

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
AEKO HAWAII, formerly known as )  
U ofN BENCORP )  
To Amend the Agricultural Land Use )  
District to the Urban Land Use District )  
for approximately 62 acres, Tax Map Key )  
Nos.: (3) 7-5-10:85 and 7-5-17:06 situate )  
at Waiaha 1<sup>st</sup>, North Kona, Island, County )  
and State of Hawaii. )  
\_\_\_\_\_ )

DOCKET NO. A02-737

FIRST AMENDED FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER FOR A STATE  
LAND USE DISTRICT BOUNDARY  
AMENDMENT; EXHIBITS A - B

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STATE OF HAWAII  
LAND USE COMMISSION

PETITIONER'S EXHIBIT 3

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**FIRST AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER  
FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

AEKO HAWAII, formerly known as U of N Bencorp, a Hawaii non-profit corporation ("Petitioner" or "AEKO") submitted a State Land Use Boundary Amendment Application on November 21, 2003 ("Original Petition"), and an Amended State Land Use Boundary Amendment Application on December 5, 2003 ("Original Amended Petition"), pursuant to Sections 205-3.1(c) and 205-4, Hawaii Revised Statutes ("HRS"), and Chapter 15-15, Hawaii Administrative Rules ("HAR"), to amend the State Land Use District boundary by reclassifying approximately 62 acres of land situate at Waiaha 1<sup>st</sup>, Kailua-Kona, District of North Kona, County and State of Hawaii, and designated by Tax Map Key Nos.: (3) 7-5-10:85 and 7-5-17:06 ("Property" or "Petition Area"), from the Agricultural Land Use District to the Urban Land Use District to allow for the development of the Hualalai Village condominiums, a multi-function Cultural Center, and a five-acre Educational Facility ("Original Project").

The Land Use Commission ("Commission") issued its Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A02-737, dated August 8, 2003 ("Decision & Order"), granting the Original Amended Petition and reclassifying the Property from the State Land Use Agricultural District to the State Land Use Urban District, and causing the State Land Use Districts boundaries to be amended accordingly.

Concurrent with submitting its Motion to Amend Petitioner's Name and Amend Caption, seeking Commission approval to recognize Petitioner's change of name to AEKO HAWAII, pursuant to the Articles of Amendment to Change Corporate Name filed May 18, 2005, with the Department of Commerce and Consumer Affairs - Business Registration Division for the State of Hawaii, Petitioner submitted a Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order ("Motion to Amend"), seeking Commission approval for proposed changes to Petitioner's Original Project and the development of Petitioner's revised project (the "Revised Project").

For the Revised Project, Petitioner sought approval to forgo the commercial portion of the Original Project in favor of providing more faculty and student housing, as well as expanding its academic and recreation facilities.

The Land Use Commission ("Commission"), having considered the entire record on this matter, hereby makes the following First Amended Findings of Fact, Conclusions of Law and Decision and Order. This First Amended Findings of Fact, Conclusions of Law and Decision and Order, upon adoption by the Commission, shall hereby supersede in its entirety the Decision & Order.

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On November 21, 2002, Petitioner filed the Original Petition proposing the development of the Original Project.
2. On December 5, 2002, Commission staff transmitted its comments upon review of the Original Petition, which deemed the Original Petition incomplete.
3. On December 5, 2002, Petitioner filed the Original Amended Petition.
4. On December 6, 2002, the Commission received a facsimile transmission from Petitioner of a letter of intent to intervene from Mr. Lunakanawai Hauanio.
5. On December 20, 2002, Petitioner provided comments and clarification pursuant to the Commission staff's review of the Original Amended Petition.
6. On December 30, 2002, Commission staff deemed the Original Amended Petition as a proper filing pursuant to Section 15-15-50, HAR.
7. On January 5, 2003, the Notice of Hearing was published in the Star Bulletin, and West Hawaii Today. The deadline for timely petition to intervene was January 21, 2003.
8. On January 21, 2003, Petitioner filed its witness list and exhibit list identifying Exhibits 1 to 14, filed with the Decision & Order.
9. On January 21, 2003, the County of Hawaii Planning Department ("County") filed its witness list and its Statement of Position in Support of the Petition, and the State of Hawaii Office of Planning ("OP") filed its Statement of Position in Support of the Project.
10. On February 20, 2003, OP filed its witness list and exhibit list, and Exhibits 1 and 2, filed with the Decision & Order.

11. On February 21, 2003, the Commission conducted a field trip to the Petition Area.

12. On February 21, 2003, a prehearing conference was held in Kona. Petitioner filed Exhibit 5, the archaeological inventory survey, filed with the Decision & Order, and Exhibit 15, addendum to its Final Traffic Impact Analysis Report, filed with the Decision & Order.

13. On February 26, 2003, the County filed its exhibit list and Exhibits 1 to 3; filed with the Decision & Order, and OP filed its first amended witness list.

14. On February 27, 2003, Petitioner filed its second amended witness list and second amended exhibit list, and Exhibits 15 to 25, filed with the Decision & Order.

15. On March 5 and 6, 2003, the Commission conducted a hearing on the Original Amended Petition in Kona.

16. On March 5, 2003, the Commission received public witness testimony from Mary Kamahale Boyd, Lunakanawai Hauanio, and Mikahala Roy. The Commission did not receive Mr. Hauanio's written petition to intervene pursuant to Section 15-15-52, HAR, and his verbal request for intervention pursuant to Land Use Commission Rule 15-15-34, HAR, was denied by the Commission on March 5, 2003.

17. On May 16, 2003, Petitioner filed its fourth amended witness list and third and fourth amended exhibit lists, and Exhibits 26 to 35, filed with the Decision & Order.

18. On May 19, 2003, the County filed its first amended witness list and first amended exhibit list, and Exhibits 4 and 5, filed with the Decision & Order.

19. On May 22, 2003, the Commission continued the hearings for the subject docket in Kona.

20. On May 22, 2003, the Commission received public witness testimony from Richard T. Bell, Kathryn Ward-Smith, Curtis Tyler, Dr. William H. Wilson, and Holo Hoopai.

21. On May 22, 2003, Petitioner filed Exhibit 36, filed with the Decision & Order.

22. On May 22, 2003, OP filed its second amended witness list and second amended exhibit list, and Exhibit 4, filed with the Decision & Order.

23. On May 23, 2003, Petitioner filed its Exhibits 37 and 38, filed with the Decision & Order.

24. On May 23, 2003, OP filed its Exhibit 5, filed with the Decision & Order.

25. On June 9, 2003, the County filed its second amended witness list and Exhibits 6 and 7, filed with the Decision & Order.

26. On August 8, 2003 the Commission issued the Decision & Order, reclassifying the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District subject to the conditions set forth in the Decision & Order.

27. On August 18, 2003, Petitioner recorded in the Bureau of Conveyances of the State of Hawaii the conditions set forth in the Decision & Order.

28. On December 21, 2006, the Petitioner, by and through its attorney Jennifer A. Benck, filed two motions: (1) a Motion for Order to Change Petitioner's Name and Amend Caption to reflect a corporate name change from U of N Bencorp to AEKO HAWAII; and (2) a Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order, to reflect the Petitioner's decision to forgo the commercial portion of the Original Project, and pursue development of the Revised Project.

## DESCRIPTION OF THE PROPERTY

29. The Property is located on the west coast of the Island of Hawaii, approximately one mile southeast of the town center of Kailua-Kona, on the lower western slopes of Mount Hualalai at an elevation ranging from approximately 100 to 325 feet.

30. The Property is bordered by Kuakini Highway on the west, Queen Ka'ahumanu (Queen K) Highway and Hualalai Road on the east, the University of the Nations-Kona ("U of N") campus on the north, and the Kona Hillcrest subdivision on the south.

31. The Property is generally gently sloped, with steeper slopes (approaching 25 percent) on the upper mauka side just below Hualalai Road.

32. The Property comprises approximately 62 acres, and two tax map parcels: TMKs (3) 7-5-10:85 and 7-5-17:6.

### Soils and Geology

33. The Property comprises two soil groups. The Soil Conservation Service's *Soil Survey of the Island of Hawaii, State of Hawaii*, locates a narrow band of Honuaulu extremely stony silty clay loam ("HVD") along the mauka border of the property. The Honuaulu series consists of well-drained silty clay loams that formed in volcanic ash. The HVD soil subtype is generally found with stones covering 3-15% of the area and with slopes of 12-20%. Its typical use is for growing of coffee or macadamia nuts (at higher elevations than the Property), or pasturage.

34. The vast majority of the Property is Punalu`u extremely rocky peat ("rPYD") with slopes of 6-20%. The Punalu`u Series consists of well-drained, thin organic soils over pahoehoe lava bedrock. Soils of this type are used for pasturage. The peat is rapidly permeable; the underlying lava is very slowly permeable, with runoff slow and erosion hazard slight.

35. The ground surface is very broken with heaps of sharp broken lava rock appearing more like a`a than the smooth pahoehoe. These fragments have been piled, apparently by hand, to facilitate cattle grazing. The potential for agricultural productivity is low.

Agricultural/ALISH/Land Study Bureau Classification

36. The agricultural potential for the Property is generally poor because of the shallow, rocky soil type. None of the Property is classified as within "agricultural lands of importance to the State of Hawaii" (ALISH). The ALISH classification system contains four categories: prime, unique, other important agricultural lands, and unrated. The Property is classified as unrated. The nearest rated ALISH parcel is roughly three-quarters of a mile south.

37. The Land Study Bureau map classification for the Property is "E", or very poorly suited for agricultural productivity.

Climate

38. The climate of the Island of Hawaii is characterized by remarkable differences in rainfall over short distances, mild temperatures, persistent northeasterly trade winds, and distinct climatic regimes in locales sheltered from the prevailing winds. The Property is on the leeward side of the Big Island, at a low elevation, and thus receives relatively little precipitation.

39. Yearly rainfall at the nearest weather station (Holualoa Beach) averages around 28 inches, and is spread relatively evenly throughout the year. At this station, in August, the month of greatest average precipitation, averages 3.33 inches and December, the month with least rainfall, 1.6 inches. The property is on the 750-mm isohyet, equal to approximately 29.5 inches per year.



