

June 19, 2020

Aloha Lorene,

Below is OHA's formal response. Please confirm receipt at your earliest convenience.

The Office of Hawaiian Affairs (OHA) is in receipt of a "Motion to Amend Findings of Fact, Conclusions of Law, and Decision & Order (D&O)" (AO2-737) to the Land Use Commission (LUC) for a 62 acre parcel of land in North Kona, TMK (3) 7-5-010:85 and 7-5-017:006. In 2003, the parcel was re-zoned from agricultural to urban pursuant to 19 conditions established in a D&O and originally intended for 400 residential condominiums, a cultural center, and educational facilities. As landownership has changed to the University of the Nations, Kona Inc., (UNK) in 2018 and the scope of work has been modified to include only educational related facilities, UNK is seeking amendments to the original D&O. The current scope of work is a 30-year phased approach to include construction of: dormitories for students and staff; elementary, middle, and high schools; student resource center; athletic complex; storage and maintenance facilities; discovery center; chapel; agricultural area; and, supportive facilities. For entry and use of the parcel, proposed work will also necessitate modifications to Kuakini Highway (addition of refuge lane, re-striping, lane widening, new light signals) and the intersections of Queen Ka'ahumanu Highway and Hualai Road, and Queen Ka'ahumanu Highway and Kuakini Highway. A Hawai'i Revised Statutes (HRS) 343 (environmental review) exemption is being proposed for these portions of the project requiring modifications to the State and County roads.

OHA offers the follow comments related to proposed amendments for Condition 6 and the HRS 343 exemption being sought.

Amendments for Condition #6

UNK is seeking to remove archaeological mitigation commitments in Condition #6 as they indicate that these tasks (i.e., Archaeological inventory survey, Preservation Plan, Data Recovery, burial treatment plan) were previously completed. Rather than simply deleting these commitments, OHA believes the D&O should be re-evaluated by the LUC in consultation with the State Historic Preservation Division, Hawai'i Island Burial Council and OHA to ensure existing mitigations for preserved archaeological sites (i.e., SIHP# 50-10-28-23681 and -6032) and protected burials (SIHP#s 50-10-28-23683, 23684, and 23685) are adequate based on the modified scope of work.

An onsite archaeological field inspection should be conducted to assess the current condition of archaeological sites and burials and verify the accuracy of their plotted locations as it has been many years since the completion of the archaeological inventory survey work and burial treatment plan in 2003.

Given that preservation sites and burials are on property, OHA believes archaeological monitoring is warranted. In review of the current language for condition #6 and proposed amendments, there is already a requirement for an archaeological monitoring plan (AMP) that is set to remain. OHA further recommends strengthening the language in condition #6 to require archaeological monitoring for all ground disturbing work pursuant to that AMP and to ensure appropriate protections are in place.

HRS 343 Exemption

For UNK's proposed improvements, the document indicates the possibility of an environmental review being required for modifications needed on State and County roads to facilitate efficient access onto the parcel. Typically, use of State lands will trigger HRS 343 review unless it is considered an exempted action. The Hawai'i Department of Transportation (HDOT) does in fact exempt many routine maintenance actions that include, but are not limited to, re-striping, widening, and traffic signal installations. UNK thus believes that their proposed modifications to State and County roads would be exempt even if HRS 343 is triggered. Exemption Class Numbers 1B and 3 from HDOT's exemption list are specifically cited as justification for the exemption.

However, OHA notes that while individual isolated actions are often reasonably exempted, the Hawai'i Administrative Rules (HAR) cautions against a cumulative succession of exemptions for the same place. HAR 11-200-8(b) states that "all exemptions under the classes in this section [HAR 11-200] are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant..." As such, the cumulative effect of multiple exempted actions may in fact prove to be significant. A 2020 Mobility Assessment Report (contracted by UNK) described in the A02-37 document even admits that there could be impacts to traffic as a result of proposed improvements.

As there is some uncertainty on the applicability of HRS 343 and given that HAR 11-200-8(b) limits cumulative successive exemptions in one place, OHA recommends that UNK seek a formal opinion from the Office of Environmental Quality Control (OEQC) and HDOT on the applicability of HRS 343 for their project. Alternatively, OHA would support a decision to just voluntarily conduct an environmental review in this case. The HRS 343 process is meant to be inclusive and allows for public participation. As such, the opportunity to seek comments on the proposed action would allow the public (inclusive of OHA beneficiaries) to have a voice and opportunity to point out concerns that perhaps the applicant has not considered. However, if UNK insists on exempting the action, we ask that UNK seek out a formal opinion from OEQC and HDOT on the matter.

