



UNIVERSITY OF THE NATIONS

August 8, 2023

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

Re: LUC Docket No. A02-737 (U of N Bencorp)
2023 Annual Report
Tax Map Key Nos. (3) 7-5-010:085 & (3) 7-5-017:006 ("**Petition Area**")

Dear Executive Officer Orodener:

The University of the Nations, Kona, Inc., a Hawai'i nonprofit corporation ("**UNK**"), hereby submits its 2023 Annual Report pursuant to Condition No. 17 of the State of Hawai'i Land Use Commission's ("**Commission**") *Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment*, filed in Docket No. A02-737 ("**D&O**").

Pursuant to the Commission's December 8, 2022 *Decision on 2022 Status Report Hearing*, and as represented at the June 22, 2023 status report hearing ("**June 2023 Status Report Meeting**"), UNK submitted its preliminary Draft Environmental Impact Statement ("**DEIS**") on June 30, 2023, for review and comment by the Commission's staff, the State of Hawai'i Office of Planning and Sustainable Development ("**OPSD**"), and the County of Hawai'i ("**County**") Planning Department prior to publication. UNK received comments from the Commission's staff on August 7, 2023, but has not yet received comments from OPSD or the County. Once all comments are received and addressed, as appropriate, UNK will request that the DEIS be published for public comment in accordance with Haw. Rev. Stat. ("**HRS**") Chapter 343 and its implementing regulations.

At the June 2023 Status Report Meeting, the Commission questioned UNK about existing uses on the Petition Area and UNK's use of volunteers to serve its mission. The following sections address those questions, and also provide some background on UNK's purpose and

mission, the services UNK provides to the Kona community, and some background history of this Docket to those Commissioners who are new to the Commission. Thereafter follows an update of the status of the conditions of approval imposed under the D&O.

A. UNK's Purpose and Mission.

UNK operates a mission-based educational facility founded in Kona in 1978 (the “**University**”), which is immediately adjacent to and shares a common boundary with the Petition Area. Through the University, UNK fulfills its commitment to Jesus Christ by equipping men and women with spiritual, cultural, intellectual, and professional training and inspiring them to continually grow in their personal relationship to God, while also seeking to make God known among people in all nations. In short, UNK trains missionaries. UNK is affiliated with the University of the Nations, which has campuses in over 800 locations throughout more than 160 countries.¹

The University serves as the training expression of Youth with a Mission (“**YWAM**”). Founded in 1960, YWAM is a global movement of Christians from many cultures dedicated to serving Jesus Christ throughout the world.² YWAM functions as a relationally-networked family of ministries rather than a centralized organization. Currently, well over 30,000 missionaries are serving world-wide in nearly 200 countries.

Students come to the University to learn how to share their faith in Jesus Christ, and to serve the poor and needy in Kona and abroad. The core program UNK offers is the Discipleship Training School, which is mandatory for all other UNK courses. The Discipleship Training School is a full-time program that lasts five-to-six months. It consists of two phases: a lecture phase and an outreach phase. In the outreach phase, students focus on applying what they learned in the classroom (during the lecture phase) through an intense, cross-cultural experience that includes sending missionaries to foreign countries to assist with a variety of missions, including assisting in building housing, digging wells, and providing medical support.

Although UNK prepares students for service around the globe, UNK's mission begins by providing critical services to Kona's most underserved communities. Those services include, but are not limited to:

- Kama'aina Hale Apartments affordable housing project
- Kona clean-up crews
- Wrap Around Foster Care program
- Family Friday's childcare program
- Food distribution and support for homeless community
- Kona Kids Outreach

¹ Each campus is its own separate legal corporation. In America, each campus is registered as a 501(c)(3) corporation; elsewhere as charitable NGOs in conformity with each respective nation's laws.

² UNK's Statement of Purpose can be found at: <https://www.ywamvalues.com/purpose-beliefs--values.html>.

