEED

THIS INDENTURE, made effective the 14th day of October, 2011, by and between **AEKO HAWAII**, a Hawaii non-profit corporation, whose address is 6001 Egan Dr., Ste. 100, Savage, Minnesota 55378, referred to as "Grantor," and **KA 'OHANA WAI'AHIA**, a Hawaii non-profit corporation, whose address is 75-581 Kuakini Highway #102, Kailua-Kona, Hawaii 96740-2199, hereinafter referred to as "Grantee,"

WITNESSETH:

That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), and other valuable consideration to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto Grantee, as Tenant in Severalty forever, the property, situated on the Island of Hawaii, County of Hawaii, State of Hawaii, and described in Exhibit A attached hereto and by reference made a part hereof.

TO HAVE AND TO HOLD the same, together with all buildings and improvements thereon, all rights, privileges, and easements held or enjoyed in connection therewith, all rents, issues and profits therefrom, or appurtenant thereto, and all of the estate, right, title and interest of Grantor therein and thereto, unto Grantee, Grantee's successors and assigns, forever.

EXHIBIT 2a

AND Grantor does hereby covenant and agree with Grantee, Grantee's successors and assigns, that Grantor is lawfully seised in fee simple of the premises hereby conveyed; that Grantor has good right to sell and convey the same as aforesaid; that the same are free and clear from all encumbrances, except non-delinquent real property taxes and as may be described in Exhibit A; and that Grantor will, and Grantor's successors and assigns shall, forever WARRANT AND DEFEND the title to the land against the lawful claims and demands of all persons whomsoever, except as aforesaid.

AT ALL TIMES HEREIN the terms "Grantor" and "Grantee" or any pronouns used in place thereof, shall mean and include the masculine or feminine, singular or plural number, and individuals, firms or corporations, and their and each of their respective successors and assigns, according to the context thereof, and the covenant of any two or more persons herein shall be joint and several.

IN WITNESS WHEREOF, the parties have signed this instrument as of the day and year first above written.

GRANTOR:

AEKO HAWAII,
a Hawaii nonprofit corporation,

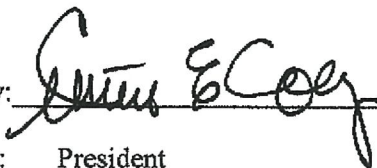
By: 

Warren J. Israelson

Its:

GRANTEE:

KA 'OHANA WAI'AHU,
a Hawaii nonprofit corporation,

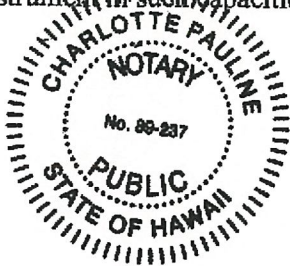
By: 

James E. Coey

Its: President

State of Hawaii)
County of Hawaii) SS:

On October 14, 2011, before me personally appeared, **Warren J. Israelson**, to me personally known or satisfactorily proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Charlotte Pauline

Name (print): Charlotte Pauline
Notary Public, State of Hawaii
My commission expires: April 26, 2013

NOTARY CERTIFICATION

Document Identification or Description: Warranty Deed

Doc. Date: October 14, 2011

No. of Page(s): _____ Jurisdiction: Third Circuit

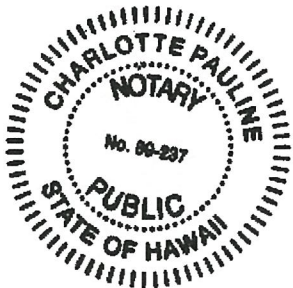
Charlotte Pauline

October 14, 2011

Signature of Notary

Date of Certificate

Name (print): Charlotte Decker



State of Hawaii)
County of Hawaii) SS:

On October 14, 2011, before me personally appeared, Christine Colby, to me personally known or satisfactorily proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Charlotte Pauline
Name (print): Charlotte Pauline
Notary Public, State of Hawaii
My commission expires: April 26, 2013

NOTARY CERTIFICATION

Document Identification or Description: Warranty Deed

Doc. Date: October 14, 2011

No. of Page(s): _____ Jurisdiction: Third Circuit

Charlotte Pauline October 14, 2011

Signature of Notary Date of Certificate

Name (print): Charlotte Pauline

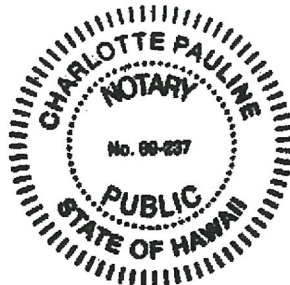


EXHIBIT A

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 1930 to Asa Thurston on a portion of Land Commission Award Number 387, Part 4, Section 2, No. 3 to American Board of Commissioners for Foreign Missions) situate, lying and being on the easterly side of Kuakini Highway, Project No. SS-229(1), and on the westerly side of Lot B and Hualalai Road (Kailua-Keauhou Middle Road), at Waiaha 1st, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT "A", same being a portion of Lot "B", and thus bounded and described as per survey dated April 4, 2001, revised December 20, 2001, to-wit:

Beginning at the northerly corner of this parcel of land at the Great Wall of Kuakini, being the southeast corner of Lot 7, TMK: 7-5-18:28, being the existing northeast corner of TMK: 7-5-18:73 and the existing northwest corner of TMK 7-5-17:07, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA" (North Meridian) being 4,301.12 feet south and 3,245.12 feet east and running by azimuths measured clockwise from True South:

1. 258° 38' 49" 419.30 feet to a point;
2. 265° 41' 49" 603.40 feet to a point;
3. 269° 49' 49" 229.50 feet to a point;
4. 261° 25' 49" 329.20 feet to a point;
5. 258° 35' 49" 269.50 feet to a point;
6. 265° 37' 49" 77.10 feet to a point;

Thence, along Lot B, along a curve to the left having a radius of 500.00 feet, the chord azimuth and distance being;

7. 325° 39' 31" 184.00 feet to a point;
8. 315° 03' 20" 145.67 feet along Lot B to a point;

Thence, along Lot B, along a curve to the right having a radius of 900.00 feet, the chord azimuth and distance being;

9. 322° 59' 20" 248.44 feet to a point;

EXHIBIT A CONTINUED

- 10. 240° 55' 18" 92.44 feet along Lot B to a point;
- 11. 179° 04' 30" 10.85 feet along Lot B to a point;
- 12. 269° 04' 30" 20.28 feet along Lot B to a point;
- 13. 240° 55' 18" 144.12 feet along Lot B to a point;

Thence, along Lot B, along a curve to the left having a radius of 160.00 feet, the chord azimuth and distance being;

- 14. 217° 00' 44" 129.69 feet to a point;
- 15. 193° 06' 10" 33.04 feet to a point;

Thence, along Lot B, along a curve to the right having a radius of 100.00 feet, the chord azimuth and distance being;

- 16. 215° 47' 40" 77.15 feet to a point;

Thence, along Lot B, along a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being:

- 17. 271° 35' 47" 54.62 feet to a point;

Thence, along the southwesterly to the westerly side of Hualalai Road (Queen Kaahumanu Highway Extension) Hawaii Belt Road for the following five (5) courses;

- 18. 304° 42' 24" 138.61 feet to a point;
- 19. 302° 00' 00" 134.71 feet to a point;
- 20. 311° 15' 00" 21.71 feet to a point;
- 21. 334° 11' 04" 337.35 feet to a point;
- 22. 71° 47' 48" 37.57 feet to a point;
- 23. 76° 50' 39" 150.56 feet along Lots 29 and 26 of Kona Hillcrest Subdivision to a point;

EXHIBIT A CONTINUED

24. 75° 03' 00" 404.68 feet along Lots 26, 24, 23, 22, 21 and 20 of Kona Hillcrest Subdivision to a point;
25. 78° 26' 08" 2,213.85 feet along TMK: 7-5-017:6, along Grant 5327 to Samuel Liftee to a point;
26. 68° 38' 00" 105.50 feet along TMK: 7-5-17:6, along Grant 5327 to Samuel Liftee to a point;

Thence, along the easterly side of Kuakini Highway, along a curve to the right having a radius of 2,824.79 feet, the chord azimuth and distance being;

27. 143° 26' 35" 838.99 feet to a point;
28. 151° 59' 00" 321.64 feet along the easterly side of Kuakini Highway to a point;
29. 265° 01' 00" 424.15 feet along Lot 7, Land Court Application 1659, Map 4 to the point of beginning and containing a gross area of 57.047 acres, more or less, and a net area of 56.597 acres excluding the two (2) Water Tank Sites (TMK: 7-5-17:13 and 15).

Together with a perpetual and non-exclusive easement over Easement "79" (50-foot wide) for roadway and utility purposes, affecting Lot 1-B as shown on Map 15 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1066 of the Roman Catholic Church in the State of Hawaii as described in Land Court Order No. 143824, as granted by GRANT OF EASEMENT, dated November 23, 2001, filed as Land Court Document No. 2762460, recorded as Document No. 2001-198862; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

EXHIBIT A CONTINUED

Together with Easement "R-1" (Part 1) 50 feet wide, for roadway and utility purposes, as granted by GRANT OF EASEMENT, dated November 23, 2001, filed as Land Court Document No. 2762460, recorded as Document No. 2001-198862; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein, more particularly described as follows:

EASEMENT R-1 (PART 1) 50 FEET WIDE
For Roadway and Utility Purposes

Easement situated on the westerly side of Lot B
Adjoining the easterly side of Lot C
on the westerly side of Hualalai Road

as Puaa 2nd & 3rd, North Kona, Hawaii, Hawaii

Being a portion of Lot B, a portion of Grant 1744
to Kahunaele and a portion of Lot 1
Land Court Application 1666 - Map 1

Beginning at the northerly corner of THIS EASEMENT being the northerly corner of Lot B, also being the easterly corner of Lot C on the southwesterly side of Hualalai Road, the coordinates of said point beginning referred to Government Survey Triangulation Station "KAILUA" (North Meridian) being 3,519.30 feet south and 5,165.02 feet east and running by azimuths measured clockwise from True South:

Thence, along the southwesterly side of Hualalai Road for the following three (3) courses:

1. 313° 50' 49" 36.33 feet to a point;
2. 314° 26' 49" 100.60 feet to a point;
3. 305° 57' 29" 12.10 feet to a point;

Thence, along the remainder of Lot B for the following four (4) courses:

4. 35° 57' 49" 20.84 feet to a point;

Thence, along a curve to the left having a radius of 60.00 feet, the chord azimuth and distance being:

8

EXHIBIT A CONTINUED

5. 84° 54' 19" 78.82 feet to a point;

Thence, along a curve to the left having a radius of 275.00 feet,
the chord azimuth and distance being:

6. 31° 22' 51" 118.72 feet to a point;

7. 76° 47' 49" 46.25 feet along the remainder of Lot B,
the remainder of Easement R-1 and
Land Court Lot 1-B and Easement R-3
to a point;

8. 81° 43' 49" 10.67 feet along the remainder of Lot B,
the remainder of Easement R-1 and
Land Court Lot 1-B and Easement R-3
to a point;

Thence, along Lot C, along a curve to the right having a radius
of 325.00 feet, the chord azimuth and
distance being:

9. 208° 46' 48.5" 168.96 feet to a point;

Thence, along Lot C, along a curve to the right having a radius
of 60.00 feet, the chord azimuth and
distance being:

10. 178° 50' 49" 84.85 feet to a point;

11. 223° 50' 49" 19.57 feet along Lot C to the point of
beginning and containing an area of
0.342 acre, more or less.

EXHIBIT A CONTINUED

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : GOMES FAMILY LIMITED PARTNERSHIP, a Hawaii limited
partnership

GRANTEE : PACU BENCORP, INC., a Hawaii corporation

DATED : July 31, 2000

RECORDED : Document No. 2000-112926

EXHIBIT A CONTINUED

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. The Great Wall of Kuakini as shown on tax map.
3. Matters arising out of, including any utility and access rights in favor of Tax Map Keys (3) 7-5-017-013 and 015 located within the subject land.
4. Waterline easement (6 feet wide) as shown on tax map.

GRANT

TO : HAWAIIAN TELEPHONE COMPANY, a Hawaii corporation,
now known as HAWAIIAN TELCOM, INC., and HILO
ELECTRIC LIGHT COMPANY, LIMITED, a Hawaii
corporation

DATED : August 12, 1969

RECORDED : Liber 6724 Page 257

GRANTING : a perpetual right and easement for utility purposes

Restriction of abutter's right of vehicle access, appurtenant to the remainder of the land of which Parcel 49, is a part, into and from Hawaii Belt Road, FAP Route 11, Project No. 11A-03-69, Palani Road to Kilohana Subdivision over and across course 3 of the above described Parcel 49 and over an across the boundaries designated as Boundaries "29" and "30" more particularly described as follows:

BOUNDARY "29"

EXHIBIT A CONTINUED.

Being the common boundary between Hualalai Road (Kailua-Holualoa Road) and a portion of R. P. 1930 to Asa Thurston, L.C. Award 387 Part 4 Section 2 No. 3 to American Board of Commissioners for Foreign Missions.

Beginning at the southeast end of this right-of-way boundary, on the southwest side of Hawaii Belt Road, FAP Route 11, Project No. 11A-03-69, Palani Road to Kilohana Subdivision, being also the southwesterly side of Hualalai Road (Kailua-Holualoa Road) and at the end of Course 3 of the above described Parcel 49, thence running azimuths measured clockwise from true south:

- | | | | |
|----|----------|--------|--|
| 1. | 131° 15' | 21.71 | feet along a portion of L.C. Award 387 Part 4 Section 2 No. 3 to American Board of Commissioners for Foreign Missions; |
| 2. | 122° 00' | 134.71 | feet along same; |
| 3. | 124° 00' | 114.75 | feet along same; |
| 4. | 127° 00' | 35.36 | feet along same to the northwest end of this right-of-way boundary and having a total length of 306.53 feet. |

BOUNDARY "30"

Being the common boundary between Lot 103 of "Kona Hillcrest Subdivision" (File Plan 1124) and R.P. 1930 to Asa Thurston, L.C. Award 387 Part 4 Section 2 No. 3 to American Board of Commissioners for Foreign Missions.

Beginning at the east end of this right-of-way boundary, on the southwest side of Hawaii Belt Road, FAP Route 11, Project No. 11A-03-069, Palani Road to Kilohana Subdivision, and at the end of Course 2 of the above described Parcel 49, thence running by azimuth measured clockwise from true south:

- | | | | |
|----|---------|-------|--|
| 1. | 76° 24' | 31.12 | feet along a portion of L.C. Award 387 Part 4, Section 2, No. 3 to |
|----|---------|-------|--|

EXHIBIT A CONTINUED

American Board of
Commissioners for Foreign
Missions to the west end
of this right-of-way
boundary and having a
length of 31.12 feet.

GRANT

TO : WATER BOARD OF THE COUNTY OF HAWAII

DATED : February 25, 2003

RECORDED : Document No. 2003-179095

GRANTING : the right in the nature of a perpetual easement
over Waterline Easements "W-4", area 0.386 acre or
16,824 square feet, more particularly described
therein

5. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDITIONS APPLICABLE TO AN
AMENDMENT OF DISTRICT BOUNDARY FROM AGRICULTURAL TO
URBAN

DATED : August 14, 2003

RECORDED : Document No. 2003-171988

6. Filed with the Department of Commerce and Consumer Affairs of the State of Hawaii (Business Registration, is the name change of PACU BENCORP to U OF N BENCORP on November 9, 2000.
7. The name of U OF N BENCORP was changed to AEKO HAWAII by instrument dated May 18, 2005, filed as Land Court Order No. 162969.
8. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised statutes.

