

ORIGINAL

LAND USE COMMISSION
STATE OF HAWAII

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OFFICE OF PLANNING
Leiopapa a Kamehameha
235 South Beretania St., 6th Fl.
Honolulu, Hawaii 96813
Telephone: (808) 587-2846
Facsimile: (808) 587-2824

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A02-737
)	
U OF N BENCORP)	OFFICE OF PLANNING'S
)	STATEMENT OF POSITION IN
To Amend the Agricultural Land Use)	UNIVERSITY OF THE NATIONS,
District to the Urban Land Use District)	KONA, INC.S MOTION TO AMEND
for Approximately 62 Acres, Tax Map)	FINDINGS OF FACT,
Key No.: (3) 7-5-010: 085 and 7-5-017:)	CONCLUSIONS OF LAW,
006 situated at Waiaha, North Kona,)	AND DECISION AND ORDER;
County and State of Hawaii)	CERTIFICATE OF SERVICE

OFFICE OF PLANNING'S STATEMENT OF POSITION IN UNIVERSITY OF THE NATIONS, KONA, INC.S MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

The Office of Planning ("OP") submits this Statement of Position in support of Petitioner's Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order, subject to certain conditions. The Statement of Position summarizes OP's position based on information currently available, including the representations of U of N Bencorp ("Petitioner"), documents filed in these proceedings, coordination with the Petitioner and affected government agencies, and the statutes and regulations applicable to these proceedings. Any additional information that becomes available to us may be reflected in OP's written testimony.

PETITION OVERVIEW

General Information

The Petitioner requests that the Land Use Commission ("Commission" or "LUC") approve a revised project and modify and/or delete some of the original conditions within the original Petition Area of approximately 62 acres at Waiaha, North Kona, Island of Hawaii.

The Petitioner is the fee owner of the parcels, Tax Map Key No. (3) 7-5-010: 085 and 7-5-017: 006, being considered under this Motion.

Original Proposal of the Petition Area

Petitioner's original proposal was comprised of the Hualalai Village condominiums, the Cultural Center, and the Education Facility. The proposed condominiums were located on approximately 31 acres of the Petition Area. The Petitioner had proposed to construct about 297 units with a recreation center and exercise facilities.

The Cultural Center, proposed to be situated on approximately 26.5 acres of the Petition Area, was to be a visitor destination, presenting a history of the native Hawaiian culture and its interaction with Christianity. The Cultural Center was comprised of an outdoor performance area, enclosed auditorium, outdoor water feature, educational living museum complex, restaurant and shops. Parking areas that would accommodate 15 buses and up to 840 vehicles were also proposed. Petitioner was proposing to make these facilities available for community use.

Lastly, Petitioner had proposed to expand the existing educational facilities by 5.0 acres to be an extension of the existing University. According to the original Findings of Fact, Conclusions of Law and Decision and Order ("D&O"), the Village condominiums were to have been completed by about 2007. Subsequent to the construction of the condominiums, Petitioner was to begin construction of the Cultural Center. Construction for the 5-acre Educational Facility was scheduled to begin in 2005/2006.

Petitioner's Revised Project

Petitioner now proposes to use the entire 62-acre Petition Area to expand the existing educational facilities. According to the Motion to Amend Findings of Fact, Conclusions of

Law, and Decision and Order (“Motion to Amend”) dated March 23, 2020, Exhibit 2 is a Master Plan that details the revised proposal. The Petition Area will include the following facilities in three (3) phases, with each phase projected to be completed in 10-years for a total of 30 years for completion of the revised project. The project details are listed in Petitioner’s Exhibit 3, University of the Nations, Kona 2020 Master Plan Update, Environmental Planning Report.

Phase 1-Within five to ten years. A. Discipleship Learning Center with Chapel, Instruction building, student resident dormitory buildings, and parking areas. B. Athletic/Training Complex with Gym, practice field, and parking. C. Lower School improvements with instruction building, playground and parking area. D. Archaeological Preservation sites, including restoration of burial sites, Kuakini Wall dismantling and restoration plan, installation of rock walls, permanent preservation buffer areas, etc. E. Agricultural Exhibit areas, Maintenance and storage facilities, roadways and pathways, open space and landscaping areas. The Motion to Amend also indicates that the major roadway/utility corridor, known as the Spine Road, will be completed in its entirety in the first 10 years. This Spine Road located on the north side boundary edge of the Petition Area and is proposed to be the main access/circulation roadway improvement servicing the entire Petition Area with infrastructure for drainage, water, sewer and communications.