- Kealahou Intermediate School tutoring services
- Academic and athletic support for Kona high schools
- Holoholo sports and activities programs
- Tree planting at Pu'u Wa'awa'a Wildlife Sanctuary
- Ocean View dentistry and medical outreach
- Kosrae translation projects
- Marshallese community development initiatives
- Haleo Hawaiian language classes
- Hawai'i First Responder Invitational Fitness Competition
- Strength conditioning for Hawaii County SWAT team and police officer training
- Support for Big Brother Big Sister events on campus

B. Background on this Docket and the Petition Area.

The development approved under the D&O for the Petition Area included: (a) approximately 297 for-sale residential condominium units; (b) a Cultural Center that was to be a first-class tourist attraction intended to present the authentic story of the native Hawaiian culture, its historical relationship with the introduction of Christianity, and its impact upon the monarchy and the people of Hawai'i, including the Kona region; and (c) a small Educational Facility (collectively, the "**Original Project**"). The Cultural Center would have also included an outdoor water feature, an educational living museum complex, a restaurant, and shops. The Educational Facility was a modest, approximately five-acre expansion of the University's existing campus onto the Petition Area. The exact site plan and configuration of the Educational Facility had not been determined at the time of the D&O.

In 2006, UNK's predecessor-in-interest, Aeko Hawai'i, filed a Motion to Amend ("**2006 Motion to Amend**") with the Commission to get approval for revisions to the Original Project that Aeko Hawai'i believed would more closely align with the University's institutional and faith-based values ("**2006 Updated Project**"). The 2006 Updated Project consisted of three primary elements: (a) a Staff Housing Community (with up to 400 units, ranging from studios to three-bedroom units, along with six single-family residences); (b) three Student Villages consisting of 300 low-cost residential units, classrooms, offices, and a library; and (c) expanded Academic and Recreational Facilities. The Academic and Recreational Facilities were proposed to include the College of Arts and Communications, the College of Education, a commons with a multi-purpose gymnasium, and additional sports facilities. The Commission held a hearing on the 2006 Motion to Amend in 2007, but no action was taken.

On March 23, 2020, UNK withdrew the 2006 Motion to Amend and filed a new Motion to Amend ("**2020 Motion to Amend**"). The 2020 Motion to Amend seeks Commission approval to allow UNK to develop the Petition Area as an expansion of the University's existing campus and eliminates all for-profit elements approved under the D&O, including the condominium units and Cultural Center ("**Campus Expansion Master Plan**").

Shortly after the 2020 Motion to Amend was filed, UNK determined that the Campus Expansion Master Plan triggered environmental review under HRS Chapter 343, which must be completed before the Commission can take action on the 2020 Motion to Amend. Upon

completion of the HRS Chapter 343 environmental review process, UNK expects that the 2020 Motion to Amend will be supplemented or otherwise amended, including to account for refinements that have been made to the Campus Expansion Master Plan and to incorporate information gathered through the environmental review process.

C. Present Limited Use of the Petition Area.

As noted above, the D&O approved an approximately five-acre portion of the Petition Area to be utilized for the Educational Facility that would function as an expansion of the University's existing campus. The D&O further provided that the exact site plan and configuration of the Educational Facility had not yet been determined.

Since 2008, UNK has used a portion of the Petition Area for its Natural Farm Research and Training Center. Through research, demonstration, and training, the Natural Farm Research and Training Center seeks to develop and convey knowledge about sustainable community technologies in the areas of food, energy, water, and sanitation that can improve the lives of people throughout the world. The primary focus of the Farm Research and Training Center is to develop family-scale technologies that are appropriate for use in developing countries, as well as parts of Hawai'i.

The Natural Farm Research and Training Center includes demonstrations of, and training in, natural farming using Korean natural farming, aquaponics, animal care with innovative deep liter systems with no discharge, and agroforestry with trials of more than 100 species of edible plants for use in edible landscaping. Water technology demonstration and training includes rainwater catchment and storage, as well as water purification methods. Energy technology research includes a focus on solar and wind with innovative models of low velocity wind capture devices made from repurposed materials. Sanitation training includes methods of detecting and mitigating water-borne diseases.

