



UNIVERSITY OF THE NATIONS, KONA



March 28, 2019

Daniel E. Orodenker
Executive Officer
State of Hawai'i Land Use Commission
Department of Business, Economic Development, & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804-2359

RE: LUC Docket No. A02-737
Annual Report by University of the Nations, Kona
Former Petitioner UofN Bencorp
Tax Map Key Nos. (3) 7-5-10:85 and (3) 7-5-17:06

Dear Mr. Orodenker:

The Land Use Commission issued a Findings of Fact, Conclusions of Law, and Decision and Order (hereinafter "**D&O**") on August 2, 2003 regarding the Land Use Commission docket number A02-737 in the Matter of the Petition of UofN Bencorp. The University of the Nations, Kona, (hereinafter "**University**") as owners of Tax Map Key Nos. (3) 7-5-10:85 and (3) 7-5-17:06 (hereinafter "**Subject Property**"), hereby submits its annual report in compliance with Condition No. 17 of the D&O by providing the condition and University's response showing substantial completion.

History of the Subject Property

On August 3, 2003, the Petitioner was granted a State Land Use Boundary Amendment to reclassify 62 acres of land in the Kailua-Kona, District of North Kona, in the County and Island of Hawai'i from Agricultural Land Use District to Urban Land Use District to allow for the development of the Hualalai Village condominiums, the Cultural Center, and approximately five acres for the development of the University. This original plan focused on the economic benefit that the condominiums and Cultural Center could bring.

After the D&O was issued, the University began to have financial strain derived from the business model and realized the need to realign itself with the mission's original faith-based value system. This value system is focused on service rather than financial gain. The University began an extensive realignment process to return to its foundations by remembering the history.

In May 2005, UofN Bencorp changed its name to Aeko Hawaii under new leadership and reflecting this change in underlying values. As Aeko Hawaii notified the Land Use Commission of these changes in its annual report filed in August 30, 2006 and at its March 1, 2007 hearing



for its Motion to Change Petitioner's Name and Amend Caption and Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order. This hearing was left without a resolution or vote since a quorum was not present.

In 2011, the note against the land was cleared by several large donations and payments by Ka 'Ohana Waiaha ("KOW"), a Hawaii non-profit land trust which was established by U of N Kona. In October 2011, Aeko Hawaii transferred by deed the Subject Area to KOW. At this time, the land was no longer encumbered and the Hualalai Village project (outside of the petition area) was substantially completed with six out of eight of the condominium buildings finished. The faith-based model that the University is effective for the University's development.

Now that the large debt from the Hualalai Project has been cleared, the litigation resolved, and the University is growing, the University needs to expand onto the Subject Property.

Therefore, the University provides the following updates to the conditions of the D&O:

Compliance with Conditions of Approval for Docket No. A02-737

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.

Response: University was asked to 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. While there is no present development on the land, the University's ministries and projects extend beyond the petition area. In 2014, the University has provided the community affordable housing through "Kama'aina Hale Apartments". Until 2014, the Hawaii Housing Finance & Development Corporation (HHFDC) maintained and managed "Kama'aina Hale Apartments. 68 of the 128 units were totally uninhabitable for over a decade. A "request for proposals" for private developers to take-over the Apartments at no-cost attracted no interest. The University set up "Kama'aina Hale Apartments" (KHA) a non-profit entity that would rehabilitate the 68 abandoned units at its own expense (no government subsidy), and manage the apartments under HUD's affordable income and rent restrictions. HHFDC's board, after thorough consideration, and with the approval of the Governor, transferred ownership of the Apartments to KHA in 2014. The Bishop Estate, as owner of the land, conducted its due diligence and consented to the transfer.

Since 2014, KHA has fully refurbished the 68 abandoned units (each a duplex approximately 800 sq. ft., with 2 bedrooms and large living spaces), and these units have been placed into the rental housing pool for working families on the Big Island. General services along with other neighborhood events have been set up to build a community environment.

The affordability requirements for KHA comply with the state of Hawaii requirements. Hawaii Affordable Properties Inc., has been engaged as the management company and

certifies people's eligibility. As of 2019, KHA policy requires 42 of the 128 units set for applicants who make 50% below AMI, the remainder 84 units set for applicants 80% below AMI with two units reserved for managers. Presently over 50 units are inhabited by applicants with 50% or below AMI. These units are rented at \$940 per month, the other units at \$1,276 per month. There is currently a 98% occupancy rate. No preference is given to any segment and is fully accessible to the general public.

Therefore, although we have not provided affordable housing on the subject area, we have been productive and active to the substantially complete this commitment.