Phase 2-Approximately 10-20 years. A. Discipleship Learning Center with student resource center, instruction building, student dormitory buildings and parking. B. Athletic/training Complex with soccer field, courts, building and locker room, and pool. C. Discovery Center with Exhibit building, driveway and parking area. D. Lower school improvements with instruction buildings and field. E. Middle School with instruction buildings, field and courts, parking area. F. High School with instruction buildings and Gym/Cafetorium, field and courts, and parking area. G. Youth camp cabins. F. Maintenance and storage facilities, garage, food and supply storage warehouse. H. Roadways and Kuakini Highway access, Open space and landscaping.

Phase 3-Approximately 20- 30 years. A. Discipleship Learning Center, with instruction buildings, café, outdoor gathering space, student dormitory buildings, parking areas. B. Aquatic Center with Pool and parking. C. Discovery Center exhibit buildings.

D. Youth camp cabins. E. Vocational Training and future Expansion area. E. Roadways and pathways. F. Open space and landscaping.

Petitioner's Proposed Revised and Deleted Conditions

Petitioner proposes to revise Condition No. 6 Archaeology, No. 7 Cultural, Historical, Customary and Traditional Rights and Resources, and No. 15 Compliance with Representations to the Commission. Petitioner also proposes to delete Condition No. 11 Cultural Center, and No. 12 Ka Haka Ula O Keelikolani, College of Hawaiian Language at University of Hawaii-Hilo.

Petitioner's proposed revision of Condition No. 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 State Historic Preservation Division of the Department of Land and Natural Resources ("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. Mitigation commitments shall be monitored by the "Waiaha Community Advisory Committee" ("WCAC") as described below.~~
- b. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving 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 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 WCAC as described below.
- e. ~~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 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 Waiaha 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~~ c. The Archaeological Data Recovery 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 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, where appropriate). The plan shall include input from the KWS 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. d. 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 grading would occur first, then 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.

OP has obtained comments from the Office of Hawaiian Affairs (OHA), however, comments from the State Historic Preservation Division is still pending at this time. Thus, OP may have further comments for this condition. In an email dated June 19, 2020, OHA indicated the following concerns regarding Petitioner's proposed revisions. See OP Exhibit 1.

"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.”

Petitioner’s proposed revision of Condition No. 7 - Cultural, Historical, Customary and Traditional Rights and Resources:

- a. Petitioner shall initially establish the Waiha Community Advisory Committee (“WCAC”) ~~and annually provide reasonable operating and capital expenditure costs or facilities through revenues from the Project, the KWC~~ composed of but not limited to: (1) a person of Native Hawaiian ancestry ~~who is a lineal descendant~~ 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 WCAC shall operate on an equal vote basis.
- b. The WCAC ~~KWC~~ shall be established by Petitioner no later than six months from the issuance of this Amended Decision and Order. Upon establishment of the WCAC ~~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, and structure, ~~operating costs and compensation for members and staff,~~ procedures and plan of action.
- c. The WCAC ~~KWC~~ shall jointly decide, on an equal 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~~ WCAC ~~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 WCAC ~~KWC~~ shall be filed with the Commission.
- d. The WCAC ~~KWS~~ shall monitor the quality of the Petitioner’s action to provide access to and/or preserve and maintain traditional and customary native Hawaiian practices and cultural resources. The WCAC ~~KWC~~ shall provide recommendations consistent with this Amended 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 WCAC ~~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

Amended 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 WCAC KWC.

OP supports Petitioner's proposed revisions to Condition No. 7.

Petitioner's proposed deletion of Condition No. 11:

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 Keelikolani, 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.

OP has no objection to deleting this condition. The amended proposal does not include a Cultural Center.

Petitioner's proposed deletion of Condition No. 12:

12. Ka Haka Ula O Keelikolani, 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.

Op has no objection to the deletion of this condition.

Petitioner's proposed amendment to Condition No. 15:

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, as amended, 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.

OP has no objections to this amendment to Condition No. 15.