40. Temperatures are similarly fairly constant, with the daily highs averaging between 80 and 85 degrees (with the highest temperatures from August to October), and the lowest temperatures ranging from 64 to 70 degrees Fahrenheit, with the coolest temperatures in January and February.

41. The local daily solar heating and nightly cooling results in ocean breezes flowing up the slopes in the daytime and cooling mountain breezes blowing toward the ocean in the evening. The site plan orients the condominium units so as to catch these breezes and utilize passive cooling techniques.

## **PROPOSAL FOR DEVELOPMENT**

### **The Original Project**

42. The Original Project was comprised of three separate developments: 1) Hualalai Village; 2) the Cultural Center; and 3) an Educational Facility.

43. Hualalai Village, a 400-unit market condominium complex, was to be developed in four stages. Phase I (103 units) was already zoned and under construction, and was not a part of the Original Petition or the Original Amended Petition. The remaining 297 units of the planned Hualalai Village were to be contained in Phases II, III and IV.

44. The Cultural Center was planned to have on-going outdoor daytime performances. The Cultural Center included an indoor performance theater, outdoor water feature, educational living museum complex, restaurant and shops. A total of approximately 28,900 square feet of the 49,400 square foot Cultural Center was planned for commercial uses.

45. No specific development plans were in place for the Educational Facility, which was allotted approximately 5.0 acres of the 62 acre Property.

### **The Original Project - The Hualalai Village**

46. Hualalai Village, a 400-unit condominium complex, was planned to be developed in four stages, with Phase I (103 units) already zoned and under construction, and not part of the Original Petition or the Original Amended Petition.

47. The remaining three phases of Hualalai Village were planned to consist of approximately 297 high-quality condominium units in approximately 21 two- and three-story structures distributed over approximately 31 acres. There were plans for a recreation center with exercise facilities and a pool. The structures were planned to be made of steel and stucco, and would have been built with no party walls, non-creak floors, and a variety of available interior layouts and appointments. The buildings would have been oriented to take advantage of makai views to the ocean and Kailua Bay, and the mauka-makai breezes. The condominium units were planned to range in size from one to four bedrooms, and in price from \$167,500 to \$502,500.

48. Construction of Hualalai Village was planned to proceed in phases and sub-phases, with each phase significantly pre-sold before construction began. Ground was broken on Hualalai Village phase 1A in early May, 2002, and 75% of the planned units pre-sold.

49. Two different market segments were to be served by Hualalai Village: (i) U of N affiliates, including donors and friends, faculty and staff, and some students; and (ii) the general public. The two sectors would have been financially segmented, with friends and donors of the U of N and the target general public being relatively more able to purchase units, and faculty, staff and students relatively less able to purchase units. There was an intention to aid less affluent U of N affiliates, as well as staff, to purchase within Hualalai Village

50. There was an intent to provide some student housing units within Hualalai Village.

51. Within the normal market segment, market data and research indicated strong demand for the Hualalai Village component of the Original Project.

52. It was anticipated that Hualalai Village would benefit Kailua-Kona by helping satisfy the demand for high-quality condominium residences, and by helping to meet the needs of friends and staff of the U of N for housing close to the campus.

53. The landscape plan for Phases II - IV of Hualalai Village would have maintained the style and pattern followed in Phase I. Similar plant species were to be utilized to provide a continuity of visual pattern and texture. The selection of plant material would have had a stronger emphasis on native species: endemic, indigenous and Polynesian introduced, either coastal species or species that are found in the dry mesic forest of the original Hawaiian landscape.

54. Net revenues generated from the Hualalai Village would have flowed through Bencorp to be used to benefit the U of N.

#### The Original Project - The Cultural Center

55. The Cultural Center was planned as a first-class visitor destination, intended to present the authentic story of the native Hawaiian culture and its historical relationship with the introduction of Christianity, its impact upon the monarchy, the people of Hawaii, and the region of Kona, with references to traditional cultures from Pacific regions that have combined to produce Hawaii's unique multicultural mosaic. These stories would have been told through on-going daytime performances in outdoor performance area(s) and an enclosed performance auditorium. Other aspects of the Cultural Center included an outdoor water feature, an educational living museum complex, a restaurant, and shops. The performances would have lasted approximately 20 minutes, and the entire Cultural Center would have been experienced in

approximately two and one-half hours. The water feature was planned to provide water-based activities and a Hawaiian sense of place.

56. The Cultural Center would have provided education and entertainment related to different elements of native Hawaiian culture and history. It was anticipated that the Cultural Center facilities, including the auditorium, would have been made available for community use, such as for concerts.

57. The Cultural Center would have benefited Kailua-Kona by providing a needed venue and visitor attraction in the Kona region that respected, educated, and told the story of Hawaii's cultures, thus building respect for, and awareness of, cultural diversity as well as similarity across cultures. It was anticipated that the Cultural Center would have appealed to families and across generations.

58. The Cultural Center would have enhanced the exposure of U of N students to native Hawaiian and Pacific cultures.

59. Net revenues generated by the Cultural Center would have flowed through Bencorp to be used to benefit the U of N.

60. The preliminary site plan devoted approximately 26.5 acres to the Cultural Center including parking to accommodate 15 tour buses and up to 840 cars which were anticipated to arrive daily at the Cultural Center.

61. Economically, the Cultural Center would have enhanced the Kailua-Kona community as a significant new visitor attraction. The Cultural Center would have added to the region's economic stability and economic growth by bringing a constant flow of income to the region. By helping to facilitate the continued growth of the U of N, it was anticipated that the income would have fueled the arrival of a growing student population from the U.S. mainland

and elsewhere, contributing to growth in the local and regional economy. The construction of the Cultural Center would have resulted in temporary, and some permanent, additions to local employment.

62. Ongoing operations at the Cultural Center were anticipated to provide a continued demand for local goods and services, and a supply of new and steady jobs, the income from which would have circulated through the region on a continuing basis. In the absence of any comparable attraction in the Kona region or on the Big Island, the Cultural Center would have added a new dimension to the attractiveness and economy of the region while not competing with any similar existing enterprise.

63. Based upon the feasibility assumption prepared by Steven Au and Roy Tokujo, between 500-1,100 visitors per day were projected to visit the Cultural Center. Cruise line passengers would have been shuttled via buses from the pier to the Cultural Center and would have represented approximately 75% of the daily visitor count to the Cultural Center. Fifty (50) tour patrons were expected to arrive by van transport, 50 kamaaina, and 200 independent travelers were expected to arrive by private automobiles.

64. Socially, the primary programmatic goals of the Cultural Center were to introduce and educate visitors and local families to the authentic story of the native Hawaiian culture and its historical relationship with the introduction of Christianity, its impact upon the monarchy, the people of Hawaii and the region of Kona. Inherent in this telling was how Christianity changed the Hawaiian culture to promote respect for differences among cultures and the value of community. It was planned that the Cultural Center would do this through a set of experiences that were fun, intellectually and creatively stimulating, and appealing to families and across generations.

65. It was anticipated that the Cultural Center facilities would have been open to the community, and would have provided a new and high quality performance venue for Kailua-Kona. As planned, the main performance area was situated on site as far as possible from any existing or planned residential areas, and would have been completely enclosed.

66. Educationally, the Cultural Center would have offered local residents, and particularly local schoolchildren, the opportunity to deepen their understanding of their own culture by seeing it in its traditional form and by experiencing the range of traditional cultures that produced Hawaii's present cultural amalgam. Student educational events would have been scheduled on "non-ship arrival" days and during the normal hours of operations.

67. The landscape plan for the Cultural Center would have focused on education. Remnants of the previous agricultural features that could have been preserved would have been preserved. Plantings related to Hawaiian agriculture would have been planted to model the dry mesic forest of olden times.

68. A two to three acre passive park was planned for the area between the Hualalai Village and the Cultural Center. The park was sited adjacent to the existing Hillcrest Community Park. Walking paths and recreational landscaping would have been provided. Native species and Polynesian introductions suited to the area would have been emphasized in the park landscaping

#### The Original Project - Educational Facility

69. The Original Project would have had an approximately five (5) acre Educational Facility. The exact site plan and configuration had not been determined at the time of the Original Petition. This site was an exchange area for land previously transferred from the U of N to Hualalai Village to facilitate the development schedule.

## The Revised Project

70. The Revised Project consists of three separate developments which are intended to link the Property to the original U of N Campus Master Plan. The Petitioner represented that the Revised Project should have significantly less impact on the socio-economic, natural, historic, and environmental resources than was expected under the Original Project. The 3 components of the Revised Project are the: 1) Staff Housing Community; 2) Student Villages; and 3) Expanded Academic and Recreation Facilities.

71. In total, the Revised Project will eventually provide up to approximately 400 housing units. The Staff Housing Community is expected to provide up to 100 residential condominium units available for sale to U of N staff and up to 6 single family homes to be available for purchase by U of N leaders. The three Student Villages are expected to provide up to 300 rental units, of which approximately forty percent (40%) of the units (up to 120 units) will be available for staff, and sixty percent (60%) of the units (up to 180 units) will be available for students.

72. The Expanded Academic and Recreation Facilities will consist of academic buildings and sports and recreation facilities.

### The Revised Project- Staff Housing Community

73. A range of apartments will be available in the Staff Housing Community. The anticipated mixture will include studios, and 1, 2 and 3 bedroom units. Up to 100 units are planned for the Staff Housing Community. The architectural character of the Staff Housing Community will compliment the existing, adjacent, Phase I of the Hualalai Village. In addition to the Staff Housing Community, Petitioner intends to construct up to 6 single family homes for purchase by U of N leaders.

74. The Staff Housing Community will be built in structures of one to three stories.

75. The Staff Housing Community will be designed to serve the needs of more senior staff who have "settled down" and desire permanent housing in Kona.

76. Development of the Staff Housing Community is anticipated to commence in 2008. Development will proceed pursuant to demand, which at this time is strong.

77. Similar to the Original Project, the philosophy of the Revised Project is to "build to the land," by avoiding major cuts and fills. The Revised Project will be designed to facilitate pedestrian access, and with a lower density (RM-4) than the site allows. This is to provide a better quality of life for residents over the long term. The landscaping and design throughout the development will encourage residents to leave their cars at home and walk to and from Kailua Village, as well as to the adjacent U of N campus.

78. It is planned that units within the Staff Housing Community will be offered at approximately 30% below market rates. This reduced cost is possible in part because Petitioner does not face land acquisition costs in the development of the Revised Project.

79. The Staff Housing Community will benefit Kailua-Kona by providing below market price housing for U of N staff, thereby freeing more off-site housing for local families.

80. The landscape plan for the Staff Housing Community will mesh with the style and pattern followed in Phase I of Hualalai Village. Similar plant species will be utilized to provide visual continuity. The selection of plant material will include native species (endemic, indigenous and Polynesian introduced), either coastal species or species that are found in the dry mesic forest of the original Hawaiian landscape.



### The Revised Project - Student Villages

81. The Student Villages will consist of up to 300 units available for rent by students and staff, and will be clustered in 3 Villages (Villages 5, 6, and 7), constructed in a style similar to that of the Villages planned for the original 41 acre U of N campus.

82. Classrooms will be imbedded throughout the Student Villages. The Student Villages concept is "live, learn and work" meaning students and staff will both live and study in the Villages.

83. The Student Villages will benefit Kailua-Kona by providing affordable rental housing for U of N students and staff, thereby freeing off-site low cost housing for local families.

84. The landscape plan for the Student Villages will be similar to the plans already developed for Village 2 located on the original U of N campus and currently under construction.

### The Revised Project - Expanded Academic and Recreation Facilities

85. The Expanded Academic and Recreation Facilities consist of: 1) the College of Arts and Communications; 2) the College of Education; 3) a Commons with Multi-Purpose Gymnasium; and (4) Sports Facilities.

86. College of Arts and Communications.

87. The College of Arts and Communications will be a two-story building with a performance arts complex with seating capacity for 800 - 1,000 people, a stage, studios, and offices.

88. College of Education.

89. The College of Education will include a model Education Center with a teaching laboratory, library, science room, shop room, and administration offices. Playground areas and green courtyards will be provided.

90. An Education Center has long been desired on the U of N campus to provide teaching education to the students of the U of N, and a coherent and continuous learning environment for the children of U of N staff, as well as for those students who have attended the existing U of N pre-school. It is anticipated that the Education Center may eventually be expanded to provide educational opportunities for children from pre-school through high-school.

91. Students at the Education Center will include the children of staff in addition to students from the Kailua-Kona community.

92. Commons Area with Multi-Purpose Gymnasium.

93. The Commons Area with Multi-Purpose Gymnasium will include a 1-story building with mezzanine. The Gymnasium floor will have 2 courts, a stage and backstage. The Multi-Purpose Gymnasium will provide seating for approximately 1,200, and will include classrooms, offices, lockers, restrooms and lobbies.

94. The Commons Area with Multi-Purpose Gymnasium will serve the U of N campus in general, and will provide a venue for special events for the larger Kailua-Kona community.

95. Sports Facilities.

96. The Sports Facilities will consist of soccer, football, and softball fields, bleachers, a track, tennis courts, volleyball courts, a walking or running "vita course" with exercise stations around the campus, and an Olympic swimming pool with showers and lockers.

## **DEVELOPMENT TIMETABLE**

97. The development timetable for the Revised Project will be affected by a number of factors, including market conditions and student enrollment. The development timetable is given based upon the growth in student enrollment now occurring, i.e., twelve percent (12%) per annum, projected into the future. Thus, subject to the foregoing, the following is the projected development timetable of the Revised Project.

98. Construction of the Staff Housing Community is proposed to begin in 2008 and be completed in 2014.

99. Construction of the Student Villages is proposed to begin in 2010 and be completed by 2016.

100. Construction of the Expanded Academic and Recreation Facilities is expected to begin on a phased basis starting in 2007, with the volleyball courts, soccer, football and softball fields, track and bleachers to be completed first, followed by the tennis courts and vita course, and later the Olympic swimming pool with locker and showers. Concurrent with the development of the sports fields, construction of the academic buildings is planned, also on a phased basis starting with the College of Education, to be followed by the Multi-Purpose Gymnasium, and next the College of Arts and Communications. Construction of the Expanded Academic and Recreation Facilities is expected to be completed by 2016.

## **PETITIONER'S FINANCIAL CAPABILITIES TO UNDERTAKE THE PROPOSED DEVELOPMENT**

101. Petitioner was established in 1985, as a non-profit tax-exempt 501(c)(2) benefit corporation for the purpose of providing financial and material support to the U of N, a Hawaii 501(c)(3) non-profit corporation.

102. For the Original Project, the Petitioner obtained special purpose niche financing.

103. For the Original Project, Petitioner and the parent organization for the Cultural Center would have provided necessary financial statements to assist in the procurement of financing. Initial capital monies would have been raised by donations, private investors, and/or conventional financing.

104. For the Original Project, primarily through niche and conventional financing and contributions from U of N affiliates, including donors and friends, faculty and staff, and some students, approximately \$20.5 million was received for the development of Hualalai Village.

105. For the Revised Project, Petitioner will provide necessary financial statements to assist in the procurement of financing. Initial capital monies may be raised by donations, private investors, and/or conventional financing. A current financial statement of the Petitioner is attached hereto as Exhibit "A" and incorporated herein by reference.

#### **STATE AND COUNTY PLANS AND PROGRAMS**

106. The State Land Use Commission currently classifies the Property in the Urban District.

107. The Property is surrounded on three sides by lands in the Urban District classification. Abutting the Property on the north, the existing U of N campus is in the Urban District classification and zoned RM-4 and a 2.729 acre parcel zoned RM-2. Bordering the Project area to the south is the Kona Hillcrest subdivision, classified in the Urban District and zoned RS-7.5; there is also a narrow parcel owned by Petitioner that is in the Urban District and split-zoned RD-3.75 and RS-7.5. To the west, across Kuakini Highway lies a parcel classified Urban and zoned CV-10. To the east, across Queen Ka'ahumanu Highway lie parcels zoned

Agricultural 5a and Agricultural 1a; nearby, the planned Pualani Subdivision is classified in Urban District and zoned RS-15.

108. The County of Hawaii General Plan, in its Land Use Pattern Allocation Guide (LUPAG) Maps, designates the Property as Medium Density Urban. This designation includes "village and neighborhood commercial and residential and related functions (3-story commercial; residential -- up to 35 units per acre)."

109. The Property is not within the Special Management Area established by the County of Hawaii pursuant to Chapter 205A, Hawaii Revised Statutes.

110. The Property is currently zoned Agricultural 1a. The Petitioner will seek a change of zone to RM-4, or possibly Residential-Commercial Mixed use or Village Commercial to facilitate development of the Revised Project.

111. The Kona Regional Plan was adopted by the Planning Commission of the County of Hawaii as Resolution No. 184 in April 1984, and designates the Property as Medium Density Urban RES 6 (6 units per acre). The Revised Project is consistent with this designation.

112. The Office of State Planning developed the West Hawaii Regional Plan ("Plan") in November 1989. The Plan identifies the Property as falling within the Keahole-Keauhou Resort Destination Node. The Revised Project is consistent with the policies of clustering resort development within designated resort destination nodes, developing employment opportunities within those nodes, and encouraging the County to use its zoning powers to support the development of those nodes.

113. The Kailua-Kona Master Plan was adopted in 1994, to help advise the Hawaii County Planning Director and guide urban design in the Kailua Village area, which includes the project area. The Kailua-Kona Master Plan lists the Property as low-density

residential in its entirety. The Revised Project is consistent with the objectives of the Kailua-Kona Master Plan.

114. The Revised Project is located within the boundaries of the Kailua Village Special District. The plans for Hualalai Village, Phase I, were reviewed and approved by the Kailua Village Design Commission, and Phase IA has been completed.

115. The Keahole to Kailua Development Plan (K to K Plan) was adopted by resolution by the Hawaii County Council in April 1991. The K to K Plan serves as an implementing tool for the County General Plan and as a flexible guide for the future growth and development of an area of approximately 17,000 acres in the North Kona District extending from the Kau ahupuaa to the north, Mamalahoa Highway to the east, Palani Road and Kailua Village to the south, and the shoreline to the west. The Revised Project will result in little additional traffic because the Student Villages and Staff Housing Community will absorb the housing needs created by increased enrollment and expansion at the U of N, thus eliminating commuter traffic. According to the Traffic Impact Analysis Report by M&E Pacific, Inc., dated November 2006 (the "2006 TIAR"), the Revised Project is not expected to have any impact on existing traffic conditions. The critical turning movements at the unsignalized intersections on Kuakini Highway and Queen Ka'ahumanu Highway Extension are forecast to operate at acceptable levels of service with all three proposed projects in place with no mitigating measures required.

#### **NEED FOR PROPOSED DEVELOPMENT**

116. A feasibility study was performed to determine the strength of market demand for the condominium units proposed in the Original Project. The research examined historical data, interviews with local real estate agents, unit qualitative analysis, and internal needs assessments. Two market segments were considered: (a) affiliates of the U of N, including

donors, friends, faculty, staff, and students; and (b) the general public and faith-based audiences. The study found a strong demand for the Original Project. Extrapolating from that study, there continues to be strong demand for the staff and student housing that is proposed for the Revised Project.

Demand from University affiliate.

117. Bencorp was formed in 1985 as a 501(c)(2) non-profit benefit corporation serving the development of the U of N. The U of N is a mission-based educational institution, founded in Kona in 1977, and now actively involved in equipping men and women in more than 140 nations through field driven course work within its seven colleges and focused centers.

118. Over the last three decades, through both the educational and physical development of the campus, tens of thousands of lives have been impacted, and have in turn identified with, and invested in, the mission and vision of the U of N. These include parents who have sent their children to the U of N, thousands of volunteers who have labored in the building and staffing of the facilities, and a growing constituency of donors. There has been a significant and growing demand among faculty, staff and students for housing opportunities near the Kona campus. These requests are not investment oriented. Rather, they represent the intention and commitment to engage on a part or full-time basis with the U of N. Thus, there is an ongoing demand for adequate and appropriate housing that addresses the needs of the U of N faculty and staff, while allowing those individuals to fulfill the primary mission of serving the U of N. Moreover, the U of N is projected to continue to grow, continuing the related growth in demand for residences and accommodations convenient to the campus.

119. There is a strong need for both owner-occupied and rental housing in Hawaii County, especially in the Kailua-Kona area, particularly at the lower income levels, due to the rising median prices on the Big Island.

120. Prices for most units within the Staff Housing Community will offered to U of N staff at prices approximately 30% below market. Although some units may be offered at market prices, a significant number of the units are anticipated to fall within the affordable housing price range established by the County of Hawaii. Due to the over-all affordability of the units, the Revised Project will not contribute to rising home prices within the Kailua-Kona area.

121. The anticipated unit buyer within the Staff Housing Community will have a median family income of \$28,000-\$41,000 per year, be between 35 to 65 years of age, and be working for, or closely affiliated with, the U of N.

122. The Staff Housing Community will reduce housing pressure on the Kailua-Kona community overall. The Revised Project will provide suitable housing for staff and faculty, thereby removing that segment of home buyers from the general population and leaving more housing available for the general community.

123. The Staff Housing Community will be subsidized by the U of N, thereby increasing the overall number of reasonably priced housing units available in the Kailua-Kona area.

124. In general, the Staff Housing Community will offer high-quality housing that reinforces the Kona way of life by avoiding over-density, building to the land, and encouraging a walkable, pedestrian friendly community. The Revised Project will help to satisfy the demand for owner-occupied housing in the Kona area, and the special need for housing to serve staff, friends, donors, and affiliates of the U of N.



125. Each Student Village is expected to provide up to 100 rental units, for a total of up to 300 low-cost rental housing units to be available for students and staff. In addition to housing units, each Village will include classrooms, offices and a library.

126. The Student Villages will be subsidized by the U of N, resulting in rental units being offered well below market rates. This affordability and convenience should lead to increased availability of rental housing units in the general community, as students and staff who currently rent outside of the campus move into the Student Villages.

Expanded Academic and Recreation Facilities.

127. The Kona coast has relatively few facilities for education and recreation. The Expanded Academic and Recreation Facilities will provide the community new destinations for theater performances and spectator sports. The College of Education within the Revised Project will include a model laboratory Education Center. The Education Center will combine student education with teacher training and curriculum development. It will provide the Kailua-Kona area with increased educational opportunities for children and adults.

128. The Kona region has experienced strong growth over the last decade, and is in need of additional venues for concerts and other performances. Petitioner is committed to strong interaction with the community and support for community activities. The College of Arts and Communications performance theater can help meet the demand for new arts and performance facilities.

129. The Revised Project may provide short-term employment in the areas of development, construction, financing, architecture, engineering, insurance, accounting, law, and other related employment relative to the development, and in the operation of the Sports and Recreation Facilities. Full and part-time job opportunities may be created in the areas of

administration, staff support, accounting, finance, customer service, security, property management, personnel, production and promotion, clerical, landscape maintenance, janitorial services, and marketing and advertising.

130. At any one time, the U of N hosts students from 30 – 50 nations. The U of N makes a significant contribution to cultural diversity as well as training in cross-cultural relationships. The Staff Housing Community and Student Villages will be closely linked to the U of N, and will provide much needed additional housing units for the staff and students. As consumers, U of N staff and students make a substantial contribution to the Kona economy.

### **SOCIO-ECONOMIC IMPACTS**

#### **Population**

131. In 1980 there were 13,748 people living in the region of North Kona. By 2000, the population had more than doubled to 28,543. The population increase from 1990-2000, was 28.1%. The population of the Kailua CDP increased just 8% from 1990-2000, to 9,870, but the Holualoa CDP, the one closest to the Property, increased by 59.3% over that time, to 6,107. Together this local population equals 15,977.

132. In 2000 Hawaii County per-capita income was \$18,791. In Kailua-Kona it was \$20,353, while in Holualoa it was \$25,222, which is 22% higher than Kailua, and 39% higher than Hawaii County. This statistical picture of Kailua-Kona demonstrates that the area is slightly better off than the Island as a whole, but generally similar in socioeconomic profile except for a higher proportion of workers in the resort sector that grew up with the area over the last 10-20 years. The area has fewer professionals but more workers in the "arts, entertainment, recreation, accommodation and food services." Holualoa appears more upscale and newer than Kona. Overall, the census data bears out the impression that Kailua is the hub of North Kona, around which an influx of newer in-migration is gathering.

133. At full build-out, the Staff Housing Community will provide housing for approximately 100 families, in addition to the families who will reside in the planned six single-family homes. Assuming an average household size of 2.5, that equates to potentially 265 occupants. If half of those occupants are new to the Big Island, approximately 133 new residents would be added to the Big Island.

134. Within the Student Villages, assuming an average unit will contain 1.5 staff or 3.9 students, at full build-out, the Student Villages will provide housing for approximately 702 students and 270 staff. Assuming that all of the residents of the Student Villages are new to the Big Island, the Student Villages would result in an increase of approximately 972 residents to the general population.

#### Housing

135. A decadal increase in housing units generally mirrored the increase in population between 1990 and 2000. As of 2000, there were 13,330 housing units in the North Kona district, up 68% from 1990. Kailua had 4,322 units, up 20% from 1990, Holualoa had 3,330, up 63% from 1990. The distribution of housing stock between owner-occupied and rental housing was profoundly divergent from the island-wide average.

136. At the time of the Commission's hearing on the Original Project in 2003, 65% of the housing units in Hawaii County were owner-occupied, 35% of the housing units were rentals; the rental vacancy rate was 8%. Holualoa had generally similar numbers. However, in Kailua, owner-occupied and rental housing was nearly evenly divided, and according to the 2000 US Census, the rental vacancy rate was a healthy (for renters) 12%. The market conditions at the time of the Commission's hearing on the Revised Project indicated increased pressure for higher market prices, thus generating upward pressure on rental rates.

137. The addition of up to 400 new housing units will raise the number of housing units in North Kona by approximately 2.5%-3%, and will increase the total number in Kailua and Holualoa by approximately 5%.

138. Operation of the Recreation Facilities is expected to offer a variety of jobs. It is expected that volunteers and students from the U of N will fill some of those positions, with the remainder of the positions being filled by members of the local community.

139. The construction of the Revised Project will provide temporary employment for current area residents. In assessing the Original Project, the Commission found that construction workers attracted to Kailua-Kona for temporary construction jobs related to the Original Project would be able to find housing for the duration of their employment or longer. Construction workers for the Revised Project should be similarly situated.

140. Condition J under Ordinance No. 02-101, requires Petitioner to comply with the applicable affordable housing requirements pursuant to Chapter 11, Hawaii County Code, which may include but not be limited to the following options:

- provision of in-lieu fees;
- provision of off-site housing units;
- provision of developable lands;
- provision of infrastructure/services; and
- other means approved by the County.

Petitioner has committed to the Commission that it will comply with affordable housing requirements of the County of Hawaii.

## Economy

141. Portions of the Revised Project may provide short-term employment in the areas of development, construction, financing, architecture, engineering, insurance, accounting, law, and other related employment relative to the development, and in the operation of the Sports and Recreation Facilities. Full and part-time job opportunities may be created in the areas of: administration and staff support, accounting, finance, customer service, security, property management, personnel, production and promotion, clerical, landscape maintenance, janitorial services, and marketing and advertising.

## **IMPACTS UPON THE RESOURCES OF THE AREA**

### Flora and Fauna

142. A flora and fauna study and biological survey of the Petition Area was completed in July 2002. The purpose of the survey was to identify any State or federally listed threatened or endangered plant species growing on or near the Petition Area, and to summarize the populations of native and introduced plant species. All portions of the Petition Area were surveyed, and all of the naturalized and most of the prominent landscaped plants were noted. During the course of the plant survey, all bird species present on the project site were identified by sight or sound. No mammals were sighted, although it is likely that a number of aliens including mongooses, rats and cats inhabit the Property.

143. The general landscape of the Kailua-Kona area has been radically changed by centuries of settlements, over a century of grazing and particularly by the development of hotels, condominiums, resort homes and associated infrastructure and commercial activity since 1960. The vegetation has also been fundamentally altered by alien species invasion to the point that in many locations native species are few to none. The alien species invasion of kiawe (*Prosopis pallida*) and koa haole (*Leucaena leucocephala*), long ago became dominant in the

coastal dry forest. As is typical of the region, the Property has been managed for grazing and thus the vegetation is non-natural and almost completely alien. The Petition Area is basically kiawe parkland with an understory of guinea grass (*Panicum maximum*). Other trees, including opiuma (*Pithecellobium dulce*) are present infrequently in the canopy. The understory contains a number of other species, and is in some areas dominated by *Desmanthus virgatus*. Variations in grazing and lava type appeared to have left some areas (particularly the mauka and southern ends) denser with vegetation than others.

144. No threatened or endangered plant or animal species are present or would be expected to be present on the Property. In terms of conservation value, no botanical or zoological resources requiring special protection are present.

#### Surface Water, Flooding and Drainage

145. There are no known drainage ways on the Property. The nearest major drainage way is the Waiaha drainage way located about 600 feet from the edge of the Property on the opposite side of the Hillcrest subdivision. The low rainfall, site drainage plan and any drainage mitigation measures to be implemented pursuant to requirements of the County Department of Public Works ("DPW") will minimize the impacts associated with storm water runoff. The Federal Emergency Management Agency's Flood Rate Insurance Maps indicate that the Property is within Zone X, which represents areas determined to be outside the 500-year floodplain.

146. In connection with the Original Project, a Drainage Report for Hualalai Village was prepared to analyze off-site drainage flows that are tributary to the Property and to propose mitigation for the impacts of these flows. The study quantified flows through three culverts below the Queen Kaahumanu Highway that could potentially impact the Property. Of

the three culverts, only one culvert, an 84" culvert near the southeast corner of the Petition Area, actually impacts the Petition Area. Flow from this culvert will be directed to a retention basin with drywells designed to infiltrate the 100-year storm flow. Discharge from the other two culverts will not impact the Property. There are catch basins along the Hualalai Road/Queen Kaahumanu intersection that contribute a small amount of off-site flow. This flow will be disposed of through drywells.

147. The DPW expressed concern regarding possible diversion of flows to off-site properties due to the curb, gutter and sidewalk that is currently being constructed along Hualalai Road as part of Hualalai Village Phase I. Petitioner demonstrated to the DPW's satisfaction that off-site drainage is not being diverted to other than historic drainage patterns through the U of N property at TMK: (3) 7-5-10:03. By letter dated March 4, 2003, the DPW accepted the Drainage Report for Hualalai Village dated September, 2002 as satisfying Condition G of Ordinance No. 02-01.

#### Historical/Cultural Resources

148. A Cultural Impact Assessment was conducted in December 2002, to assess the potential impacts upon any identifiable cultural properties, features, resources, practices or beliefs of native Hawaiians or any other ethnic groups that are associated with the Property or specific to the Wai'aha ahupua'a.

149. The Property is located within the Kula zone, and thus was probably not heavily settled in comparison to the shoreline and mauka regions. The historic clearing of much of the Property for cattle grazing and ranching further impacted the Property.

150. The Petitioner and its consultants have uncovered substantial evidence, as determined by Petitioner's cultural assessment, of valued cultural, historical or natural resources

within the Property, but have not found that traditional and customary native Hawaiian rights are currently exercised within the Property. As such, it is unlikely that any valued resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action. Additional archaeological survey and mitigation work will be undertaken on the Property.

151. If in the future, any valued cultural, historical, natural resources and/or traditional and customary native Hawaiian rights are discovered in the Property, Petitioner will report this matter to the State of Hawaii, Department of Land and Natural Resources, Historic Preservation Division ("DLNR-SHPD") for review and assessment.

152. As a cultural landscape, the ahupua`a of Wai`aha offers a kaleidoscope of historical and cultural features and properties. Historical documentation indicates that as early as the 15<sup>th</sup> century, the mokuoloko of Kona was a recognized residential and political center whose population was sustained by a variety of agricultural activities and an abundant coastal resources base. Evidence of these traditional land use patterns are documented in remnant cultural properties and features of na heiau ho'oulu 'ai, na ku'ula, springs, enclosures, and terraces of the once extensive Kona field system.

153. During the late 1800s, the upper slopes of Wai'aha served as a summer residence for Emma Naea Rooke and Alexander Kalanikualihohihoekapu 'Iolani.

154. Wai'aha, meaning "gathering water," has one major tributary system whose headwaters are situated in the upper slopes of Hualalai, near 'Umiahu and Kumukou. However, intermittent flow rates of the system historically influenced the development of dryland agriculture.



155. Sources suggest that by the late 1890s, much of the land within the Wai'aha ahupua'a was utilized by the Kona Sugar Company to support the sugarcane industry. Following the closure of the plantation in 1926, Manuel Gomes as part of an immense cattle and ranching operation purchased much of the land within Wai'aha, including a large portion of the Petition Area.

#### Archaeological Resources

156. Permanent settlement began in the Kailua-Kona area in approximately A.D. 1000-1200. Several large and densely populated centers were situated at several locations along the shoreline between Kailua and Honaunau, and included dwellings for rulers, chiefs and people, places of refuge, and other structures. Also present are large and small heiau, sporting areas, and burial clusters. Fishing and farming were the major economic activities. The zone of habitation was segmented makai to mauka, a land division known as an ahupuaa, and included: a) the shoreline inland to approximately 600 feet; b) the Kula, which extended approximately to 500 feet in elevation where some food growing occurred and where permanent habitations are more sparsely distributed; and c) several other zones demarcated primarily by elevation. The Property lies within the Kula zone.

157. Two levels of archaeological/historical reconnaissance have been performed for a portion of the Petition Area. Previously, an eastern portion of the Property was inspected and given clearance by the DLNR-SHPD. In April 2002, an initial field assessment survey was done for the remainder of the Petition Area to determine if any features of archaeological, cultural or historic importance were observable and to make a preliminary assessment of possible historic-preservation treatments appropriate or required by such features. The assessment survey identified 28 possible sites comprising approximately 53 features,

including walls, terraces, mounds, modified outcrops, stone concentrations, platforms, enclosures, and a lava blister cave. The functional types included boundary, temporary and permanent habitation, possible grave, possible ceremonial, clearing, ranching, and indeterminate. During this survey, as many as 30-35 component structural features at eleven different sites were tentatively identified as possible burial features. This tentative functional identification was based primarily on physical similarities to structural features previously identified on other survey projects and confirmed through excavation to contain human skeletal remains.

158. Subsequently, a follow-up investigation was conducted in the survey area of the April 2002 assessment to sample a reasonable number of the possible burial features to determine the following: (a) the presence or absence of burials in the sample of features tested; (b) if present, the number of additional burials likely to be represented by the remaining features that were not tested; (c) the historic preservation implications of any such burials for the feasibility of any proposed development; and (d) the general scope of the work and level of effort for any subsequent archaeological-historical preservation work that might be appropriate and/or required. The ultimate objective of any such subsequent work would be to comply with all applicable historic preservation requirements of the Hawaii State Historic Preservation Division (SHPD) and the Hawaii County Planning Department. The April 2002 survey and the follow-up sampling were performed by PHRI, Inc.

159. No human skeletal remains were recovered within or beneath the eleven sampled possible burial features at eleven different sites. Possible explanations of rock mound features include prehistoric, historic, or modern agricultural clearing mounds; areas of prehistoric sweet potato cultivation, or temporary prehistoric habitation platforms. Other significant archaeological features were noted during the initial survey and recommended for follow-up

investigation and appropriate treatment, possibly including preservation in place in some cases. The results of the fieldwork in the April 2002 survey area do not preclude the existence of human skeletal remains elsewhere on the Property.

160. During the follow-up investigation, cultural remains, including a coral abrader (surface) and several pieces of cowrie shell (subsurface) were noted at Site 2235-7. An adze fragment (surface) and several pieces of unidentified shell (subsurface) were noted at Site 2235-4.

161. An Archaeological Inventory Survey was conducted by Rechtman Consulting in February, 2003 for the April 2002 survey area. Twenty-six sites were defined including the previous recorded Kuakini Wall. The sites include Historic Period walls and enclosures, Precontact temporary and permanent habitation sites, Precontact burial sites, trail segments, an agricultural complex containing 297 features, one ceremonial enclosure and platform, and a papamū. There are four breaches in the Kuakini Wall. No lava tube entrances were found.

162. Subsurface testing was conducted at 22 separate features within 10 sites, including habitation, agricultural, and suspected burial features. The presence of human remains was confirmed at three suspected burial sites. DLNR-SHPD Burial Program was notified of the discovery of the human remains.

163. All 26 sites were assessed for their significance based on criteria established and promoted by DLNR-SHPD and draft Section 13-284-6, HAR (1998) with treatment recommendations for the 26 sites. Five sites were recommended for preservation: Site 6302 (ranching/boundary-Great Wall of Kuakini); Site 23681 (ceremonial-agricultural heiau); and Sites 23683, 23684 and 23685 (burials). The Petitioner has also voluntarily committed to

preserve, with interpretative development, the papamū or rough square game board identified as Site 23682.

164. DLNR-SHPD, by letter dated May 7, 2003, concurred with the site significance evaluations as addressed in the Archaeological Inventory Survey, and recommended the five sites for preservation and 10 sites for data recovery.

165. Two mauka-makai trail segments located on the Property were not recommended for preservation by DLNR-SHPD.

### Scenic and Visual Resources

166. The Property is located on the lower western slopes of Mount Hualalai, one of five shield volcanoes whose lava flows created the island of Hawaii. The Property is bordered by Kuakini Highway on the west, Hualalai Road and Queen Ka`ahumanu Highway to the east, the U of N- Kona campus to the north and the Kona Hillcrest subdivision on the south. The Property is gently sloping, rising in elevation from approximately 100 feet at Kuakini Highway to 325 feet at its highest point, with the steepest slopes on the upper mauka side just below Hualalai Road. Slopes average 5-10% but increase to as much as 25% just below Hualalai Road. Certain residential units in the Revised Project may have a view of Kailua Bay. The site plan preserves these views.

## **ENVIRONMENTAL QUALITY**

### Hazards – Tsunami, Lava Flows and Earthquakes

167. Tsunami: The Federal Emergency Management Agency Flood Insurance Rate Map shows no areas of potential tsunami inundation on the Property.

168. Lava Flows: Hazard zones from lava flows are based chiefly on the location and frequency of both historic and prehistoric eruptions. The hazard zones also take into account the larger topographic area. The island of Hawaii is divided into nine hazard zones

according to the level and degree of potential hazards related to lava flows. An area designated as Zone 1 is considered to be an area of greatest potential hazard. These designated zones are determined primarily from the location and frequency of past eruptions.

169. The Kailua-Kona area is within Zone 4, indicating a moderate hazard. Zone 4 includes all of Hualalai, where the frequency of eruptions is lower than on Kilauea and Mauna Loa. Flows typically cover large areas. The dormant Hualalai last erupted in 1801 (Stearns and McDonald, 1946). Since 1800, five percent of the Hualalai area has been covered by lava. In the last 750 years, 15% has been covered.

170. "Historic eruptions" include those for which there are written records, beginning in the early 1800's, and those that are known from the oral traditions of the Hawaiian people. Our knowledge of prehistoric eruptions is based on geologic mapping and dating of the old flows of each volcano. In the last 3000 years, Hualalai has erupted near its summit, along the northwest and south-southeast rift zones, and from vents on the north flank of the volcano. Twenty-five percent of the volcano is covered by flows less than 1000 years old. Hualalai last erupted in 1800-1801 from several vents on the northwest rift zone. Large flows spilled down both sides of the ridge formed by the rift zone and quickly reached the ocean. One of these flows lies south of Kiholo Bay, and part of the Kona Village resort is built upon it. Another flow underlies the northern end of the Keahole (Kona) Airport. Other major eruptions occurred about 300 and 700 years ago. A large flow from the 700-year old eruption forms the north side of Keauhou Bay, south of Kailua-Kona.

171. Earthquakes: The entire island of Hawaii is susceptible to earthquakes originating in fault zones under and adjacent to the island. Two fault zones have been identified within the Kona region: the Kealakekua and the Kaloko faults, both located in South Kona and

well away from the Property. According to previously established procedures, the United States Geological Survey conducted a probabilistic seismic-hazards assessment in 1997. From this assessment, seismic zones were re-assigned for each county. The classification system is based on a scale of 0 to 4, increasing in level of risk due to seismic occurrence and danger. Due to the island's active volcanic activity, the entire county of Hawaii lies in a seismic zone designated as Zone 4, the highest designation.

172. Under the Uniform Building Code seismic provisions, a Zone 4 area could experience severe seismic activity between .30 and .40 of the earth's gravitational acceleration (g-forces) causing major damage to poorly designed or built structures. The potential of damage caused by strong earthquakes is a prevalent concern for the entire County of Hawaii. As such, the Revised Project will be in compliance with the Uniform Building Code and County of Hawaii structural design standards, including earthquake design provisions.

#### Coastal Waters

173. As described above, rainfall in the area is generally quite low and evenly distributed throughout the year. Site design will minimize runoff and provide for its collection, including runoff from newly hard-topped areas, and for its dispersal through percolation from drywells. Adequate provision has been made for the 100-year flood event. No surface water is expected to reach the coast directly, or flow into drainage ways north or south of the Property and so reach the coast. The management of surface water and drainage control measures during construction and subsequent operation will meet County of Hawaii and State Department of Health standards. The Property's location approximately one-quarter mile inland from the coast is sufficient to further reduce the possibility of any such impacts, and no impacts on coastal waters are anticipated.

## Air Quality and Noise

174. The Revised Project is expected to create short-term disturbances to the present air quality and noise levels for the area due to construction. The Petitioner will implement standard dust and noise attenuation measures during the construction period to minimize the negative short-term effects on these conditions.

175. Potential subsequent impacts to local air quality are expected to be minimal, and limited to emissions from any increase in the number of motor vehicles operated by residents of the Staff Housing Community and Student Villages. By providing a landscape design that reduces or eliminates the need for motor vehicles and encourages walking, noise and air quality impacts from the Revised Project will be minimized.

## Water Quality

176. There are currently 297 water units available for the portion of the Hualalai Village within the Petition Area. The Department of Water Supply (DWS) is in the process of developing a well at Waiaha and up to 1,000 units of water from that source will become available within the next 12 to 18 months. Off-site infrastructure improvements are required to transmit the water from the well to the Petition Area. Discussions with DWS regarding the development of the necessary transmission lines and tanks are ongoing. Once an agreement is reached regarding the off-site infrastructure improvements, water commitments can be secured for the Revised Project.

177. The only intrusion into the groundwater table is expected to be the possible drilling of a well to supply brackish water for the central water feature. This is not expected to have a significant impact because the water will be recirculating and evaporation losses are not expected to be significant. The low rainfall, site drainage plan and any drainage

mitigation measures to be implemented pursuant to requirements of the DPW and the State Department of Health will minimize the potential for adverse water quality impacts.

178. Two 500,000 gallon water tanks are located on the Property and will be replaced by a 1.0 million gallon tank located further south on the Property.

#### Recreational Resources

179. The Kona coast has relatively few education and recreation facilities. The Expanded Academic and Recreation Facilities will provide the community a new destination for theater performances. The performance theater complex will provide for a diversity of cultural, artistic, and recreational needs for present and future generations. The facility will be open to the community for special events.

180. Appropriate provisions for recreation have been made for the Revised Project. The landscape design of the housing areas is such that it encourages walking and biking instead of driving.

### **ADEQUACY OF PUBLIC SERVICES AND FACILITIES**

#### Transportation/Roads/Traffic

181. Based upon the findings of the final report on the Keahole to Honaunau regional circulation plan, the County of Hawaii has developed an action plan to prioritize local transportation projects.

182. To address traffic congestion in the Kona Region, the County of Hawaii and/or the State of Hawaii have committed to roadway improvement projects which have been funded through the construction phase. These include the widening of Queen Kaahumanu from Kealakehe to Henry Street, traffic safety improvements without widening at Palani Road, Kuakini Highway widening, pedestrian improvement project along Alii Drive, and the southern phase of the Kahului-Keauhou Parkway from Kamehameha III Road up to Lako Street.



183. Additional planned and ongoing projects include roadway improvements to the Queen Kaahumanu Highway from Henry Street to Kamehameha III Road; the northern phase of Kahului-Keauhou Parkway; completion of mauka/makai roads along Lako Street and Laaloa Avenue; and alternatives to the intersection of Palani and Queen Kaahumanu, such as the Kealakehe Parkway connection to the Henry Street extension. Funding for these projects ranges from secured to uncommitted.

184. Projects with committed funding in the vicinity of the Property include the widening of Kuakini Highway and pedestrian improvements along Alii Drive. The construction for the widening of Kuakini Highway from Palani Road to Hualalai Road is underway.

185. The County acknowledged that the utilization of fair share contributions collected from fair share assessments imposed pursuant to Hawaii County Code Section 12-162 needs improvement to insure that the funds are utilized for specific projects through the CIP process and to insure that the fair share payments do not languish in the accounts. The County committed to develop and improve systems to track the fair share assessments, to verify payments made and disposition of the payments, to develop an accounting system that is linked to the Planning Department's permit-tracking system and CIP data base system to assure that the fair share assessments are spent for appropriate projects in the vicinity of the contributing project, and to optimize the use of matching funds to leverage federal or State grants.

186. To alleviate the increased traffic congestion in the region, the County is implementing alternatives such as Transportation Systems Management and Transportation Demand Management, which contemplate coordination of traffic signals, HOV and adjustments to peak hour travel by addressing hours of work. The County is also concentrating on implementing increased mass transit, bikeway and pedestrian travel to minimize traffic.

187. Access to the Revised Project would be via a single roadway connecting to Kuakini Highway about 3,600 feet south of the Kuakini/Hualalai Rd. intersection. There would be a controlled access point between the existing Hualalai Village and the expanded campus so that Hualalai Village residents could reach Kuakini Highway. The controlled access would be opened in times of emergency so that the general public could use this route as a secondary route.

188. Based upon a Traffic Impact Analysis Report for the Original Project by M&E Pacific ("TIAR") that analyzed ambient and projected levels of traffic at:

(a) Hualalai/Kuakini; (b) Kuakini/Oni Oni; (c) Hualalai/Queen Ka`ahumanu; and (d) Queen Ka`ahumanu/Nani Kailua, ambient traffic can be expected to increase due to regional growth and new projects in the area during the period between 2002 through 2007. The housing proposed for the Original Project was expected to generate peak traffic of 150 trips during the morning and 190 trips in the afternoon commuter hours.

189. The Addendum to the TIAR dated February 17, 2003, reanalyzed the traffic forecasts and traffic impacts for the Original Project to include the cumulative traffic impacts of several proposed developments in the vicinity. The reanalysis indicated that traffic generated by other proposed developments (Kona Hawaiian Village, Kona Sea Ridge, Alii Cove) could have significant adverse impact at the Kuakini Highway/Walua Road intersection. The opening of the proposed Kahului to Keauhou Parkway is expected to decrease through traffic problems on Kuakini Highway and decrease delay times/improve level of service on Walua Road.

190. The State Department of Transportation ("DOT") reviewed the TIAR and raised concerns regarding the interaction of the entire master planned development at build-out,

compliance with standard practices in preparation of a TIAR, supporting documentation and justification, and mitigation of project generated traffic impacts.

191. According to the 2006 TIAR, given the proposed on-campus staff and student housing, estimated traffic flows from the Revised Project are not expected to have a significant adverse traffic impact on the neighboring road system. Petitioner will submit the 2006 TIAR for review and approval by the DPW as part of Petitioner's rezoning of the Property.

#### Water Service

192. The Revised Project will be served by the County Department of Water Supply system. The County Department of Water Supply has indicated that 297 water units will be allocated for the Staff Housing Community and Student Villages within the Petition Area. Discussions between Petitioner and the County regarding any water unit balance needed for the Expanded Academic and Recreation Facilities are currently underway.

193. The water infrastructure for the Revised Project will be constructed incrementally in conjunction with the development of the various components of the Revised Project. However, the overall system is planned in an integrated fashion with storage capacity to be maintained in the planned tanks in the Villages and at an off-site location adjacent to Hualalai Road.

#### Wastewater

194. Wastewater for the Revised Project will be collected via an on-site gravity system. The on-site system will discharge to a trunk sewer line that has been constructed in Kuakini Highway. The flow is tributary to the County's municipal wastewater treatment plant at Kealakehe.

### Solid Waste/Sanitation

195. Solid waste for the Revised Project will be handled by private solid waste hauling contractors. Waste reduction will be incorporated into the design of the Revised Project. A solid waste management plan will be prepared as required by the County.

### Drainage

196. There are no known drainage ways on the Property. The nearest major drainage way is the Waiaha drainage way located about 600 feet from the edge of the Property on the opposite side of the Kona Hillcrest Subdivision. The low rainfall, site drainage plan and any drainage mitigation measures to be implemented pursuant to requirements of the County Department of Public Works will minimize the problems associated with storm water runoff. The FIRM map indicates the Property is not in a flood prone zone.

197. The drainage area directly mauka of the Property (above Queen Ka`ahumanu Highway) is divided into four (4) smaller drainage basins. Impacts from off-site runoff for the Staff Housing Community, Student Villages, and Expanded Academic and Recreation Facilities will be mitigated through the construction of retention basins with drywells. The retention basins will be designed with the potential to increase capacity should it be warranted in the future. In addition, emergency overflow from the retention basins will be directed toward the street and driveway drainage systems. All anticipated off-site flows will be handled by existing drains along Queen Ka`ahumanu Highway and proposed new drywells. Increase in runoff from impervious surfaces within the Property will be disposed of through drywells. By letter dated March 4, 2003, the Department of Public Works, accepted the Drainage Report for Hualalai Village dated September, 2002 as satisfying Condition G of Ordinance No. 02-01.

### Power and Telephone

198. Utility poles along both Hualalai Road and Kuakini Highway provide electrical power. By letter dated January 31, 2003, Hawaii Electric Light Company (HELCO) indicated to the Public Utilities Commission that HELCO will have sufficient capacity available on its system to serve the Revised Project into the foreseeable future and to cover the projected annual system peaks.

199. Telephone service is also available to the Revised Project along the same pole lines. Telephone service is provided by Hawaiian Telcom.

### Police and Fire Protection

200. The County of Hawaii provides police and fire protection for the entire island. The Petition Area is well served due to its proximity to existing urban areas and location along major roadways. The nearest fire station is located near the corner of Palani Road and Queen Ka'ahumanu Highway about a mile away. Additionally, all buildings will be built to meet life safety and fire code requirements.

### Schools

201. The current U of N campus is immediately adjacent to the Petition Area. The Expanded Academic Facilities will be a part of this campus. Several private and public schools serve the Kailua-Kona area. They include Hualalai Academy, Kahakai Elementary, Kealakehe Elementary, Kealakehe Intermediate, Kealakehe High School, Kona Montessori School, Hualalai Academy, Kona Christian Academy, and Makua Lani Christian High School. The nearest public high school is Kealakehe High School several miles to the north. The West Hawaii Branch of the University of Hawaii Center at West Hawaii, a branch of the Community College System, is located to the south in Kealakekua.

## Parks

202. There are few parks in the Kona region. The nearest large park is the State of Hawaii's Old Kona Airport Park just north of Kailua Kona past the industrial park. A smaller County beach park, Hale Halawai is closer to the Property near the terminus of Hualalai Road. Immediately adjacent to the Property is a small community park in the Hillcrest subdivision.

203. The U of N has recreational amenities scattered through its campus including children's play areas and a soccer field. New recreational amenities are planned, in coordination with landscaped buffers and green space throughout the Revised Project.

## Health Facilities

204. The nearest hospital is Kona Community Hospital which is located to the south in Kealahou about 10 miles away. Several private clinics are located in Kailua Kona near the Property.

## **COMMITMENT OF STATE FUNDS AND RESOURCES**

205. The on-site development of the Revised Project will be funded through a combination of niche financing and conventional financing, and donors from the friends, faculty and staff of the U of N affiliates, and will not require direct expenditures by either the State of Hawaii or the County of Hawaii.

206. State of Hawaii and/or County of Hawaii funds are being committed to local and regional traffic improvements in the area of the Revised Project.

## **CONFORMANCE TO APPLICABLE DISTRICT STANDARDS**

207. The proposed reclassification is in general conformance to Section 15-15-18(1) to (8) of the Land Use Commission rules, standards for determining "U" Urban District boundaries.

**CONFORMANCE WITH GOALS, OBJECTIVES AND POLICIES OF HAWAII STATE PLAN**

208. Pursuant to Section 205-17(1), HRS and Section 15-15-77(b)(1), HAR, and subject to the conditions of approval set forth herein, the reclassification of the Property conforms to the applicable goals, objectives and policies of the Hawaii State Plan, Chapter 226, HRS, as amended with respect to the following State Plan objectives and policies, based upon the following:

Section 226-5: Objective and Policies for Population: The staff and student housing represents a minimal increase of approximately 2½-3% in the population of North Kona and an increase of approximately 3% in the population of Kailua-Kona and Holualoa combined.

Section 226-6: Objectives and Policies for the Economy – In General: the Revised Project will create temporary jobs in construction and ongoing jobs in operation of the facilities.

Section 226-7: Objectives and Policies for the Economy – Agriculture: Under the Original Project the Property was reclassified from Agricultural to Urban State Land Use District. While the Property has a history of use for cattle grazing, the land was poorly suited for agricultural production. The County of Hawaii had 1,214,732 acres of land in the Agricultural land use designation in 2000; North Kona had 158,853. The reclassification of 62 acres to the Urban Land Use District was a relatively insignificant change, especially in this case, where the land was poorly suited to agriculture.

Section 226-12: Objectives and Policies for the Physical Environment – Scenic, Natural Beauty, and Historic Resources: The planning and design of the Revised Project reflects the history, location, topography and setting of the Property. Prominent view corridors and major topographical features will be maintained in the design of the Revised Project. The historical setting of the region will be reflected in its traditionally based planning, architecture, site amenities and operation. The DLNR-SHPD will be consulted regarding treatment of any historic sites that are identified within the Property. No rare or endangered plant and animal species or habitats are present on-site. Native habitats do not exist on the Property given its history as an agricultural parcel and the introduction of non-native species over time.

Section 226-13: Objectives and Policies for the Physical Environment – Land, Air, and Water Quality: Developing the Revised Project is consistent with the intent of this objective as the Petition Area is adjacent to existing urban community and commercial developments. The Revised Project is intended to cluster development and compatible activities and facilities in this area.

Section 226-14: Objectives and Policies for Facility Systems/In General: Existing roadway systems are generally adequate to accommodate the Revised Project. The water system will tie into the County's water system. At the present time capacity for the initial phases of the Revised Project seems sufficient to meet the projected demand. Additional capacity will be developed as required by the Department of Water Supply as the development of the Revised Project will be phased in with development of new water sources by the County. The wastewater system will connect to the existing County system. System capacity is adequate to accommodate the projected loads from the staff and student housing and academic and recreation facilities. Drainage designs will meet County standards for runoff. No offsite impacts are expected.

Section 226-19: Objectives and Policies for Socio-Cultural Advancement - Housing: Approximately 882 people will be housed with the addition of three Student Villages. Up to 100 units will be made available for purchase by staff. The addition of up to 400 units of multi-family housing (comprised of units in the Staff Housing Community and the Student Villages) is proposed as a major component of this development. The units will be situated adjacent to the University facilities, within the unique Kona setting and at a pedestrian scale. The Staff Housing Community and Student Villages will be closely linked to the University and provide will much needed additional housing opportunities for U of N staff and students. The University hosts international students from 30 – 50 nations at any one time. This institution makes a significant contribution to cultural diversity as well as training in cross-cultural relationships.

Section 226-23: Objectives and Policies for Socio-Cultural Advancement – Leisure: The proposed new academic and recreational facilities will be available for use by members of the Kailua Kona community for special events. The College of Arts and Communications will provide a place to enjoy theater performances. The Multi-Purpose Gymnasium will provide balcony seating for viewing sports activities, thereby providing new recreational opportunities.

### **CONFORMANCE WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS**

209. State Education and Higher Education Plan: The U of N is a mission-based educational institution, founded in Kona in 1977. This non-traditional, globally networked university offers viable university-level learning opportunities for emerging leaders in Kona and other locations worldwide. The Revised Project is intended to support the U of N's mission.



210. State Transportation Plan: Roadway improvements will conform to projections for growth in this region. Transportation standards will be observed during development.

211. State Recreation Plan: The Revised Project includes recreation facilities with a Multi-Purpose Gymnasium, track, fields for soccer, football and softball, tennis courts, volleyball courts, a walking/running "vita course" with exercise stations around the campus, and an Olympic pool. The landscape design of the Revised Project encourages walking and biking.

212. State Water Resources Development Plan: The State Water Resources Development Plan is a plan with a broad mandate and agenda to "guide the development, conservation, and administration of Hawaii's water and related land resources on a comprehensive and coordinated basis." As such, new development must be located logically and the short term and long term impacts should promote resource availability and water quality. The Revised Project is located in an urban infill area between two existing urban developments, the Hillcrest subdivision and the U of N campus. By its location, it consolidates and minimizes the expansion of water infrastructure for urban development. In addition to suitable native species, the landscaping will consider xeriscape concepts and species to reduce water demand. The drainage plans for the Revised Project will include drywells that will enhance percolation into the ground and help recharge the aquifer and that will have capacity for expansion. The overall concept calls for management of rainwater on site through filtration within the landscaping or dry wells.

213. State Agriculture Plan: The Revised Project is within the State Land use Urban District.

214. State Tourism Plan: The Revised Project will provide alternate education and recreation facilities consistent with the goals and policies of the State Tourism Plan.

215. State Housing Plan: The Revised Project will accommodate the housing needs of most of the students and staff of the U of N. This will reduce the overall housing demand within the area. The Revised Project will not create additional demands on the limited housing market because the students and staff living on-site will not be competing with local residents for housing. The Petitioner has agreed to comply with the applicable affordable housing requirements of the State and County in the development of the Revised Project.

216. State Employment Plan: The Revised Project is intended to reflect the needs and desires of the Kona and U of N communities through the creation of new housing and additional educational and recreational facilities. The Revised Project will provide some employment opportunities for area residents. The academic and recreational facilities, along with the residential component of the Revised Project, are anticipated to generate up to 30 temporary and permanent part-time and full-time jobs.

**CONFORMANCE WITH OBJECTIVES AND POLICIES OF THE HAWAII GENERAL PLAN**

217. The Staff Housing Community, Student Villages, and Educational and Recreation Facilities are consistent with the Medium Density Urban designation of the Hawaii County Land Use Pattern Allocation Guide Map. The Revised Project will build approximately 11 residential units per acre. The Educational and Recreation Facilities are also consistent because the County's Multiple-Family Residential (RM), Village Commercial (CV) and Residential – Commercial Mixed Use (RCX) districts allow these uses. In the words of the General Plan, "[t]he land use pattern is a broad, flexible design intended to guide the direction and quality of future developments in a coordinated and rational manner."

Economic: University of the Nations-Kona hosts international students from 30 - 50 nations. The University makes a significant contribution to cultural diversity as well as training in cross-cultural relationships. The Revised Project provides additional housing for staff and expanded activities with enrichment programs for residents and visitors. Staff and students associated with the University also make substantial contributions to the West Hawaii economy. This Revised Project will enhance further growth of the University and add opportunities for residents to improve their quality of life through further educational opportunities.

Environmental Quality: Drainage will be disposed of through the use of drywells. Wastewater will be tributary to the County of Hawaii's sewer system and wastewater treatment plant. Throughout construction and operation, the Revised Project will remain in compliance with all applicable Federal, State and County air, water solid waste and noise control standards.

Flood Control and Drainage: the Flood Insurance Rate Map (FIRM) for this vicinity shows the Waiaha Drainage way located approximately 1,000 to 1,500 feet south of and separated from the Petition Area by the Hillcrest Subdivision. Consequently, no known drainage ways are located on the Property. Off-site runoff that enters the Property will be disposed of through retention basins and drywells. This will mitigate any existing drainage problems that occur downstream of the Revised Project as well as protect the Property from storm damage. Increased runoff generated by the Property will be disposed of in drywells. Best Management Practices will be used to prevent soil erosion.

Historic Sites: An archaeological assessment survey was conducted by Paul H. Rosendahl, Ph.D., Inc. in April 2002, and an Archaeological Inventory Survey was conducted by Rechtman Consulting in February, 2003 for the portion of the Petition Area not reviewed and cleared by DLNR-SHPD. In its letter dated May 7, 2003, DLNR-SHPD concurred with the site significance evaluations as addressed in the Archaeological Inventory Survey, and recommended five sites for preservation and 10 sites for data recovery. Between October 29 and December 20, 2002, Rechtman Consulting, LLC conducted an intensive field survey of the entire Property. The presence of burial human remains was confirmed at three platform features. DLNR SHPD Burials Program has been notified of the discovery of human remains. The three sites were recommended for preservation. In cooperation with the State Historic Preservation Officer, a treatment and mitigation plan will be developed for all features determined to be archaeologically or historically significant.

Natural Beauty: The philosophy of the entire Revised Project is to "build to the land," avoiding major cuts and fills, design to facilitate pedestrian access, and build to a lower residential density than the site would allow to provide a better quality of life for residents over the long term. The landscaping and design through the Revised Project will encourage residents to leave their cars at home and walk to and from Kailua Village.

Housing: The Revised Project will provide additional residential inventory for West Hawaii and will consist of units targeted for individuals affiliated with the University, thereby reducing the demand for other local housing. The Revised Project is located within close proximity to all necessary urban services and facilities, and will help complete the urban core for that area of Kailua-Kona. The Revised Project will be completed in compliance with required codes and standards.

Public Facilities: The Revised Project includes recreational amenities for residents and guests. The establishment of a Multi-Purpose Gymnasium and performances arts theater shall be available to the community for special events.

Public Utilities: The Revised Project is located adjacent to Kuakini Highway, Hualalai Road and the University. Water, telephone, electricity, sewer, services are available as described in the following sections.

Water: Engineering consultants working for the U of N are currently in communication with the Department of Water Supply, Engineering Division, regarding the water master plan for TMK: 7-5-10:85 and 7-5-17:6. This planning will also incorporate water storage considerations for the existing U of N Campus, TMK: 7-5-10:3. Alternative transmission line layouts and storage tank locations are being evaluated.

Telephone: Existing telephone lines and poles are available along the property lines of the Revised Project.

Electricity: Electrical utility poles and lines exist along the boundary of the Property. HELCO has indicated that source capacity of the grid is sufficient to accommodate the proposed project. The policy of the U of N is for all on-site utilities to be underground.

Sewer: Wastewater will be serviced through a private sewer line, connecting to an existing sewer line through the University and then connecting to the County sewer at Kuakini Highway. The County of Hawaii has constructed the Kuakini Interceptor Sewer from the University to the Kailua-Kona sewage treatment plant. An extension of the interceptor sewer has been constructed fronting the Property along Kuakini Highway. The Revised Project will connect to this system at the northwest corner of the Property at Kuakini Highway.

Recreation: The plan for the Revised Project includes recreational amenities available for U of N staff and students. In addition, the expanded Educational and Recreation Facilities are intended to be available to the Kailua-Kona community for special events.

Transportation: The existing roadway system, as improved by projected State and County programs, has sufficient capacity to accommodate the growth in ambient traffic and the traffic that will be generated by the Revised Project.

Land Use – Multiple-Family Residential: The Staff Housing Community and the Student Villages will provide new housing units on medium-density parcels in close proximity to similarly zoned urban areas. The Revised Project access points are on collector and arterial roads. Traffic from the Revised Project will not be routed through areas of lesser density to reach regional transportation facilities.

### **CUSTOMARY AND TRADITIONAL NATIVE HAWAIIAN RIGHTS**

218. The Property is located within the Kula zone, and thus was probably not heavily settled in comparison to the shoreline and mauka regions. The historic clearing of much of the Property for cattle grazing and ranching further impacted the Property. The Petitioner and its consultants have uncovered substantial evidence of significant cultural, historical or natural resources within the Property, but have not found any traditional and customary native Hawaiian rights being exercised within the Property. As such, it is unlikely that any valued resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action. Additional archaeological survey and mitigation work will be undertaken on the Property. If in the future, any valued cultural, historical, natural resources and/or traditional and customary native Hawaiian rights are discovered in the Property, the Petitioner will report this matter to the DLNR-SHPD for review and assessment.

### **INCREMENTAL DISTRICTING**

219. Pursuant to Section 15-15-78 of the Land Use Commission Rules, incremental districting is not required because full development of the Revised Project can be completed within ten years after the date of the Commission's granting of Petitioner's Motion to Amend, and the Commission's Approval of this First Amended Findings of Fact, Conclusions of Law, and Decision and Order for State Land Use District Boundary Amendment in Docket No. A02-737.

## **RULING ON PROPOSED FINDINGS OF FACT**

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

221. Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law, any finding of fact herein improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

## **CONCLUSIONS OF LAW**

222. The Commission finds upon the clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 62 acres situate at Waiaha 1<sup>st</sup>, Kailua-Kona, District of North Kona, Island and State of Hawaii, identified as Tax Map Key Nos.: (3) 7-5-10:85 and 7-5-17:06, from the Agricultural District to the Urban District, upon the conditions set forth in this Decision and Order, is reasonable and consistent with the Hawaii State Plan as set forth in Chapter 226, HRS, the policies and criteria established pursuant to Section 205-17, HRS, and conforms to Chapter 15-15, HAR.

223. Article XII, Section 7 of the Hawaii Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The Commission affirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and/or religious purposes on the Property, subject to the right of the State to regulate such rights.

224. The State's power to regulate the exercise of customary and traditional native Hawaiian rights allows the Commission to permit development that interferes with such rights if the preservation and protection of such rights would result in actual harm to the recognized interests of others. Nevertheless, the State is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent

feasible. *Public Access Shoreline Hawaii v. Hawaii County Planning Commission*, 79 Hawai`i 425, 450, n. 43, 903 P.2d 1246 (1995).

### **DECISION AND ORDER**

IT IS HEREBY ORDERED that the Property being the subject of Docket No. A02-737, filed by Petitioner U of N Bencorp (now AEKO) consisting of approximately 62 acres of land in the State Land Use Agricultural District at Hualalai, North Kona, Island, County and State of Hawaii, identified as Tax Map Key:(3) 7-5-10:85 and (3) 7-5-17:06, and approximately shown on Exhibit "B", attached hereto and incorporated herein by reference ("Reclassified Area") is hereby reclassified from the State Land Use Agricultural District to the State Land Use Urban District, and the State Land Use District boundaries are amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the valued cultural, historical or natural resources and any customary and traditional native Hawaiian rights and practices within the Reclassified Area that have been identified herein shall be protected in perpetuity; that the reclassification shall not significantly affect or impair the continued exercise of those right and practices; and that the reasonable exercise of those rights and practices shall be protected, to the extent feasible, by the conditions of approval set forth herein.

IT IS HEREBY FURTHER ORDERED that the reclassification of the Reclassified Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

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

226. 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.

227. Public School Facilities. Petitioner shall contribute to the development, funding, and/or construction of school facilities for the Revised 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.

228. Water Resources. Petitioner shall provide adequate water supply facilities and improvements or equivalent funding to accommodate the Revised 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.

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



230. 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.

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.

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.

e. For all sites approved for preservation by the DLNR-SHPD, to include without limitation the Great Wall of Kuakini (Site 6302), the papamū 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 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.

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.

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

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 First Amended Findings of Fact, Conclusions of Law, and

Decision and Order. Petitioner shall adhere to prevailing and/or published protocols of the DLNR-SHPD where these sites are found to exist.

232. 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.

233. 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.

234. 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.

235. 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.

236. 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.

237. 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.

238. 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.

239. 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.

240. 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 the 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.

Done at Honolulu, Hawaii, this \_\_\_\_ day of \_\_\_\_\_, 2007, per motion on December \_\_\_\_, 2006.

LAND USE COMMISSION  
STATE OF HAWAII

By \_\_\_\_\_  
LISA M. JUDGE  
Chairperson and Commissioner

By \_\_\_\_\_  
MICHAEL D. FORMBY  
Vice-Chairperson and Commissioner

By \_\_\_\_\_  
STEVEN LEE MONTGOMERY  
Vice-Chairperson and Commissioner

By \_\_\_\_\_  
DUANE KANUHA  
Commissioner

By \_\_\_\_\_  
THOMAS CONTRADES  
Commissioner

By \_\_\_\_\_  
KYONG-SU IM  
Commissioner

By \_\_\_\_\_  
RANSOM A.K. PILTZ

Commissioner

By \_\_\_\_\_  
REUBEN S.F. WONG  
Commissioner

By \_\_\_\_\_  
NICHOLAS W. TEVES, JR.  
Commissioner

Filed and effective on  
\_\_\_\_\_, 2007.

Certified by:

\_\_\_\_\_  
ANTHONY J.H. CHING  
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A02-737
	)	
AEKO HAWAII, formerly known as	)	CERTIFICATE OF SERVICE
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) 7-5-10:85 and 7-5-17:06 situate	)	
at Waiaha 1 <sup>st</sup> , North Kona, Island, County	)	
and State of Hawaii.	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the First Amended Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment and Exhibits A through B were served upon the following by either hand delivery or depositing the same in the U. S. Postal Service postage prepaid, by regular or certified mail as noted:

DEL.            MARY LOU KOBAYASHI  
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                  Honolulu, Hawaii 96804-2359

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Group 70 International, Inc.  
925 Bethel Street, Fifth Floor  
Honolulu, Hawaii 96813-4307

Dated: Honolulu, Hawaii, \_\_\_\_\_.

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ANTHONY J. H. CHING  
Executive Officer



Exhibit "A"  
Financial Statement

To be filed separately.

CAMPUS MASTER PLAN - ALTERNATIVE 7

