



LAND USE COMMISSION
STATE OF HAWAII

UNIVERSITY OF THE NATIONS, KONA

'22 SEP 12 P1:11

September 9, 2022

Mr. Daniel E. Orodenker
Executive Officer
State of Hawai'i Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

Re: LUC Docket No. A02-737 (U of N Bencorp)
Supplemental 2022 Annual Report
Tax Map Key Nos. (3) 7-5-010:085 & (3) 7-5-017:006

Dear Executive Officer Orodenker:

On August 8, 2022, the University of the Nations, Kona, Inc., a Hawai'i nonprofit corporation ("**UNK**"), filed its 2022 Annual Report pursuant to Condition No. 17 of the Land Use Commission's ("**Commission**") *Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment ("D&O")*, filed in Docket No. A02-737 on August 8, 2003.¹ UNK hereby submits this Supplemental 2022 Annual Report.

As noted in UNK's 2022 Annual Report, after holding the scoping meeting in preparation of its draft Environmental Impact Statement ("**EIS**"), and in response to some of the impacts of the pandemic, UNK revisited the scale and scope of its master-planned campus expansion onto the Petition Area ("**Project**"). Specifically, UNK's intent is to reduce the number of dormitories, based on modified projections of student enrollment, which in turn reduces the other planned facilities, such as classrooms.

As noted in UNK's 2022 Annual Report, as an educational institution with students and faculty from the mainland and internationally, UNK was severely impacted by the pandemic. Out of necessity, UNK's focus during that time was on internal matters, and unfortunately it was unable to devote resources and attention this past year to amend the D&O to account for the Project. However, UNK has made substantial progress in completing the technical studies necessary to amend the D&O, which substitutes dorms and student-support facilities for the previously planned condominiums, cultural center, and campus expansion elements approved under the D&O.

The following provides an update of the status of the conditions of approval imposed on the Petition Area under the D&O.

¹ The D&O reclassified Tax Map Key Nos. (3) 7-5-010:085 and (3) 7-5-017:006 ("**Petition Area**") from the State Land Use Agricultural District to the Urban District.



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.

Status of Compliance: On February 7, 2020, representatives of UNK met with the then-Director of the County of Hawai'i Office of Housing and Community Development ("**OHCD**"), Duane Hosaka, to determine whether the Project would be subject to the affordable housing requirements under Chapter 11 of the Hawai'i County Code ("**Housing Code**"). By letter dated February 19, 2020, then-Director Hosaka determined that the Project did not include any residential or industrial uses, and that dorms are not "residential uses" under the Housing Code. Based on those determinations, then-Director Hosaka concluded that so long as UNK's campus expansion does not later include any residential uses and is rezoned to the appropriate zoning district, the Project would not be subject to the affordable housing requirements of the Housing Code. A copy of then-Director Hosaka's letter was filed as Petitioner's Exhibit 17 in support of UNK's *Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order*, filed March 23, 2020 ("**Motion to Amend**").

As noted in its 2022 Annual Report, UNK also met with OHCD's current Housing Director, Susan Kunz, to discuss the affordable housing units provided at Hualalai Village (located immediately adjacent to the Petition Area at Tax Map Key No. (3) 7-5-010:086). As noted in UNK's prior filings with the Commission, Buildings C, D, F, G, and H of Hualalai Village were completed in 2016 by UNK's predecessor in interest, who also created the Ka 'Ohana Waiaha land trust (f/k/a University Community Land Trust) to arrange for the acquisition and provision of affordable housing for faculty and staff of the University of the Nations, Inc., amongst other purposes. Ka 'Ohana Waiaha was transferred title to a number of the units in Hualalai Village, and currently retains a ground lease interest for units within buildings C, D, F, G and H, which are sold on a priority basis to staff and persons affiliated with UNK. In this way, affordable housing is provided for UNK staff and personnel.

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.

Status of Compliance: In connection with the Motion to Amend, UNK engaged Group 70 International, Inc. ("**G70**") to prepare, among other things, a Conceptual Infrastructure Master Plan ("**Infrastructure Master Plan**").² The Infrastructure Master Plan discusses the existing

² The Infrastructure Master Plan was filed as Petitioner's Exhibit 21 in support of the Motion to Amend.

conditions of the Petition Area and analyzed the drainage needs and improvements for the Project. The Infrastructure Master Plan explained that stormwater management for the Project will focus on both the adequate conveyance and disposal/retention of stormwater runoff generated by the proposed development and increase in impervious areas. The Infrastructure Master Plan also explained that drainage improvements would prioritize maintaining predevelopment hydrologic conditions through the utilization of best management practices (“BMPs”) that focus on protecting and restoring natural ecosystems near the source of runoff generation. The Infrastructure Master Plan calls for a Low Impact Development (LID) approach to be utilized in developing a stormwater management plan for the Petition Area, which will include mitigating any increased stormwater runoff through BMPs and other drainage infrastructure, such as infiltration trenches, drywells and detention/retention basins in order to attenuate any increases in peak flow and prevent adverse impacts downstream of the Petition Area.

As UNK proceeds through the Chapter 343 environmental review process, it will continue to gather additional information and input from relevant agencies, stakeholders, and its consultants to identify on-site and regional drainage improvements that will be necessitated by the Project. Upon completion of the Chapter 343 environmental review process, UNK will prepare a drainage study and obtain the County of Hawaii Department of Public Works’ (“DPW”) approval of the study, as required under the Hawai’i County Code.

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.

Status of Compliance: UNK expects that the State of Hawai’i Department of Education (“DOE”) will submit comments on UNK’s forthcoming draft EIS, which may indicate whether UNK’s campus expansion triggers an obligation to contribute to the development, funding, and/or construction of school facilities. However, even if such comments are not submitted, UNK will engage with DOE at the appropriate time, to determine UNK’s obligations, if any, to contribute to the development, funding, and/or construction of school facilities. If the Project is determined to trigger such obligations, UNK will enter into and comply with the appropriate written agreement with DOE.

UNK also notes that it has a license agreement with the Boys and Girls Club of Hawai’i, which allows the organization to use UNK’s existing campus for summer and after-school programs serving all public schools in the Kona community. UNK has also participated in after school activities at Kealakehe, and remains committed to serving the Kona local community and its families in their educational endeavors.

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.

Status of Compliance: For the Motion to Amend, UNK engaged Tom Nance Water Resource Engineering to prepare a Water Supply Study, dated February 12, 2020, a copy of which was filed as Appendix D to Petitioner's Exhibit 3 in support of the Motion to Amend. As noted in the EISPN, UNK is in the process of completing an updated water supply study, which will include adjustments for the reduction in student projections.

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.*

Status of Compliance: G70's Infrastructure Master Plan analyzed UNK's wastewater needs and the ability of UNK's current wastewater system on its existing campus, which is connected to the County of Hawai'i Department of Environmental Management's ("DEM") wastewater system, to accommodate the increased demand created by the Project. The Infrastructure Master Plan determined that UNK's existing system can accommodate some level of the increased flows that will result from the expansion of UNK's campus onto the Petition Area, although it also acknowledged that offsite improvements to increase flow capacity may be required in the future. The Infrastructure Master Plan also noted that as a result of a reduction in water use realized from implementing certain contemplated water-management strategies (e.g., use of greywater and harvested rainwater), it is anticipated that there will also be a reduction in the wastewater generated.

Petitioner's Exhibit 16 in support of the Motion to Amend was a letter from DEM indicating that there was available capacity at its Kealakehe Wastewater Treatment Plant. As UNK completes the Chapter 343 environmental review process and refines its master plan and phasing, UNK will work with DEM and the State of Hawai'i Department of Health to determine what new wastewater treatment, transmission, and disposal facilities are required for each phase of the Project.