END OF EXHIBIT A

Tax Map Key No.: (3) 7-5-010:085



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

December 29, 2011 8:01 AM

Doc No(s) A-43800695



1 2/2
B-31990957

KKA

/s/ NICKI ANN THOMPSON
REGISTRAR

Conveyance Tax: \$1235.20

LAND COURT SYSTEM

kh **REGULAR SYSTEM**

After Recordation Return To:

By Mail (X)

Pickup ()

Jennifer L. Zelko, Esq.
Torkildson, Katz, Moore,
Hetherington & Harris
120 Pauahi Street, Ste. 312
Hilo, HI 96720

TITLE GUARANTY OF HAWAII HAS
FILED THIS DOCUMENT FOR RECORD
AS AN ACCOMMODATION ONLY. THIS
DOCUMENT HAS NOT BEEN
REVIEWED OR IN ANY WAY EXAMINED
AS TO ITS EFFECT ON REAL PROPERTY.

TGA: 433087Q (2)
RJS
CAC
Total Pages: 1

TAX MAP KEY NO.:

(3) 7-5-017:006

WARRANTY DEED

THIS INDENTURE, made effective the 14th day of October, 2011, by and between **AEKO HAWAII**, a Hawaii non-profit corporation, whose address is 6001 Egan Dr., Ste. 100, Savage, Minnesota 55378, referred to as "Grantor," and **KA 'OHANA WAIAHA**, a Hawaii non-profit corporation, whose address is 75-581 Kuakini Highway #102, Kailua-Kona, Hawaii 96740-2199, hereinafter referred to as "Grantee,"

WITNESSETH:

That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), and other valuable consideration to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto Grantee, as Tenant in Severalty forever, the property, situated on the Island of Hawaii, County of Hawaii, State of Hawaii, and described in Exhibit A attached hereto and by reference made a part hereof.

TO HAVE AND TO HOLD the same, together with all buildings and improvements thereon, all rights, privileges, and easements held or enjoyed in connection therewith, all rents, issues and profits therefrom, or appurtenant thereto, and all of the estate, right, title and interest of Grantor therein and thereto, unto Grantee, Grantee's successors and assigns, forever.

Exhibit 2b

AND Grantor does hereby covenant and agree with Grantee, Grantee's successors and assigns, that Grantor is lawfully seised in fee simple of the premises hereby conveyed; that Grantor has good right to sell and convey the same as aforesaid; that the same are free and clear from all encumbrances, except non-delinquent real property taxes and as may be described in Exhibit A; and that Grantor will, and Grantor's successors and assigns shall, forever WARRANT AND DEFEND the title to the land against the lawful claims and demands of all persons whomsoever, except as aforesaid.

AT ALL TIMES HEREIN the terms "Grantor" and "Grantee" or any pronouns used in place thereof, shall mean and include the masculine or feminine, singular or plural number, and individuals, firms or corporations, and their and each of their respective successors and assigns, according to the context thereof, and the covenant of any two or more persons herein shall be joint and several.

IN WITNESS WHEREOF, the parties have signed this instrument as of the day and year first above written.

GRANTOR:

AEKO HAWAII, INC.,
a Hawaii nonprofit corporation,

By: 
Warren J. Israelson

Its:

GRANTEE:

KA 'OHANA WAI'AHU, Hawaii nonprofit
corporation,

By: 
Its: President

State of Hawaii)
County of Hawaii) SS:

On October 14, 2011, before me personally appeared, **Warren J. Israelson**, to me personally known or satisfactorily proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Charlotte Pauline

Name (print): Charlotte Pauline
Notary Public, State of Hawaii
My commission expires: April 26, 2013

NOTARY CERTIFICATION

Document Identification or Description: Warranty Deed

Doc. Date: October 15, 2011

No. of Page(s): _____ Jurisdiction: Third Circuit

Charlotte Pauline

October 14, 2011

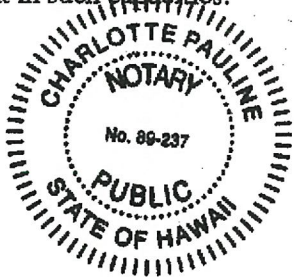
Signature of Notary - Charlotte Pauline Date of Certificate

Name (print): _____



State of Hawaii)
)
County of Hawaii) SS:

On October 14, 2011, before me personally appeared, Christine Colby, to me personally known or satisfactorily proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Charlotte Pauline

Name (print): Charlotte Pauline
Notary Public, State of Hawaii
My commission expires: April 26, 2013

NOTARY CERTIFICATION

Document Identification or Description: Warranty Deed

Doc. Date: October 14, 2011

No. of Page(s): _____ Jurisdiction: Third Circuit

Charlotte Pauline _____ October 14, 2011

Signature of Notary _____ Date of Certificate

Name (print): Charlotte Pauline



EXHIBIT A

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5327 to Samuel Liftee) situate, lying and being on the easterly side of Kuakini Highway, Project FAP No. SS-229(1), and on the northerly side of Kona Hillcrest Subdivision, at Waiaha 2nd, District of North Kona, Island and County of Hawaii, State of Hawaii, being PARCEL 6, and thus bounded and described as per survey dated November 11, 2002, to-wit:

Beginning at the northwest corner of this parcel of land on the easterly side of Kuakini Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA" (North Meridian) being 5,295.84 feet south and 3,473.38 feet east and running by azimuths measured clockwise from true South:

Thence, along Lot A, along Land Commission Award 387, Part 4, Section 2, No. 3 to American Board of Commissioners for Foreign Missions for the next two (2) courses:

1. 248° 38' 00" 105.50 feet to a point;
2. 258° 26' 08" 2,213.85 feet to a point;

Thence, along the northerly side of Kona Hillcrest Subdivision for the following seven (7) courses:

3. 71° 43' 30" 124.57 feet along Lots 20 & 19 to a point;
4. 71° 05' 30" 389.65 feet Lots 18 through 14 to a point;
5. 74° 18' 00" 108.90 feet along Lots 14 & 13 to a point;
6. 73° 28' 00" 81.34 feet along Lots 13, 12 & 9 to a point;
7. 74° 29' 00" 176.29 feet along Lots 9 & 8 to a point;
8. 75° 12' 00" 174.88 feet along Lots 7, 6 & 5 to a point;

EXHIBIT A CONTINUED

9. 74° 32' 00" 285.07 feet along Lots 5, 4, 3 & 2 to a point;
10. 70° 05' 00" 39.34 feet along County of Hawaii, Lot 1 to a point;
11. 74° 38' 30" 147.50 feet along County of Hawaii, Lot 1 to a point;
12. 76° 51' 00" 65.76 feet along County of Hawaii, Lot 1 to a point;

Thence, along Parcel 25 (TMK: 7-5-18:25) for the following four (4) courses:

13. 76° 51' 00" 100.00 feet to a point;
14. 76° 01' 30" 141.117 feet to a point;
15. 72° 30' 00" 240.00 feet to a point;
16. 71° 31' 00" 131.08 feet to a point;

Thence, along the easterly side of Kuakini Highway, along a curve to the right having a radius of 2,824.79 feet, the chord azimuth and distance being:

17. 132° 47' 27.5" 208.36 feet to the point of beginning and containing an area of 5.361 acres, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : GOMES FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership

GRANTEE : PACU BENCORP, INC., a Hawaii corporation

DATED : July 31, 2000

RECORDED : Document No. 2000-112926

EXHIBIT A CONTINUED

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. The Great Wall of Kuakini as shown on tax map.
3. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDITIONS APPLICABLE TO AN
AMENDMENT OF DISTRICT BOUNDARY FROM AGRICULTURAL TO
URBAN

DATED : August 14, 2003
RECORDED : Document No. 2003-171988
4. Matters arising out of, including any utility and access rights in favor of Tax Map Keys (3) 7-5-017-013 and 015 located within the subject land.
5. Filed with the Department of Commerce and Consumer Affairs of the State of Hawaii (Business Registration), is the name change of PACU BENCORP to U OF N BENCORP on November 9, 2000.
6. The name of U OF N BENCORP was changed to AEKO HAWAII by instrument dated May 18, 2005, filed as Land Court Order No. 162969.
7. Claims arising out of customary and traditional rights and Practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

END OF EXHIBIT A

Tax Map Key No.: (3) 7-5-017:006

410



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

June 14, 2018 8:01 AM

Doc No(s) A-67390372



1 1/2 OFC
B-33178987

/s/ LESLIE T. KOBATA
REGISTRAR

Conveyance Tax: \$5,673.90

LAND COURT SYSTEM

mw

REGULAR SYSTEM

Return By Mail Pick-Up To:

UNIVERSITY OF THE NATIONS, KONA, INC.
75-5851 Kuakini Highway
Kailua Kona, HI 96740

PTIC File # 01801526

r/s 1

TOTAL NUMBER OF PAGES: 10

Title of Document:

GENERAL WARRANTY DEED

Parties to the Document:

GRANTOR: KA 'OHANA WAIAHA, a Hawaii nonprofit corporation, whose mailing address is 75-581 Kuakini Highway #102, Kailua-Kona, Hawaii 96740-2199;

GRANTEE: UNIVERSITY OF THE NATIONS, KONA, INC., a Hawaii nonprofit corporation, whose mailing address is 75-5851 Kuakini Highway, Kailua Kona, Hawaii 96740.

Tax Map Key No.: (3) 7-5-010:085

5/24/2018

GENERAL WARRANTY DEED

This deed, made effective on this the 24th day of May, 2018, by and between **KA 'OHANA WAIAHA**, a Hawaii nonprofit corporation, whose mailing address is 75-581 Kuakini Highway #102, Kailua-Kona, Hawaii 96740-2199, hereinafter referred to as "**Grantor**" and **UNIVERSITY OF THE NATIONS, KONA, INC.**, a Hawaii nonprofit corporation, whose mailing address is 75-5851 Kuakini Highway, Kailua Kona, Hawaii 96740, hereinafter referred to as "**Grantee**",

WITNESSETH:

That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), and other valuable consideration to Grantor in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto Grantee, as Tenant in Severalty forever, the property,

EXHIBIT 3a

|

situated on the Island of Hawaii, County of Hawaii, State of Hawaii, and described in Exhibit A attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the same, together with all buildings and improvements thereon, all rights, privileges, and easements held or enjoyed in connection therewith, all rents, issues, and profits therefrom, or appurtenant thereto, and all of the estate, right, title, and interest of Grantor therein and thereto, unto Grantee, Grantee's successors and assigns, forever.

AND Grantor does hereby covenant and agree with Grantee, Grantee's successors and assigns, that Grantor is lawfully seised in fee simple of the premises hereby conveyed; that Grantor has good right to sell and convey the same as aforesaid; that the same are free and clear from all encumbrances, except non-delinquent real property taxes and as may be described in Exhibit A; and that Grantor will, and Grantor's successors and assigns shall, forever WARRANT AND DEFEND the title to the land against the lawful claims and demands of all persons whomsoever, except as aforesaid.

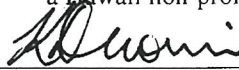
BEING the same land conveyed by Warranty Deed from Aeko Hawaii, a Hawaii nonprofit corporation, to Ka 'Ohana Waiaha, a Hawaii nonprofit corporation on the 14th day of October, 2011 and recorded in the State of Hawaii Bureau of Conveyances as Document No. A-43800694 on the 29th day of December, 2011.

AT ALL TIMES HEREIN, the terms "Grantor" and "Grantee" or any pronouns used in places thereof, shall mean and include the masculine or feminine, singular or plural number, and individuals, firms or corporations, and their and each of their respective successors and assigns, according to the context thereof, and the covenant of any two or more persons herein shall be joint and several.

(The remainder of this page is intentionally left blank. Signature page to follow.)

IN WITNESS WHEREOF, the parties have signed this instrument as of the day and year first above written.

GRANTOR: KA 'OHANA WAIAHA,
a Hawaii non-profit corporation,



By: KEVIN NORRIS
Its: OFFICER

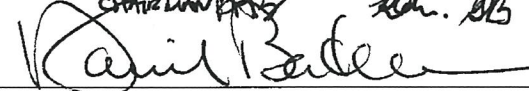


By: GUNILA BAUMANN
Its: OFFICER

GRANTEE: UNIVERSITY OF THE NATIONS, KONA, INC.,
a Hawaii non-profit corporation,



By: MARTIN REDIGER
Its: PRESIDENT, BOARD OF TRUSTEES

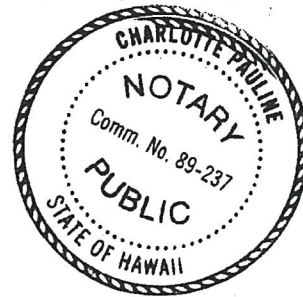


By: DAVID BATEMAN
Its: SECRETARY, BOARD OF TRUSTEES

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this the 24th day of May, 2018, before me personally appeared KEVIN NORRIS, to me known (or proved to me on the basis of satisfactory evidence) that he is an officer of **KA 'OHANA WAIHAHA**, a Hawaii non-profit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)



Charlotte Pauline
Name: CHARLOTTE PAULINE

Notary Public

State of Hawaii

My commission expires: April 26 2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: General Warranty Deed

Document Date: May 24 2018

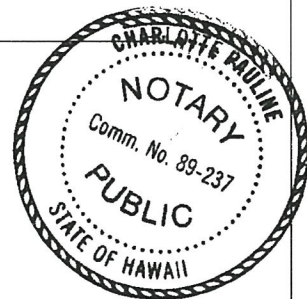
No. of Pages: 16

Jurisdiction (in which notarial act is performed): Third Circuit

Charlotte Pauline May 24 2018
Signature of Notary Date of Notarization and
Certification Statement

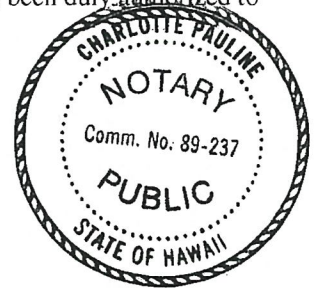
CHARLOTTE PAULINE
Printed Name of Notary

(Notary Stamp or Seal)



STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this the 24th day of May, 2018, before me personally appeared GUNILA BAUMANN, to me known (or proved to me on the basis of satisfactory evidence) that she is an officer of **KA 'OHANA WAIHAHA**, a Hawaii nonprofit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Notary Stamp or Seal)

Charlotte Pauline
Name: CHARLOTTE PAULINE

Notary Public

State of Hawaii

My commission expires: April 26 2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: General Warranty Deed

Document Date: May 24 2018

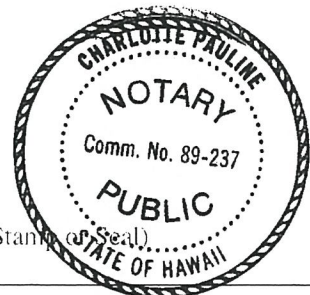
No. of Pages: _____

Jurisdiction (in which notarial act is performed): Third Circuit

Charlotte Pauline May 24 2018
Signature of Notary Date of Notarization and
Certification Statement

Charlotte Pauline
Printed Name of Notary

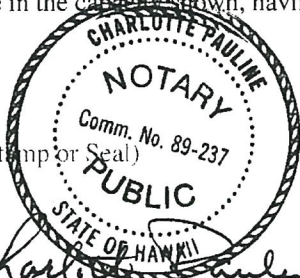
(Notary Stamp or Seal)



STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this the 24th day of May, 2018, before me personally appeared MARTIN REDIGER, to me known (or proved to me on the basis of satisfactory evidence) that he is the ^{Chairman} President of the Board of ^{CP} Trustees of the UNIVERSITY OF THE NATIONS, KONA, INC., a Hawaii nonprofit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)



Name: Charlotte Pauline

Notary Public

State of Hawaii

My commission expires: April 26, 2021

NOTARY CERTIFICATION STATEMENT

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Signature of Notary

Charlotte Pauline

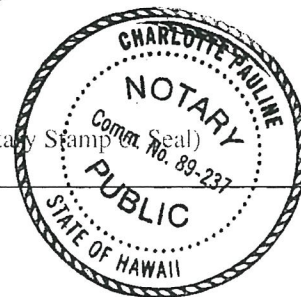
Date of Notarization and Certification Statement

May 24, 2018

Printed Name of Notary

Charlotte Pauline

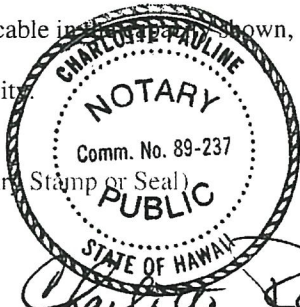
(Notary Stamp or Seal)



STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this the 24th day of May, 2018, before me personally appeared DAVID BATEMAN, to me known (or proved to me on the basis of satisfactory evidence) that he is the Secretary of the Board of Trustees of the **UNIVERSITY OF THE NATIONS, KONA, INC.**, a Hawaii nonprofit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the event shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)



Charlotte Pauline

Name: CHARLOTTE PAULINE

Notary Public

State of Hawaii

My commission expires: April 26, 2021

NOTARY CERTIFICATION STATEMENT

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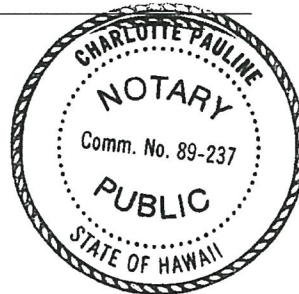
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Charlotte Pauline May 24, 2018
Signature of Notary Date of Notarization and
Certification Statement

CHARLOTTE PAULINE
Printed Name of Notary



(Notary Stamp or Seal)

EXHIBIT A

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 1930 to Asa Thurston on a portion of Land Commission Award Number 387, Part 4, Section 2, No. 3 to American Board of Commissioners for Foreign Missions) situate, lying and being on the easterly side of Kuakini Highway, Project No. SS-229(1), and on the westerly side of Lot B and Hualalai Road (Kailua-Keauhou Middle Road), at Waiaha 1st, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT "A", same being a portion of Lot "B", and thus bounded and described as per survey dated April 4, 2001, revised December 20, 2001, to-wit:

Beginning at the northerly corner of this parcel of land at the Great Wall of Kuakini, being the southeast corner of Lot 7, TMK: 7-5-18:28, being the existing northeast corner of TMK: 7-5-18:73 and the existing northwest corner of TMK 7-5-17:07, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA" (North Meridian) being 4,301.12 feet south and 3,245.12 feet east and running by azimuths measured clockwise from True South:

1. 258° 38' 49" 419.30 feet to a point;
2. 265° 41' 49" 603.40 feet to a point;
3. 269° 49' 49" 229.50 feet to a point;
4. 261° 25' 49" 329.20 feet to a point;
5. 258° 35' 49" 269.50 feet to a point;
6. 265° 37' 49" 77.10 feet to a point;

Thence, along Lot B, along a curve to the left having a radius of 500.00 feet, the chord azimuth and distance being;

7. 325° 39' 31" 184.00 feet to a point;
8. 315° 03' 20" 145.67 feet along Lot B to a point;

Thence, along Lot B, along a curve to the right having a radius of 900.00 feet, the chord azimuth and distance being;

9. 322° 59' 20" 248.44 feet to a point;

EXHIBIT A CONTINUED

- 10. 240° 55' 18" 92.44 feet along Lot B to a point;
- 11. 179° 04' 30" 10.85 feet along Lot B to a point;
- 12. 269° 04' 30" 20.28 feet along Lot B to a point;
- 13. 240° 55' 18" 144.12 feet along Lot B to a point;

Thence, along Lot B, along a curve to the left having a radius of 160.00 feet, the chord azimuth and distance being;

- 14. 217° 00' 44" 129.69 feet to a point;
- 15. 193° 06' 10" 33.04 feet to a point;

Thence, along Lot B, along a curve to the right having a radius of 100.00 feet, the chord azimuth and distance being;

- 16. 215° 47' 40" 77.15 feet to a point;

Thence, along Lot B, along a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being:

- 17. 271° 35' 47" 54.62 feet to a point;

Thence, along the southwesterly to the westerly side of Hualalai Road (Queen Kaahumanu Highway Extension) Hawaii Belt Road for the following five (5) courses;

- 18. 304° 42' 24" 138.61 feet to a point;
- 19. 302° 00' 00" 134.71 feet to a point;
- 20. 311° 15' 00" 21.71 feet to a point;
- 21. 334° 11' 04" 337.35 feet to a point;
- 22. 71° 47' 48" 37.57 feet to a point;
- 23. 76° 50' 39" 150.56 feet along Lots 29 and 26 of Kona Hillcrest Subdivision to a point;

EXHIBIT A CONTINUED

24. 75° 03' 00" 404.68 feet along Lots 26, 24, 23, 22, 21 and 20 of Kona Hillcrest Subdivision to a point;
25. 78° 26' 08" 2,213.85 feet along TMK: 7-5-017:6, along Grant 5327 to Samuel Liftee to a point;
26. 68° 38' 00" 105.50 feet along TMK: 7-5-17:6, along Grant 5327 to Samuel Liftee to a point;

Thence, along the easterly side of Kuakini Highway, along a curve to the right having a radius of 2,824.79 feet, the chord azimuth and distance being;

27. 143° 26' 35" 838.99 feet to a point;
28. 151° 59' 00" 321.64 feet along the easterly side of Kuakini Highway to a point;
29. 265° 01' 00" 424.15 feet along Lot 7, Land Court Application 1659, Map 4 to the point of beginning and containing a gross area of 57.047 acres, more or less, and a net area of 56.597 acres excluding the two (2) Water Tank Sites (TMK: 7-5-17:13 and 15).

Together with a perpetual and non-exclusive easement over Easement "79" (50-foot wide) for roadway and utility purposes, affecting Lot 1-B as shown on Map 15 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1066 of the Roman Catholic Church in the State of Hawaii as described in Land Court Order No. 143824, as granted by GRANT OF EASEMENT, dated November 23, 2001, filed as Land Court Document No. 2762460, recorded as Document No. 2001-198862; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

EXHIBIT A CONTINUED

Together with Easement "R-1" (Part 1) 50 feet wide, for roadway and utility purposes, as granted by GRANT OF EASEMENT, dated November 23, 2001, filed as Land Court Document No. 2762460, recorded as Document No. 2001-198862; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein, more particularly described as follows:

EASEMENT R-1 (PART 1) 50 FEET WIDE
For Roadway and Utility Purposes

Easement situated on the westerly side of Lot B
Adjoining the easterly side of Lot C
on the westerly side of Hualalai Road

as Puaa 2nd & 3rd, North Kona, Hawaii, Hawaii

Being a portion of Lot B, a portion of Grant 1744
to Kahunaele and a portion of Lot 1
Land Court Application 1666 - Map 1

Beginning at the northerly corner of THIS EASEMENT being the northerly corner of Lot B, also being the easterly corner of Lot C on the southwesterly side of Hualalai Road, the coordinates of said point beginning referred to Government Survey Triangulation Station "KAILUA" (North Meridian) being 3,519.30 feet south and 5,165.02 feet east and running by azimuths measured clockwise from True South:

Thence, along the southwesterly side of Hualalai Road for the following three (3) courses:

1. 313° 50' 49" 36.33 feet to a point;
2. 314° 26' 49" 100.60 feet to a point;
3. 305° 57' 29" 12.10 feet to a point;

Thence, along the remainder of Lot B for the following four (4) courses:

4. 35° 57' 49" 20.84 feet to a point;

Thence, along a curve to the left having a radius of 60.00 feet,
the chord azimuth and distance being:

EXHIBIT A CONTINUED

5. 84° 54' 19" 78.82 feet to a point;

Thence, along a curve to the left having a radius of 275.00 feet,
the chord azimuth and distance being:

6. 31° 22' 51" 118.72 feet to a point;

7. 76° 47' 49" 46.25 feet along the remainder of Lot B,
the remainder of Easement R-1 and
Land Court Lot 1-B and Easement R-3
to a point;

8. 81° 43' 49" 10.67 feet along the remainder of Lot B,
the remainder of Easement R-1 and
Land Court Lot 1-B and Easement R-3
to a point;

Thence, along Lot C, along a curve to the right having a radius
of 325.00 feet, the chord azimuth and
distance being:

9. 208° 46' 48.5" 168.96 feet to a point;

Thence, along Lot C, along a curve to the right having a radius
of 60.00 feet, the chord azimuth and
distance being:

10. 178° 50' 49" 84.85 feet to a point;

11. 223° 50' 49" 19.57 feet along Lot C to the point of
beginning and containing an area of
0.342 acre, more or less.

EXHIBIT A CONTINUED

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : GOMES FAMILY LIMITED PARTNERSHIP, a Hawaii limited
partnership

GRANTEE : PACU BENCORP, INC., a Hawaii corporation

DATED : July 31, 2000

RECORDED : Document No. 2000-112926

EXHIBIT A CONTINUED

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. The Great Wall of Kuakini as shown on tax map.
3. Matters arising out of, including any utility and access rights in favor of Tax Map Keys (3) 7-5-017-013 and 015 located within the subject land.
4. Waterline easement (6 feet wide) as shown on tax map.

GRANT

TO : HAWAIIAN TELEPHONE COMPANY, a Hawaii corporation,
now known as HAWAIIAN TELCOM, INC., and HILO
ELECTRIC LIGHT COMPANY, LIMITED, a Hawaii
corporation

DATED : August 12, 1969

RECORDED : Liber 6724 Page 257

GRANTING : a perpetual right and easement for utility purposes

Restriction of abutter's right of vehicle access, appurtenant to the remainder of the land of which Parcel 49, is a part, into and from Hawaii Belt Road, FAP Route 11, Project No. 11A-03-69, Palani Road to Kilohana Subdivision over and across course 3 of the above described Parcel 49 and over an across the boundaries designated as Boundaries "29" and "30" more particularly described as follows:

BOUNDARY "29"

EXHIBIT A CONTINUED

Being the common boundary between Hualalai Road (Kailua-Holualoa Road) and a portion of R. P. 1930 to Asa Thurston, L.C. Award 387 Part 4 Section 2 No. 3 to American Board of Commissioners for Foreign Missions.

Beginning at the southeast end of this right-of-way boundary, on the southwest side of Hawaii Belt Road, FAP Route 11, Project No. 11A-03-69, Palani Road to Kilohana Subdivision, being also the southwesterly side of Hualalai Road (Kailua-Holualoa Road) and at the end of Course 3 of the above described Parcel 49, thence running azimuths measured clockwise from true south:

- | | | | |
|----|----------|--------|--|
| 1. | 131° 15' | 21.71 | feet along a portion of L.C. Award 387 Part 4 Section 2 No. 3 to American Board of Commissioners for Foreign Missions; |
| 2. | 122° 00' | 134.71 | feet along same; |
| 3. | 124° 00' | 114.75 | feet along same; |
| 4. | 127° 00' | 35.36 | feet along same to the northwest end of this right-of-way boundary and having a total length of 306.53 feet. |

BOUNDARY "30"

Being the common boundary between Lot 103 of "Kona Hillcrest Subdivision" (File Plan 1124) and R.P. 1930 to Asa Thurston, L.C. Award 387 Part 4 Section 2 No. 3 to American Board of Commissioners for Foreign Missions.

Beginning at the east end of this right-of-way boundary, on the southwest side of Hawaii Belt Road, FAP Route 11, Project No. 11A-03-069, Palani Road to Kilohana Subdivision, and at the end of Course 2 of the above described Parcel 49, thence running by azimuth measured clockwise from true south:

- | | | | |
|----|---------|-------|--|
| 1. | 76° 24' | 31.12 | feet along a portion of L.C. Award 387 Part 4, Section 2, No. 3 to |
|----|---------|-------|--|

EXHIBIT A CONTINUED

American Board of
Commissioners for Foreign
Missions to the west end
of this right-of-way
boundary and having a
length of 31.12 feet.

GRANT

TO : WATER BOARD OF THE COUNTY OF HAWAII

DATED : February 25, 2003

RECORDED : Document No. 2003-179095

GRANTING : the right in the nature of a perpetual easement
over Waterline Easements "W-4", area 0.386 acre or
16,824 square feet, more particularly described
therein

5. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDITIONS APPLICABLE TO AN
AMENDMENT OF DISTRICT BOUNDARY FROM AGRICULTURAL TO
URBAN

DATED : August 14, 2003

RECORDED : Document No. 2003-171988

6. Filed with the Department of Commerce and Consumer Affairs of the State of Hawaii (Business Registration, is the name change of PACU BENCORP to U OF N BENCORP on November 9, 2000.
7. The name of U OF N BENCORP was changed to AEKO HAWAII by instrument dated May 18, 2005, filed as Land Court Order No. 162969.
8. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised statutes.

END OF EXHIBIT A

Tax Map Key No.: (3) 7-5-010:085

410



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

June 14, 2018 8:01 AM
Doc No(s) A - 67390373



1 2/2 OFC
B - 33178987

/s/ LESLIE T. KOBATA
REGISTRAR

Conveyance Tax: \$585.00

mj

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail Pick-Up To:

UNIVERSITY OF THE NATIONS, KONA, INC.
75-5851 Kuakini Highway Drive
Kailua Kona, Hawaii 96740

PTIC Escrow # 011301526

r/s 2

TOTAL NUMBER OF PAGES: 10

Title of Document:

GENERAL WARRANTY DEED

Parties to the Document:

GRANTOR: KA 'OHANA WAIHAHA, a Hawaii nonprofit corporation, whose mailing address is 75-5851 Kuakini Highway #102, Kailua-Kona, Hawaii 96740-2199;

GRANTEE: UNIVERSITY OF THE NATIONS, KONA, INC., a Hawaii nonprofit corporation, whose mailing address is 75-5851 Kuakini Highway, Kailua Kona, Hawaii 96740.

Tax Map Key No.: (3) 7-5-017:006

GENERAL WARRANTY DEED

This deed, made effective on this the 24th day of May, 2018, by and between **KA 'OHANA WAIHAHA**, a Hawaii nonprofit corporation, whose mailing address is 75-5851 Kuakini Highway #102, Kailua-Kona, Hawaii 96740-2199, hereinafter referred to as "**Grantor**" and **UNIVERSITY OF THE NATIONS, KONA, INC.**, a Hawaii nonprofit corporation, whose mailing address is 75-5851 Kuakini Highway, Kailua Kona, Hawaii 96740, hereinafter referred to as "**Grantee**",

WITNESSETH:

That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), and other valuable consideration to Grantor in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto Grantee, as Tenant in Severalty forever, the property,

EXHIBIT 3b

situated on the Island of Hawaii, County of Hawaii, State of Hawaii, and described in Exhibit A attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the same, together with all buildings and improvements thereon, all rights, privileges, and easements held or enjoyed in connection therewith, all rents, issues, and profits therefrom, or appurtenant thereto, and all of the estate, right, title, and interest of Grantor therein and thereto, unto Grantee, Grantee's successors and assigns, forever.

AND Grantor does hereby covenant and agree with Grantee, Grantee's successors and assigns, that Grantor is lawfully seised in fee simple of the premises hereby conveyed; that Grantor has good right to sell and convey the same as aforesaid; that the same are free and clear from all encumbrances, except non-delinquent real property taxes and as may be described in Exhibit A; and that Grantor will, and Grantor's successors and assigns shall, forever WARRANT AND DEFEND the title to the land against the lawful claims and demands of all persons whomsoever, except as aforesaid.

BEING the same land conveyed by Warranty Deed from Aeke Hawaii, a Hawaii nonprofit corporation, to Ka 'Ohana Waiaha, a Hawaii nonprofit corporation on the 14th day of October, 2011 and recorded in the State of Hawaii Bureau of Conveyances as Document No. A-43800695 on the 29th day of December, 2011.

AT ALL TIMES HEREIN, the terms "Grantor" and "Grantee" or any pronouns used in places thereof, shall mean and include the masculine or feminine, singular or plural number, and individuals, firms or corporations, and their and each of their respective successors and assigns, according to the context thereof, and the covenant of any two or more persons herein shall be joint and several.

(The remainder of this page is intentionally left blank. Signature page to follow.)

IN WITNESS WHEREOF, the parties have signed this instrument as of the day and year first above written.