DISCUSSION OF ISSUES OF CONCERN TO THE STATE

The following discusses Project impacts and recommendations to avoid, minimize, or mitigate reasonably foreseeable impacts caused by the proposed Project with respect to areas of State concern under Hawaii Revised Statutes ("HRS") § 205-16 and 205-17.)

Flora and Fauna

The State Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW"), submitted a letter dated June 14, 2020, with the following concerns as summarized. See OP Exhibit 2.

- a. The State listed Hawaiian Hawk. Petitioner's Motion to Amend indicates that a Hawaiian Hawk was seen over the Petition Area. Nests may be present in trees during the breeding season of March to September. If trees are to be cut down, DOFAW recommends surveying the area for nests during the nesting period.
- b. State listed Blackburn's Sphinx Moth may be in the Petition Area. DOFAW recommends contacting their Hawaii Island office for further information. Also, during the dry time of the year, DOFAW recommends not removing plants less than one meter in height and/or if tree tobacco plants are to be removed, Petitioner should check these plants for the presence of eggs and larvae.
- c. State listed Hawaiian Hoary Bat may be in the vicinity. If any site clearing is required, woody plants over 15 feet, should not be disturbed, removed or trimmed during the pupping season of June 1 through September 15.
- d. State listed seabirds that may pass through the area at night. DOFAW notes that the Motion to Amend addresses mitigation measures for these species.
- e. Other comments are related to using native plants that are appropriate for the area, and minimizing the movement of plant or soil material to minimize the risk of spreading invasive species.

Transportation

The Petitioner's Motion to Amend includes Exhibit 3, the Environmental Planning Report ("EPR"), which in turn includes Appendix B Mobility Analysis Report. The State Department of Transportation ("DOT") submitted a letter dated April 27, 2020, and their concerns are summarized below. See OP Exhibit 3.

DOT's letter indicates that the Petitioner's original D&O contain Conditions Nos. 9 and 10 relating to transportation and traffic impacts. DOT indicates that these conditions are still relevant, however, they note that Condition No. 10 could be amended to exclude the portions of the development which the Petitioner has deleted from the amended proposal, such as the Hualalai Village project and the Cultural Center. DOT indicates that the Mobility Analysis Report is consistent with condition 10, and addresses the proposed development in all phases of the development, however, the estimates of students and staff on campus should be clarified. The DOT letter also indicates that Petitioner should commit to implementing a transportation management program, as recommended by the Mobility Analysis Report.

Development Timetable

According to the Motion to Amend, the Petitioner will begin design and construction of the spine road for the entire Petition Area in Phase 1. Construction would consist of site grading activities, installation of roadway infrastructure and utilities, and landscaping. The Motion to Amend also provides description of a new Master Plan and development schedule of the University expansion over a 30-year period of time. Petitioner's proposal appears to be reasonable, and provides for full use of the Petition Area for school use.

RECOMMENDATION

Based on the foregoing information and analysis, OP recommends approval of the Motion to Amend subject to conditions. We are awaiting comments from several other State agencies, such as the Department of Health, State Historic Preservation Division, and various other agencies. Thus, OP may have additional comments and may recommend other

conditions, subject to State agencies' concerns, and the Petitioner's commitments to avoid, minimize, or mitigate Project impacts as represented herein, and in this proceeding, and the imposition of conditions in addition to the standard conditions of the Commission.

DATED: Honolulu, Hawaii, June 23, 2020.

OFFICE OF PLANNING
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
Director

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A02-737
)
U OF N BENCORP) CERTIFICATE OF SERVICE
)
To amend the Agricultural Land Use District)
Boundary Into the Rural Land Use District for)
Approximately 62 acres, Tax Map Key Nos. (3))
7-5-002:010: 085 and 7-5-017: 006, situated at)
Waiaha 1st, North Kona, County and State of)
Hawaii)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

STEVE S.C. LIM, Esq.
KATHERINE A. GARSON, Esq.
DEREK B. SIMON, Esq.
CARLSMITH BALL LLP
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, HI 96813

MICHAEL YEE, Director
Department of Planning
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, HI 96720

JOSEPH K. KAMELAMELA, Esq.
DIANA MELLON-LACEY, Esq.
Department of the Corporation
Counsel
Hilo Lagoon Center
101 Aupuni Street, Unit 325
Hilo, HI 96720

DATED: Honolulu, Hawaii, June 23, 2020.

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING