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LAND USE COMMISSION
STATE OF HAWAII

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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A16-800
)	
ISLAND SCHOOL)	OFFICE OF PLANNING'S TESTIMONY
)	IN SUPPORT OF PETITION WITH
To Amend the Land Use District Boundary)	CONDITIONS; CERTIFICATE OF
of Approximately 38.448 Acres of Land)	SERVICE
from the Agricultural District into the Urban)	
District at Puhi, Lihue, Island of Kauai,)	
State of Hawaii, Tax Map Key No: (4) 3-8-)	
002: 016)	
)	

OFFICE OF PLANNING'S TESTIMONY
IN SUPPORT OF PETITION WITH CONDITIONS

The Office of Planning ("OP") recommends approval of Island School's ("Petitioner") Petition to reclassify approximately 38.448 acres of land from the State Agricultural District to the Urban District at Puhi, Lihue, Island of Kauai, subject to conditions. OP's recommendation is based on the representations of the Petitioner and documents filed to date in these proceedings, consultations with affected government agencies, and the statutes and regulations applicable to these proceedings.

PETITION OVERVIEW

General Information

The Petitioner requests that the Land Use Commission ("Commission or LUC") reclassify approximately 38.448 acres of land from the State Agricultural District to the State Urban District at Puhi, Lihue, Island of Kauai.

The Petitioner is the fee owner of the parcel, Tax Map Key (“TMK”) No. (4) 3-8-02: 16, proposed for reclassification under this Petition.

Proposed Use of the Petition Area

According to the Petition, Island School was founded in 1977 in Kealia by a group of Kauai parents and teachers. It was relocated in 1991 to its current location on a 10-acre site, deeded to the Petitioner by Lihue Plantation. It is one of the oldest and largest private schools on Kauai. The school accommodates grades Pre-kindergarten through grade 12, with a current enrollment of about 370 students.

Petitioner is requesting the reclassification in order to allow for expansion of the campus and facilities, preclude the need to obtain future State Special Permits, and to allow for a more comprehensive review. Petitioner is drafting a long range master plan for the Petition Area. Petitioner currently has an enrollment of about 370 students and proposes to provide for an increased enrollment of up to 500 students. The school currently has 62 full-time equivalent (“FTE”) faculty and staff. An increase of about 22 FTE faculty and staff would be required for the increased student enrollment.

The master plan includes new, renovated and expanded classroom buildings, an expanded administration facility, visual arts facility, and other expanded school facilities.

The Petition Area is consistent with the Kauai General Plan, which designates this area as “Urban Center.” As indicated in the Petition, the development and operation of the Petition Area was permitted through a State Special Permit granted by the Kauai County Planning Commission on August 23, 1990. An amendment to this original State Special Permit was approved on April 13, 1995. Additional Special Permits were approved by the County Planning Commission for additional improvements to the campus on August 22, 1996, August 14, 1997, and April 26, 2005. The Petitioner also increased the school site from the original 10 acres to 30 acres in September 1998. Subsequently, an additional 8.448 acres were added to the school site in 2006, for a total of 38.448 acres for the Petition area. The Final Environmental Assessment (“FEA”) for the project also indicates that the Petitioner constructed a 200 kilowatt solar photovoltaic facility on a one-acre site within the northeast area of the Petition Area in November 2012, and that it should meet the daytime needs for the Petitioner.

Access to the site is through a driveway easement granted from Kauai Community College, located from Puhi Road, along the adjoining Kauai Community College campus (A16-801), through Nuhou Road, into the Petitioner's campus.

Petition Area Description and County Land Use Designations

The Petition Area was previously in sugar cane cultivation by Lihue Plantation Company, Ltd. until the late 1980's. Since that time, approximately 30 acres of the site were developed as a school, and the remaining 8.44 acres are currently vacant and undeveloped.