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.

Response: This has not happened yet, but we are certainly aware of it as we move the project forward. As advancing plans are envisioned, University is committed to working with 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 to insure there is proper drainage and will seek all appropriate approval from the county.

We do not believe there are any runoff issues. In the time since the LUC order was issued, we have not been cited by the county for runoff issues.

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.

Response: As the development plans are still in progress, University is not yet seeking building permits on the subject area and as such have not finalized any agreements with the Department of Education. When permits are sought, University will meet with the DOE and take the appropriate actions. It remains part of our intention to contribute to early childhood education through preschools and schools from K-12 in this project which will part of our discussion with the DOE at the time. Also, University understands that there may be a contribution including an impact fee that may be required.

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.

Response: University is currently working with the Department of Water Supply of the County of Hawai'i to supply water to the subject parcel. Currently, University is applying for a well permit and is in discussion with the Water Board about a possible "Water Development Agreement". University will continue to work with the Commission on Water Resource Management of the State Department of Land and Natural Resources, and the County of Hawaii Department of Water Supply as we move forward.

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.

Response: University currently has no wastewater being generated from the subject property. University knows that as the project develops, we need to apply to the State Department of Health and the County of Hawaii Department of Environmental Management and will seek connection to the county system.

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").

Response: The complete inventory survey was completed and the DLNR-SHPD approved the survey by letter dated November 17, 2003.

- a. 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.

Response: The Preservation Plan was completed August 2013 and approved by the DLNR-SHPD by letter. The Burial Treatment Plan was dated September 2003 and approved in the board minutes of the Burial Council on November 20, 2003. The project development plans are still in progress but we understand the importance and will ensure that the project plans include appropriate mitigation measures. The DLNR-SHPD has not required a monitoring plan.

- 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. Any mitigation and preservation shall be monitored by the KWC as described below.

Response: University understands the importance of complying within this condition, and if any such discovery is made shall stop work and follow appropriate protocol.

- 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. Mitigation commitments shall be monitored by the Kahu Wai`aha Committee (“KWC”).

Response: The burial treatment plan was completed in 2003 and accepted by the Hawai’i Island Burial Council in the Board Minutes of November 20, 2003 (see attached).

On January 5, 2013, a brushfire was started from a firework from the Hillcrest housing side of the subject property. The fire department came onto the property with a bulldozer and stayed clear of several of the preserved sites. As recommended, the preserved sites had been marked with orange fence. However, site 23683 was apparently engulfed in flames and smoke and the bulldozer crossed the site. After the fire was controlled and it was realized that site 23683 was damaged, University contacted the Hawaii Island Burial Council to report and seek wisdom. Kaoanoi Ho’omanwanui of the Council inspected the site, made a verbal determination how the site should be treated, and how we can restore it. She also inspected it for any exposed remains and none were found. The site has once again been marked off with orange fence to protect it.

- 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. The approved plan shall be monitored by the KWC.

Response: The Archaeological Data Recovery Plan was completed and submitted in October 2007. The plan included ten (10) SIHP Sites: 23670, 23671, 23672, 23673, 23674, 23675, 23676, 23677, 23678, and 23686 from where data was recovered (see attached).

- e. For all sites approved for preservation by the DLNR-SHPD, to include without limitation the Great Wall of Kuakini (Site 6302), the papamu or rough square game board (Site 23682), the agricultural heiau (Site 23681), and after completion of the finished grade for the area, at least one of the alignments for the ancient trails (Site 23679 or Site 23680), a preservation plan shall be prepared by Petitioner. (Burial sites are covered under the burial treatment plan.) This plan shall include buffer zones/interim protection measures during construction, 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.

Response: The Preservation Plan was completed in October 2013 and the DNLN sent the approval letter on June 19, 2014. (See attached)

- 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.

Response: University shall comply with this condition.

- 7. Cultural, Historical, Customary and Traditional Rights and Resources.
 - a. 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.

Response: As mentioned above, the University has been in close relationship with the lineal descendants of the subject property and sought their input on numerous occasions as well as other Hawaiians such as Kupuna Mary Boyd. University shall formally set up the KWC to invite the ongoing input of the lineal descendants.

- b. 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.

Response: Please refer to Response “7.a.” above.

- c. 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.

Response: Please refer to Response “7.a.” above.

- d. 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.

Response: Please refer to Response “7.a.” above.

- e. 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.

Response: Please refer to Response “7.a.” above.

- f. Petitioner shall preserve and protect rights to gathering for cultural purposes, including religious practice, by providing appropriate access to burial sites and other archaeological sites within the Reclassified Area consistent with this 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.

Response: University shall comply with this condition.

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.

Response: University is committed to implementing efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health.

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

Response: University has not finalized the local and regional transportation programs. However, the University expects that the nature of the improvements of facilities may differ as we are abandoning the cultural center as an economically driven project and substituting with a Hawaiian learning center, preschool expansion, and appropriate activities.

As the final determination is made as to the scope of the project, University will seek and obtain the agreement with the DOT and DOW as to funding and participation for necessary improvements prior to building and zoning approvals.

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.

Response: University agrees to, prior to 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 developments, as well as existing and potential future developments in the immediate area as required by the DOT and DPW.

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.

Response: On March 1, 2007, the Petitioner brought before the Land Use Commission a “Motion to Change Petitioner’s Name and Amend Caption” and a “Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order”. This action was brought to comply with this condition and notify the Commission of the change in leadership that returned to the foundational values of YWAM. This included a shift from the economic focus of the project to the service vision of the mission.

University is committed on developing the campus as an area of cultural understanding and preserving the Hawaiian culture and language. The exact scope and nature of the Hawaiian Learning Center is still being finalized, but we do not anticipate that a commercially-based cultural center will be pursued as an economic engine for the project. Instead we will continue developing programs committed to outreach to the community and children of the Big Island.

Some examples of the current projects and outreaches include the creation of Uniskript for the Hawaiian language which aids in reading and correct pronunciation of the Haleo; Hawaiian language courses; Holoholo ministries; summer immersion programs for children; and a preschool open to local children. These projects currently operate outside the reclassification area but are growing, and we need to expand onto the reclassified area to meet the need.

As the property is developed, the University is committed to providing outreach and educational opportunities for the children of Hawaii as well as educating all the students of the UofN Kona, members of the organization and the local community the historical and cultural importance of the native Hawaiian culture. Hawaiian cultural authenticity.

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.

Response: In 2004, University of Hawaii- Hilo came to Kona to discuss possible partnerships related to the College of Hawaiian Language. At that time, it became apparent that UH-Hilo was interested primarily in the development of the Cultural Center and resulting funding. There was discussion regarding creating a distance learning opportunity for teaching native Hawaiian language, but again, the interest by UH-Hilo seemed minimal. University began its own Hawaiian language programs on the Kona

side of the island. At this time, it remains the only Hawaiian language program where native Hawaiians are welcomed to learn their native language on 100% scholarship through the University of the Nations, Kona.

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.

Response: University agrees to comply with this condition and contact and work with the State of Hawaii Department of Defense-Office of Civil Defense, and the County of Hawaii Civil Defense Agency.

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.

Response: As the development plan progresses, University shall develop a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act and approved by the County of Hawaii Department of Environmental Management, Solid Waste Division. Our commitment to reducing waste is evident by our recycling program and using food scraps for pig food or as compost.

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.

Response: It has always been the intention to satisfy or exceed the expectation of the project, the community, and students both locally and internationally. We intend and want to comply. As evidenced in the chronology of events, University faced numerous and consecutive challenges since the original order and is moving forward.

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.

Response: University will notify the change in ownership. To date, the reclassified land has moved between YWAM entities to address the legal challenges. However, each entity falls under the YWAM umbrella and shares the same objectives and purpose. UofN Bencorp was a 501(c)(2) under the UofN Kona. Ka 'Ohana Wai'aha ("KOW) was a nonprofit land trust created by YWAMers for the express and limited purpose of providing housing for long-term staff of the UofN. University of the Nations, Kona is also called University. Thus, there has not been a material change in ownership. The reclassified area was shifted around to preserve and protect it, but has always been held by a YWAM entity.

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.

Response: On August 30, 2006, annual reports 2004, 2005, and 2006 were submitted through counsel to the Land Use Commission. Now that this litigation period has resolved, we are trying to resolve outstanding commitments and thus are filing an annual report for 2008-2019 on March 28, 2019.

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.

Response: University understands that they may motion to amend the Conditions as stated in Condition 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.

Response: The Conditions were filed with the State of Hawaii Bureau of Conveyances on August 18, 2003 as Document No. 2003-171988.

Thank you for the opportunity to present University of the Nations, Kona's annual report for 2008-2019. The University hopes that this report sufficiently updates the Land Use Commission of the present status of the Subject Property. If you have need additional information, please do not hesitate to contact me. Thank you for your time and consideration.

Sincerely,



Julie B. Anjo

cc: Office of State Planning
County of Hawaii Planning Department
County of Hawaii Planning Commission