Closing Remarks

OHA looks forward to consulting further on this matter and hopes our recommendations are taken into consideration. Should you have any questions, please contact our Lead Compliance Specialist, Kamakana C. Ferreira, at (808) 594-0227, or by email at kamakanaf@oha.org.

Mahalo,

Kamakana C. Ferreira, M.A.

Lead Compliance Specialist

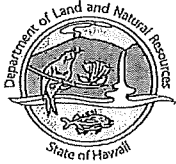
Office of Hawaiian Affairs

560 N. Nimitz Hwy

Honolulu, Hi. 96817

(808)594-0227

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 16, 2020

State of Hawaii
DBEDT - Office of Planning
Land Use Division
Attention: Ms. Lorene Maki, Planner
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

via email: lorene.k.maki@hawaii.gov

Dear Ms. Maki:

SUBJECT: University of the Nations, Kona, Inc.'s Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order; Land Use Commission Docket No. A02-737 located at North Kona, Island of Hawaii; TMK: (3) 7-5-010:085 and (3) 7-5-017:006

Thank you for the opportunity to review and comment on the subject matter. In addition to our previous comments dated June 12, 2020, enclosed are comments from the Division of Forestry & Wildlife on the subject matter. Should you have any questions, please feel free to contact Darlene Nakamura at (808) 587-0417 or email: darlene.k.nakamura@hawaii.gov. Thank you.

Sincerely,

Russell Tsuji

Russell Y. Tsuji
Land Administrator

Enclosure
cc: Central Files

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

Log No. 2671

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 3, 2020

MEMORANDUM

TO: DLNR Agencies:

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division (DLNR.ENGR@hawaii.gov)
- Div. of Forestry & Wildlife (rubyrosa.r.terrao@hawaii.gov)
- Div. of State Parks
- Commission on Water Resource Management (DLNR.CWRM@hawaii.gov)
- Office of Conservation & Coastal Lands
- Land Division – Hawaii District (gordon.c.heit@hawaii.gov)
- Historic Preservation (DLNR.Intake.SHPD@hawaii.gov)

FROM: Russell Y. Tsuji, Land Administrator *Russell Tsuji*

SUBJECT: University of the Nations, Kona, Inc.'s Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order; Land Use Commission Docket No. A02-737

LOCATION: North Kona, Island of Hawaii; TMK: (3) 7-5-010:085 and (3) 7-5-017:006

APPLICANT: State Office of Planning

Transmitted for your review and comment is information on the above-referenced subject matter. Please submit comments by June 10, 2020.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417 or by email at darlene.k.nakamura@hawaii.gov. Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: _____

Print Name: **DAVID G. SMITH, Administrator**

Date: Jun 15, 2020

Attachments
cc: Central Files

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE INLAND RESERVE COMMISSION
LAND
STATEPARKS

June 14, 2020

Log no. 2671

MEMORANDUM

TO: RUSSELL Y. TSUJI, Administrator
Land Division

FROM: DAVID G. SMITH, Administrator

SUBJECT: Division of Forestry and Wildlife Comments for University of the Nations, Kona, Inc.'s Motion to Amend Findings of Fact, Conclusion of Law, and Decision and Order to Amend Agricultural Land Use District to the Urban Land Use District.

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your inquiry regarding review of the motion to amend the agricultural land use district to the urban land use district for U of N Bencorp in North Kona on Hawai'i Island, Hawai'i, TMKs: (3) 7-5-010:85 and (3) 7-5-017:006. The new development proposal calls for the expansion of the school, including classrooms, dormitories, storage and maintenance facilities, an athletic complex, chapel, agricultural area and other accessory uses on the 62-acre petition area.

The State listed Hawaiian Hawk or 'Io (*Buteo solitarius*) is known to occur in the project vicinity. DOFAW recommends surveying the area to ensure no Hawaiian Hawk nests are present if trees are to be cut. 'Io nests might be present during the breeding season from March to September.

We note that artificial lighting can adversely impact seabirds that may pass through the area at night by causing disorientation. We appreciate the measures outlined in the permit application to minimize night time lighting impacts to seabirds such as fully shielding lights. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season from September 15 through December 15. This is the period when young seabirds take their maiden voyage to the open sea. For illustrations and guidance related to seabird-friendly light styles that also protect the dark, starry skies of Hawai'i please visit:
<https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

The State listed Blackburn's Sphinx Moth (BSM; *Manduca blackburni*) has a historic range that encompasses the project area. Larvae of BSM feed on many nonnative hostplants that include tree tobacco (*Nicotiana glauca*) which grows in disturbed soil. We recommend contacting our Hawai'i Island DOFAW office at (808) 974-4221 for further information about where BSM may be present and whether a vegetation survey should be conducted to determine the presence of plants preferred by BSM. To avoid harm to BSM, DOFAW recommends removing plants less than one meter in height or during the dry time of the year. If you remove tree tobacco over one meter in height or

disturb the ground around or within several meters of these plants they must be checked thoroughly for the presence of eggs and larvae.

The State listed Hawaiian Hoary Bat or 'Ōpe'ape'a (*Lasiurus cinereus semotus*) has the potential to occur in the vicinity of the project area and may roost in nearby trees. If any site clearing is required this should be timed to avoid disturbance during the bat birthing and pup rearing season (June 1 through September 15). If this cannot be avoided, woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed without consulting DOFAW.

DOFAW is concerned about attracting vulnerable birds to areas that may host nonnative predators such as cats, rodents, and mongoose. This land development is likely to increase human activity in the area and may generate more predator attractants such as trash. We recommend taking action to minimize predator presence; remove cats, place bait stations for rodents and mongoose, and provide covered trash receptacles.

DOFAW recommends minimizing the movement of plant or soil material between worksites, such as in fill. Soil and plant material may contain invasive fungal pathogens (e.g. Rapid 'Ōhi'a Death), vertebrate and invertebrate pests (e.g. Little Fire Ants, Coconut Rhinoceros Beetles), or invasive plant parts that could harm our native species and ecosystems. We recommend consulting the Big Island Invasive Species Committee at (808) 933-3340 in planning, design, and construction of the project to learn of any high-risk invasive species in the area and ways to mitigate spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species. Gear that may contain soil, such as work boots and vehicles, should be thoroughly cleaned with water and sprayed with 70% alcohol solution to prevent the spread of Rapid 'Ōhi'a Death and other harmful fungal pathogens.

DOFAW recommends using native plant species for landscaping that are appropriate for the area (i.e. climate conditions are suitable for the plants to thrive, historically occurred there, etc.). Please do not plant invasive species. DOFAW recommends consulting the Hawai'i-Pacific Weed Risk Assessment website to determine the potential invasiveness of plants proposed for use in the project (<https://sites.google.com/site/weedriskassessment/home>). We recommend that you refer to www.plantpono.org for guidance on selection and evaluation for landscaping plants.

We appreciate your efforts to work with our office for the conservation of our native species. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Lauren Taylor, Protected Species Habitat Conservation Planning Coordinator at (808) 587-0010 or lauren.taylor@hawaii.gov.

Sincerely,



DAVID G. SMITH
Administrator

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097


JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

IN REPLY REFER TO:
DIR 0367
STP 8.2892

April 27, 2020

TO: MARY ALICE EVANS
DIRECTOR, OFFICE OF PLANNING

FROM: JADE T. BUTAY 
DIRECTOR OF TRANSPORTATION

SUBJECT: MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER
LAND USE COMMISSION DOCKET NO. A02-737, UNIVERSITY OF THE
NATIONS, BENCORP
KAILUA-KONA, NORTH KONA, HAWAII
TMK: (3) 7-5-010:085 AND 7-5-017:006

The Hawaii Department of Transportation (HDOT) understands that the University of the Nations Bencorp (U of N), Petitioner, has revised the original master plan and development proposal for their 62-acre petition area, that was reclassified from State Agricultural District to Urban District in 2003. The 2003 master plan focused on revenue generating land uses including, Hualalai Village condominiums and a commercial tourist destination, Pacific Islands Cultural Center, neither of which are included in the Draft 2020 Master Plan Update, Environmental Planning Report (EPR), March 2020. The current vision is an expansion of the existing U of N educational campus (TMK: (3) 7-5-010:086) into the petition area to include K-12 education, Discipleship Learning Center; dormitories; an athletic complex; and a vocational training center. The "development area" (used herein to refer to the three parcels) is located approximately one mile south of Kailua-Kona on the Island of Hawaii.

The existing Hualalai Village was constructed as Phase I of a 400-unit condominium development, proposed in 2003. The remaining phases (297 units) were proposed in the petition area; however, are no longer being proposed. Hualalai Village Road is not accessible to either the existing campus or the petition area. There is no access to the development area from the east. The only roadway in the near vicinity of the development area under State jurisdiction is Queen Kaahumanu Highway (State Route 11).