6. *Archaeology. 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").*

Status of Compliance: An *Archaeological Inventory Survey of TMKs: 3-7-5-10:85 and 3-7-5-17:06, Wai'aha Ahupua'a, North Kona District, Island of Hawai'i ("AIS")* was completed for the Petition Area by Rechtman Consulting in 2003. The State of Hawai'i Department of Land and Natural Resources, State Historic Preservation Division ("SHPD") approved the AIS by letter dated November 17, 2003. Copies of the of the AIS and SHPD's approval letter were filed as Appendices E and F, respectively, of Petitioner's Exhibit 3 in Support of the Motion to Amend.

- 6a. *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.*

Status of Compliance: An *Archaeological Data Recovery at Ten Sites on Parcel 85 and Parcel 06 (“Data Recover Plan”)* was prepared by Rechtman Consulting in 2007. The Data Recovery Plan was submitted to SHPD in October 2007, and was resubmitted to SHPD on August 30, 2019. A copy of the Data Recovery Plan was filed as Appendix I of Petitioner’s Exhibit 3 in support of the Motion to Amend.

A Preservation Plan for SIHP Site 6032 and Site 23681 (TMKs: 3-7-5-10:085 and 3-7-5-17:006) Wai‘aha 1st Ahupua‘a, North Kona District, Island of Hawai‘i (“Preservation Plan”), was prepared by Rechtman Consulting in October 2013. SHPD approved the Preservation Plan by letter dated June 19, 2014. Copies of the Preservation Plan and SHPD’s approval letter were filed as Appendices J and K, respectively, of Petitioner’s Exhibit 3 in support of the Motion to Amend.

A Burial Site Component of a Preservation Plan for Three Sites in the Proposed Hualālai Village Development Area (TMKs: 3-7-5-10:85 and 3-7-5-17:06) Wai‘aha Ahupua‘a, North Kona District, Island of Hawai‘i (“Burial Treatment Plan”), was prepared by Rechtman Consulting in September 2003. The Burial Treatment Plan was approved by the Hawai‘i Island Burial Council on November 20, 2003, and by SHPD by letter dated August 20, 2019. Copies of the Burial Treatment Plan and SHPD’s approval letter were filed as Appendices G and H, respectively, of Petitioner’s Exhibit 3 in support of the Motion to Amend.

A Dismantling/Restoration Plan for a Portion of the Kuakini Wall (SIHP 5-10-28-6302) TMKs: (3) 7-5-010:085 and (3) 7-5-017:006, Wai‘aha 1st Ahupua‘a, North Kona District, Island of Hawai‘i (“Dismantling/Restoration Plan”) was prepared by ASM Affiliates in September 2019.³ A copy of the Dismantling/Restoration Plan filed as Appendix L of Petitioner’s Exhibit 3 in support of the Motion to Amend.

UNK will be hiring rock masons to build the rock walls around the permanent preservation buffers of the burial and preservation sites, which, once verified in writing to SHPD, will complete the implementation of the Burial Treatment Plan and Archaeological Preservation Plan.

³ The Archaeological Preservation Plan stipulated, among other measures, that the collapsed portions of Site 6032 will be restored and stabilized, and that the missing southern portion of the wall will be reconstructed to the extent possible given availability of appropriate stones. In their acceptance letter for the Archeological Preservation Plan, SHPD required that a separate dismantling/restoration plan be submitted. This plan was prepared in response to that requirement.

- 6b. *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.*

Status of Compliance: UNK acknowledges and will comply with this condition.

- 6c. *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").*

Status of Compliance: See response to Condition No. 6a.

- 6d. *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.*

Status of Compliance: See response to Condition Nos. 6a and 7a.

- 6e. *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.

Status of Compliance: See response to Condition No. 6a. UNK will comply with all interim and long-term preservation and protect measures.

- 6f. *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.*

Status of Compliance: UNK will preserve the approximate alignment of at least one of the mauka-makai trail segments, as required by Condition No. 6f.

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

- 7a. *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.*

Status of Compliance: The Kahu Wai'aha Committee ("KWC") was proposed by the petitioner and imposed as a condition on the Original Project because of the proposed Hualalai Village and the Cultural Center⁴, which are not being pursued as a part of the campus expansion.

However, UNK has worked closely with people with familial ties to the Petition Area and sought their input on numerous occasions, as well as other Hawaiians such as Kupuna Mary Kamahela Boyd. UNK established the Waia`ha Community Advisory Committee ("WCAC"), which is comprised of Leinā`ala Fruean, Kahu Kealoha Kaopua, Rollins Rabara, Tammie Rabara, Kahu Bobby Laioha Macomber, Kumu Namahana, and Brooke Anderson, with Paul Childers and Tom Waddle serving as representatives on behalf of UNK. The WCAC gives advice on programs and the development of the Petition Area, including integrating its archaeological resources.

The WCAC met twice in 2022, and undertook a preliminary assessment of soils and water to determine the feasibility of growing kalo. The WCAC was also active in the recent production of

⁴ D&O at FOF ¶119.

“The Wind and the Reckoning”, a locally and produced film featuring ‘Olelo, Hawaiian language dialogue. Through the Motion to Amend, UNK sought certain amendments to Condition No. 7 so that it is consistent with UNK’s campus expansion master plan and the establishment of the WCAC.

UNK also notes that in February of 2020, ASM Affiliates completed the *Ka Pa‘akai O Ka‘Aina* analysis (“***Ka Pa‘akai Analysis***”) for the Project, which was filed as Appendix N of Petitioner’s Exhibit 3 in support of the Motion to Amend. In summary, the *Ka Pa‘akai* Analysis noted that the previous archeological studies conducted within the Petition Area identified significant, valued cultural resources, including sites traditionally used for ceremonial, habitation, agricultural, burial, and transportation purposes. Although a Cultural Impact Assessment conducted in 2003 did not identify any specific past or ongoing traditional or customary practices occurring within the project area, concerns were expressed by the consulted parties regarding the presence of burials on the property; the possibility of encountering additional *iwi kupua* during development activities; and the potential effects that the proposed development would have on the ability of the descendant community to care for those ancestral remains.

Several measures have already been undertaken by UNK to reasonably mitigate and protect the cultural resources located on the Petition Area and to ensure that the rights of the descendant community to access and care for their *iwi kupuna* are not impinged. These mitigation measures include archaeological data recovery and the establishment of permanent preservation easements with associated access rights for any identified lineal and cultural descendants to the three known burial sites, a heiau, and the Kuakini wall. Also, at the recommendation of the Office of Hawaiian Affairs, UNK has agreed to preserve a portion of a historic trail across the Petition Area. If all of the conditions and mitigation measures (both interim and permanent) set forth in the Burial Treatment Plan and Preservation Plan are adhered to and implemented as part of the campus expansion, there will be no anticipated adverse impacts to the three burial sites (SIHP Sites 23683, 23684, and 23685) and the two preservation sites (SIHP Sites 6302 and 23681), or to the exercise of cultural practices associated with those sites.⁵

- 7b. *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.*

Status of Compliance: See response to Condition No. 7a.

- 7c. *The KWC shall jointly decide, on an equal vote basis, monitoring and dispute resolution decisions related to the protection of native Hawaiian practitioners’*

⁵ ASM Affiliates also noted that to further avoid potential impacts to valued cultural resources, the Commission could condition any approvals to include the recommended archaeological/cultural precautionary monitoring measures as additional mitigation during all ground disturbing development activities. This condition is already included in Condition No. 6 under the D&O.

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.

Status of Compliance: See response to Condition No. 7a.

- 7d. *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.*

Status of Compliance: See response to Condition No. 7a.

- 7e. *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.*

Status of Compliance: See response to Condition No. 7a.

- 7f. *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.*

Status of Compliance: UNK acknowledges and will comply with this condition. To date, UNK is unaware of any cultural practitioners accessing the Petition Area to exercise traditional and customary practices and has not received any requests from individuals seeking to engage in any such practices.