GRANTOR: KA 'OHANA WAIAHA,
a Hawaii nonprofit corporation,



By: KEVIN NORRIS
Its: OFFICER



By: GUNILA BAUMANN
Its: OFFICER

GRANTEE: UNIVERSITY OF THE NATIONS, KONA, INC.,
a Hawaii nonprofit corporation,



By: MARTIN REDIGER
Its: PRESIDENT, BOARD OF TRUSTEES

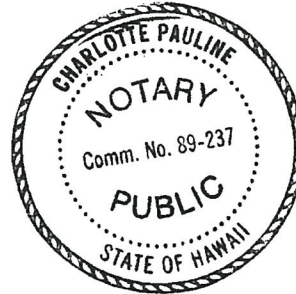
 *Handwritten notes: common to all, Mr. MR 8/13*

By: DAVID BATEMAN
Its: SECRETARY, BOARD OF TRUSTEES

CP

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this the 24th day of May, 2018, before me personally appeared KEVIN NORRIS, to me known (or proved to me on the basis of satisfactory evidence) that he is an officer of **KA 'OHANA WAIAHA**, a Hawaii nonprofit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Notary Stamp or Seal)

Charlotte Pauline
Name: Charlotte Pauline

Notary Public

State of Hawaii

My commission expires: April 26 2021

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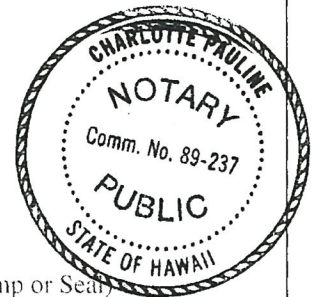
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Charlotte Pauline
Printed Name of Notary

(Notary Stamp or Seal)



STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this the 24th day of May, 2018, before me personally appeared GUNILA BAUMANN, to me known (or proved to me on the basis of satisfactory evidence) that she is an officer of **KA 'OHANA WAIHAHA**, a Hawaii nonprofit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

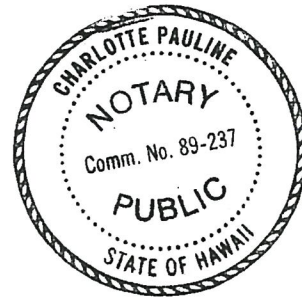
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Notary Public

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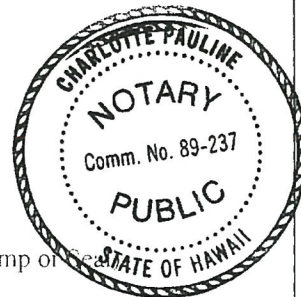
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Charlotte Pauline
Signature of Notary

May 24 2018
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CHARLOTTE PAULINE
Printed Name of Notary

(Notary Stamp of)



STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this the 24th day of May, 2018, before me personally appeared MARTIN REDIGER, to me known (or proved to me on the basis of satisfactory evidence) that he is the ^{Chairman CP} ~~President~~ of the Board of Trustees of the **UNIVERSITY OF THE NATIONS, KONA, INC.**, a Hawaii nonprofit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Notary Stamp or Seal)

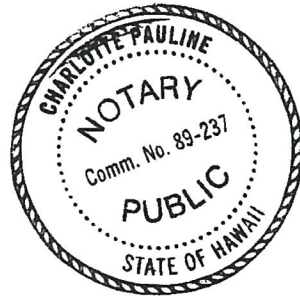
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Name: Charlotte Pauline

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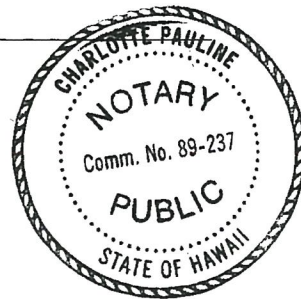
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Charlotte Pauline May 24 2018

Signature of Notary Date of Notarization and Certification Statement

Charlotte Pauline
Printed Name of Notary

(Notary Stamp or Seal)



STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this the 24th day of May, 2018, before me personally appeared DAVID BATEMAN, to me known (or proved to me on the basis of satisfactory evidence) that he is the Secretary of the Board of Trustees of the **UNIVERSITY OF THE NATIONS, KONA, INC.**, a Hawaii nonprofit corporation, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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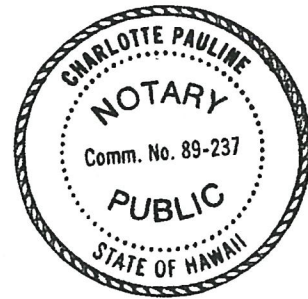
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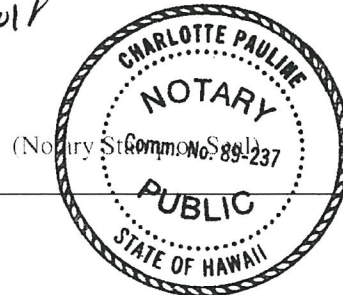


EXHIBIT A

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5327 to Samuel Liftee) situate, lying and being on the easterly side of Kuakini Highway, Project FAP No. SS-229(1), and on the northerly side of Kona Hillcrest Subdivision, at Waialaha 2nd, District of North Kona, Island and County of Hawaii, State of Hawaii, being PARCEL 6, and thus bounded and described as per survey dated November 11, 2002, to-wit:

Beginning at the northwest corner of this parcel of land on the easterly side of Kuakini Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA" (North Meridian) being 5,295.84 feet south and 3,473.38 feet east and running by azimuths measured clockwise from true South:

Thence, along Lot A, along Land Commission Award 387, Part 4, Section 2, No. 3 to American Board of Commissioners for Foreign Missions for the next two (2) courses:

1. 248° 38' 00" 105.50 feet to a point;
2. 258° 26' 08" 2,213.85 feet to a point;

Thence, along the northerly side of Kona Hillcrest Subdivision for the following seven (7) courses:

3. 71° 43' 30" 124.57 feet along Lots 20 & 19 to a point;
4. 71° 05' 30" 389.65 feet Lots 18 through 14 to a point;
5. 74° 18' 00" 108.90 feet along Lots 14 & 13 to a point;
6. 73° 28' 00" 81.34 feet along Lots 13, 12 & 9 to a point;
7. 74° 29' 00" 176.29 feet along Lots 9 & 8 to a point;
8. 75° 12' 00" 174.88 feet along Lots 7, 6 & 5 to a point;

EXHIBIT A CONTINUED

9. 74° 32' 00" 285.07 feet along Lots 5, 4, 3 & 2 to a point;
10. 70° 05' 00" 39.34 feet along County of Hawaii, Lot 1 to a point;
11. 74° 38' 30" 147.50 feet along County of Hawaii, Lot 1 to a point;
12. 76° 51' 00" 65.76 feet along County of Hawaii, Lot 1 to a point;

Thence, along Parcel 25 (TMK: 7-5-18:25) for the following four (4) courses:

13. 76° 51' 00" 100.00 feet to a point;
14. 76° 01' 30" 141.117 feet to a point;
15. 72° 30' 00" 240.00 feet to a point;
16. 71° 31' 00" 131.08 feet to a point;

Thence, along the easterly side of Kuakini Highway, along a curve to the right having a radius of 2,824.79 feet, the chord azimuth and distance being:

17. 132° 47' 27.5" 208.36 feet to the point of beginning and containing an area of 5.361 acres, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : GOMES FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership

GRANTEE : PACU BENCORP, INC., a Hawaii corporation

DATED : July 31, 2000

RECORDED : Document No. 2000-112926

EXHIBIT A CONTINUED

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. The Great Wall of Kuakini as shown on tax map.
3. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDITIONS APPLICABLE TO AN
AMENDMENT OF DISTRICT BOUNDARY FROM AGRICULTURAL TO
URBAN

DATED : August 14, 2003
RECORDED : Document No. 2003-171988
4. Matters arising out of, including any utility and access rights in favor of Tax Map Keys (3) 7-5-017-013 and 015 located within the subject land.
5. Filed with the Department of Commerce and Consumer Affairs of the State of Hawaii (Business Registration), is the name change of PACU BENCORP to U OF N BENCORP on November 9, 2000.
6. The name of U OF N BENCORP was changed to AEKO HAWAII by instrument dated May 18, 2005, filed as Land Court Order No. 162969.
7. Claims arising out of customary and traditional rights and Practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

END OF EXHIBIT A

Tax Map Key No.: (3) 7-5-017:006



UNIVERSITY OF THE NATIONS, KONA

Daniel E. Orodener
Executive Officer
Hawaii Land Use Commission
PO Box 2359
Honolulu, Hawaii 95804

Re: In the Matter of U of N Bencorp
Docket No. A02-737

Dear Mr. Orodener:

We respectfully request that the Commission grant Petitioner adequate time to respond to the Show Cause Order issued by the Commission on March 29, 2019. This includes adequate time to communicate with the parties on the creation of the timeline for submissions for the upcoming hearing.

After the Petitioner gave the Annual Report on March 28, 2019, the Commission ordered a show cause and set the hearing for May 22, 2019. On March 29, 2019, the Petitioner requested via a telephone call to the Executive Director Orodener that the pretrial hearing be set for May 22, 2019 date and the show cause hearing to be set approximately one month afterward, so that all interested parties had sufficient time to prepare. However, the Commission declined the request to set the pre-hearing date as May 22, 2019 and stated that the May 22, 2019 date was for the hearing. The Executive Director then requested that the Petitioner speak to all parties and determine an appropriate timeline with the input of the parties. Petitioner needs to communicate with all interested parties individually rather than corporately as a pretrial hearing allows.

Therefore, in best effort to comply with the Commission's timeline request, we respectfully request that the Commission permit the Petitioner and interested parties be given until April 19, 2019 to set up a schedule and timeline that is agreeable to all parties.



In support of this request, Petitioner states,

1. Due to the scope and nature of the Show Cause Order, we are required to interact and consult with numerous parties, some are traveling and unavailable at such short notice.
2. In answering the Show Cause, Petitioner is communicating with the lineal descendants of the land and others in the local community. Some parties are not readily available on such short notice.
3. Throughout the land development, Petitioner has consulted with the lineal descendants of the land and others in the local community. In moving forward, Petitioner seeks to consult with the local community including the lineal descendants and other local Hawaiian leaders on the development plan and requests adequate time to do this.
4. Petitioner plans to present a projected development plan that requires communication with county, state, and other interested parties to receive their input.
5. In discussions with the Office of Planning, they stated that they require thirty (30) days to review and respond to any filing. In planning for the hearing, we want to ensure all interested parties have the time that they need to adequately prepare and offer input.

For the above-mentioned reasons, we humbly request that the Commission permit the Petitioner and interested parties be given until April 19, 2019 to set up a schedule and timeline that is agreeable to all parties. In the alternative, we request the Commission to reconsider our initial request for the pretrial hearing to be set on May 22, 2019 and the show cause hearing to be set at a time convenient for all parties. Thank you for your time and consideration.

Sincerely,



Julie Anjo

DAVID Y. IGE
Governor

JOSHUA B. GREEN
Lieutenant Governor

MICHAEL MCCARTNEY
Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
Executive Officer

BERT K. SARUWATARI
Planner

SCOTT A.K. DERRICKSON
Planner

RILEY K. HAKODA
Planner/Chief Clerk

RASMI AGRAHARI
Planner

FRED A. TALON
Drafting Technician

April 5, 2019

UNIVERSITY OF THE NATIONS, KONA, INC.
Office of General Counsel
75-5851 Kuakini Highway #452
Kailua-Kona , Hawaii 96740
Attn: Julie Anjo

Dear Ms. Anjo,

The Land Use Commission is sending you this letter to confirm that an Order to Show Cause as to why the property which is set forth in Docket A02-737 U of N Bencorp and subject to that Decision and Order dated August 8, 2003, should not be reverted to its Agricultural Classification has been scheduled for 09:30 a.m. on May 22, 2019 at Natural Energy Laboratory Hawai'i Authority (NELHA), 73-970 Makako Drive, Kailua-Kona, HI 96740-2627, Hale `Iako Training Room#119.

The Petitioner and/or their representative shall be required to appear at such hearing to state its position with regard to various perceived violations of the conditions contained in the Decision and Order and state any reasons and provide evidence it may have as to why the conditions have or have not been violated. Any party to the proceeding may retain counsel if the party so desires.

All Land Use Commission hearings of this type are quasi-judicial in nature. As such you will have the opportunity to present evidence and put on witnesses to support your case as well as to cross-examine witnesses and refute evidence put on by the Office of State Planning and the County of Hawai'i.

To ensure that proceedings are timely, I am requesting that no later than the close-of-business of April 26, 2019, each party shall submit and serve upon all the other parties, as the case may be, a list identifying all witnesses that they will be presenting to the LUC in support of the respective party's position; a list identifying all exhibits that will be submitted in support of the respective party's position; and all exhibits identified in the aforementioned exhibit list. Also, except as provided by §15-15- 57, HAR, filings or submissions which are untimely may be stricken or rejected by the LUC at the time of the hearing.

By copy of this letter, I am also requesting that no later than the close of business on May 3, 2019, the Petitioner, the Office of Planning ("OP"), and the County of Hawai`i Planning Department ("PD"), each file with the Commission and serve upon all the other parties as appropriate a rebuttal witness list, a rebuttal exhibit list, and all rebuttal exhibits.

Please contact LUC Staff -Riley Hakoda at (808)587-3824 if you have any questions or concerns regarding this matter

Sincerely,



Daniel Orodener
Executive Officer

Cc: Mary Alice Evans, OP

Dawn Takeuchi-Apuna, Deputy Attorney General

Michael Yee, Hawai`i County Planning Department

Joseph Kamelamela, Hawai`i County Corporation Counsel

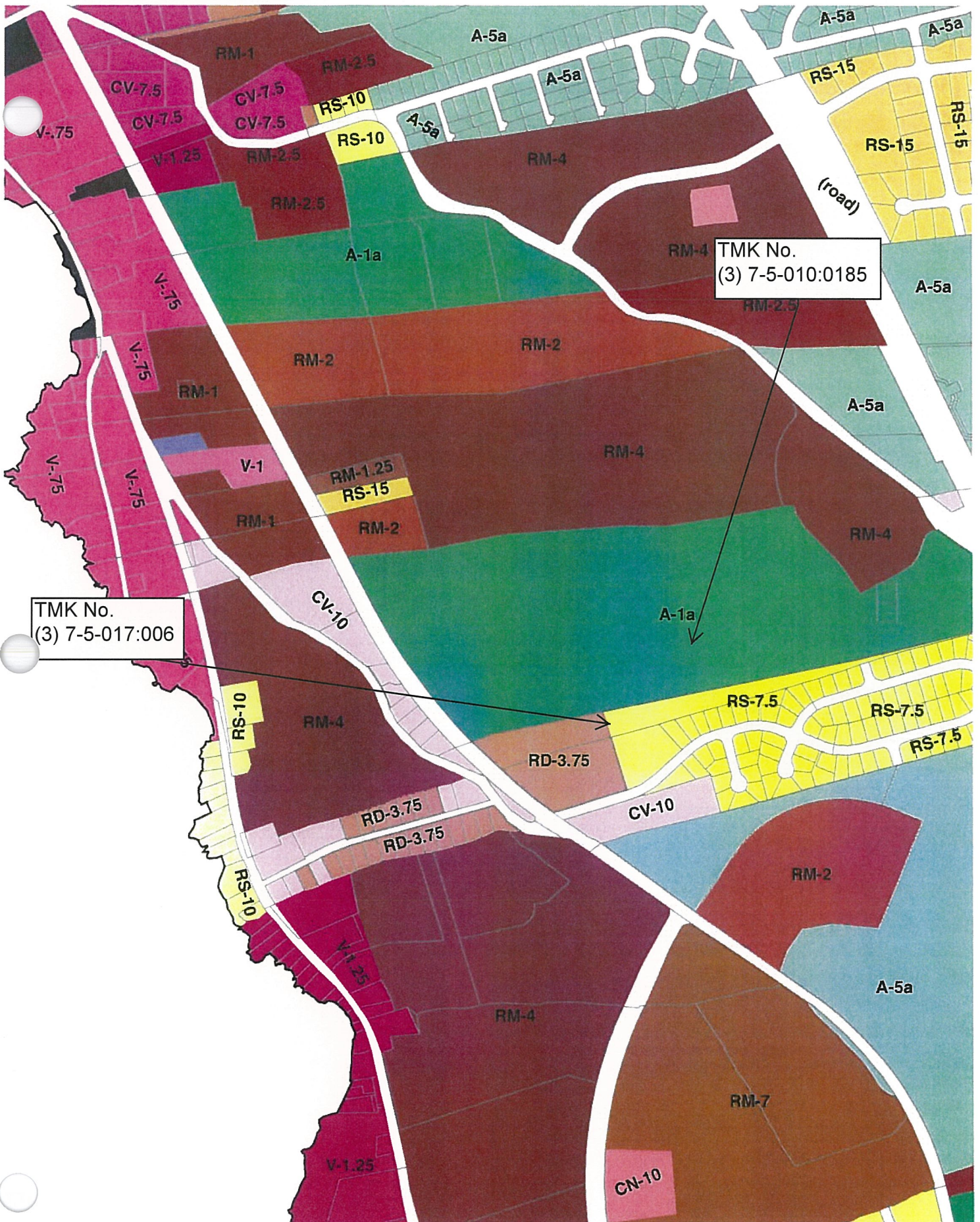


EXHIBIT 22

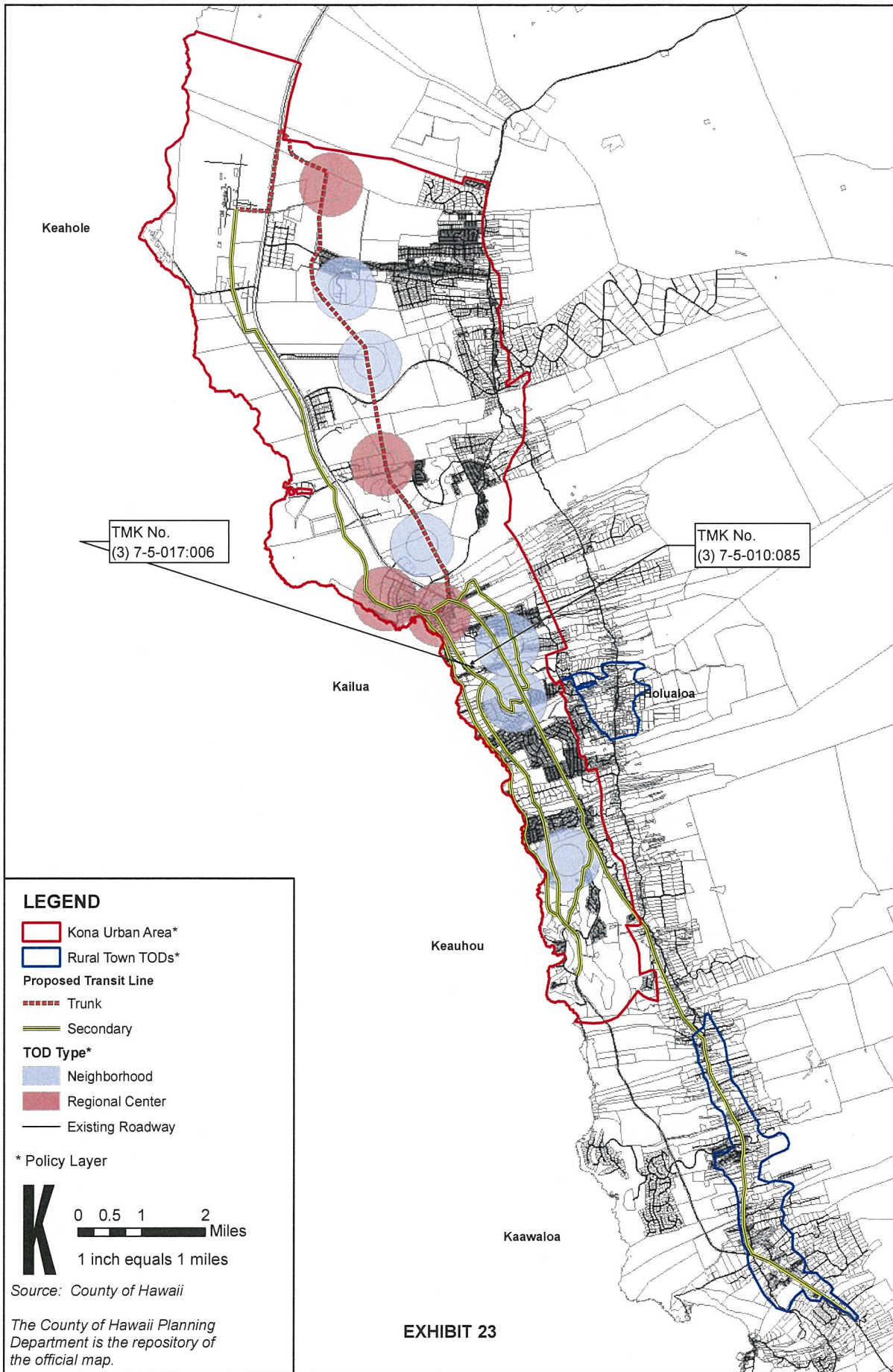
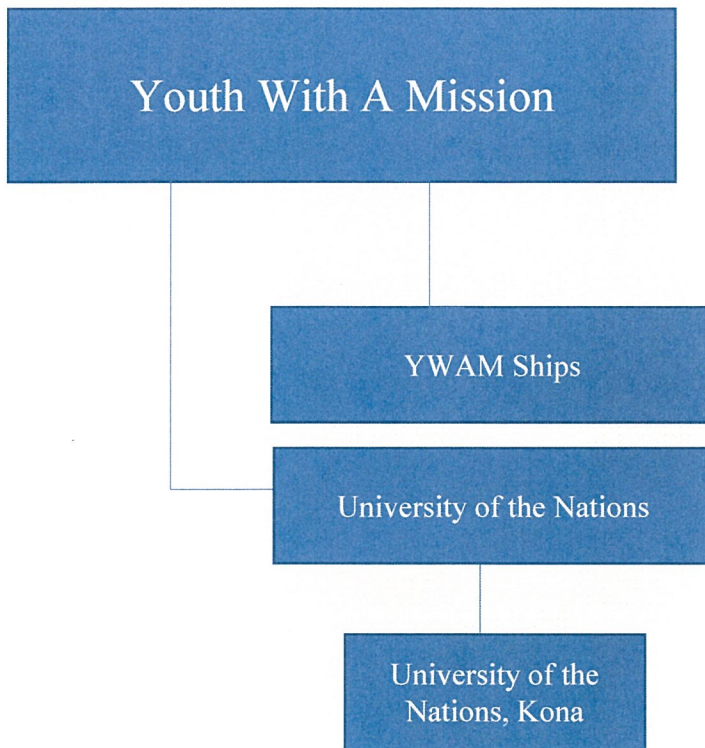


Exhibit 24 (Corporate Structure)



Youth With a Mission (YWAM) is a global movement of Christians from many cultures, age groups, and Christian traditions, dedicated to serving Jesus throughout the world. Each location is unite in a common purpose to know God and to make Him known.

Every location is a YWAM location, however some locations have a ministry focus.

- YWAM Ships, a marine based ministry,
- University of the Nations, an educational and teaching based ministry

Each location is an independent legal entity that adheres to the YWAM Values, and each location can identify itself with ministries.

University of the Nations, Kona is a YWAM location that is focused on the University of the Nations ministry as a teaching institution.



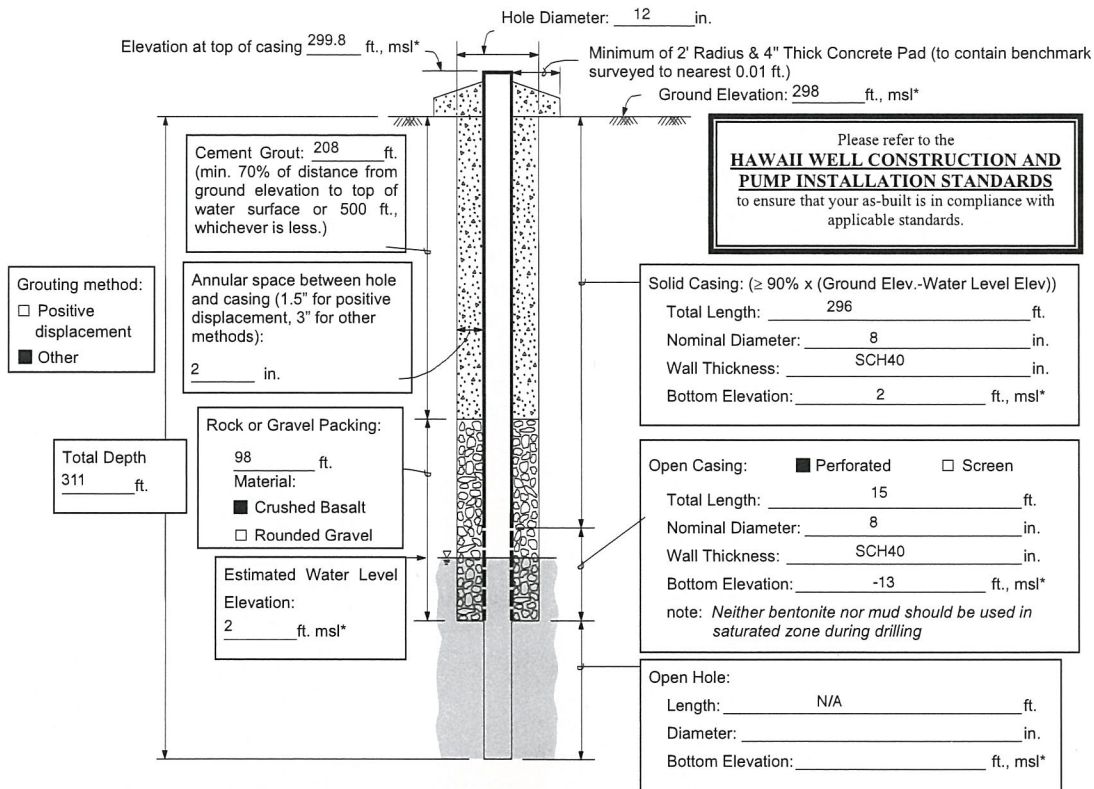
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
APPLICATION FOR A WELL CONSTRUCTION /
PUMP INSTALLATION PERMIT

For Official Use Only:

Instructions: Please print in ink or type and send completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Original application must be accompanied by a non-refundable filing fee of \$25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225. For further information and updates to this application form, visit <http://www.hawaii.gov/dlnr/cwrm>.

WELL LOCATION INFORMATION						
1. STATE WELL NO. (if assigned)	2. WELL NAME	3. ISLAND	4. TMK			
	UNK Campus 1	Hawai'i	(3) 7 - 5 - 010 : 003	island zone sec plat parcel lot		
5. WELL COORDINATES (latitude and longitude, referenced to NAD 83, degrees, minutes, seconds to 1 decimal place) and ADDRESS (street, city, zip code)						
19° 37' 58.93" -155° 58' 46.88" 75-332 Hualalai Rd. Kailua Kona, HI 96740						
The following must be attached before this application is accepted as complete: • Property tax map, showing well location referenced to established property boundaries • Photograph of the proposed well site • A schematic diagram showing the well site, access road and proposed well infrastructure • Attach written permission from the landowner listed below, that acknowledges the work proposed by this application. If the landowner changes during construction, a new permission statement is required.						
6. WELL OPERATOR'S NAME/COMPANY		Well Operator's Contact		7. LANDOWNER'S NAME/COMPANY		Landowner's Contact
same		same		University of the Nations Kona INC		Martin Rediger
Well Operator's Mailing Address				Landowner's Mailing Address		
same				75-5851 Kuakini Hwy. Kailua Kona, HI 96740-2136		
Well Operator's Phone		Well Operator's Fax		Landowner's Phone		Landowner's Fax
same		same		719-659-9695		Landowner's E-mail
						mrediger@uofnkona.edu
PROPOSED WELL CONSTRUCTION			PROPOSED PUMP INSTALLATION			
8. Proposed Work <input type="checkbox"/> Construct New Well <input type="checkbox"/> Modify Existing Well <input type="checkbox"/> Abandon/Seal Well			9. Construction Type <input checked="" type="checkbox"/> Drilled <input type="checkbox"/> Dug <input type="checkbox"/> Shaft <input type="checkbox"/> Tunnel		11. Proposed Work <input checked="" type="checkbox"/> Install New Pump <input type="checkbox"/> Replace Pump	
					13. Proposed Pump Capacity, gpm (gallons per minute) 375	
			12. Method of flow measurement <input type="checkbox"/> Flowmeter <input checked="" type="checkbox"/> Other (explain)		14. Proposed Amount of Withdrawal, gpd (gallons per day) 60,000	
10. Is this well part of a battery of wells? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			15. Proposed Surveyor name and license number (a surveyor is required for all Well Construction Permits and may be required for some Pump Installation Permits)			
PROPOSED USE <i>If the well water will be treated, please describe how (reverse osmosis, ultra violet, etc.) and disposal method of resulting effluent, reject water, etc.</i>						
<input type="checkbox"/> 16. Municipal (water systems serving greater than 25 individuals or 15 service connections)						
<input checked="" type="checkbox"/> 17. Domestic Number of units to be served: _____ For future campus use						
<input type="checkbox"/> 18. Industrial (describe)						
<input checked="" type="checkbox"/> 19. Irrigation (describe crop and no. of acres) 45 Lawn and lanscape						
<input type="checkbox"/> 20. Military (describe)						
<input type="checkbox"/> 21. Other (describe)						
OTHER LEGAL REQUIREMENTS <i>If required, items 22. and 23. must be obtained before the Commission can legally issue a permit:</i>						
22. Conservation District Use Permit (CDUP) <input type="checkbox"/> Well is in Conservation District <input type="checkbox"/> Required, CDUP # _____ date approved _____ <input type="checkbox"/> Not Required (attach documentation from OCCL) <input type="checkbox"/> I have not checked with OCCL about whether or not a CDUP is required. <input checked="" type="checkbox"/> Well is not in Conservation District <input type="checkbox"/> I have not checked if the well is in the Conservation District			23. Special Management Area Permit (SMAP) <input type="checkbox"/> Well is in the Special Management Area <input type="checkbox"/> Required, SMA # _____ date approved _____ <input type="checkbox"/> Not Required (attach documentation from applicable County agency) <input type="checkbox"/> I have not checked with the county about whether or not an SMA Permit is required. <input checked="" type="checkbox"/> Well is not in the Special Management Area <input type="checkbox"/> I have not checked if the well is in the Special Management Area			
24. State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (Hawaii Revised Statute, Chapter 6E, Section 106) <input type="checkbox"/> I have consulted with the SHPD regarding potential impacts of well construction activities on historic sites. I have attached applicable documentation from the HPD. <input checked="" type="checkbox"/> I have not consulted with the SHPD regarding potential impacts of well construction activities on historic sites.						
25. Chapter 343 <input type="checkbox"/> An Environmental Assessment was completed, and <input type="checkbox"/> An Environmental Impact Statement was required and has been accepted (attach letter of acceptance). Publication date in The Environmental Notice: _____ <input type="checkbox"/> A Finding of No Significant Impact has been determined (attach letter). Publication date in The Environmental Notice: _____ This project proposes: <input type="checkbox"/> Use of state or county lands, or use of state or county funds <input type="checkbox"/> Use within a state conservation district <input type="checkbox"/> Use within a shoreline setback area <input type="checkbox"/> Use within a national or Hawaii registered historic site <input type="checkbox"/> Use within the Waikiki Special District <input type="checkbox"/> The construction, expansion or modification of helicopter facility <input type="checkbox"/> A wastewater treatment unit <input type="checkbox"/> Waste-to-energy facility <input type="checkbox"/> Landfill <input type="checkbox"/> Oil refinery <input type="checkbox"/> Power-generating facility <input checked="" type="checkbox"/> None of the above 11 items						
26. Water Use Permit No. (if applicable): N/A						
Additional remarks, explanations, etc. (attach additional sheet if more space is needed)						
NOTE: Signing below indicates that the signatories understand and swear that the information provided is accurate and true to the best of their knowledge. Further, the signatories understand that upon permit approval: 1) the proposed work is to be completed within two (2) years of the approval date; 2) the contractor shall submit to the Commission a well completion/abandonment report within 30 days after the completion date of the permitted work; 3) if the landowner changes during construction, a new permission statement is required; 4) in the event that the application is not completed correctly, any permit may be suspended until the item is brought in to compliance, and any work done while the permit is in suspension may result in fines of up to \$5000/day.						
27. WELL DRILLER (Must be filled out if application is for Well Construction)			28. PUMP INSTALLER (Must be filled out if application is for Pump Installation)			
Daniel R Diamond C33980 Licensee business name C-57 License No.			Daniel R Diamond C33980 Licensee business name C-57/C-57a/A License No.			
Signature Daniel R Diamond 17 Dec 2018 Print Date			Signature Daniel R Diamond 17 Dec 2018 Print Date			
HCR 3 Box 14073 Keaau, HI 96749 Address			HCR 3 Box 14073 Keaau, HI 96749 Address			
808-333-2320 808-966-4129 diamonddrillingandpump@yahoo.com Phone Fax E-mail			808-333-2320 808-966-4129 diamonddrillingandpump@yahoo.com Phone Fax E-mail			

PROPOSED WELL SECTION (Please attach schematic if different from diagram provided below. Also, if this proposed well is a dug well, attach a grading plan with cross section profiles showing existing and finished grades)



* The approximate elevation must be referenced to mean sea level (msl) at the time of application filing. Final elevations of well components shall be submitted in the Well Completion/Well Abandonment reports and referenced to a benchmark which has been established by a surveyor licensed by the State.

For non-salt water Basal Wells - bottom elevation of well should not be deeper than 1/4 of aquifer thickness or,
Bottom Elevation of Well Limit = $(\text{Water Elevation} - \frac{41 \times \text{Water Level Elevation}}{4})$

Example: Estimated + 2 ft. Water Level Elev. → Bottom Elevation of Well Limit = $(2 - \frac{41 \times (2)}{4}) = -18.5 \text{ ft.}$

Note: Unless a variance is requested and approved, if the well is greater than 1/4 of the theoretical aquifer thickness, the well may have to be backfilled to bring the depth into compliance.

Solid Casing Material:

Carbon Steel: compliant with (check one or more): ANSI/AWWA C200 API Spec. 5L ASTM A53 ASTM A139

And compliant with (check one or more): ASTM A242 (or A606) Type E Type S Grade B Other

Stainless Steel: (check one): ASTM A409 (production wells) ASTM A312 (monitor wells)

ABS Plastic conforming to ASTM F480 and ASTM D1527: (check one) Schedule 40 Schedule 80

PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (check one): Schedule 40 Schedule 80 Schedule 120

Thermoset Plastic: (check one) Filament Wound Resin Pipe conforming to ASTM D2996
 Centrifugally Cast Resin Pipe conforming to ASTM D2997
 Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3517
 Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950
 PTFE Fluorocarbon Tubing conforming to ASTM D3296
 FEP Fluorocarbon Tubing conforming to ASTM D3296

Open Casing Material:

Carbon Steel: compliant with (check one or more): ANSI/AWWA C200 API Spec. 5L ASTM A53 ASTM A139

And compliant with (check one or more): ASTM A242 (or A606) Type E Type S Grade B Other

Stainless Steel: (check one): ASTM A409 (production wells) ASTM A312 (monitor wells)

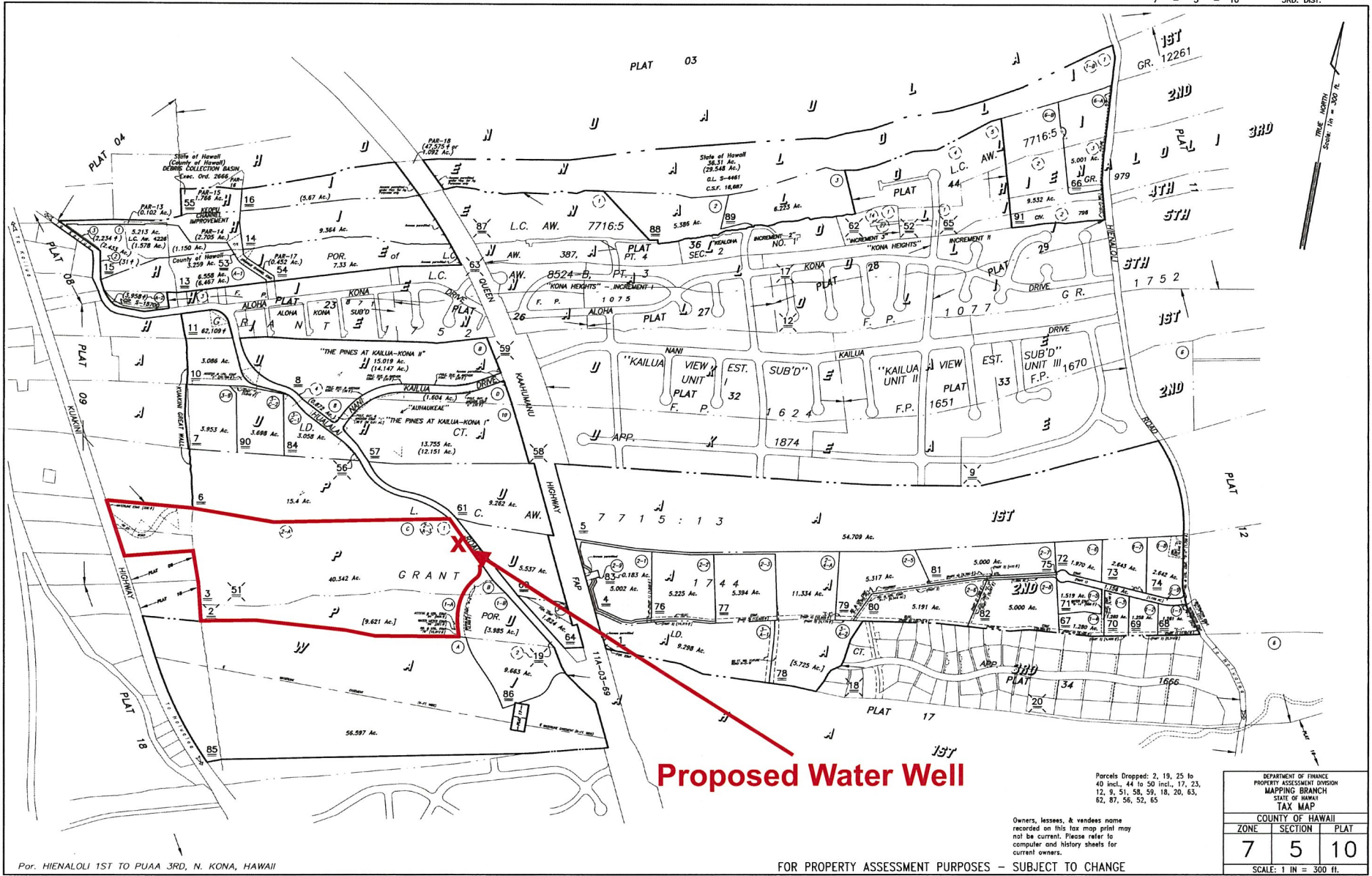
ABS Plastic conforming to ASTM F480 and ASTM D1527: (check one) Schedule 40 Schedule 80

PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (check one): Schedule 40 Schedule 80 Schedule 120

Thermoset Plastic: (check one) Filament Wound Resin Pipe conforming to ASTM D2996
 Centrifugally Cast Resin Pipe conforming to ASTM D2997
 Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3517
 Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950
 PTFE Fluorocarbon Tubing conforming to ASTM D3296
 FEP Fluorocarbon Tubing conforming to ASTM D3296

**University of the Nations Kona INC
UNK Campus 1 Well
3-7-5-010-003**

7 - 5 - 10 3RD. DIST.



Proposed Water Well

Parcels Dropped: 2, 19, 25 to 40 incl., 44 to 50 incl., 17, 23, 12, 9, 51, 58, 59, 18, 20, 63, 62, 87, 56, 52, 65

Owners, lessees, & vandeas name recorded on this tax map print may not be current. Please refer to computer and history sheets for current owners.

DEPARTMENT OF FINANCE PROPERTY ASSESSMENT DIVISION MAPPING BRANCH STATE OF HAWAII TAX MAP		
COUNTY OF HAWAII		
ZONE	SECTION	PLAT
7	5	10
SCALE: 1 IN = 300 FT.		

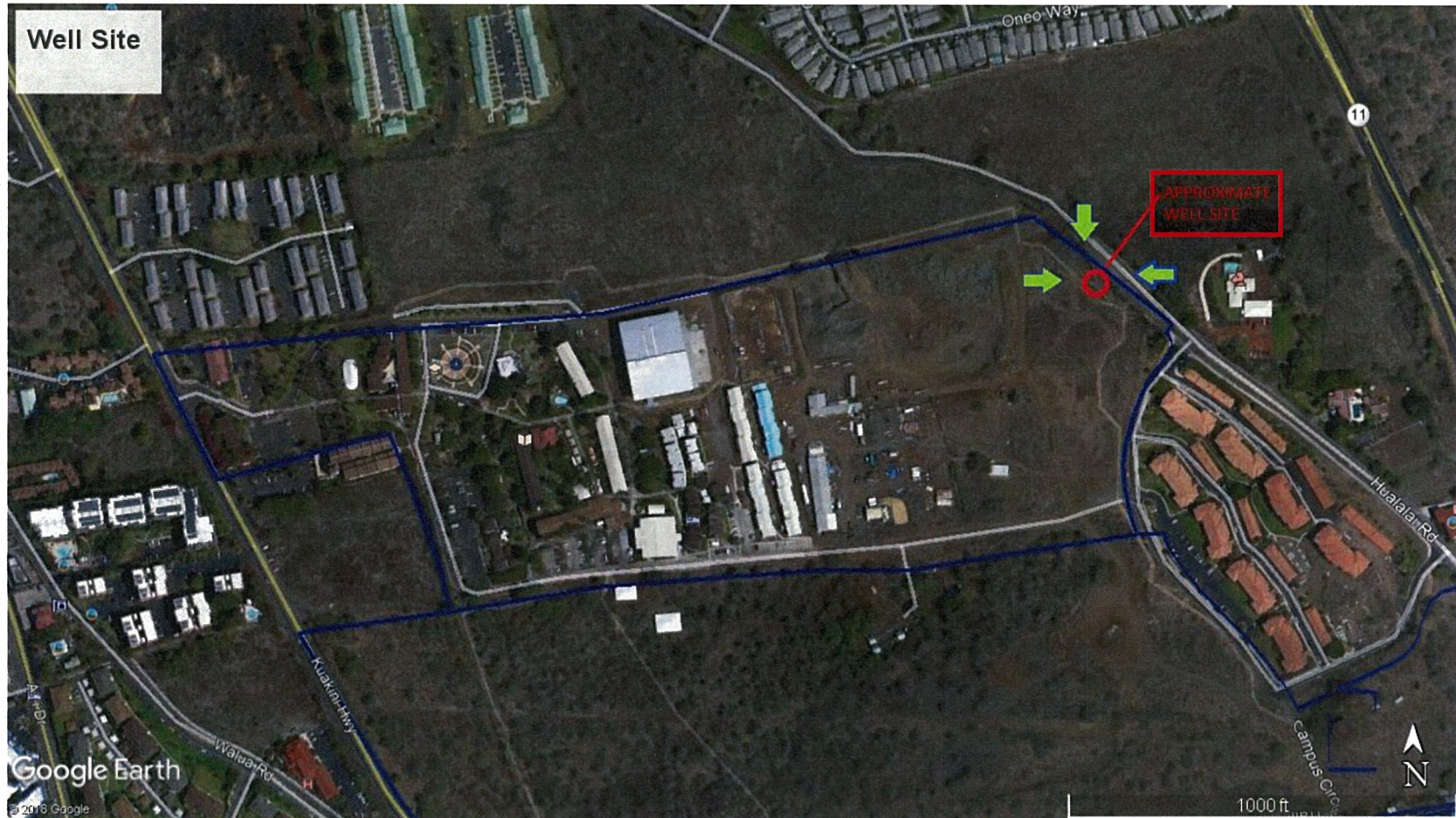
FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

PRINTED:

DWC NO. 2231 DATE: May 06, 2017 BY: EB/DB/AK SOURCE: T.A.B.

Por. HIENALOLI 1ST TO PUAU 3RD, N. KONA, HAWAII

University of the Nations Kona INC
UNK Campus 1 Well
3-7-5-010-003



Approximate location of proposed well site TMK 7-5-010:003

University of the Nations Kona INC
UNK Campus 1 Well
3-7-5-010-003



View from Hualalai Road looking west

COUNTY OF HAWAII

Real Property Tax Office



[Recent Sales in Area](#) |
 [Previous Parcel](#) |
 [Next Parcel](#) |
 [Return to Main Search Page](#) |
 [Hawaii Home](#) |
 [Real Property Home](#)

Owner and Parcel Information

Owner Name	UNIVERSITY OF THE NATIONS KONA INC Fee Owner	Today's Date	December 17, 2018
Mailing Address	75-5851 KUAKINI HWY KAILUA KONA, HI 96740-2136	Parcel Number	750100030000
Location Address	75-332 HUALALAI ROAD	Project Name	
Property Class	APARTMENT	Parcel Map	Show Parcel Map Plat (TMK) Maps
Neighborhood Code	7599-2	Land Area (acres)	40.342
Legal Information	LOT C & LOT 1-A 40.342 AC	Land Area (approximate sq ft)	1,757,298

Assessment Information [Show Historical Assessments](#)

Year	Property Class	Market Land Value	Dedicated Use Value	Assessed Land	Land Exemption	Market Building Value	Assessed Building Value	Building Exemption	Total Market Value	Total Taxable Value
2018	APARTMENT	\$ 3,801,300	\$ 0	\$ 3,801,300	\$ 3,801,300	\$ 8,332,500	\$ 8,332,500	\$ 8,332,500	\$ 12,133,800	\$ 0

Land Information

Property Class	Square Footage	Acreage	Agricultural Usage
	1,757,298	40.342	

Commercial Improvement Information

Property Class	Building Card	Building Number	Improvement Name	Identical Units	Units	Structure Type	Year Built	Effective Year Built	Gross Building Description	Sketch
	12		STORAGE & MECHANICAL ROOM	0	1	COMMERCIAL C-3 (MAS)	2014	2014		NA

Commercial Building Sections

Card	Section	Level From	Level To	Area	Perimeter	Usage	Wall Height	Exterior Wall	Frame Type
12	1	1	1	1,449	180	SUPPORT	8	WOOD	STEEL

Property Class	Building Card	Building Number	Improvement Name	Identical Units	Units	Structure Type	Year Built	Effective Year Built	Gross Building Description	Sketch
	1	0001	YOUTH WITH A MISSION	1	1	APARTMENTS - W-3	1965	1965		NA

Commercial Building Sections

Card	Section	Level From	Level To	Area	Perimeter	Usage	Wall Height	Exterior Wall	Frame Type
1	1	01	01	3,848	348	DORMITORY	8	WOOD	WOOD FRAME
1	1	02	02	3,848	348	DORMITORY	8	WOOD	WOOD FRAME

Commercial Building Other Features

Description	Measurements	Identical Units
BAL - WOOD RAIL	4 x 148	1
PRCH - UNCEIL; RAILING	8 x 148	1
BAL - WOOD RAIL	4 x 148	1
PRCH - UNCEIL; RAILING	7 x 148	1

Property Class	Building Card	Building Number	Improvement Name	Identical Units	Units	Structure Type	Year Built	Effective Year Built	Gross Building Description	Sketch
	2	0002	YOUTH WITH A MISSION	1	1	APARTMENTS - W-3	1965	1965		NA

Commercial Building Sections

Card	Section	Level From	Level To	Area	Perimeter	Usage	Wall Height	Exterior Wall	Frame Type
------	---------	------------	----------	------	-----------	-------	-------------	---------------	------------



University of the Nations

Youth With A Mission
Kona, Hawaii

January 4, 2019

Commission on Water Resources Management
P.O. Box 621
Honolulu, HI 96809

Aloha,

I give my permission to Daniel Diamond/Diamond Drilling and Pump to apply for a well construction/Pump installation permit for my lot at:

TMK: 3-7-5-010-003
75-5851 Kuakini Hwy. #433
Kailua-Kona, HI 96740

Thank you,

Paul Childers
Campus Director
University of the Nations

DAVID Y. IGE
GOVERNOR



Dr. Christina M. Kishimoto
SUPERINTENDENT

ARTHUR F. SOUZA
COMPLEX AREA
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
Ke Kula 'o 'Ehunuikaimalino
81-1041 Konawaena School Road
Kealahou, HI 96750

February 20, 2019

Leina'ala Fruen
Hui o Hanohano
73-4541 Kukui St.
Kailua-Kona Hawaii

Welina mai e Leina'ala,

As a Kumu here at 'Ehunuikaimalino, I would like to extend a heartfelt Mahalo, to you for the program that you head, within our local community, for adult Hawaiian Language Education known as Hāleo. It is through the generosity of your time and knowledge that I am able to sit the position I am in today. After committing two sessions of your class (Hāleo I & II), I had enough knowledge to teach at the Hawaiian Immersion School as a part-time teacher assistant. After completing the Hāleo III, IV, and V, I was offered full time Educational Assistant and after completing Hāleo VI & VII, I was offered a full time teaching position by the Office of Hawaiian Education (OHE). This year I am a full time science teacher. Because I don't have a degree, this is a really big step as it is hard to fill position at a Hawaiian Immersion school due to the extremely low amounts of Hawaiian Language speakers in Kona. This makes me a unqualified teacher in the state of Hawai'i but like my journey through all the steps of the Hāleo classes, starting with nothing, I will continue my education through the University of Hawaii (UH), including my State approved Teacher Education Program (SATEP), required by the DOE, to become a highly qualified Kumu. This letter is to exhibit how much your program has helped me as well as the future generations, in more than just the Hawaiian Language but in the Hawaiian Lifestyles and in Hawaiian Prospective.

I appreciate your generosity and continued support of my exploration for knowledge.

Please note: No consideration or promise for future consideration has been made or given in exchange for or in contemplation of the above donation.

Me ke ha'aha'a

A handwritten signature in blue ink that reads "Alapa'i H. Kaulia".

Alapa'i H. Kaulia

EXHIBIT 26a

DAVID Y. IGE
GOVERNOR



Dr. Christina M. Kishimoto
SUPERINTENDENT

ARTHUR F. SOUZA
COMPLEX AREA
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
Ke Kula 'o 'Ehunuikaimalino
81-1041 Konawaena School Road
Kealahou, HI 96750

April 25, 2019

Leina'ala Fruen
Hui o Hanohano
73-4541 Kukui St.
Kailua-Kona Hawai'i

Welina mai e Leina'ala,

On behalf of Ke Kula 'o 'Ehunuikaimalino, we would like to thank you for allowing our non-proficient Hawaiian Language speaking employees to enroll into Hāleo without charge. Since 2014, we have had a total of 6 employees (3- Non-Native Hawaiian) enroll into the Hāleo Hawaiian Language classes. We had also employed 2 individuals that gained Hawaiian Language skills from Hāleo Hawaiian Language classes. We look forward to perpetuating this reciprocal relationship with you and the Hāleo Hawaiian Language classes into the future.

We appreciate your generosity and continued support.

Please note: No consideration or promise for future consideration has been made or given in exchange for or in contemplation of the above donation.

Me ke ha'aha'a

A. Keli'ikanoe Mahi
Po'okumu (Principal)
Ke Kula 'o 'Ehunuikaimalino

ahp:ahk

Cc: Melanie Billings, SASA

EXHIBIT 26b

Telephone: (808) 313-3131 • Fax: (808) 323-4538
AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

CR



R-1057

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
AUG 18, 2003 01:00 PM

Doc No(s) 2003-171988



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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LAND COURT SYSTEM

881

REGULAR SYSTEM

Return by Mail () Pickup () to:

Steven S.C. Lim, Esq.
Carlsmith Ball LLP
121 Waianuenue Avenue
Hilo, HI 96720

TITLE OF DOCUMENT:

DECLARATION OF CONDITIONS APPLICABLE TO
AN AMENDMENT OF DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN

No. of Pages: 16

PARTIES TO DOCUMENT:

DECLARANT: U of N Bencorp, a Hawaii non-profit corporation, whose mailing address is 75-165
Hualalai Road, Second Floor, Kailua-Kona, HI 96740-1742

PROPERTY: The subject land is situate at Waiaha 1st, Kailua-Kona, District of North Kona,
County and State of Hawaii, Tax Map Key Nos. (3) 7-5-10:85 and 7-5-17:06

EXHIBIT 27

DECLARATION OF CONDITIONS APPLICABLE TO
AN AMENDMENT OF DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN

THIS DECLARATION OF CONDITIONS is made this 14th day of August, 2003, by U of N Bencorp, a Hawaii non-profit corporation, whose mailing address is 75-165 Hualalai Road, Second Floor, Kailua-Kona, HI 96740-1742, as Petitioner in State of Hawaii Land Use Commission Docket No. A02-737 (hereinafter called the "Declarant" or "Petitioner");

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real property situate at Waiaha 1st, Kailua-Kona, District of North Kona, County and State of Hawaii, specifically identified as Tax Map Key Nos. (3) 7-5-10:85 and 7-5-17:06, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter called the "Property" or "Reclassified Area"); and

WHEREAS, said State of Hawaii Land Use Commission (hereinafter called the "Commission"), by Findings of Fact, Conclusions of Law, and Decision and Order filed August 8, 2003, in the aforementioned Docket No. A02-737 (hereinafter called the "Decision and Order"), amended the State Land Use district boundaries and reclassified the Property from the Agricultural District to the Urban District, subject to certain conditions enumerated therein; and

WHEREAS, pursuant to Section 15-15-92 of the Commission's Rules, the conditions imposed by the Commission in said Docket No. A02-737 are to run with the land and require Declarant to record said conditions at the Bureau of Conveyances of the State of Hawaii;

NOW, THEREFORE, Declarant hereby declares that the Property described in Exhibit "A" attached hereto and described above shall be reclassified from the State Land Use Agricultural District to the State Land Use Urban District, subject to the following conditions imposed by the Commission in Docket No. A02-737:

1. Affordable Housing. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable housing requirements for the Project of the County of Hawaii. 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 Hawaii.

2. Drainage Improvements. Petitioner shall design and construct on-site and regional drainage improvements required as a result of the development of the Reclassified Area to the satisfaction of the State Department of Health, the Commission on Water Resource Management of the State Department of Land and Natural Resources, and the County of Hawaii. The Petitioner shall prepare a Drainage Study meeting with the approval of the County of Hawaii Department of Public Works. The Drainage Study shall consider regional drainage issues.

3. Public School Facilities. Petitioner shall contribute to the development, funding, and/or construction of school facilities for the Project, on a fair-share basis, as determined by and to the satisfaction of the Department of Education. Terms of the contribution shall be agreed upon in writing by the Petitioner and the Department of Education prior to seeking building permits for any portion of the Reclassified Area.

4. Water Resources. Petitioner shall provide adequate water supply facilities and improvements or equivalent funding to accommodate the Project. The water supply facilities,

improvements and/or equivalent funding shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources, and the County of Hawaii Department of Water Supply.

5. Wastewater Facilities. Petitioner shall provide adequate wastewater treatment, transmission, and disposal facilities for the Project as determined by the State Department of Health and the County of Hawaii Department of Environmental Management.

6. Archaeology.

a. Petitioner shall submit a complete inventory survey report of the Reclassified Area for the review and approval of the State Historic Preservation Division of the Department of Land and Natural Resources (“DLNR-SHPD”). Petitioner shall prepare and implement a data recovery plan, a preservation plan, a burial treatment plan, and a monitoring plan to be reviewed and approved by the DLNR-SHPD. The submittal of these plans shall be accompanied by the design plans for the Project to facilitate the development of appropriate mitigation measures.

b. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the DLNR-SHPD shall be notified immediately. The significance of these finds shall then be determined and approved by the DLNR-SHPD. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that mitigative measures have been implemented to its satisfaction. Petitioner shall also comply with all applicable statutory provisions and

administrative rules regarding inadvertent burial finds within the Reclassified Area. Any mitigation and preservation shall be monitored by the KWC as described below.

c. The proposed mitigation commitments for all identified sites with burials shall be submitted to the DLNR-SHPD for review and comment. A burial treatment plan for those sites, to include without limitation Sites 23683, 23684 and 23685, shall then be approved by DLNR-SHPD, and a certified copy of said plan shall be filed with the Commission prior to any land alteration in the vicinity of these sites. Mitigation commitments shall be monitored by the Kahu Wai'aha Committee ("KWC").

d. For all sites approved by the DLNR-SHPD to undergo archaeological data recovery, an archaeological data recovery plan (scope of work) shall be prepared by Petitioner. This plan shall be approved by the DLNR-SHPD and a certified copy of said plan shall be filed with the Commission prior to any land alteration in the vicinity of these sites. The approved plan shall be monitored by the KWC.

e. For all sites approved for preservation by the DLNR-SHPD, to include without limitation the Great Wall of Kuakini (Site 6302), the papam« or rough square game board (Site 23682), the agricultural heiau (Site 23681), and after completion of the finished grade for the area, at least one of the alignments for the ancient trails (Site 23679 or Site 23680), a preservation plan shall be prepared by Petitioner. (Burial sites are covered under the burial treatment plan.) This plan shall include buffer zones/interim protection measures during construction, and long-range preservation (including public access and interpretation, where appropriate). The plan shall include input from the KWC and relevant Hawaiian groups. The plan shall be approved by the DLNR-SHPD and a certified copy of said plan shall be filed with

the Commission prior to any land alteration in the vicinity of these sites. The approved preservation plan shall be monitored by the KWC.

f. Petitioner shall preserve the approximate alignment of at least one of the mauka-makai trail segments. Due to the difficulty of development on this site, the site grading would occur first, then the Petitioner shall reestablish a minimum of one of the two trail segments, Site 23679 (20 meter segment) or Site 23680 (ten meter segment), at a mutually agreeable site, giving allowances for building footprints, on finished grade, in consultation with the Office of Hawaiian Affairs.

7. Cultural, Historical, Customary and Traditional Rights and Resources.

a. Petitioner shall initially establish and annually provide reasonable operating and capital expenditure costs or facilities through revenues from the Project, the KWC composed of: (1) a person of Native Hawaiian ancestry who is a lineal descendent and knowledgeable regarding the type of cultural resources and practices within the Reclassified Area, as selected by the Executive Officer of the Commission from a list of three names based on a review of their resumes, and (2) a management member knowledgeable regarding the type of cultural resources and practices within the Reclassified Area, as selected by the Petitioner. The individuals making up the KWC shall operate on an equal vote basis.

b. The KWC shall be established by Petitioner no later than six months from the issuance of this Decision and Order. Upon establishment of the KWC, Petitioner shall provide a written report to the Commission, the Office of Planning, and the County of Hawaii with details as to its composition, structure, operating costs and compensation for members and staff, procedures, and plan of action.

c. The KWC shall jointly decide, on an equal vote basis, monitoring and dispute resolution decisions related to the protection of native Hawaiian practitioners' exercise of customary and traditional practices and rights within the Reclassified Area; the availability of natural and cultural resources for present and future generations; and appropriate access within the Reclassified Area to the extent that these rights are protected by PASH vs. Hawaii County Planning Commission, 79 Haw. 425 (1995), in perpetuity. In the event that the two person KWC cannot agree on a specific decision, they shall jointly select a third person to break the tie. A certified description of any action requiring selection of a third member of the KWC shall be filed with the Commission.

d. The KWC shall monitor the quality of the Petitioner's actions to provide access to and/or preserve and maintain traditional and customary native Hawaiian practices and cultural resources. The KWC shall provide recommendations consistent with this Decision and Order to the Commission with respect to maintenance and/or preservation of those traditional and customary native Hawaiian practices and cultural resources.

e. The KWC shall provide reports to the Commission on an annual basis describing items and issues covered in their deliberations and any other findings and recommendations.

f. Petitioner shall preserve and protect rights to gathering for cultural purposes, including religious practice, by providing appropriate access to burial sites and other archaeological sites within the Reclassified Area consistent with this Decision and Order. Petitioner shall adhere to prevailing and/or published protocols of the DLNR-SHPD where these sites are found to exist, as monitored by the KWC.

8. Soil Erosion and Dust Control. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health.

9. Transportation. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT) and County of Hawaii Department of Public Works (DPW). Agreement between the Petitioner and the DOT and DPW as to the level of funding and participation shall be obtained prior to the Petitioner obtaining County zoning, or prior to the Petitioner securing County building permits if County zoning is not required.

10. Traffic. Petitioner shall, prior to the Petitioner obtaining County zoning, submit a revised Traffic Impact Analysis Report for the review and approval of the DOT and DPW, which shall include an analysis of the entire development of the existing/proposed University of the Nations-Kona, Hualalai Village project, and the Cultural Center, as well as existing and potential future developments in the immediate area as required by the DOT and DPW.

11. Cultural Center. The Petitioner shall develop the Cultural Center with sensitivity to the host native Hawaiian culture, and provide for outreach and educational opportunities for the children of Hawaii. The Petitioner shall consult with the KWC and the Ka Haka 'Ula O Ke'elikelani, College of Hawaiian Language at University of Hawaii-Hilo to promote cultural sensitivity in the development of programs for the Cultural Center. Petitioner shall, prior to commencement of operations for the Cultural Center, submit a status report to the Commission for its approval on the Petitioner's traffic mitigation efforts for development of the Reclassified

Area. If, for any reason, the Cultural Center does not commence operations by January 1, 2008, the Petitioner shall return to the Commission for a hearing to review compliance with the requirements of this Condition.

12. Ka Haka 'Ula O Ke'elikolani, College of Hawaiian Language at University of Hawaii-Hilo. Petitioner shall cooperate with the College of Hawaiian Language at University of Hawaii-Hilo in promoting the perpetuation of the Hawaiian language by providing distance learning opportunities for teaching the native Hawaiian language, as well as cooperating in activities that promote Hawaiian cultural authenticity.

13. Civil Defense. Petitioner shall fund and construct adequate civil defense measures serving the Reclassified Area as determined by the State of Hawaii Department of Defense-Office of Civil Defense, and the County of Hawaii Civil Defense Agency.

14. Solid Waste. Petitioner shall develop a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes. Petitioner's Solid Waste Management Plan shall be approved by the County of Hawaii Department of Environmental Management, Solid Waste Division. The Plan shall address and encourage an awareness of the need to divert the maximum amount of waste material caused by developments away from the County's landfills.

15. Compliance with Representations to the Commission. 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 own expense, reversion of the Reclassified Area to its former classification, a change to a more appropriate classification, or any other legal remedies.

16. Notice of Change to Ownership Interests. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

17. Annual Reports. Petitioner shall timely provide without prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawaii Planning Department in connection with the status of the development proposed for the Reclassified Area, and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval of the Petition.

18. Release of Conditions Imposed by the Commission. Petitioner may seek from the Commission full or partial release of the conditions provided herein as to all or any portion of the Reclassified Area upon evidence acceptable to the Commission of satisfaction of these conditions.

19. Recording of Conditions. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with Bureau of Conveyances and/or the Assistant Registrar of the Land Court of State of Hawaii, as applicable, a statement that the Reclassified Area is subject to conditions imposed by the Commission in the reclassification of the Reclassified Area, and (b) file a copy of such recorded statement with the Commission. Petitioner shall record the conditions imposed herein by the

Commission with the Bureau of Conveyances and/or Assistant Registrar of the Land Court of the State of Hawaii, as applicable, pursuant to Section 15-15-92, Hawaii Administrative Rules.

The above-stated conditions contained in this Declaration, set forth in Paragraphs enumerated 1 through 19, shall operate as covenants running with the land and shall be binding upon Declarant and each and every subsequent owner, lessee, sublessee, transferee, grantee or assignee.

The limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to the Property included in this Declaration until such time that the Commission removes or releases the conditions relating to the subject Property established through its Decision and Order filed August 8, 2003 in Docket No. A02-737.

The term "Petitioner", as and when used herein, shall mean and include the Declarant herein and the terms "Declarant" and "Petitioner", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context hereof.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on the date first written above.

U OF N BENCORP,
a Hawaii non-profit corporation

By: Mark R. Spengler
Mark R. Spengler
Its President and CEO

"Declarant"

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 14th day of August, 2003, before me personally appeared MARK R. SPENGLER, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed same as his free act and deed and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in said capacity.

Willetha T. Archer
Name: Willetha T. Archer
Notary Public, State of Hawaii
My commission expires: 5-31-07

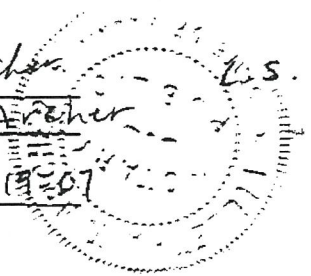


EXHIBIT "A"

All of that certain parcel of land situated on the easterly side of Kuakini Highway, Project FAP No. SS-229(1) and on the westerly side of Lot B and Hualalai Road (Kailua-Keauhou Middle Road), at Waiaha 1st and 2nd, North Kona, Hawaii, Hawaii, being a portion of Lot B, a portion of Royal Patent 1930 to Asa Thurston on a portion of Land Commission Award 387, Part 4, Section 2, No. 3 to American Board of Commissioners for Foreign Missions and a portion of Grant 5327 to Samuel Liftee, and more particularly described as follows:

Beginning at the northerly corner of this parcel of land at the Great Wall of Kuakini, being the southeast corner of Land Court Application 1659, Map 4, Lot 7, (TMK: 7-5-18:28), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA" (North Meridian) being 4,301.12 feet south and 3,245.12 feet east and running by azimuths measured clockwise from true South:

Thence, along Lot A, along Lot 1 of Land Court Application 1666-Map 1 for the following six (6) courses:

1. 258° 38' 49" 419.30 feet to a point;
2. 265° 41' 49" 603.40 feet to a point;
3. 269° 49' 49" 229.50 feet to a point;
4. 261° 25' 49" 329.20 feet to a point;
5. 258° 35' 49" 269.50 feet to a point;
6. 265° 37' 49" 77.10 feet to a point;

Thence, along Lot B, along a curve to the left having a radius of 500.00 feet, the chord azimuth and distance being:

7. 325° 39' 31" 184.00 feet to a point;
8. 315° 03' 20" 145.67 feet along Lot B to a point;

Thence, along Lot B, along a curve to the right having a radius of 900.00 feet, the chord azimuth and distance being:

9. 322° 59' 20" 248.44 feet to a point;

- 10. 240° 55' 18" 92.44 feet along Lot B to a point;
- 11. 179° 04' 30" 10.85 feet along Lot B to a point;
- 12. 269° 04' 30" 20.28 feet along Lot B to a point;
- 13. 240° 55' 18" 144.12 feet along Lot B to a point;

Thence, along Lot B, along a curve to the left having a radius of 160.00 feet, the chord azimuth and distance being:

- 14. 217° 00' 44" 129.69 feet to a point;
- 15. 193° 06' 10" 33.04 feet to a point;

Thence, along Lot B, along a curve to the right having a radius of 100.00 feet, the chord azimuth and distance being:

- 16. 215° 47' 40" 77.15 feet to a point;

Thence, along Lot B, along a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being:

- 17. 271° 35' 47" 54.62 feet to a point;

Thence, along the westerly side of Hualalai Road (Queen Kaahumanu Highway Extension) Hawaii Belt Road for the following five (5) courses;

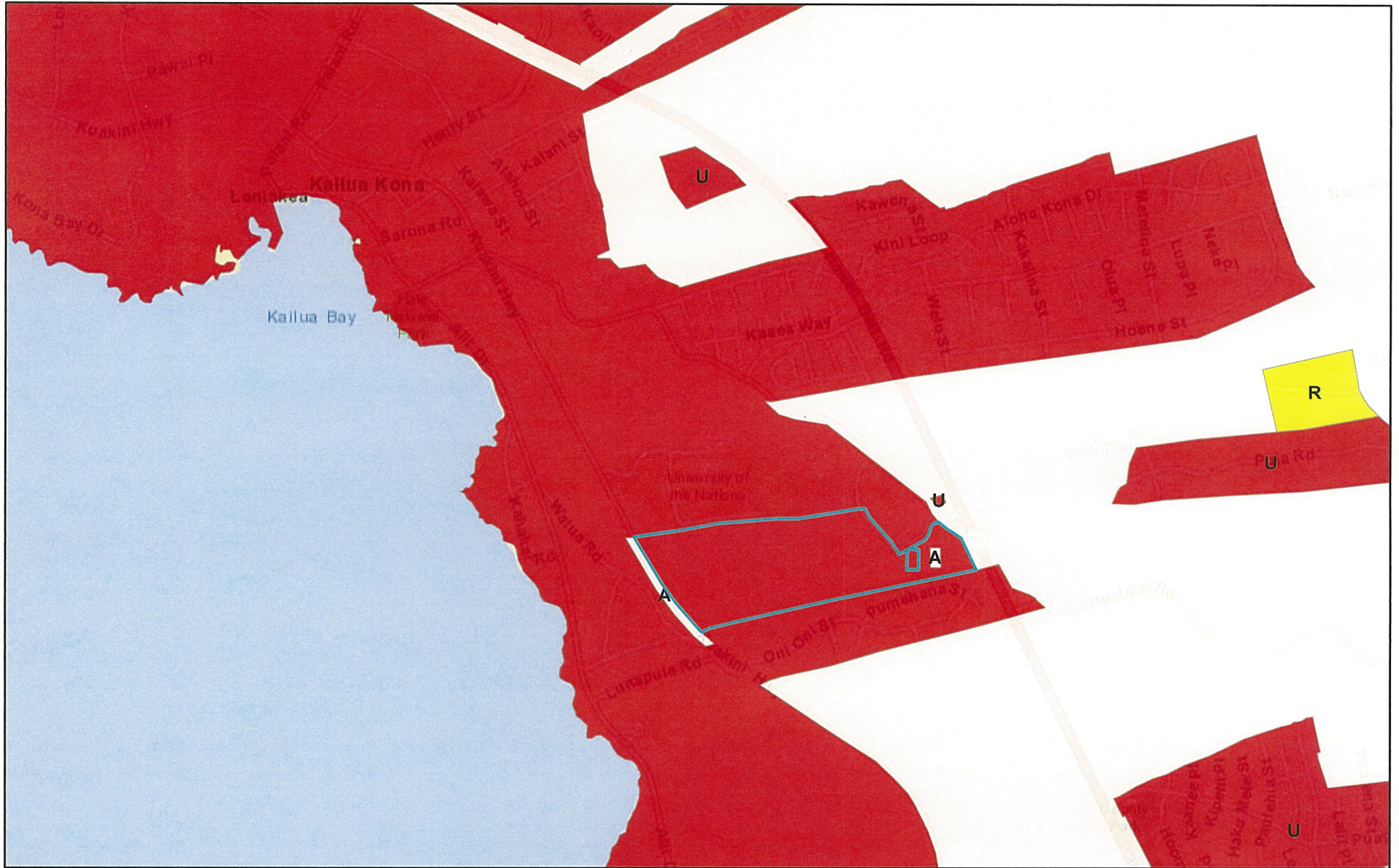
- 18. 304° 42' 24" 138.61 feet to a point;
- 19. 302° 00' 00" 134.71 feet to a point;
- 20. 311° 15' 00" 21.71 feet to a point;
- 21. 334° 11' 04" 337.35 feet to a point;
- 22. 71° 47' 48" 37.57 feet to a point;

Thence, along the northerly side of Hillcrest Subdivision for the following eight (8) courses:

- | | | | | | |
|---|------|-----|-------|---------------|---|
| 23. | 76° | 50' | 39" | 150.56 feet | along Lots 29 and 26 of Kona Hillcrest
Subdivision to a point; |
| 24. | 75° | 03' | 00" | 404.68 feet | along Lots 26, 24, 23, 22, 21 & 20 to a point; |
| 25. | 71° | 43' | 30" | 124.57 feet | along Lots 20 & 19 to a point; |
| 26. | 71° | 05' | 30" | 389.65 feet | along Lots 18 through 14 to a point; |
| 27. | 74° | 18' | 00" | 108.90 feet | along Lots 14 & 13 to a point; |
| 28. | 73° | 28' | 00" | 81.34 feet | along Lots 13, 12, & 9 to a point; |
| 29. | 74° | 29' | 00" | 176.29 feet | along Lots 9 & 8 to a point; |
| 30. | 75° | 12' | 00" | 174.88 feet | along Lots 7, 6 & 5 to a point; |
| 31. | 74° | 32' | 00" | 285.07 feet | along Lots 5, 4, 3 & 2 to a point; |
| 32. | 70° | 05' | 00" | 39.34 feet | along County of Hawaii, Lot 1 to a point; |
| 33. | 74° | 38' | 30" | 147.50 feet | along County of Hawaii, Lot 1 to a point; |
| 34. | 76° | 51' | 00" | 65.76 feet | along County of Hawaii, Lot 1 to a point; |
| Thence, along Parcel 25 (TMK: 7-5-18:25) for the
following four (4) courses: | | | | | |
| 35. | 76° | 51' | 00" | 100.00 feet | to a point; |
| 36. | 76° | 01' | 30" | 141.17 feet | to a point; |
| 37. | 72° | 30' | 00" | 240.00 feet | to a point; |
| 38. | 71° | 31' | 00" | 131.08 feet | to a point; |
| 39. | 141° | 47' | 47.4" | 1,044.47 feet | to a point; |
| 40. | 151° | 59' | 00" | 321.64 feet | along the easterly side of Kuakini Highway to a
point; |

41. 265° 01' 00" 424.15 feet along Lot 7, Land Court Application 1659, Map 4 to the point of beginning and containing a gross area of 62.409 acres, more or less, and a net area of 61.950 acres excluding the two (2) Water Tank Sites (TMK: 7-5-17:13 and 15), as per survey of Donald C. McIntosh, L.P.L.S. #4968, dated November 18, 2002.

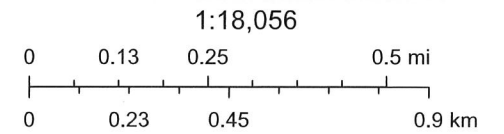
END OF EXHIBIT "A"



May 2, 2019

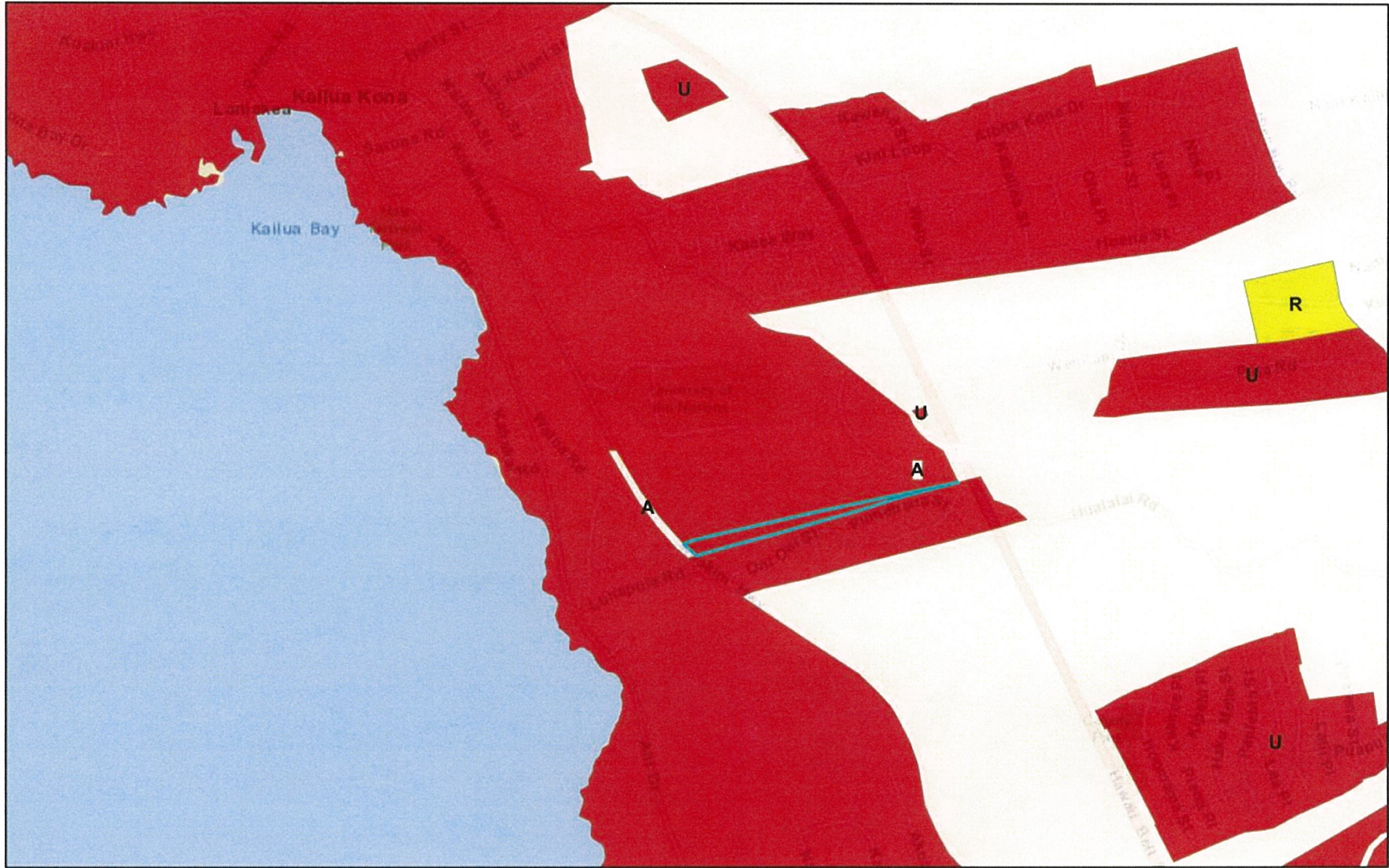
State Land Use Districts Rural Urban
 Agricultural

EXHIBIT 28a



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCAN.

TMK (3) 7-5-017:006



May 3, 2019

State Land Use Districts Rural Urban

Agricultural

1:18,056

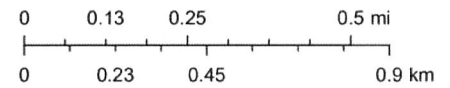


EXHIBIT 28b

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan,

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
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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a filed copy of the 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 Hawai'i Land Use Commission on March 29, 2019, 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:

MICHAEL YEE, DIRECTOR Department of Planning, County of Hawai'i Aupuni Center 101 Pauahi Street, Suite 3 Hilo, HI 96720	U.S. MAIL, POSTAGE PREPAID
JOSEPH K. KAMELAMELA, ESQ. Corporation Counsel Department of the Corporation Counsel County of Hawai'i Hilo Lagoon Centre, 101 Aupuni Street, Unit 325 Hilo, HI 96720 Attorneys for County of Hawai'i Department of Planning	U.S. MAIL, POSTAGE PREPAID

Mary Alice Evans Director Office of Planning, State of Hawai'i 235 S. Beretania Street, Suite 600 Honolulu, HI 96813	HAND DELIVERY
DAWN TAKEUCHI APUNA, ESQ. Deputy Attorney General Department of the Attorney General, State of Hawai'i 425 Queen Street Honolulu, HI 96813 Attorneys for Office of Planning, State of Hawai'i	HAND DELIVERY

DATED: Honolulu, Hawai'i, May 3, 2019.



STEVEN S.C. LIM
KATHERINE A. GARSON
DEREK B. SIMON

Attorneys for
UNIVERSITY OF THE NATIONS, KONA, INC.