The development is proposed in three phases: Phase 1 (2030), Phase 2 (2040) and Phase 3 (beyond 2040). Phase 1 would complete connections to the existing and both campuses would share the existing campus driveway on Kuakini Highway. A second access point is

proposed at new unsignalized intersection with Hualalai Road. On completion of Phase 2, a second U of N driveway on Kuakini Highway, south of the existing campus driveway, would provide primary access to the petition area. A peripheral Campus Road would be constructed during Phases 2 and 3.

HDOT reviewed historical documents and the documents and exhibits provided, including the Mobility Analysis Report (MAR), dated February 18, 2020, and has the following comments relevant to State roadways:

1. Although the proposed land use, trips generated and access points to the petition area have changed in the interim, the 2003 Decision and Order conditions, as follows, remain relevant to the 2020 Master Plan:

Condition 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 HDOT and County of Hawaii Department of Public Works (DPW). Agreement between the Petitioner and the HDOT 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.

Condition 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 HDOT 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 HDOT and DPW.

2. No changes to the language of these conditions is proposed by the Petitioner, however, reference to Hualalai Village (Phases 2 through 4) and the Cultural Center in Condition 10 could be updated to reflect the new development plan.
3. Although the vision is for an integrated U of N campus. The EPR, is focused on the petition area. We recommend the EPR reflect the holistic approach for a single integrated Kona campus and address the environmental impacts of the improvements proposed for the entire development area, as stated in Condition 10 for the traffic study.
4. The MAR appears to be consistent with Condition 10 and addresses potential impacts of the traffic generated by the entire development area (three parcels), not just the petition area. However, the estimates of students and staff living on-campus versus off-campus for 2030 appears to differ between the EPR (Page 2-15) and the MAR (Table 5-1). Clarify the population/enrollment assumptions for the phases. For example, Phase I appears to fully build-out the Discipleship Learning Center and partially build-out the

lower school campus. Will all enrollment in 2030 be adult or will enrollment include lower school children that require drop-off and pick-up during peak traffic hours?

5. Identify and discuss existing and proposed emergency access roads/gates (e.g., from Kona Hillcrest subdivision), if any.
6. Clarify the need for two parallel internal east-west roads (MAR, Page 6), one of which would extend east to a new U of N driveway on Hualalai Road and the other would extend to Hualalai Village Road, which intersects with Hualalai Road. The EPR does not include this discussion. The Preliminary Infrastructure Assessment, included in the EPR, includes a figure (Attachment 2) that identifies the central "Spine" Road Phase 1, but no further details are shown.
7. Edit EPR/MAR graphics to clearly identify all existing and proposed access driveways and primary interior circulation routes to these driveways for the entire development area.
8. The intersections of Queen Kaahumanu Highway and Hualalai Road; and Queen Kaahumanu Highway and Kuakini Highway would operate at the same unacceptable LOS (LOS E or F) during both a.m. and p.m. peak traffic hours under the 2030 Phase 1 horizon year with or without project. Propose recommendation measures to mitigate traffic impacts related to safety, congestion, and capacity. We recommend meeting with the HDOT Hawaii District Engineer to review the impact analysis, recommendations and pro-rata share of regional HDOT improvements.
9. Minor edit: MAR Page 29, Section 5.1, second paragraph, first sentence, the numbers in parentheses for the projected and existing numbers of students, faculty, and staff living off campus appear to be switched. Revise accordingly.
10. The three phases of implementation span 20 years or more. An updated MAR shall be prepared before county zoning (Condition 9), prior to executing each phase, and when there is a significant change in the proposed land use, trip generation, or roadway network.
11. We understand there would be special events hosted on campus that would potentially cause significant impacts on traffic conditions and safety. We recommend the Petitioner commit to implementing a transportation management program, including transportation demand management elements, as recommended in the MAR.
12. We appreciate the consideration of impacts to multimodal transportation. The MAR includes recommendations that are not directly relevant to HDOT roadways and we defer to others for comment; however, we recommend the 2020 Master Plan include a conceptual plan identifying opportunities for internal campus paths to connect with the existing and proposed public roadway routes in the vicinity, as well as adjacent

MARY ALICE EVANS, DIRECTOR
April 27, 2020
Page 4

STP 8.2892

residential communities. The demand for bicycle and pedestrian routes will increase with each phase of development.

If there are any questions, please contact Mr. Blayne Nikaido of the HDOT Statewide Transportation Planning Office at telephone number (808) 831-7979, or via email at blayne.h.nikaido@hawaii.gov.