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.*

Status of Compliance: All grading operations for UNK's campus expansion will be conducted in full compliance with dust and erosion control requirements. Prior to grading, necessary

grading permits and a National Pollutant Discharge Elimination System (NPDES) permit will be obtained. All earthwork and grading will conform to Hawai'i County Code, Chapter 10, (Erosion and Sediment Control), and all construction activities will comply with the provisions of HAR § 11-60.1-33 relating to fugitive dust. Grading activities will follow best management practices (BMPs) as described in and required by the permits.

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 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.*

Status of Compliance: For the Motion to Amend, UNK engaged Fehr & Peers, Incorporated to prepare a Mobility Analysis Report ("**MAR**"). The MAR was completed in February 2020, and was filed as Appendix B of Petitioner's Exhibit 3 in support of the Motion to Amend.⁶ UNK will be preparing an updated traffic study for the EIS, which will be subject to agency comment and review during the Chapter 343 environmental review process and the Commission's further proceedings on the Motion to Amend. Upon approval of the Motion to Amend, UNK will work with DOT and DPW to enter into an agreement on UNK's pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the campus expansion, if necessary.

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.*

Status of Compliance: As noted above, Fehr and Peers prepared the MAR in support of the Motion to Amend. The potential impacts of the Project were evaluated following guidelines established by the County of Hawai'i Department of Public Works ("**DPW**") Engineering Division and the State of Hawai'i Department of Transportation ("**HDOT**"). In support of the EIS, UNK will be preparing an updated traffic study. Both DOT and DPW will have opportunities to comment on the new traffic study, both during the comment period on the draft EIS and in the Commission's further proceedings on the Motion to Amend.

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*

⁶ The MAR is discussed in Section 3.12 of Petitioner's Exhibit 3.

'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.

Status of Compliance: As UNK previously informed the Commission, the Cultural Center envisioned in the D&O will not be included in the Project. In light of that, UNK's Motion to Amend sought the deletion of Condition No. 11.

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.*

Status of Compliance: 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. Although there was some discussion regarding creating a distance learning opportunity for teaching the native Hawaiian language, UHH's interest appeared minimal.

UNK has since established the Haleo Hawaiian language program, which has trained approximately 400 students. UNK charges no tuition for native Hawaiians ages 14 and up to enroll in the Haleo Hawaiian language program. UNK believes that its Haleo Hawaiian language program fulfills the purpose and intent of Condition No. 12.

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.*

Status of Compliance: At the appropriate time, UNK consult with the State of Hawai'i Department of Defense, Office of Civil Defense and the County of Hawai'i Civil Defense Agency to determine the civil defense measures necessitated by the Project. Upon reaching an agreement with these agencies, UNK will fund and construct the appropriate civil defense measures.

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.*

Status of Compliance: At the appropriate time, UNK will develop a Solid Waste Management Plan in conformance HRS Chapter 342G, and will obtain approval of the plan from DEM's Solid Waste Division. Among other things, the plan will address and encourage an awareness of the need to divert the maximum amount of waste material 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.*

Status of Compliance: UNK acknowledges that it is required to develop the Petition Area in substantial compliance with its (and its predecessor's) representations to the Commission, and reaffirms its commitment to do so.

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.*

Status of Compliance: There have been no changes in ownership of the Petition Area since UNK filed its 2021 Annual Report.

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.*

Status of Compliance: UNK's 2022 Annual Report, filed August 8, 2022, and this 2022 Supplemental Annual Report are submitted in compliance with Condition No. 17.

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.*

Status of Compliance: UNK acknowledges that it may seek the full or partial release of the conditions imposed under the D&O pursuant to Condition No. 18.

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 the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, pursuant to Section 15-15-92, Hawaii Administrative Rules.

Status of Compliance: On August 18, 2003, UNK's predecessor (U of N Bencorp) recorded a Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban with the Bureau of Conveyances of the State of Hawai'i as Regular System Document No. 2003-171988, a copy of which was previously filed with the Commission.



David Hamilton, President & CEO, UofN Kona Inc.

Sept 9, 2022

Date

