

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A16-800
	)	
ISLAND SCHOOL	)	ISLAND SCHOOL
	)	
To Amend the Agricultural Land Use	)	
District Boundary into the Urban District for	)	
approximately 38.448 acres at Puhi, Lihu'e,	)	
Island of Kaua'i, State of Hawai'i,	)	
TMK: (4) 3-8-002: 016	)	
_____	)	

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LAND USE COMMISSION  
STATE OF HAWAII

**PETITIONER'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER  
FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

**AND**

**CERTIFICATE OF SERVICE**

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ISLAND SCHOOL

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**PETITIONER'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER  
FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

Comes now, Petitioner ISLAND SCHOOL ("Petitioner"), by and through its attorneys, MATSUBARA, KOTAKE & TABATA, and hereby submits Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment ("Petitioner's Proposed Decision and Order").

Petitioner's Proposed Decision and Order is as follows:

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

Petitioner ISLAND SCHOOL ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on December 2, 2016 ("Petition"), pursuant to Hawai'i Revised Statutes ("HRS") Section 205-4, and Hawai'i Administrative Rules ("HAR") Chapter 15-15, to amend the land use district boundary to reclassify approximately 38.448 acres of

land, situated in Puhi, Lihu`e, Island of Kaua`i, State of Hawai`i, Tax Map Key No. (4) 3-8-0902: 016 ("Petition Area" or "Property"), from the State Land Use Agricultural District to the State Land Use Urban District. The reclassification is necessary to allow for the Island School Updated Master Plan ("Project").

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

**I. PROCEDURAL MATTERS**

1. On December 2, 2016, the Commission received Petitioner's Petition for Land Use District Boundary Amendment ("Petition"), and Exhibits "1" through "8" of the Petition.
2. On December 19, 2016, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of December 16, 2016.
3. On January 17, 2017, the Commission received the County of Kaua`i's ("County") Position Statement.
4. On January 19, 2017, the Commission received the Office of Planning's ("OP") Statement of Position.
5. On January 27, 2017, the Commission issued its Prehearing Order.

6. On February 16, 2017, the Notice of Hearing was filed, mailed and published in the Honolulu Star-Advertiser, Hawai`i Tribune-Herald, West Maui Today, The Maui News and Kaua`i Publishing Company dba The Garden Island in compliance with HAR § 15-15-51.

7. On February 21, 2017, the Commission received OP's List of Witnesses, List of Exhibits, and Exhibits 2, 3, 4, 5, 6, 7 and 8.

8. On February 22, 2017, the Commission received Petitioner's List of Witnesses.

9. On February 23, 2017, the Commission received the County's List of Witnesses, List of Exhibits and Exhibits 1 through 6.

10. On March 2, 2017, the Commission received Petitioner's Affidavit of Service.

11. On March 2, 2017, the Commission received Petitioner's Affidavit of Service Regarding Notice of Hearing and Exhibits A through D.

12. On March 3, 2017, the Commission received Petitioner's First Amended List of Witnesses, List of Exhibits and Exhibits 13 through 19.

13. On March 3, 2017, the Commission received County's Rebuttal Exhibit List, and Exhibits 1-2.

14. The Commission held the evidentiary hearing in this docket on March 22, 2017 in Lihu`e, Kaua`i, Hawai`i.

15. On March 22, 2017, the Commission closed the evidentiary portion of the proceedings.

## II. FINDINGS OF FACT

### A. Description of the Petition Area

16. The Petition Area is located adjacent to and north/northeast of the University of Hawai`i's Kaua`i Community College campus and approximately two miles west of Līhu`e town in Pūhi, Līhu`e District, Island of Kaua`i. [Pet. Ex. 67, page 1-3]

17. Elevations across the Project range from approximately 350 feet above Mean Sea Level ("MSL") at the eastern portion of the Petition Area to approximately 400 feet MSL at the northwestern portion of the Petition Area. The average slope is approximately 3%. [Pet. Ex. 6, page 3-1]

18. The Petition Area is comprised of TMK (4) 3-8-002: 016, and is owned in fee simple by Petitioner. [Pet. Ex. 6, page S-1; Pet. Ex. 4; Pet. Ex. 2]

19. The Petition Area was previously in sugar cane cultivation by the Līhu`e Plantation Company, Ltd. until the late 1980s. Since the 1990's, the majority of the Petition Area of approximately 30 acres encompassing the western and central portions of the site, has been developed as the Island School campus consisting of classroom, administration and various other facility buildings; athletic/recreational fields; open space; school parking; and, road access. The remaining 8.448 acres comprising the

north-central and eastern portions of the Petition Area are currently undeveloped and vegetated with forest, shrub land, and grassland areas. [Pet. Ex. 6, page 1-6]

20. Land uses bordering the Petition Area include the University of Hawai`i's Kaua`i Community College campus to the southwest/south; a reservoir to the south; undeveloped, vegetated lands owned by Grove Farm Company, Inc. to the north; and, an agro-tourism venture operated by Kaua`i Kilohana Partners, dba Kilohana Plantation, to the east on property owned by Grove Farm Company, Inc. [Pet. Ex. 6, page 1-6]

21. Other surrounding land uses in the nearby vicinity include Kilohana Plantation to the southeast; Kaumuali`i Highway to the south; two Hawaiian Language Immersion schools, including Punana Leo o Kaua`i Preschool and Kawaikini New Century Public Charter School, located to the south within the Kaua`i Community College property; a water storage tank located to the southwest; and, undeveloped, vegetated lands owned by Grove Farm Company, Inc. to the west, north and east. [Pet. Ex. 6, page 1-6]

22. Across Kaumuali`i Highway from Kaua`i Community College to the south is the town of Puhi, with retail businesses, residences and light industrial uses. Further east along the highway, opposite the access road to Kaua`i Community College and Island School, is Chiefess Kamakahahei Middle School and the YMCA at the intersection of Nuhou Street. About a half-mile further east along the highway, on the south side,

are Kukui Grove Shopping Center, Home Depot, Costco and K-Mart. Lihu'e is about another half-mile further east along the highway. [Pet. Ex. 6, page 1-6]

23. The Petition Area is within the State Agricultural Land Use District. The southern border of the Petition Area is adjacent to Kaua'i Community College which is in the State Urban Land Use District. [Pet. Ex. 6; **Subject to completion of Docket No. A16-801**]

24. According to the Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA), most of the property is designated Zone X, which denotes areas outside of flood plains. [Pet. Ex. 6, page 3-11]

**B. Proposal for Reclassification**

25. The proposed updated master plan includes new, renovated and expanded classroom buildings; expanded administration facility and visual arts facility; new facilities, including science building, campus center, dining facility, auditorium and stage, arts education building, dormitory, faculty and employee housing, back-of-house building and courtyard, robotics shed, outdoor science area, maintenance facility, and informal gathering areas; playground and sports facilities, including physical education (P.E.) facilities, track and football field, soccer field, baseball field, softball field, and outdoor swimming pool; internal loop road with bus parking spaces; school and community drop-off areas; and, additional parking spaces. [Pet. Ex. 6, page 2-1]

**C. Development Timetable**

26. Development of the Property will be substantially completed within ten (10) years after the date of the Commission's approval. [Pet. Ex. 11]

**D. HRS Chapter 343**

27. The Final Environmental Assessment/Finding of No Significant Impact for the Project was approved by County of Kaua'i Planning Department on January 28, 2013, and published in The Environmental Notice on February 8, 2013. [Pet. Ex. 11; Pet. Ex. 12; Transcript, March 22, 2017, page 61:line 1 through page 61:line 16 ("Tr. 61:1-61:16")]

**E. Petitioner's Financial Capability to Undertake the Project**

28. The financial statements of Petitioner as of December 31, 2012, reflect total assets of \$13,679,578 total liabilities of \$4,525,547, and total net assets of \$9,154,031. [Pet. Ex. 5]

**F. Need for the Proposed Development**

29. Petitioner's updated Island School master plan is to accommodate additional campus facilities for future increase in its student enrollment, currently at approximately 400 students, to approximately 500 students projected over a ten-year period. Petitioner believes that the additional 130 students increase is sufficient to meet the projected future need. Future enrollment could exceed 500, depending on donations and funding to pay for improvements, but the initial goal is to reach 500. [Pet. Ex. 6, page 2-1; Tr. 27:15-27:18, 28:1-28:9]



**G. Social and Economic Impacts**

30. In the short term, the proposed project will bring about positive benefits to the local economy. This would include increased expenditures for construction, construction-related jobs and tax revenue. Direct economic benefits will result from construction expenditures both through the purchase of material from local suppliers and through the employment of local labor, thereby stimulating that sector of the economy. Indirect economic benefits may include benefits to local retailing businesses resulting from construction activities. [Pet. Ex. 6, page 3-32]

31. In the long-term, the project will contribute toward positive economic benefits through the employment of labor associated with the increased faculty and staff associated with the updated master plan improvements. An increase of approximately 22 FTE faculty and staff, to the current 62 FTE members, for a total of 84 FTE members, will be required for the future increase in the student enrollment to approximately 500 students. [Pet. Ex. 6, page 3-32]

**H. Impacts Upon Resources of the Area**

**1. Agricultural Resources**

32. The U.S. Department of Agriculture Natural Resources Conservation Service classifies the soils within the Petition Area as the Puhi series and rough broken land. [Pet. Ex.6, page 3-1]

33. The predominant soil type within the Petition Area is classified as Puhi silty clay loam, 3 to 8 percent slopes (PnB), with a sliver along the southwestern boundary classified as Puhi silty clay loam, 8 to 15 percent slopes (PnC). This soil type is well-drained, developed in material derived from basic igneous rock, and occurs on broad interfluves on the uplands. The representative profile of the surface layer is brown silty clay loam, about 12 inches thick. The subsoil, about 48 inches thick, is reddish-brown and dark reddish brown silty clay loam and silty clay that has subangular blocky structure. The substratum is silty clay. Runoff is slow and erosion hazard is slight. [Pet. Ex.6, page 3-1]

34. A sliver within the northeastern portion of the Petition Area is classified as rough broken land (rRR). This soil type consists of very steep land broken by numerous intermittent drainage channels. It occurs in gulches and on mountainsides, and in most places it is not stony. These soils are variable, and are 20 to more than 60 inches deep over soft, weathered rock. In most places, some weathered rock fragments are mixed with the soil material. Small areas of rock outcrop, stones, and soil slips are common. Runoff is rapid, and geologic erosion is active. [Pet. Ex.6, page 3-1]

35. The *Detailed Land Classification – Island of Kaua`i* published by the University of Hawai`i Land Study Bureau (LSB) evaluates the quality or productive capacity of certain lands on the Island for selected crops and overall suitability in agricultural use. A five-class productivity rating system was established, with “A”

representing the class of highest productivity and “E” the lowest. The Petition Area is classified as “B” rated soils which are considered to have good attributes for agricultural productivity. [Pet. Ex.6, page 3-1]

36. The State Department of Agriculture’s *Agricultural Lands of Importance in the State of Hawai`i* (ALISH) established a classification system for identification of agriculturally important lands. Three classes of lands were established for the State, primarily, but not exclusively, on the basis of soil characteristics. The three classes of ALISH lands are Prime Agricultural Land, Unique Agricultural Land, and Other Important Agricultural Land. Lands not included under this system are “unclassified”. The majority of the Petition Area is classified as Prime Agricultural Land, except for slivers of land within the northeast and southern portions which are unclassified. [Pet. Ex.6, page 3-1, 3-2]

37. The proposed Project will not have a significant impact on the conversion of agricultural-designated land within the Petition Area. The Petition Area is rendered unsuitable for intensive agricultural uses given its use as a school since 1990. Further, no intensive agricultural activities presently occur within the Petition Area. [Pet. Ex.6, page 3-6]

38. The Project will not have a significant impact on adjoining or nearby agricultural lands as the proposed updated master plan improvements will occur

entirely within the Petition Area, of which the majority of the site is currently developed as the Island School campus. [Pet. Ex. 6, page 3-17].

39. The Petition Area has not been designated as Important Agricultural Lands pursuant to chapter 205, and the Petition Area does not qualify as Important Agricultural Lands as it is within the County's urban growth designation. [Pet. Ex. 6, page 3-6; Tr. 66:12-67:6]

## **2. Fauna and Flora**

40. Flora. A botanical survey of the Petition Area was conducted by AECOS Consultants in September 2010. The botanical survey report is included as Appendix A of Exhibit "6". The vegetation within the undeveloped areas of the Petition Area consists of mixed areas of moderately open to closed forest, shrubland, and grassland. Forest tends to predominate, with mostly mature macaranga (*Macaranga tanarius*) and albizia (*Falcataria moluccana*) trees. Other species include Christmas berry (*Schinus terebinthifolius*), octopus plant (*Schefflera actinophylla*), and Java plum (*Syzygium cuminii*). Groundcover and understory shrubs and vines varied considerably from area to area. No plant species currently listed as endangered, threatened, or proposed for listing under either the Federal or State of Hawai'i endangered species programs were recorded as growing naturally within the Petition Area. Several listed species observed were ornamentals in a Hawai'ian native plant garden. [Pet. Ex. 6, Appendix A; Pet. Ex. 17]

41. Fauna. A fauna survey of the Petition Area was conducted by Rana Biological Consulting, Inc. in September 2010. A total of 221 individual birds of 22 species, representing 16 separate families, were recorded during the survey. Three of the species recorded, the Hawai`ian Goose or Nēnē (*Branta sandvicensis*), Common Moorhen (*Galinula chloropus sandvicensis*), and Hawai`ian Coot (*Fulica alai*) are all native and listed as endangered species under both Federal and State of Hawai`i endangered species statutes. The Nēnē population on Kaua`i is increasing at a fairly rapid pace, and it is likely that if this increase continues, human interactions with Nēnē will continue to rise over time on the Island. The Common Moorhen and Hawai`ian Coot are relatively abundant and widespread on the Island. One other species recorded, the Pacific Golden-Plover (*Pluvialis fulva*), is an indigenous migratory shorebird species that nests in the high Arctic during the late Spring and Summer months, returning to Hawai`i and the tropical Pacific to spend the Fall and Winter months each year. Another, the Black-crowned Night-Heron (*Nycticorax nycticorax hoactli*), is an indigenous resident breeding species. The remaining 17 species recorded are all considered to be alien to the Hawai`ian Islands. Avian diversity and densities were in keeping with the highly manicured nature of the majority of the Petition Area, and its location in the lowlands of Kaua`i. Three species, the Chestnut Munia (*Lonchura atricapilla*), Zebra Dove (*Geopelia striata*), and Common Myna (*Acridotheris tristis*), accounted for slightly less than 52 percent of all birds recorded during the station counts. The most commonly recorded

species was the Chestnut Munia, which accounted for slightly more than 21 percent of the total number of individual birds recorded. Although not detected during the survey, it is probable that the Hawai`ian endemic sub-species of the Short-eared Owl, or Pueo (*Asio flammeus sandwichensis*) use resources in the general project area, as they are regularly seen foraging over open fields in the low- to mid-elevation areas on the Island. Two other species not detected during the survey, the endangered Hawai`ian Petrel (*Pterodroma sandwichensis*) and the threatened endemic sub-species of the Newell's Shearwater (*Puffinus auricularis newelli*) have been recorded flying over the Petition Area between April and the end of November each year. Additionally, the Save Our Shearwaters Program has recovered both species from the general Petition Area on an annual basis over the past three decades. There are no nesting colonies or appropriate nesting habitat for either of these listed seabird species within or close to the Petition Area. By letter dated September 14, 2012, in response to the pre-assessment consultation conducted for this Draft EA, the USFWS stated that the Band-rumped Storm Petrel (*Oceanodroma castro*), a candidate for listing, may fly over the Petition Area. In addition, the USFWS stated the federally endangered Hawai`ian stilt (*Himantopus mexicanus*) and endangered Hawai`ian duck (*Anas wyvilliana*) may also be present in the vicinity of the project site. [Pet. Ex. 6, Appendix A; Pet. Ex. 16]

42. Mammalian species detected during the survey include a dead cat (*Felis c. catus*), and tracks and sign of both dog (*Canis f. familiaris*) and pig (*Sus s. scrofa*). The

endangered Hawai`ian hoary bat (*Lasiurus cinereus semotus*), or `ōpe`ape`a as it is known locally, was not detected during the survey, although bats have been recorded within the general Petition Area on a regular basis. Hawai`ian hoary bats are widely distributed in the lowland areas on Kaua`i, and have been documented in and around almost all areas that still have some dense vegetation. Although no rodents were detected during the survey, it is likely that the four established alien muridae found on Kaua`i, the Roof rat (*Rattus r. rattus*), Norway rat (*Rattus norvegicus*), European house mouse (*Mus musculus domesticus*), and possibly Polynesian rat (*Rattus exulans hawaiiensis*) use various resources found within the general Petition Area. All of these introduced rodents are deleterious to native ecosystems and the native faunal species dependant on them. No mammalian species protected or proposed for protection under either the Federal or State of Hawai`i endangered species programs were detected within the Petition Area during the survey. [Pet. Ex. 6, Appendix A; Pet. Ex. 16]

43. No significant impacts on fauna within the Petition Area are anticipated from the construction and operation of the proposed project. No listed, candidate, or proposed threatened or endangered avian or mammalian species under either the Federal or State endangered species statutes will be disturbed or adversely impacted as a result of the proposed project. [Pet. Ex. 6, Appendix A; Pet. Ex. 16]

44. The principal potential impact that the proposed project improvements poses to Hawai`ian Petrels, Newell's Shearwaters, and Band-rumped Storm Petrels is the increased threat that birds will be downed after becoming disoriented by outdoor lighting associated with possible nighttime construction activity, and following build-out with exterior lighting associated with the structures and appurtenances that are built within the Petition Area. Should nighttime work be required in conjunction with the project construction, and during operation of the proposed project, all exterior lighting will be shielded to reduce the potential for interactions of nocturnally flying Hawai`ian Petrels, Newell's Shearwaters, and Band-rumped Storm Petrels with external lights and man-made structures. The principal potential impacts that the proposed project improvements pose to Nēnē are during construction, and following build-out with the increased student enrollment and associated school activities. [Pet. Ex. 6, Appendix A; Pet. Ex. 16]

45. If construction activity is planned to occur within the Petition Area during the Nēnē nesting season, which typically runs from October through March on Kaua`i, the Petition Area should be surveyed by a qualified biologist prior to the start of construction, to determine if any active Nēnē nesting activity is occurring on the site. If such nesting does occur during construction, it is recommended that a Nēnē monitor be on site during such activity to ensure that no harm occurs to the birds. Due to the likelihood that the endangered Nēnē will utilize resources within the Petition Area, and



the Hawaiian Petrels, Newell's Shearwaters, and Band-rumped Storm Petrels could potentially fall onto the Petition Area during the construction phase of the Project, it is recommended that an endangered species awareness program be developed to include general information on the endangered species act and protected species; specific restrictions that will be in force on the job site to protect endangered species; and protocol on who, and how job site personnel will respond to any downed or injured endangered species that may occur on the site. All construction personnel should be required to be familiar with the program, and its guidelines, restrictions and protocols to be followed. [Pet. Ex. 6, Appendix A; Pet. Ex. 16]

46. The principal potential impact that the proposed Project improvements pose to Hawai'ian hoary bats is during the clearing and grubbing phases of the project. Areas of dense vegetation are likely used to some degree by roosting bats. The principal threat that clearing potential roosting habitat poses to this species is between June and September when female bats may be carrying pups and potentially may not be able to flee vegetation clearing activities quickly enough to avoid harm. Following build-out of the project, lighting associated with the school facilities, and landscaping vegetation will likely attract volant insects to the site, which in turn will provide bats with additional foraging opportunities. To avoid potential impacts to the Hawai'ian hoary bat, the clearing of dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area should not occur between June 1 to September

15 when bats may be carrying young and potentially could be at risk by such clearing activities. [Pet. Ex. 6, Appendix A; Pet. Ex. 16]

47. As there is no federal delineated Critical Habitat present within or adjacent to the Petition Area, development of the proposed project improvements will not result in impacts to any Critical Habitat. [Pet. Ex. 6, Appendix A; Pet. Ex. 16]

### **3. Archaeological and Historical Resources**

48. An Archaeological Inventory Survey (AIS) was prepared by Cultural Surveys Hawai'i, Inc. in May of 2013. The scope of work for the AIS included historic and archaeological background research, ground survey and subsurface testing. [Pet. Ex. 7; Pet. Ex. 14]

49. One historic property was identified: SIHP # 50-30-11-2179, Features A through D. Feature A is a reservoir, Feature B is an earthen ditch, Feature C is an earthen ditch with running water, and Feature D is an earthen ditch. [Pet. Ex. 7; Pet. Ex. 14]

50. SIHP # 50-30-11-2179 (historic agricultural infrastructure) is part of a large historic agricultural district that was once extant throughout much of Nawiliwili. Portions of the district are still farmed today, but the agricultural infrastructure has lost its integrity through repeated modification, disuse and ground disturbance and cannot convey its historic functional significance as part of this larger district. [Pet. Ex. 7; Pet. Ex. 14]

51. SIHP # 50-30-11-2179, Features C and D will be adversely affected by the proposed Project. An archaeological monitoring program for features C and D in accordance with HAR Chapter 13-279 is recommended to mitigate the impacts of the project. [Pet. Ex. 7; Pet. Ex. 14]

52. The AIS was accepted by the State Historic Preservation Division, Department of Land and Natural Resources (“SHPD”) by letter dated March 31, 2014. [Pet. Ex. 7; Pet. Ex. 14]

#### **4. Cultural Resources**

53. A cultural impact assessment (CIA) was undertaken by Cultural Surveys Hawai‘i, Inc. in April 2014. The Area of Potential Effect and Survey Acreage for the CIA was defined as the 38.448 acre petition area and also included the two ahupua‘a of Nāwiliwili and Niumalu. [Pet. Ex. 8; Pet. Ex. 14]

54. In *Ka Pa‘akai v. Land Use Commission*, 94 Hawai‘i 31, 74, 7 P.3d 1068, 1084 (2000), the Court held the following analysis be conducted:

(1) The identity and scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary native Hawai‘ian rights are exercised in the petition area;

(2) The extent to which those resources – including traditional and customary native Hawai‘ian rights – will be affected or impaired by the proposed action; and

(3) The feasible action, if any, to be taken by the LUC to reasonably protect native Hawai`ian rights if they are found to exist. [Pet. Ex. 8; Pet. Ex. 14]

55. The CIA found that there are no known traditional and customary native Hawai`ian rights exercised in the petition area. Under the Ka Pa`akai case, the required analysis therefore ends after the determination that there are no known traditional and customary native Hawai`ian rights exercised in the petition area. [Pet. Ex. 8; Pet. Ex. 14]

56. Should cultural or burial sites be identified during future ground disturbance in the project area, all work will immediately cease and the appropriate agencies will be notified pursuant to applicable law. [Pet. Ex. 8; Pet. Ex. 14]

#### **5. Groundwater and Surface Water Resources**

57. The Petition Area is located within the Līhu`e Aquifer Sector Area. The Līhu`e Aquifer Sector Area is comprised of five Aquifer System Areas identified as the Kīlauea, Anahola, Wailua, Hanamaulu, and Kōloa Aquifer System Areas. The Petition Area is located within the Hanamaulu Aquifer System Area. The State Department of Land and Natural Resources (DLNR), Commission on Water Resource Management (CWRM) has adopted a sustainable yield of 36 million gallons per day (mgd) for this aquifer. The Petition Area is not within a Ground Water Management Area as designated by DLNR CWRM. No significant impacts on ground water are anticipated as a result of the construction and development of the proposed Project. Construction and operational activities associated with the proposed Project are not likely to

introduce to, nor release from the soil, any materials which could adversely affect ground water sources. [Pet. Ex. 6, page 3-10]

58. There are no streams within the Petition Area. Nāwiliwili Stream is the nearest perennial stream, located approximately 300 feet north of the Petition Area at its closest point. Nāwiliwili Stream generally flows in a northwesterly to easterly direction in the vicinity of the Petition Area, and continues in a southeasterly direction to Nāwiliwili Bay. Puhi Stream flows in a southerly direction approximately 0.2 mile west of the Petition Area at its closest point. Puhi Stream converges with Hoinakaunalehu Stream south of the Petition Area, forming Papakōlea Stream. Further south, Papakōlea Stream flows through the Hulē`ia National Wildlife Area before discharging into Hulē`ia Stream, which flows east to Nāwiliwili Bay. [Pet. Ex. 6, page 3-6]

## **6. Visual Resources**

59. The Petition Area is not visible from public vantage points due to its inland location and distance from Kaumuali`i Highway, the nearest public roadway. The Petition Area is located approximately 0.4-mile mauka of Kaumuali`i Highway at its closest point, and is visually buffered by vegetation and the adjacent Kaua`i Community College campus located between the southern boundary of the site and the Highway. The visual environment of the remaining areas surrounding the Petition Area is of expansive undeveloped, vegetated lands, and agricultural cultivation. No

significant visual or aesthetic impacts are anticipated as a result of the proposed project.

[Pet. Ex. 6, page 3-26]

I. Environmental Quality

1. Air Quality

60. Air quality in the vicinity of the Petition Area is generally good, with prevalent northeasterly tradewinds during most of the year. Within the nearby vicinity of the Petition Area, air quality is primarily affected by vehicular-related emissions in the form of carbon monoxide (CO) generated from traffic traveling along Kaumuali'i Highway and other nearby roadways. In the short-term, there will be air quality impacts related to construction activities, including fugitive dust generated by soil disturbance, and emissions from construction vehicles and equipment and commuting construction workers. Potential air quality impacts during construction of the proposed project will be mitigated by complying with the State DOH Administrative Rules, Title 11, Chapter 60, "Air Pollution Control". The construction contractor(s) will be responsible for complying with the State DOH regulations that prohibit visible dust emissions at property boundaries. Compliance with State regulations will require adequate measures to control fugitive dust by methods such as water spraying and sprinkling of loose or exposed soil or ground surface areas and dust-generating equipment during construction. Exhaust emissions from construction vehicles are anticipated to have negligible impact on air quality in the vicinity of the Petition Area as

the emissions would be relatively small and readily dissipated. In the long-term, no significant impacts on ambient air quality are anticipated with the development of the proposed project. The ambient air quality levels would be most affected by vehicular emissions in the form of CO generated by project-related traffic, although the elevated concentrations are anticipated to be nominal and dissipate. [Pet. Ex. 6, page 3-18]

## 2. Noise

61. Ambient noise in the vicinity of the Petition Area is predominantly attributed to vehicular traffic along Kaumuali'i Highway. Unavoidable short-term construction noise impacts will be mitigated to some degree by complying with the provisions of the State DOH Administrative Rules, Title 11, Chapter 46, "Community Noise Control" regulations which require a noise permit if the noise levels from construction activities are expected to exceed the allowable noise levels stated in the Rules. It shall be the contractor's responsibility to minimize noise by properly maintaining noise mufflers and other noise-attenuating equipment, and to maintain noise levels within regulatory limits. Also, the guidelines for the hours of heavy equipment operation and noise curfew times as set forth by the State DOH noise control regulations must be adhered to. In the long-term, no significant impacts on ambient noise levels are anticipated from the development of the proposed Project. Ambient noise levels in the vicinity of the Petition Area will increase slightly as a result of the associated minimal increase in vehicular traffic generated by the proposed Project.

Operation of the proposed Project will potentially generate slightly increased noise during school hours due to additional students, faculty, and school and service-related activities. [Pet. Ex. 6, page 3-18]

**J. Adequacy of Public Services and Facilities**

**1. Highway and Roadway Facilities**

62. A Traffic Impact Report (TIR) for the proposed project was prepared by Wilson Okamoto Corporation in December 2010. The purpose of the TIR is to assess the traffic impacts resulting from the implementation of the Island School's updated master plan, and to identify recommendations of improvements, if appropriate, that would mitigate the traffic impacts. [Pet. Ex. 6, Appendix D; Pet. Ex. 15]

63. Existing roadways within the vicinity of the Petition Area include Kaumuali'i Highway, Puhi Road, Nani Street, and Nuhou Street. At the time that the TIR was prepared, the ongoing widening of Kaumuali'i Highway from two to four lanes had not reached the segment fronting the Petition Area. Hence, the TIR is based on conditions at the intersections of Kaumuali'i Highway with Nuhou and Puhi Roads and Nani Street at the time it was conducted. [Pet. Ex. 6, Appendix D; Pet. Ex. 15]

64. Traffic operations in the vicinity were evaluated in three scenarios: 1) existing; 2) year 2020 without Project; and 3) year 2020 with Project. Traffic operations in the vicinity in year 2020 without Project are expected to improve in comparison to the existing conditions, and the traffic operations in the vicinity in year 2020 with Project



are expected to be substantially the same as year 2020 without Project. [Pet. Ex. 6, Appendix D; Pet. Ex. 15]

65. The widening of Kaumuali`i Highway from two to four lanes has been completed since the TIR was prepared, and today Kaumuali`i Highway operates at only seventy (70) percent capacity, and the highway can probably handle an additional thirty (30) percent increase in growth in the area. [Tr. 98:8-98:17, 102:1-102:7]

66. Given the excess capacity of Kaumuali`i Highway at only seventy (70) percent capacity, there are no additional mitigation measures that would be implemented if the Project is implemented even ten (10) years beyond year 2020. [Tr. 101:10-101:16]

67. Based on the analysis of the traffic data, the following are the recommendations of the TIR with the proposed project:

1. Maintain sufficient sight distance for motorists to safely enter and exit all project roadways.
2. Maintain adequate on-site loading and off-loading service areas and prohibit off-site loading operations.
3. Maintain adequate turn-around area for service, delivery, and refuse collection vehicles to maneuver on-site to avoid vehicle-reversing maneuvers onto public roadways.
4. Maintain sufficient turning radii at all Project roadways to avoid or minimize vehicle encroachments to oncoming traffic lanes.
5. If the implementation of Island School's updated master plan is not completed by the Year 2020, prepare an updated

Traffic Impact Report that incorporates a revised Project completion year. [Pet. Ex. 6, Appendix D; Pet. Ex. 15]

68. Petitioner will comply with the recommendations of the TIR. [Tr. 95:3-95:18]

69. To reduce the use of automobiles, ongoing sustainable transportation options by Island School include providing bus transportation between home and school for students residing within the North Shore and eastern areas of the Island; implementing car-pooling for students and staff; and, encouraging bicycling and walking by students residing near the campus by way of the sidewalks/pedestrian pathways along the existing loop road providing access to the school. [Pet. Ex. 6, Appendix D; Pet. Ex. 15]

## **2. Schools**

70. The Project does not include a market/commercial residential component and will not require educational facilities. [Pet. Ex. 11]

## **3. Parks and Recreational Facilities**

71. The Project does not include a market/commercial residential component and will not require recreational facilities. [Pet. Ex. 11]

## **4. Water Service**

72. Potable water service for the Island School campus is provided by the County Department of Water's (DOW) Puhi 510-foot water system. A booster pump station located at the DOW's Puhi 393-foot water reservoir site provides source from the

393-foot water system to the 510-foot system. The Island School campus is currently served by a two-inch water meter, which has a maximum flow of 9,600 gallons per hour. [Pet. Ex. 6, page 3-38]

73. Island School currently has an agreement to utilize irrigation water from Grove Farm Company, Inc.'s irrigation ditch system which traverses within the Petition Area. Since rainfall is mostly sufficient for irrigation of landscaping within the campus, Island School has generally not utilized much irrigation water, except for a minimal amount for landscaping adjacent to the buildings over the past 20 years. [Pet. Ex. 6, page 3-38]

74. The projected average daily water demand for the proposed Project is approximately 4,700 gpd. The Petitioner will consult with the County DOW on the adequacy of the existing water system to accommodate the proposed project improvements. [Pet. Ex. 6, page 3-38]

75. Island School will continue to have use of irrigation water from Grove Farm Company, Inc.'s irrigation ditch system, as needed. The projected average demand for irrigation water for the Island School campus with the updated master plan improvements is approximately 65,000 gpd. As the average flow of the irrigation ditch within the Petition Area is approximately 1.0 mgd, the irrigation water system would be adequate to meet the irrigation demands of the proposed project. [Pet. Ex. 6, page 3-38]

## 5. Solid Waste Disposal

76. The County Department of Public Works (DPW) maintains an Island-wide solid waste collection and disposal system. The existing Kekaha Landfill, located 1.3 miles northwest of the town of Kekaha on the southwest side of the Island, is the primary disposal site for solid waste on the Island. The County is currently seeking a lateral and/or vertical expansion of the Kekaha Landfill which could extend its capacity by about 12 years. The County is also seeking another landfill site as part of its long-term planning objectives. [Pet. Ex. 6, page 3-37]

77. Currently, refuse generated at the Island School campus is collected by a private refuse collection company and transported to the Kekaha Landfill for disposal. [Pet. Ex. 6, page 3-37]

78. During construction of the Project, a trash management and recycling program will be developed and implemented to minimize solid waste disposal at the County's Kekaha Landfill. [Pet. Ex. 6, page 3-37]

79. Refuse generated by the Project will continue to be collected by a private refuse collection company and transported to the County Landfill (currently Kekaha Landfill) for disposal. During operation of the project, it is estimated that approximately 0.75 tons of solid waste will be generated per week for disposal at the County's landfill. [Pet. Ex. 6, page 3-37]

## **6. Wastewater Disposal**

80. Wastewater service for the Island School campus is provided by Grove Farm Company, Inc.'s Puhi Wastewater Treatment Plant (WWTP) located southeast of the Petition Area and makai of Kaumuali'i Highway. The privately-owned and operated WWTP currently has a design capacity of 1.0 million gallons per day (mgd), and is expandable to 3.0 mgd. The WWTP currently operates at R-1 effluent quality standards, the highest level of effluent quality regulated by the State. The WWTP currently treats approximately 400,000 gallons per day (gpd) of wastewater. The treated effluent is used to irrigate the nearby Puakea Golf Course. The existing wastewater transmission system for the Island School campus includes a network of sewer lines varying in diameter from eight to 27 inches between the WWTP and Kaua'i Community College campus, from six to eight inches within the Kaua'i Community College campus, and six inches with the Island School campus. [Pet. Ex. 6, page 3-37]

81. The projected average wastewater flow for the proposed Project is approximately 13,900 gpd, with a peak flow of approximately 88,400 gpd. The Puhi WWTP has sufficient capacity to serve the proposed Project. [Pet. Ex. 6, page 3-37]

## **7. Drainage**

82. Currently, storm runoff from the Petition Area sheetflows to three existing plantation-era irrigation ditches located within the site, and one existing plantation-era irrigation ditch located adjacent to and south of the site, and is then directed to an existing adjacent reservoir. The ditches and reservoir are part of Grove Farm Company,

Inc.'s (formerly Līhu'e Plantation Company, Ltd.'s) irrigation system. The ditch identified as CSH 2, located along the western and southwestern boundaries of the Petition Area, collects storm runoff from the western portion of the Island School campus. The ditch identified as CSH 3, located within the eastern portion of the Petition Area, is an active irrigation ditch that enters the Petition Area from the north and feeds into the reservoir adjacent to the south-central boundary of the Petition Area. The ditch identified as CSH 4, located along the southeastern boundary of the Petition Area, is fed by the adjacent reservoir. The irrigation ditch located south of the Petition Area flows out of the adjacent reservoir, and also collects storm runoff from the Island School campus. [Pet. Ex. 6, page 3-38]

83. Potential impacts to the quality of nearby surface waters during construction of the proposed Project improvements will be mitigated by adherence to State and County water quality regulations governing grading, excavation, and stockpiling. A NPDES General Permit for Storm Water Associated with Construction Activity, administered by the State DOH, will be required to control storm water discharges. Mitigation measures will be instituted in accordance with site-specific assessments, incorporating appropriate structural and/or non-structural BMPs, such as minimizing time of exposure between construction and re-vegetation, and implementing erosion control measures such as silt fences and sediment basins. No

construction activities in conjunction with the proposed Project will occur within the adjacent reservoir. [Pet. Ex. 6, page 3-38]

84. Following construction, the proposed project improvements will increase impervious surface areas within the Petition Area. This will not, however, result in adverse effects from storm runoff to adjacent and downstream areas. New drainage improvements, which may include drain lines, grass swales, and culverts, will be provided in conjunction with the proposed Project. [Pet. Ex. 6, page 3-38]

#### **8. Police and Fire Protection**

85. Police protection service for the project area is provided by the County Police Department's Līhu`e Headquarters, Sectors 4 to 6, located approximately 2.7 miles east of the Petition Area at 3990 Kā`ana Street. [Pet. Ex. 6, page 3-35]

86. Fire protection service for the project area is provided by the County's Līhu`e Fire Station located at 4223 Rice Street, approximately 2.1 miles east of the Petition Area. [Pet. Ex. 6, page 3-35]

#### **9. Emergency/Medical Services**

87. Emergency medical service is provided by American Medical Response, a private ambulance service contracted by the County to provide ambulance and paramedic services, located at 3277 Palai Street, approximately 2.3 miles northeast of the Petition Area. [Pet. Ex. 6, page 3-35]

88. Health care services are available at the Wilcox Memorial Hospital located at 3420 Kūhiō Highway, approximately 2.2 miles northeast of the Petition Area. Wilcox Memorial Hospital consists of the main clinic and hospital that provides men's, women's, and children's health care services, specialty services, elderly care, family support, a long-term care units, and education and prevention services. [Pet. Ex. 6, page 3-35]

#### 10. Electricity and Utilities

89. Electrical service to the Island School campus is provided by Kaua'i Island Utility Cooperative (KIUC) via an underground duct system to a pad-mounted transformer. In addition, a 200 kW solar photovoltaic facility has been constructed, and is currently operational, on an approximately one-acre site within the northeast portion of the Petition Area. The solar photovoltaic facility includes more than 1,200 solar panels that generates clean, renewable solar energy and meets twenty-five percent of the daytime needs of the Island School campus. [Pet. Ex. 6, page 3-39; Tr. 24:23-24:25]

90. Data/telephone service to the Island School campus is provided by Hawaiian Telcom via an underground duct system to distribution equipment located within an electrical room. Fifty (50) pairs are provided to the distribution equipment, with thirteen (13) pairs currently in use. [Pet. Ex. 6, page 3-39]



91. Cable television (CATV) to the Island School campus is provided by Oceanic Time Warner Cable via an underground duct system to distribution equipment located within an electrical room. [Pet. Ex. 6, page 3-39]

### **11. Sustainability**

92. The Project proposes to incorporate Leadership in Energy and Environmental Design (LEED) standards and strategies, to the extent deemed economically feasible, to achieve sustainable site, utilities and building development. [Pet. Ex. 6, page 2-3]

93. In addition to these green principles and strategies, Island School will continue the following programs and activities toward achieving sustainability education, both within the campus and in the broader community.

- Kaua`i BOTS is an Island School robotics program that allows participation by students from Kaua`i's three public high schools. Approximately 40 percent of the participants in this cooperative program are public school students, thereby promoting efficient use of resources.
- Approximately 35 organizations currently utilize facilities at Island School, 27 of which do so on a recurring basis. This sharing of facilities reduces the demand for construction of new facilities to serve these organizations.
- Island School has a cooperative program with its neighboring Kaua`i Community College. In addition to receiving committee advisory assistance, the advanced students at Island School have the opportunity to take college level courses at the college. Such sharing of resources promotes sustainability.
- Island School is helping to establish a community garden within its campus through a private grant. The plan is to allow members of the Puhi

community to participate in food production and share their gardening knowledge with Island School students. [Pet. Ex. 6, page 2-4]

**K. Commitment of State Funds and Resources**

94. State funds and resources are not needed for the Project. [Pet. Ex. 11, page 4]

**L. State Land Use Designation**

95. The Petition Area is presently classified in the State Agricultural Land Use District. [Pet. Ex. 6]

**M. Conformance with Urban District Standards**

96. The proposed reclassification of the Petition Area is in general conformance to HAR § 15-15-18, standards for determining "U" Urban District Boundaries as follows:

**(1) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses;**

The proposed reclassification of the Petition Area from the State Agricultural District to the Urban District is more consistent with its current urban character as a school campus, as well as with the existing urban lands and developments in the vicinity makai of Kaumuali'i Highway. The Petition Area is located in close proximity to the Līhu'e and Puhi areas, which provide urban levels of services and related land uses, including schools, Kaua'i Community College, civic, retail/commercial, residential, light industrial, golf courses, and parks/recreational facilities.

(2) It shall take into consideration the following specific factors: (A)

Proximity to centers of trading and employment except where the development would generate new centers of trading and employment; (B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and (C) Sufficient reserve areas for foreseeable urban growth;

The Petition Area is located within Puhi and in close proximity to Līhu'e, areas of trading and employment. Līhu'e is the government center of Kaua'i with areas of trading and employment, including Līhu'e Airport, Nāwiliwili Harbor, Kalapaki commercial area, Līhu'e Industrial Park, U.S. Post Office, judiciary complex, Kaua'i Lagoons Resort, and Kaua'i Marriott Resort and Beach Club. Areas of trading and employment within Puhi include the adjacent Kaua'i Community College, Chiefess Kamakāhelei Middle School, Punana Leo o Kaua'i Preschool, Kawaikini New Century Public Charter School, Kukui Grove Center, Kukui Grove Village West commercial area, Puhi Industrial Park, and various retail and commercial establishments.

The County's Department of Parks and Recreation operates 17 parks and recreational facilities in the Līhu'e/Puhi region, including 13 neighborhood parks, 3 beach parks, and Vidinha Memorial Stadium located to the east of the Petition Area near Līhu'e Airport, which is used as a venue for public sporting events. State parks and recreational facilities in the Līhu'e/Puhi region include Ahukini Recreation Pier

State Park at Ahukini Landing located to the northeast of the Petition Area, and Nāwiliwili Small Boat Harbor located to the southeast of the Petition Area in Niumalu. Kalapaki Beach and Running Waters Beach are located to the southeast of the Petition Area, adjacent to the Kaua'i Marriott Resort and Beach Club and Kaua'i Lagoons Resort, respectively. The Petition Area is in close proximity to public transportation systems, utilities and services. Vehicular access to the Petition Area is via a paved loop road from Kaumuali'i Highway, a State road located approximately 0.4-mile to the south. Other public roads intersecting Kaumuali'i Highway on its makai side include Puhi Road, Nani Street, and Nuhou Street. Traffic operations in the vicinity of Island School with the implementation of its updated master plan are expected, in general, to operate at levels of service similar to Year 2020 without project conditions despite the addition of site-generated traffic to the surrounding roadways.

The County Police Department's Līhu'e Headquarters is located approximately 2.7 miles east of the Petition Area on Kā'ana Street, and the County's Līhu'e Fire Station is located approximately 2.1 miles to the east on Rice Street.

The existing Kekaha Landfill, located 1.3 miles northwest of the town of Kekaha on the southwest side of the Island, is the primary disposal site for solid waste on the Island. The County DPW is seeking a lateral expansion of the Kekaha Landfill which could extend its capacity by about 12 years, and is also seeking another landfill site as part of its long-term planning objectives. During construction of the proposed project, a

trash management and recycling program will be developed and implemented to minimize solid waste disposal at the Kekaha Landfill. In an effort to reduce the amount of solid waste to be generated upon development of the project, Island School will continue with implementation of its on-campus recycling program, and food waste generated by the school's food services will continue to be provided to pig farmers. Composting of greenwaste will be employed for the project's landscaped areas.

Potable water service for the Island School campus is provided by the County DOW's Puhi 510-foot water system. The projected average daily water demand for the proposed project is approximately 4,700 gpd. The Petitioner will consult with the County DOW on the adequacy of the existing water system to accommodate the proposed project. Island School will continue to have use of irrigation water from Grove Farm Company, Inc.'s irrigation ditch system, as needed. The projected average demand for irrigation water for the Island School campus with the updated master plan improvements is approximately 65,000 gpd. As the average flow of the irrigation ditch within the Petition Area is approximately 1.0 mgd, the irrigation water system would be adequate to meet the irrigation demands of the proposed project.

Wastewater service for the Island School campus is provided by Grove Farm Company, Inc.'s Puhi WWTP. The projected average wastewater flow for the proposed project is approximately 13,900 gpd, with a peak flow of approximately 88,400 gpd. The

privately-owned and operated Puhi WWTP, which has a design capacity of 1.0 mgd and is expandable to 3.0 mgd, has sufficient capacity to serve the proposed project.

New drainage improvements, which may include drain lines, grass swales, and culverts, will be provided in conjunction with the proposed Project.

The Petition Area is presently contiguous with existing urban areas.

**(3) It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil conditions, and other adverse environmental effects;**

The existing topography of the Petition Area is gently sloping at approximately 3 percent, ranging in elevation from approximately 400 feet above msl at the northwestern portion to about 350 feet above msl at the eastern portion.

Currently, storm runoff from the Petition Area sheetflows to three existing plantation-era irrigation ditches located within the site, and one existing plantation-era irrigation ditch located adjacent to and south of the site, and is then directed to an existing adjacent reservoir. Following construction, the proposed project improvements will increase impervious surface areas within the Petition Area. This will not, however, result in adverse effects from storm runoff to adjacent and downstream areas. New drainage improvements, which may include drain lines, grass swales, and culverts, will be provided in conjunction with the proposed Project.

According to the FIRM prepared by FEMA, the Petition Area is designated Zone "X", "Areas determined to be outside the 0.2% annual chance floodplain". The Petition Area is not within a tsunami inundation area as it is located approximately 2.7 miles inland (northwest) from the shoreline, and at elevations ranging from approximately 350 to 400 feet above msl.

**(4) Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans;**

The Petition Area is presently contiguous with existing urban areas.

**(5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans;**

The Petition Area is an appropriate location for new urban concentration and growth given its locality within Puhi and close proximity to Līhu'e, and is consistent with the County of Kaua'i General Plan and the County of Kaua'i Līhu'e Development Plan.

**(6) It may include lands which do not conform to the standards in paragraphs (1) to (5): (A) When surrounded by or adjacent to existing urban development; and (B) Only when those lands represent a minor portion of this district;**

The Petition Area conforms to the referenced paragraphs (1) to (5) as described above.

**(7) It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services; and**

The Petition Area is presently contiguous with existing urban areas, and will not contribute toward scattered or spot urban development.

The proposed project will include all required on- and off-site infrastructure improvements to minimize the burden on public systems. The project is not anticipated to have any significant impacts on public services in the area as discussed in paragraph (2) above.

**(8) It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction of controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.**

The existing topography of the Petition Area is gently sloping at approximately 3 percent, ranging in elevation from approximately 400 feet above msl at the northwestern portion to about 350 feet above msl at the eastern portion. [Pet. Ex. 6; Pet Ex. 13; Subject to completion of Docket No. A16-801]



N. Conformance With The Goals, Objectives, and Policies of The Hawai'i State Plan

97. The proposed Project is consistent with the following Hawai'i State Plan objectives and policies:

*Section 226-11 Objectives and policies for the physical environment – land-based, shoreline, and marine resources.*

*(b)(6) Encourage the protection of rare or endangered plant and animal species and habitats native to Hawai'i.*

The principal potential impact that the proposed Project improvements poses to Hawaiian Petrels, Newell's Shearwaters, and Band-rumped Storm Petrels is the increased threat that birds will be downed after becoming disoriented by outdoor lighting associated with possible nighttime construction activity, and following build-out with exterior lighting associated with the structures and appurtenances that are built within the Petition Area. Should nighttime work be required in conjunction with the project construction, and during operation of the proposed Project, all exterior lighting will be shielded to reduce the potential for interactions of nocturnally-flying Hawaiian Petrels, Newell's Shearwaters, and Band-rumped Storm Petrels with external lights and man-made structures.

The principal potential impacts that the proposed project improvements pose to Nēnē are during construction, and following build-out with the increased student enrollment and associated school activities. If construction activity is planned to occur within the Petition Area during the Nēnē nesting season, which typically runs from

October through March on Kaua'i, the Petition Area should be surveyed by a qualified biologist prior to the start of construction, to determine if any active Nēnē nesting activity is occurring on the site. If such nesting does occur during construction, it is recommended that a Nēnē monitor be on site during such activity to ensure that no harm occurs to the birds.

Due to the likelihood that the endangered Nēnē will utilize resources within the Petition Area, and the Hawaiian Petrels, Newell's Shearwaters, and Band-rumped Storm Petrels could potentially fall onto the Petition Area during the construction phase of the project, it is recommended that an endangered species awareness program be developed to include general information on the endangered species act and protected species; specific restrictions that will be in force on the job site to protect endangered species; and protocol on who, and how job site personnel will respond to any downed or injured endangered species that may occur on the site. All construction personnel should be required to be familiar with the program, and its guidelines, restrictions and protocols to be followed.

The principal potential impact that the proposed project improvements pose to Hawai'ian hoary bats is during the clearing and grubbing phases of the project. Areas of dense vegetation are likely used to some degree by roosting bats. To avoid potential impacts to the Hawaiian hoary bat, the clearing of dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area should not occur

between June 1 to September 15, when bats may be carrying young and potentially could be at risk by such clearing activities.

*Section 226-12 Objectives and policies for the physical environment – scenic, natural beauty, and historic resources.*

*(b)(4) Protect those special areas, structures, and elements that are an integral and functional part of Hawai`i's ethnic and cultural heritage.*

During the field inspection survey conducted in conjunction with the archaeological literature review for the Petition Area, a total of four historic surface features related to the Līhu`e Plantation Company, Ltd.'s plantation-era infrastructure were observed. The surface features consist of a reservoir located on a separate parcel adjacent to the south-central portion of the Petition Area (CSH 1), and three irrigation ditches (CSH 2, CSH 3, and CSH 4), two of which are associated with the adjacent reservoir. All of the surface features are currently in use. Based on an evaluation for significance according to the criteria established for the Hawai`i Register of Historic Places, no additional work appears to be necessary for the four features.

The proposed Project improvements are not anticipated to have an adverse effect on the historic features related to plantation-era infrastructure. While no additional work appears to be necessary, consultation with the SHPD is being conducted to determine mitigation, if any, which may be appropriate for the plantation infrastructure features that have been recommended for no further work.

Should any previously unidentified burial, archaeological or historic sites be found during the course of construction of the proposed Project, the Petitioner will stop

work in the immediate vicinity and the SHPD will be notified immediately. The significance of these finds will then be determined and appropriate mitigation measures will be approved by the SHPD and, as necessary, the Kaua'i/Ni'ihau Islands Burial Council, as appropriate. Subsequent work will proceed after SHPD authorization has been received and mitigative measures have been implemented.

Aside from the four historic surface features related to the Līhu`e Plantation Company, Ltd.'s plantation-era infrastructure, no traditional Hawai`ian sites or ancient trail systems were found within the Petition Area during the field inspection survey. Based on the literature review and field inspection survey, no burials are anticipated to be found within the Petition Area. Based on these findings, development of the proposed Project will have minimal or no impact upon native Hawai`ian cultural resources, beliefs and practices.

*Section 226-13 Objectives and policies for the physical environment – land, air, and water quality.*

*(b)(3) Promote effective measures to achieve desired quality in Hawai`i's surface, ground, and coastal waters.*

*(b)(7) Encourage urban developments in close proximity to existing services and facilities.*

Potential impacts to the quality of nearby surface and near shore coastal waters during construction of the proposed Project improvements will be mitigated by adherence to State and County water quality regulations governing grading, excavation, and stockpiling. A NPDES General Permit for Storm Water Associated with Construction Activity, administered by the State DOH, will be required to control storm

water discharges. Mitigation measures will be instituted in accordance with site-specific assessments, incorporating appropriate structural and/or non-structural BMPs, such as minimizing time of exposure between construction and re-vegetation, and implementing erosion control measures such as silt fences and sediment basins. No construction activities in conjunction with the proposed Project will occur within the adjacent reservoir.

Following construction, the proposed project improvements will increase impervious surface areas within the Petition Area. This will not, however, result in adverse effects from storm runoff to adjacent and downstream areas. New drainage improvements, which may include drain lines, grass swales, and culverts, will be provided in conjunction with the proposed project.

The Petition Area is located within Puhi and in close proximity to Līhu`e, areas which provide existing urban levels of services and facilities, such as civic, schools, Kaua`i Community College, retail/commercial, light industrial, resort, and parks/recreational facilities.

*Section 226-21 Objectives and policies for socio-cultural advancement—education.*

*(b)(1) Support educational programs and activities that enhance personal development, physical fitness, recreation, and cultural pursuits of all groups.*

*(b)(2) Ensure the provision of adequate and accessible educational services and facilities that are designed to meet individual and community needs.*

Island School is Kaua`i's largest private, non-sectarian, independent school accommodating Grades Pre-K through 12, and has a current enrollment of

approximately 400 students. Island School's mission is to prepare its students to live productive, fulfilling lives as confident, responsible life-long learners and contributing members of society; to express fully the talents of its faculty and administration through a challenging curriculum that prepares students for successful higher education; and, to provide a safe, nurturing environment that fosters creativity, critical thinking, initiative, and respect for self and others.

The proposed update of the Island School master plan will accommodate additional campus facilities for future increase in its student enrollment, currently at approximately 400 students, to approximately 500 students. An increase of approximately 22 FTE faculty and staff, to the current 62 FTE members, for a total of 84 FTE members, will be required for the future increase in student enrollment. The proposed updated master plan includes new, renovated and expanded classroom buildings; expanded administration facility and visual arts facility; new facilities, including science building, campus center, dining facility, auditorium and stage, arts education building, back-of-house building and courtyard, robotics shed, outdoor science area, maintenance facility, and informal gathering areas; playground and sports facilities, including physical education (P.E.) facilities, track and football field, soccer field, baseball field, softball field, and outdoor swimming pool; internal loop road with bus parking spaces; school and community drop-off areas; and, additional parking spaces. [Pet. Ex. 6; Tr. 27:15-27:18]

O. Relationship with Applicable Priority Guidelines and Functional Plans

98. The purpose of establishing priority guidelines is to address areas of Statewide concern. The proposed Project is consistent with the following priority guidelines:

*Section 226-108 Sustainability. Priority guidelines and principles to promote sustainability shall include:*

*(1) Encouraging balanced economic, social, community, and environmental priorities.*

*(5) Promoting decisions based on meeting the needs of the present without compromising the needs of future generations.*

*(7) Emphasizing that everyone, including individuals, families, communities, businesses, and government, has the responsibility for achieving a sustainable Hawai'i.*

The project proposes to incorporate Leadership in Energy and Environmental Design (LEED) standards and strategies, to the extent deemed economically feasible, to achieve sustainable site, utilities and building development. Green principles and strategies that are ongoing, or may be created for the proposed project, include those associated with sustainable sites, energy and water efficiency, building design, sustainable transport, and waste stream diversion as further discussed in Section 2.3 of this document.

In addition to these green principles and strategies, Island School will continue the following programs and activities toward achieving sustainability education, both within the campus and in the broader community.

- Kaua'i BOTS is an Island School robotics program that allows participation by students from Kaua'i's three public high schools. Approximately 40

percent of the participants in this cooperative program are public school students, thereby promoting efficient use of resources.

- Approximately 35 organizations currently utilize facilities at Island School, 27 of which do so on a recurring basis. This sharing of facilities reduces the demand for construction of new facilities to serve these organizations.
- Island School has a cooperative program with its neighboring Kaua`i Community College. In addition to receiving committee advisory assistance, the advanced students at Island School have the opportunity to take college level courses at the college. Such sharing of resources promotes sustainability.
- Island School is helping to establish a community garden within its campus through a private grant. The plan is to allow members of the Puhi community to participate in food production and share their gardening knowledge with Island School students.

[Pet. Ex. 6]

**P. Conformance With the Coastal Zone Management Program**

99. The National Coastal Zone Management (CZM) Program was created through passage of the Coastal Zone Management Act of 1972. Hawai`i's CZM Program, adopted as Chapter 205A, HRS, provides a basis for protecting, restoring and responsibly developing coastal communities and resources. The coastal zone management area is defined as all lands of the State and the area extending seaward from the shoreline to the limit of the State's police power and management authority, including the United States territorial sea (§ 205A-1, HRS). [Pet. Ex. 6]

**Q. County of Kaua`i General Plan**



100. The County of Kaua`i General Plan (2000) provides broad policy statements to guide land use regulations, new developments and facilities, and planning for County facilities and services.

On or about November 2, 2012, Petitioner filed its Petition for County General Plan Amendment to amend the County General Plan Land Use Map for the Petition Area from the Agriculture designation to the Urban Center designation.

The Council of the County of Kaua`i approved the petition and passed Ordinance No. PM-2013-404 on March 13, 2013 and changed the Petition Area from "Agriculture" to "Urban Center".

The amendment to the Urban Center designation is consistent with the existing Urban Center designation of the adjacent Kaua`i Community College campus, as well as lands to the south, makai of Kaumuali`i Highway. Further, the amendment does not have a significant impact on adjoining or nearby agricultural lands as the proposed updated master plan improvements will occur entirely within the Petition Area, of which the majority of the site is currently developed as the Island School campus. [Pet. Ex. 6; Pet. Ex. 11]

**R. County of Kaua`i Lihu`e Development Plan**

101. The County's Lihu`e Development Plan, adopted by County ordinance in 1976, provides physical, social and economic measures which relate specifically to these

communities. The Lihu'e Development Plan was amended on June 3, 2015 and Petition Area is designated for urban use. [Pet. Ex. 6; Pet Ex. 11]

**S. County of Kaua'i Comprehensive Zoning Ordinance**

102. The County's Comprehensive Zoning Ordinance (CZO) establishes procedures for the division of the County into land use districts, and creates regulations for the types, size, placement, and control of structures within various zoning district classifications. The CZO also delineates the respective types of permitted uses and the development that can take place in those zoning districts.

The zoning designations for the Petition Area are Agriculture District (A) and Open District (O). A Use Permit will be required since the proposed school improvements are not generally permitted within the Agriculture District (A) and Open District (O). A Class IV Zoning Permit will be required because a Use Permit is being sought. The application for Use Permit and Class IV Zoning Permit is processed by the County Planning Department and approved by the County Planning Commission. [Pet Ex. 6]

**T. County of Kaua'i Special Management Area**

103. The Hawai'i Coastal Zone Management (CZM) Act (Chapter 205A, HRS) is the basis of the Hawai'i CZM Program as discussed in Section 4.3 of Exhibit "6". The Act establishes objectives, policies and guidelines upon which all counties within the State have structured specific legislation which designated Special Management Areas

(SMA). Any development located within the SMA requires a County-issued SMA permit, which on Kaua`i is administered by the County Planning Department. The Petition Area is located outside of the SMA boundaries and, therefore, does not require a SMA Use Permit. [Pet. Ex. 6]

**U. Incremental Districting**

104. Development of the Property will be substantially completed within ten (10) years after the date of the Commission's approval and, therefore, incremental districting does not apply to this Project.

**III. RULINGS ON PROPOSED FINDINGS OF FACT**

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

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

**IV. CONCLUSIONS OF LAW**

1. Pursuant to HRS Chapter 205 and the Commission Rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS § 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately

38.448 acres of land, situated in Puhi, Lihu`e, Island of Kaua`i, State of Hawai`i, Tax Map Key No. (4) 3-8-002: 016 to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of HRS § 205-2 and Part III of HRS chapter 205, and is consistent with the policies and criteria established pursuant to HRS §§ 205-16, 205-17, and 205A-2.

2. Article XII, Section 7, of the Hawai`i State Constitution requires the Commission to protect native Hawai`ian traditional and customary rights. The State of Hawai`i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by *ahupua`a* tenants who are descendants of native Hawai`ians who inhabited the Hawai`ian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawai`ian rights to the extent feasible. *Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (1996).

3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawai`ians. *Ka Pa`akai O Ka`Aina v. Land Use Commission*, 94 Hawai`i 31, 7 P.3d 1068 (2000).

4. Article XI, Section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

5. Article XI, Section 3, of the Hawai`i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

6. The Petition Area is not designated as Important Agricultural Land under Part III of HRS Chapter 205.

7. Article XI, Section 7, of the Hawai`i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai`i's water resources for the benefit of its people.

8. Article XI, Section 1, of the Hawai`i State Constitution states that all public natural resources are held in trust by the State for the public benefit, and the State should make appropriate assessments and require reasonable measures to protect public natural resources, while applying a higher level of scrutiny where public natural resources are used for economic gain. *Kauai Springs v. Planning Comm. of the County of Kauai*, ICA No. 29440, April 30, 2013.

9. The Commission concludes that it has observed and complied with its duties arising from Article XI, Section 1; Article XI, Section 3; Article XI, Section 7; and Article XII, Section 7 of the Hawai`i State Constitution.

V. **DECISION AND ORDER**

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 38.448 acres of land, situated in Puhi, Lihu`e, Island of Kaua`i, State of Hawai`i, Tax Map Key No. (4) 3-8-002: 016, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

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

1. **Stormwater Management and Drainage Improvements.** The Petitioner shall maintain existing drainage patterns. To the extent feasible, Petitioner shall implement Best Management Practices and incorporate Low Impact Development

("LID") practices for onsite stormwater capture and reuse into Petition Area's site design and landscaping to control water quality and mitigate nonpoint sources of pollution.

2. **Lihue Airport.** Petitioner shall conduct a glint and glare analysis for the PV facility. Petitioner shall submit the analysis to the State Department of Transportation for their comment and approval. If glint and glare from the PV system is determined to create a hazardous condition, the Petitioner shall immediately mitigate the hazard at their expense.

3. **Archaeological and Historic Preservation.** The Petitioner shall prepare and implement an archaeological monitoring plan approved by SHPD. A report of monitoring activities shall be submitted to SHPD upon completion of fieldwork.

4. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Kaua'i Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the

discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

5. **Endangered Species.** Petitioner shall complete the following:
  - A. During the construction phase of the project, an endangered species awareness program shall be developed which includes general information on the endangered species act and protected species, specific restrictions on the job site to protect endangered species and, and protocols on how job site personnel will respond to any downed or injured endangered species that may occur on the site. All construction personnel should be required to be familiar with the program, guidelines, restrictions and protocols that will need to be followed.
  - B. If construction activity is planned to occur during the Nene nesting season, from October through March on Kaua`i, the project site should be surveyed by a qualified biologist before the onset of construction to determine if any active nesting activity is occurring on the site. If active Nene nesting does occur during construction, a biological monitor shall be on-site to ensure that no harm befalls the birds.
  - C. For any nighttime work required during construction, and for long term operation of the proposed facility, all exterior lighting shall be shielded so as



to reduce the potential for interactions of nocturnally flying Hawai`ian Petrels and Newell's Shearwaters with external lights and man-made structures.

- D. To avoid potential impacts to the Hawai`ian hoary bat, the clearing of dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area shall not occur between June 1 to September 15 when bats may be carrying young and potentially could be at risk by such clearing activities.

6. **Hazardous Substances.** Petitioner shall conduct a phase I Environmental Site Assessment and site investigation to the review and approval of the State Department of Health.

7. **Compliance with Representations.** The Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the Findings of Fact, Conclusions of Law, and Decision and Order. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

8. **Notice to Commission.** 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.

9. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kaua`i

Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

10. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

11. **Notice of Imposition 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 a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property; and (b) shall file a copy of such recorded statement with the Commission.

12. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92 Hawai'i Administrative Rules.

DATED: Honolulu, Hawai'i, April 20, 2017.



Of Counsel:

MATSUBARA, KOTAKE & TABATA

A Law Corporation

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BENJAMIN M. MATSUBARA

CURTIS T. TABATA

Attorneys for Petitioner

ISLAND SCHOOL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A16-800  
)  
ISLAND SCHOOL ) CERTIFICATE OF SERVICE  
)  
To Amend the Agricultural Land Use )  
District Boundary into the Urban District for )  
approximately 38.448 acres at Puhi, Lihu`e, )  
Island of Kaua`i, State of Hawai`i, )  
TMK: (4) 3-8-002: 016 )  
\_\_\_\_\_)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following by depositing the same in the AS INDICATED BELOW on April 20, 2017:

LEO R. ASUNCION, JR., AICP, Acting Director  
Office of Planning, State of Hawai`i  
235 South Beretania Street  
6<sup>th</sup> Floor, Leiopapa A Kamehameha  
Honolulu, Hawai`i 96813

HAND DELIVERY

DAWN T. APUNA, ESQ.  
Deputy Attorney General  
Department of the Attorney General  
425 Queen Street  
Honolulu, Hawai`i 96813

HAND DELIVERY

MICHAEL DAHILIG, Director  
Planning Department, County of Kauai  
4444 Rice Street  
Lihu`e, Kaua`i, Hawai`i 96766

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

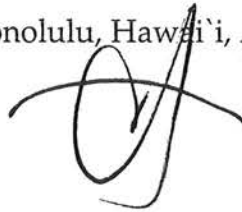
MATTHEW BRACKEN, ESQ.  
Deputy Kauai County Attorney  
Office of the County Attorney  
4444 Rice Street, Suite 220  
Lihu`e, Kaua`i, Hawai`i 96766

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

KAUAI COUNTY PLANNING COMMISSION  
c/o Planning Department, County of Kauai  
4444 Rice Street  
Lihu`e, Kaua`i, Hawai`i 96766

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

DATED: Honolulu, Hawai`i, April 20, 2017.



Of Counsel:  
MATSUBARA, KOTAKE & TABATA  
A Law Corporation

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