Present primary research topics include trials of different varieties of vegetables grown in soil and aquaponics, farm-made fish and chicken food using black soldier fly meal as a supplemental protein and fat source, comparison of methods of aquaponics production, and rates of composting green waste with different methods. Continued research in low-velocity wind capture is focused on using this technology in locations with no electricity as a sole source of energy or as a supplement to solar. Vegetables and fruit produced incidental to the research and training programs are provided to the University's cafeteria and UNK's program feeding the homeless community in the Kona region.

It had long been UNK's understanding that the structures within the Natural Farm Research and Training Center, which have never been used as dwellings or for lodging, were exempt from building permits as agricultural buildings pursuant under HRS 46-88. However, after the June 2023 Status Report Meeting, UNK discovered that the exemption may not apply to development on land within the State Land Use Urban District, and "development" referred to any manmade change to improved real estate, including, but not limited, to buildings or other structures or storage of equipment or materials.

Additionally, UNK previously set up temporary tents on the Petition Area that were utilized as additional classroom space. The tents were particularly useful during the COVID-19 pandemic, when social distancing and other restrictions severely impacted educational institutions.

Since the June 2023 Status Report Meeting, UNK has been working to bring structures within the Natural Farm Research and Training Center into compliance with applicable County laws. Most recently, UNK submitted an application to the County for an electrical permit, which was accompanied by a full set of electrical plans produced by a Hawaii-licensed electrical engineer. Additionally, the two temporary tents have been fully removed. UNK will continue to work to obtain all necessary permits and will remove any structures for which permits are not available.

D. Use of Volunteers in Service of UNK's Mission.

As UNK has previously explained to the Commission, UNK is uniquely equipped to internalize a significant amount of its development costs. UNK has an organized network of highly-skilled professionals who have donated their skills to develop the University's existing campus, and who will donate their skills in the future to assist with development of the Campus Expansion Master Plan on the Petition Area. These volunteers donate their time and skills as part of their service to Jesus Christ.

When UNK's and YWAM's founder, Loren Cunningham, describes us he begins by saying that we are "an all-volunteer, faith-missionary movement." Time and again God's generosity is highlighted as one of his primary character traits. Consequently, we too are to be a people of generosity, for the Scriptures enjoin us as followers of God to "follow all his ways." Jesus Christ is our example and we "must follow in his steps" because he perfectly portrayed the character of God. Jesus displayed God's extraordinary generosity in every detail, including the fact that he never charged anyone for his redemptive services. He told his followers that they were to do likewise: "Freely you have received; freely give."

The life of volunteerism is at the very heart of what the UNK does. Once again, "we desire to be generous, giving ourselves, our time and talents to God with no expectation of remuneration." We give of ourselves freely to serve others. In turn, others who believe in what we are doing, give freely of their prayers and resources to support us. This releases a virtuous cycle of generosity that benefits the society around us.

Over the years, many members of UNK's volunteer staff are professionals skilled in a wide range of vocations, including draftsmen, architects, engineers (civil, mechanical, electrical, etc), contractors, developers, and journeymen, to name just a few. Overall, the volunteer services provided to UNK are estimated to cover approximately 40% of construction costs. The vast majority of the development costs UNK is able to internalize come in the form of savings on professional service fees and contractor markups.

UNK also utilizes its Kokua Crew and Mission Builder programs. The Mission Builders are highly-skilled short-term professional volunteers who freely offer their services *pro bono*. They include engineers, contractors, electricians, lawyers, welders, and equipment operators and

mechanics, who volunteer their time and skills as an act of loving service to God and neighbor. These professionals have the background, experience, and certifications (insurance, licenses, etc.) necessary to carry out the tasks they are volunteering for at no or minimum cost.

As noted at the June 2023 Status Report Meeting, any work undertaken by UNK is completed under a licensed contractor and with all applicable permits. UNK will continue discuss its future needs for the Campus Expansion Master Plan with its licensed contractors and will ensure that all work is completed in full compliance with all applicable laws.

E. UNK's Non-Profit Financing Model.

As UNK has explained in the past, and in particular detail during the November 2, 2022 status report meeting (“**November 2022 Status Report Meeting**”), UNK utilizes a donation-based, non-profit financing model. This financing model is not unique to UNK; it is used by countless non-profit organizations, including the International Red Cross, Habitat for Humanity, Samaritan's Purse, Food for the Hungry Mercy Ships, and World Vision.

UNK and the larger University of the Nations global network have a well-documented and very successful track record of completing significant development projects utilizing the non-profit financing model. The University's existing campus was purchased in 1977 when it was the location of the dilapidated Pacific Empress Hotel. Since that time, UNK has fully restored the original four buildings and constructed twenty-six new buildings totaling over 360,000 square feet. The current replacement value of the thirty buildings on the University's existing campus is \$109,000,000.

The larger University of the Nations network has also developed more than 800 campuses in over 160 countries utilizing the same non-profit financing model utilized by UNK. UNK displayed a PowerPoint presentation showing just a small sample of these campuses at the November 2022 Status Report Meeting. For the Commissioners that were not present for the November 2022 Status Report Meeting, a copy of that presentation is enclosed with this Annual Report.

Despite what appeared to be meaningful progress in the Commission gaining a better understanding and appreciation of UNK's financing model at the November 2022 Status Report Meeting, some on the Commission expressed skepticism of the financing model at the June 2023 Status Report Meeting. That is concerning, given the information and examples of past success UNK has provided to the Commission.

As a non-profit religious organization, the Religious Land Use and Institutionalized Persons Act (“**RLUIPA**”) protects UNK from unduly burdensome or discriminatory land use regulations.³ While UNK understands that the Commission will examine UNK's financial capability to complete the Campus Expansion Master Plan when it determines whether there is good cause to grant the 2020 Motion to Amend pursuant to HAR § 15-15-94, rejecting UNK's non-profit financing model despite well-supported evidence of prior success and viability would place a substantial and undue burden on UNK's exercise of its religious freedoms.

³ RLUIPA is codified at Title 42, Chapter 21C of the United States Code.

F. Status of Conditions of Approval Under the D&O.

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

1. *Affordable Housing. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable housing requirements for the Project of the County of Hawaii. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Hawaii.*

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

Notwithstanding then-Director Hosaka’s letter, UNK will comply with the Housing Code at the time the Commission takes action on the 2020 Motion to Amend.

As noted in the 2020 Motion to Amend and various other filings, UNK has a strong track record of providing affordable housing in the Kona region. The Kama‘aina Hale Apartments are located immediately adjacent to UNK’s existing campus. In 2014, a non-profit established by UNK took over the lease for and management of the Kama‘aina Hale Apartments from the Hawai'i Housing Finance and Development Corporation. At the time, 68 of the 128 units were abandoned and totally uninhabitable. Through funds infused by UNK, the 68 abandoned units were rehabilitated. Today, 42 of the 128 units are made available to applicants who make 50% below the area median income (“**AMI**”), and the remaining 84 units are available to those applicants making 80% below the AMI.⁴

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

⁴ Two units are reserved for managers.

Status of Compliance: In connection with the 2020 Motion to Amend, UNK engaged Group 70 International, Inc. (“G70”) to prepare, among other things, a Preliminary Infrastructure Assessment and a Conceptual Infrastructure Master Plan (“**Infrastructure Master Plan**”).⁵ The Infrastructure Master Plan was recently updated to reflect refinements that have been made to the Campus Expansion Master Plan and is attached as Appendix C to the DEIS.

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

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

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

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

⁵ The Infrastructure Master Plan was filed as Petitioner’s Exhibit 21 in support of the 2020 Motion to Amend.

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

4. *Water Resources. Petitioner shall provide adequate water supply facilities and improvements or equivalent funding to accommodate the Project. The water supply facilities, improvements and/or equivalent funding shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources, and the County of Hawaii Department of Water Supply.*

Status of Compliance: For the 2020 Motion to Amend, UNK engaged Tom Nance Water Resource Engineering to prepare a Water Supply Study, dated February 12, 2020, a copy of which was filed as Appendix D to Petitioner’s Exhibit 3 in support of the 2020 Motion to Amend. In June 2023, Tom Nance Water Resource Engineering prepared an updated Water Supply Study for the DEIS, which is attached as Appendix D. UNK’s efforts to secure a water source and determine the appropriate facilities and improvements remain ongoing and a top priority.

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

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

Petitioner’s Exhibit 16 in support of the 2020 Motion to Amend is a letter from DEM indicating that there was available capacity at its Kealahou Wastewater Treatment Plant. As UNK completes the HRS Chapter 343 environmental review process and refines its Campus Expansion Master Plan and phasing, UNK will work with DEM and the State of Hawai‘i Department of Health to determine what new wastewater treatment, transmission, and disposal facilities are required for each phase of the Campus Expansion Master Plan.

6. Archaeology. *Petitioner shall submit a complete inventory survey report of the Reclassified Area for the review and approval of the State Historic Preservation Division of the Department of Land and Natural Resources (“DLNR-SHPD”).*

Status of Compliance: An *Archaeological Inventory Survey of TMKs: 3-7-5-10:85 and 3-7-5-17:06, Wai‘aha Ahupua‘a, North Kona District, Island of Hawai‘i (“AIS”)* was completed for the Petition Area by Rechtman Consulting in 2003. The State of Hawai‘i Department of Land and Natural Resources, State Historic Preservation Division (“SHPD”) approved the AIS by letter dated November 17, 2003.

Copies of the of the AIS and SHPD’s approval letter were filed as Appendices E and F, respectively, to Petitioner’s Exhibit 3 in support of the 2020 Motion to Amend, and again as Appendices I.1 and I.2, respectively, to the DEIS.

- 6a. *Petitioner shall prepare and implement a data recovery plan, a preservation plan, a burial treatment plan, and a monitoring plan to be reviewed and approved by the DLNR-SHPD. The submittal of these plans shall be accompanied by the design plans for the Project to facilitate the development of appropriate mitigation measures.*

Status of Compliance: An *Archaeological Data Recovery at Ten Sites on Parcel 85 and Parcel 06 (“Data Recover Plan”)* was prepared by Rechtman Consulting in 2007. The Data Recovery Plan was submitted to SHPD in October 2007, and was resubmitted to SHPD on August 30, 2019. Copies of the Data Recovery Plan was filed as Appendix I to Petitioner’s Exhibit 3 in support of the 2020 Motion to Amend, and again as Appendix I.5 to the DEIS.

A Preservation Plan for SIHP Site 6032 and Site 23681 (TMKs: 3-7-5-10:085 and 3-7-5-17:006) Wai‘aha 1st Ahupua‘a, North Kona District, Island of Hawai‘i (“Preservation Plan”), was prepared by Rechtman Consulting in October 2013. SHPD approved the Preservation Plan by letter dated June 19, 2014. Copies of the Preservation Plan and SHPD’s approval letter were filed as Appendices J and K, respectively, to Petitioner’s Exhibit 3 in support of the 2020 Motion to Amend, and again as Appendices I.6 and I.7, respectively, to the DEIS.

A Burial Site Component of a Preservation Plan for Three Sites in the Proposed Hualālai Village Development Area (TMKs: 3-7-5-10:85 and 3-7-5-17:06) Wai‘aha Ahupua‘a, North Kona District, Island of Hawai‘i (“Burial Treatment Plan”), was prepared by Rechtman Consulting in September 2003. The Burial Treatment Plan was approved by the Hawai‘i Island Burial Council on November 20, 2003, and by SHPD by letter dated August 20, 2019. Copies of the Burial Treatment Plan and SHPD’s approval letter were filed as Appendices G and H, respectively, to Petitioner’s Exhibit 3 in support of the 2020 Motion to Amend, and again as Appendices I.3 and I.4, respectively, to the DEIS.