The Petition Area is bordered by the University of Hawaii Kauai Community College ("KCC") on the southwest and south, a reservoir to the south, undeveloped land owned by Grove Farm Company, Inc, to the north, and an agro-tourism business owned by Kilohana Plantation to the east. A similar Petition has been submitted for KCC, Docket No. A16-801.

The Petition Area is generally consistent with the County of Kauai's General Plan and Lihue Community Plan. The General Plan was amended on March 13, 2013 from Agriculture to Urban Center. The Petition Area is within the Urban Edge Boundary on the Lihue Community Plan. Zoning for the Petition Area is about 28 acres Agriculture, and about 10 acres Open. See OP Exhibit 2.

Discussion of Issues Of Concern to the State

The following discusses Project impacts and recommendations to avoid, minimize, or mitigate reasonably foreseeable impacts caused by the proposed Project with respect to areas of State concern under section 205-17, Hawaii Revised Statutes ("HRS") and Chapter 15-15, Hawaii Administrative Rules ("HAR").

Impacts on Areas of State Concern, Section 205-17(3), HRS

Natural Systems and Habitats

Water Resources. According to Petitioner's Exhibit 6, Final Environmental Assessment/Finding of No Significant Impact ("FONSI"), potable water is already provided by the County Department of Water. Petitioner also has an agreement with Grove Farm Company Inc. for irrigation water which already traverses the Petition Area for landscaping. The Petitioner will continue to utilize Grove Farm Company irrigation water to irrigate any new landscaping on the Petition Area.

Drainage and Stormwater Management. According to the FONSI, Stormwater runoff from the Petition Area flows into three existing irrigation ditches on-site, and a fourth existing plantation ditch off-site to the south leading to the reservoir, which are all owned by Grove Farm Company, Ltd. The document indicates that a NPDES permit for storm water associated with construction will be obtained during any new construction. Best Management Practices will be employed, as determined by the NPDES permit.

The Office of Planning's has concerns that if existing practices for drainage should change, Petitioner should construct and maintain their own drainage facilities to meet County of Kauai and Department of Health requirements.

The State Department of Health's ("DOH") requirements and strategies, "to support sustainable and healthy design [is] provided at: <http://health.hawaii.gov/epo/landuse>. Projects are required to adhere to all applicable standard comments. [DOH] has recently updated the environmental Geographic Information System (GIS) website page. It now compiles various maps and viewers from our environmental health programs. The eGIS website page will be continually updated so please visit it regularly at: <http://health.hawaii.gov/epo/egis>." See OP Exhibit 4.

Mitigation: OP recommends imposition of a condition requiring Petitioner to maintain drainage improvements and to consider the use of Low Impact Development ("LID") techniques to mitigate stormwater and drainage impacts should it become necessary if drainage patterns change in the future. OP will rely on Petitioner's representations and compliance with applicable federal, State, and County codes and rules governing stormwater and drainage flows and water quality.

Flora and Fauna. According to the FEA, there are three plantation-era irrigation ditches, which are part of Grove Farm Company, Inc.'s irrigation system. The reservoir is designated a wetland by the U.S. Fish and Wildlife Service, and is outside of the Petition Area. There are no wetland areas within the Petition Area. The FEA indicated that there are several endangered bird species transiting the site, and various wetland birds frequent the wetland areas, such as the Hawaiian Nene, Common Moorhen, Pacific Golden Plover, and Black-crowned Night-Heron. The Hawaiian Pueo and Nene may forage in the area. The Hawaiian Hoary bat was not observed, however, mitigation measures are outlined within the FEA for the species.

The Petition indicates that an endangered species awareness program will be instituted. Specific restrictions will be in force on the job site to protect endangered species, and protocol on responses to downed or injured endangered species will be developed and enforced.

The U.S. Fish and Wildlife Service (“USFWS”) has submitted comments to OP on the project, expressing several concerns with adverse impacts to several listed species or their habitats, and proposes conditions relating to their concerns. See OP Exhibit 6. The following is a summary.

1. According to the USFWS, they provided comments in September and December 2012, in which they discussed measures regarding the Hawaiian Hoary Bat, Hawaiian Petrel, Newell’s Shearwater, Hawaiian Stilt, Hawaiian Moorhen, Hawaiian Coot, Hawaiian Duck, and the Hawaiian Goose. The USFWS indicates that all of these species, which are either endangered, threatened or a candidate species, have been noted to traverse and utilize the Petition Area and surrounding areas.
2. In order to minimize potential impacts to the Hawaiian goose, Petitioners should survey the area for nesting activity prior to any construction, between October and March. The Hawaiian goose has an extended breeding season, between August and April.
3. Petitioners propose to shield lighting should construction be required at night, to mitigate seabird mortality. The USFWS recommends that construction occur only in the daylight, and further that all exterior lighting at the Petitioner’s facilities should also be positioned to minimize and mitigate seabird mortality.
4. The USFWS recommended mitigation measures for Hawaiian waterbirds and goose, such as employing a biological monitor before project initiation to ensure that no harm shall befall endangered, threatened and listed avifauna.

Mitigation: OP recommends that appropriate conditions be imposed on the Petitioner to mitigate development impacts on endangered, threatened, and listed fauna and wildlife.

Flora. A botanical survey was conducted in September 2010. According to the survey, no plant species currently listed as endangered, threatened or proposed for listing were recorded within the Petition Area.

Air Quality. The Petitioner’s FEIS states that some short- and long-term impacts on air quality will occur through direct and indirect releases or emissions during the Project’s construction phase and operation, but will not cause a violation of national and State air quality standards at buildout.

Noise. According to the Petition, ambient noise is from vehicular traffic along Kaunualii Highway. Short term noise impacts may result from proposed construction activities.

Mitigation: OP will rely on Petitioner compliance with applicable federal, State, and County laws and rules and best practices to address air and noise quality impacts during onsite and offsite construction.

Valued Cultural, Historical, or Natural Resources

Archaeology. On March 31, 2014, the Petitioner’s archaeological inventory survey (“AIS”) completed for the Petition Area was reviewed and accepted by the State Department of Land and Natural Resources, State Historic Preservation Division (“SHPD”). A letter from SHPD to OP indicates that a recommendation for archaeological monitoring should be implemented for any proposed improvements that would adversely affect the two historic sites identified in the AIS, which are the reservoir and the three earthen irrigation ditches. SHPD notes that the archaeological monitoring plan has not been submitted. See OP Exhibit 3.

Mitigation. OP recommends a condition that the Petitioner submit an archaeological monitoring plan for SHPD’s review and approval prior to any construction activity.

Cultural Survey. Petitioner has completed a Cultural Impact Assessment (CIA), and concluded that there were no known traditional and customary native Hawaiian rights exercised within the Petition Area. The Office of Hawaiian Affairs (OHA) indicates that if any burials or Native Hawaiian cultural deposits should be identified during any ground altering activities, that all work should cease and the appropriate agencies, including OHA, should be contacted in accordance with applicable laws. See OP Exhibit 5.

Mitigation: OP requests that the Commission impose its standard conditions related to archaeological and historic preservation, discovery, and protection of established access rights. OP will rely on Petitioner’s representations and compliance with applicable State laws and rules to address mitigation in this area.

Natural Resources Relevant to Hawai'i's Economy

Agricultural Lands. The Petition Area lands have been classified as quality agricultural lands under the Land Study Bureau (“LSB”) and Agricultural Lands of Importance to the State of Hawai‘i (“ALISH”) productivity rating systems. The Petition Area is rated “B” under the LSB system. The Petition Area is classified predominantly as “Prime” under the ALISH system. Small areas are unclassified in the northeast and southern portions of the Petition Area. Since the Petition Area has been used for school purposes since the 1980’s, it is unlikely that the land will revert back to agricultural use.

Sustainability. The Petition proposes to incorporate Leadership in Energy and Environmental Design (LEED) standards and strategies in construction designs. In addition, Petitioner has constructed and is currently operating a 200 kW solar photovoltaic (“PV”) facility on a one-acre site within the northeast portion of the Petition Area, which includes more than 1,200 solar panels to meet the daytime needs of the Petitioner.

Commitment of State Funds and Resources

Lihue Airport, Highways and Transportation Improvements.

The Petition Area is located about three miles from Lihue Airport. We note that the State Department of Transportation (“DOT”) has indicated that the Petition Area is not currently beneath flight tracks for the airport. In addition, the Petition Area is located outside of the noise contours of the Lihue Airport 5-Year Noise Exposure Map, and there should be no significant noise impacts. However, DOT has concerns regarding the wildlife in the area, and the photovoltaic facility, as follows. See OP Exhibit 7.

1. Photovoltaic systems, if located in or near the approach path of aircraft into an airport, can create a hazardous condition for a pilot due to possible glint and glare reflected from the PV array. It is recommended that the highest rated non-glare materials be used in the PV system to mitigate potential hazard conditions for pilots. If glint and glare from the PV system creates a hazardous condition, the owner of the PV system must be prepared to immediately mitigate the hazard upon notification by the Department of Transportation, Airports Division or the Federal Aviation Administration (“FAA”).

2. The FAA also requires a minimum distance of five (5) statute miles between the farthest edge of the air operations area and the hazardous wildlife attractant if the attractant could cause hazardous wildlife into or across the approach or departure space. This includes using appropriate landscaping that deters bird nesting and foraging.
3. The Petitioners should be aware of the duties of the State and County agencies to implement the Technical Advisory Memo related to this project and all projects within five miles of an airport. http://files.hawaii.gov/dbedt/op/docs/TAM-FAA-DOT-Airports_08-01-2016.pdf

Mitigation recommendation: OP recommends imposition of a condition requiring Petitioner to submit glint and glare analysis of the PV facility to the State Department of Transportation for their review and approval.

The reservoir (wetland) is not within the Petition Area or under Petitioner's purview, however, we note that there are several historically important irrigation ditches that traverse the Petition Area that may attract endangered and threatened Hawaiian waterbirds and Hawaiian goose to the area. However, since Petitioner is not proposing to improve or conduct any work within these areas, there should be no concerns or mitigation required.

Transportation. The DOT indicates that access to the Petition Area is from Kaumualii Highway. The Kaumualii Highway improvement project widened the highway from two to four lanes. The Petition should not have a significant impact to State highway facilities.

Public Schools. Since the Petitioner provides additional school facilities for the County of Kauai, there should be no significant impact to the State Department of Education.

Hawaii Emergency Management Agency. The FONSI includes a letter from the State Department of Defense, Hawaii Emergency Management Agency (previously State Civil Defense) indicating that the Petition Area is already covered by an existing warning siren.

Other Issues of Concern

Hazardous Substances. The Department of Health is recommending that any redevelopment of former sugar cane lands should conduct a phase I Environmental Site Assessment and site investigation. If the investigation shows that a release of petroleum,

hazardous substance, pollutants or contaminants may have occurred on the site, the site should be properly characterized through an approved Hawaii State Department of Health DOH/Hazard Evaluation and Emergency Response Office to ensure that the contamination is removed or remediated to acceptable cleanup levels for the proposed land use in accordance with applicable federal, State, and City and County codes and rules.

Mitigation: OP recommends imposition of a condition requiring Petitioner to perform additional site investigations and remedial measures as needed to address any contaminants of concern found from historical use of the Petition Area lands.

Wastewater. According to the Petition, wastewater service is provided by a private Puhi Wastewater Treatment Plant. The Puhi plant has sufficient capacity to service the Petition Area.

SUMMARY DISCUSSION OF CONFORMITY WITH DECISION-MAKING CRITERIA FOR BOUNDARY AMENDMENTS

The following summarizes OP's assessment of the Petition's conformity with applicable district standards, planning statutes, plans, and other criteria the Commission must consider in decision-making for a district boundary amendment petition.

Applicable District Standards

The Petition Area is currently located in the State Agricultural District. OP finds that the property meets the standards set forth in section 15-15-18, HAR, for determining State Urban District boundaries, in that the Project Area is adjacent to existing urban development. Basic services are adequate in the general Area. The Project Area is not within the Special Management Area.

Hawai'i State Plan, Priority Guidelines, and State Functional Plans

With appropriate mitigation, the proposed reclassification is generally consistent with the goals, objectives, and policies of the Hawai'i State Plan, in particular, the promotion of economic opportunities, and sustainability guidelines. It is not consistent with goals, objectives, and policies and priority directions that seek to protect productive agricultural lands and promote diversified agriculture. However, the property is within the County's Urban Edge Boundary in its Lihue Community Plan, and designated Urban Center in the current General Plan.

Coastal Zone Management Objectives and Policies, Section 205A-2, HRS

The Petition Area lies within the State's Coastal Zone Management (CZM) Area, which includes all lands of the State and the area extending seaward from the shoreline to the territorial limit. The Petition Area is not within the Special Management Area. With appropriate mitigation with respect to stormwater management, protection of endangered, threatened and candidate wildlife, archaeological, historic, and cultural resources, the proposed Project generally conforms to the State CZM objectives and policies.

Areas of State Concern

The Project contributes favorably to the creation of job and educational opportunities. With appropriate mitigation measures as discussed earlier, the Petitioner can minimize the impacts to State concerns.

Removal of High Capacity Agricultural Lands, Lands in Agricultural Use, or Lands Designated as Important Agricultural Lands

In general, the State is concerned with the continued loss of agricultural lands to urban and residential uses and the availability of productive agricultural lands necessary to ensure Hawaii's food security into the future. However, the Petition Area's school has been in continuous operation since the 1980's, and is on a relatively small acreage of land near other urban uses. The Petitioner proposes to reclassify the Petition Area from the State Agricultural to the Urban land use district to continue and facilitate the viability of the school use already on-site, and to improve and expand the school without the necessity of going through amendments to, or new State Special Permits.

County Plans

The Petition is consistent with the County of Kauai's General Plan and Lihue Community Plan. The County supports the Petitioner's request to reclassify the Petition Area from the State Agricultural to the State Urban Land Use District.

Public Trust Resources

Sections 205-4 and 225M-2(b)(5), HRS, authorize OP to develop and present the position of the State in all boundary change petitions and proceedings before the Commission. We note

that the Hawaii Intermediate Court of Appeals recently decided *Kauai Springs v. Planning Commission of the County of Kauai*, dated April 30, 2013, which required that decision-makers specifically consider the applicant's use of public trust resources pursuant to Article XI, section 1 of the Hawaii Constitution. OP has made "appropriate assessments" and "require(d) reasonable measures" to protect public trust resources. This public trust evaluation has been integrated into the analysis and recommendations provided herein.

RECOMMENDATION

Based on the foregoing information and analysis, OP recommends the approval of the Petition subject to the Petitioner's commitments to avoid, minimize, or mitigate Project impacts as represented herein and in this proceeding, and the imposition of the following conditions in addition to the standard conditions of the Commission.

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, Kauai 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 shall 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 of October through March on Kauai, 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 Hawaiian Petrels and Newell's Shearwaters with external lights and man-made structures.
 - D. 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 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, prior to the start of construction activity.
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.

DATED: Honolulu, Hawaii, this 3rd day of March, 2017.

OFFICE OF PLANNING
STATE OF HAWAII


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DATED: Honolulu, Hawaii, March 3, 2017.

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