A Dismantling/Restoration Plan for a Portion of the Kuakini Wall (SIHP 5-10-28-6302) TMKs: (3) 7-5-010:085 and (3) 7-5-017:006, Wai‘aha 1st Ahupua‘a, North Kona District, Island of Hawai‘i (“Dismantling/Restoration Plan”) was prepared by ASM Affiliates in September

2019.⁶ A copy of the Dismantling/Restoration Plan filed as Appendix L of Petitioner's Exhibit 3 in support of the 2020 Motion to Amend, and again as Appendix I.8 to the DEIS.

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

- 6b. *Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the DLNR-SHPD shall be notified immediately. The significance of these finds shall then be determined and approved by the DLNR-SHPD. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that mitigative measures have been implemented to its satisfaction. Petitioner shall also comply with all applicable statutory provisions and administrative rules regarding inadvertent burial finds within the Reclassified Area. Any mitigation and preservation shall be monitored by the KWC as described below.*

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

- 6c. *The proposed mitigation commitments for all identified sites with burials shall be submitted to the DLNR-SHPD for review and comment. A burial treatment plan for those sites, to include without limitation Sites 23683, 23684 and 23685, shall then be approved by DLNR-SHPD, and a certified copy of said plan shall be filed with the Commission prior to any land alteration in the vicinity of these sites. Mitigation commitments shall be monitored by the Kahu Wai'aha Committee ("KWC").*

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

- 6d. *For all sites approved by the DLNR-SHPD to undergo archaeological data recovery, an archaeological data recovery plan (scope of work) shall be prepared by Petitioner. This plan shall be approved by the DLNR-SHPD and a certified copy of said plan shall be filed with the Commission prior to any land alteration in the vicinity of these sites. The approved plan shall be monitored by the KWC.*

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

⁶ The Archaeological Preservation Plan stipulated, among other measures, that the collapsed portions of Site 6032 will be restored and stabilized, and that the missing southern portion of the wall will be reconstructed to the extent possible given availability of appropriate stones. In their acceptance letter for the Archeological Preservation Plan, SHPD required that a separate dismantling/restoration plan be submitted. This plan was prepared in response to that requirement.

- 6e. *For all sites approved for preservation by the DLNR-SHPD, to include without limitation the Great Wall of Kuakini (Site 6302), the papamu or rough square game board (Site 23682), the agricultural heiau (Site 23681), and after completion of the finished grade for the area, at least one of the alignments for the ancient trails (Site 23679 or Site 23680), a preservation plan shall be prepared by Petitioner. (Burial sites are covered under the burial treatment plan.) This plan shall include buffer zones/interim protection measures during construction, and long-range preservation (including public access and interpretation, where appropriate). The plan shall include input from the KWC and relevant Hawaiian groups. The plan shall be approved by the DLNR-SHPD and a certified copy of said plan shall be filed with the Commission prior to any land alteration in the vicinity of these sites. The approved preservation plan shall be monitored by the KWC.*

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

- 6f. *Petitioner shall preserve the approximate alignment of at least one of the mauka-makai trail segments. Due to the difficulty of development on this site, the site grading would occur first, then the Petitioner shall reestablish a minimum of one of the two trail segments, Site 23679 (20 meter segment) or Site 23680 (ten meter segment), at a mutually agreeable site, giving allowances for building footprints, on finished grade, in consultation with the Office of Hawaiian Affairs.*

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

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

- 7a. *Petitioner shall initially establish and annually provide reasonable operating and capital expenditure costs or facilities through revenues from the Project, the KWC composed of: (1) a person of Native Hawaiian ancestry who is a lineal descendent and knowledgeable regarding the type of cultural resources and practices within the Reclassified Area, as selected by the Executive Officer of the Commission from a list of three names based on a review of their resumes, and (2) a management member knowledgeable regarding the type of cultural resources and practices within the Reclassified Area, as selected by the Petitioner. The individuals making up the KWC shall operate on an equal vote basis.*

Status of Compliance: The Kahu Wai‘aha Committee (“KWC”) was proposed by UNK’s predecessor and imposed as a condition on the Original Project because of the proposed Hualalai Village and the Cultural Center,⁷ which are not being pursued as a part of the Campus Expansion Master Plan.

⁷ D&O at FOF ¶119.

However, UNK has worked closely with people with familial ties to the Petition Area and sought their input on numerous occasions, as well as other Hawaiians such as Kupuna Mary Kamahale Boyd. UNK established the Waia‘ha Community Advisory Committee (“WCAC”), which is comprised of Leinā‘ala Fruean, Brooke Valle Anderson, Kahu Kealoha Kaopua, Rollins Rabara, Kupuna Harry and Aunty Naomi Aiu, Kahu/Kupuna Bobby Laioha Macomber, and Kupuna and Kumu Hula Namahana Kalama Panui, together with Paul Childers and others serving as representatives on behalf of UNK. The WCAC gives advice on programs and the development of the Petition Area, including integrating its archaeological resources.

The WCAC met most recently on July 23, 2023, to review the updated master plan for the Petition Area and to discuss the recently submitted Draft EIS. Prior to this, the WCAC had met twice in 2022 and undertook a preliminary assessment of soils and water to determine the feasibility of growing kalo. The WCAC has also been very active in the recent production of “The Wind and the Reckoning,” a locally filmed and produced film featuring ‘Olelo, Hawaiian language dialogue. Several members of the WCAC traveled to the mainland for the presentation of this unique film in various film festivals. Through the 2020 Motion to Amend, UNK seeks certain amendments to Condition No. 7 so that it is consistent with UNK’s Campus Expansion Master Plan and the establishment of the WCAC.

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

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

to the exercise of cultural practices associated with those sites.⁸

- 7b. *The KWC shall be established by Petitioner no later than six months from the issuance of this Decision and Order. Upon establishment of the KWC, Petitioner shall provide a written report to the Commission, the Office of Planning, and the County of Hawaii with details as to its composition, structure, operating costs and compensation for members and staff, procedures, and plan of action.*

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

- 7c. *The KWC shall jointly decide, on an equal vote basis, monitoring and dispute resolution decisions related to the protection of native Hawaiian practitioners' exercise of customary and traditional practices and rights within the Reclassified Area; the availability of natural and cultural resources for present and future generations; and appropriate access within the Reclassified Area to the extent that these rights are protected by PASH vs. Hawaii County Planning Commission, 79 Haw. 425 (1995), in perpetuity. In the event that the two person KWC cannot agree on a specific decision, they shall jointly select a third person to break the tie. A certified description of any action requiring selection of a third member of the KWC shall be filed with the Commission.*

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

- 7d. *The KWC shall monitor the quality of the Petitioner's actions to provide access to and/or preserve and maintain traditional and customary native Hawaiian practices and cultural resources. The KWC shall provide recommendations consistent with this Decision and Order to the Commission with respect to maintenance and/or preservation of those traditional and customary native Hawaiian practices and cultural resources.*

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

- 7e. *The KWC shall provide reports to the Commission on an annual basis describing items and issues covered in their deliberations and any other findings and recommendations.*

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

- 7f. *Petitioner shall preserve and protect rights to gathering for cultural purposes, including religious practice, by providing appropriate access to burial sites and*

⁸ ASM Affiliates also noted that to further avoid potential impacts to valued cultural resources, the Commission could condition any approvals to include the recommended archaeological/cultural precautionary monitoring measures as additional mitigation during all ground disturbing development activities. This condition is already included in Condition No. 6 under the D&O.

other archaeological sites within the Reclassified Area consistent with this Decision and Order. Petitioner shall adhere to prevailing and/or published protocols of the DLNR-SHPD where these sites are found to exist, as monitored by the KWC.

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

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

Status of Compliance: All grading operations for UNK's campus expansion will be conducted in full compliance with dust and erosion control requirements. Prior to grading, necessary grading permits and a National Pollutant Discharge Elimination System (NPDES) permit will be obtained. All earthwork and grading will conform to Hawai'i County Code, Chapter 10, (Erosion and Sediment Control), and all construction activities will comply with the provisions of HAR § 11-60.1-33 relating to fugitive dust. Grading activities will follow best management practices (BMPs) as described in and required by the permits.

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

Status of Compliance: For the 2020 Motion to Amend, UNK engaged Fehr & Peers, Inc. to prepare a Mobility Analysis Report ("MAR"), and an updated MAR that was filed as Appendix H to the DEIS. Upon approval of the 2020 Motion to Amend, UNK will work with DOT and DPW to enter into an agreement on UNK's pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the Campus Expansion Master Plan, if necessary.

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

Status of Compliance: As noted above, a MAR was filed in support of the 2020 Motion to Amend, and an updated MAR was filed as Appendix H to the DEIS. The potential impacts of the Campus Expansion Master Plan were evaluated following guidelines established by DPW DOT. Both DPW and DOT will have opportunities to comment on the updated MAR, both during the public comment period on the DEIS and in the Commission's further proceedings on the 2020 Motion to Amend.

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

Status of Compliance: As UNK has previously informed the Commission, the Cultural Center envisioned in the D&O is not included in the Campus Expansion Master Plan. In light of that, the 2020 Motion to Amend sought the deletion of Condition No. 11.

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

Status of Compliance: In 2004, the University of Hawai'i-Hilo ("UHH") came to Kona to discuss a possible partnership related to the College of Hawaiian Language. At that time, it became apparent that UHH was interested primarily in the development of the Cultural Center and resulting funding. Although there was some discussion regarding creating a distance learning opportunity for teaching the native Hawaiian language, UHH's interest appeared minimal.

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

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

Status of Compliance: At the appropriate time, UNK will consult with the State of Hawai'i Department of Defense, Office of Civil Defense and the County of Hawai'i Civil Defense

Agency to determine the civil defense measures necessitated by the Campus Expansion Master Plan. Upon reaching an agreement with these agencies, UNK will fund and construct the appropriate civil defense measures.

Additionally, UNK recently received its Certificate of Occupancy for the lower floor of the University's Defender Cafeteria (on its existing campus), which was designed to be used as a resource for the community in times of emergency, including hurricanes and tsunamis. UNK also continues to make its existing campus available as a training resource for the Hawai'i County Police Department, as evidenced by the public testimony submitted by the Hawai'i County Police Chief in connection with the June 2023 Status Report Meeting.

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

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

15. *Compliance with Representations to the Commission. Petitioner shall develop the Reclassified Area in substantial compliance with the representations made by the Petitioner to the Commission in this Docket, as proposed in its Petition and in documentary evidence and testimony before the Commission. Failure to do so for any reason including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Reclassified Area to its former classification, a change to a more appropriate classification, or any other legal remedies.*

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

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

Status of Compliance: There have been no changes in ownership of the Petition Area since UNK filed its 2022 Annual Report and 2022 Supplemental Annual Report.

17. *Annual Reports. Petitioner shall timely provide without prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawaii Planning Department in connection with the status of the development proposed for the Reclassified Area, and Petitioner's progress in complying with the conditions imposed. The annual report shall*

be submitted in a form prescribed by the Executive Officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval of the Petition.

Status of Compliance: This 2023 Annual Report is submitted in compliance with Condition No. 17.

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

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

19. *Recording of Conditions. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with Bureau of Conveyances and/or the Assistant Registrar of the Land Court of State of Hawaii, as applicable, a statement that the Reclassified Area is subject to conditions imposed by the Commission in the reclassification of the Reclassified Area, and (b) file a copy of such recorded statement with the Commission. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances and/or the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, pursuant to Section 15-15-92, Hawaii Administrative Rules.*

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

Respectfully submitted,

/s/ David J. Hamilton
David Joel Hamilton
President and CEO

Enclosure: