

LAND USE COMMISSION
OF THE STATE OF HAWAII
2017 MAY -4 A 11:35

In the Matter of the Petition of)	DOCKET NO. A16-801
)	
UNIVERSITY OF HAWAII)	OFFICE OF PLANNING'S COMMENTS
COMMUNITY COLLEGES)	AND OBJECTIONS TO PETITIONER'S
)	PROPOSED FINDINGS OF FACT,
To Amend the Agricultural Land Use)	CONCLUSIONS OF LAW, AND
District Boundary into the Urban District for)	DECISION AND ORDER FOR A STATE
approximately 148.37 acres at Puhi, Lihu'e,)	LAND USE DISTRICT BOUNDARY
Island of Kauai, State of Hawaii,)	AMENDMENT; AND CERTIFICATE OF
TMK: (4) 3-4-07:01, 02 03, and 06.)	SERVICE
)	
)	

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

Pursuant to Hawaii Administrative Rules (HAR) § 15-15-82, the Office of Planning (OP) respectfully submits comments and objections to Petitioner University of Hawaii Community Colleges' (Petitioner) *Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment*, filed with the State Land Use Commission (Commission) on April 19, 2017 (Petitioner's Proposed D&O).

The comments and objections offered herein are provided to help supplement and support the Petitioner's Proposed D&O. These recommended changes and additions will reduce the probability that a reviewing appellate court will find certain procedural matters, findings of fact, conclusions of law, and the ultimate decision to be arbitrary, capricious, or clearly erroneous.

OP's detailed comments and objections to specific procedural matters (PMs), findings of fact (FOFs), and decision and order (D&O) are stated below in bold after the reprinted PMs, FOFs and D&Os, with the exception of FOFs that appear to lack sufficient citations, which are not reprinted for purposes of efficiency and conciseness.

The Office of Planning (OP) has no comments or objections to the Petitioner's Proposed D&O except as set forth below.

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

I. PROCEDURAL MATTERS

...
14. On February 21, 2017, the Commission filed the OP's Witness List and Exhibit List; Exhibits 2, 3, 5, 6, 7 and 8, COS.

...
21. On March 3, 2017, the Commission filed the OP's Testimony in Support of Petition with Conditions, OP Exhibits 4 and 7 and Certificate of Service.

...
26. On March 15, 2017, the Commission filed the OP's First Amended Exhibit List; Exhibit 9 and Certificate of Service.

PMs 14, 21 & 26: OP suggests replacing the word "*Commission*" with the word "*OP*" in PMs 14, 21, and 26. OP, not the Commission, filed OP's Witness List, Exhibit List, Exhibits, Testimony in Support of Petition with Conditions, First Amended Exhibit List and Certificates of Service.

27. On March 22-23, 2017 the Commission held evidentiary hearings on Kaua'i. The evidentiary portion of the hearing was closed on March 23, 2014.

PM 27: The evidentiary portion of the hearing was closed on March 23, 2017, not 2014. PM 27 should be corrected to read "...*March 23, 2017.*"

II. FINDINGS OF FACT

A. Description of the Petition Area

...
29. During the hearing before the Commission on March 23, 2017, the record was corrected to clarify that one of the parcels originally included in the Initial Petition Area, namely Tax Map Key (4) 3-4-07:06, is outside of the Initial Petition Area. [E. Matsukawa 3/23/2017 60:20-21]

30. The Initial Petition Area was amended to consist of only Kaua'i Tax Map Key Nos. (4) 3-4-07:01, 02, and 03 and containing a reduced project area of approximately 148.37 acres ("Petition Area"). [Pet. Ex. 4, page 2]

FOFs 29 & 30: Petitioner's testimony on redirect that portion 06 is excluded from the Petition Area (Tr. 60:20-21) is not sufficient to properly amend the Petition Area.

Pursuant to HAR § 15-15-50(c), a petition must include a description of the subject property, including tax map key number, with maps, including the tax map, that identify the area stated in the petition. No amended pleadings shall be filed after forty-five days prior to the date of the hearing, unless a stipulation is reached by all parties, or good cause is shown and approval of the chairperson, presiding officer, or the chairperson's designee is obtained. HAR § 15-15-43. The Petition Area should have been amended to exclude portion 06 prior to the hearing or by stipulation of the parties or approval by the chairperson, presiding officer, or the chairperson's designee.

Without proper amendment of the Petition Area the Petition is arguably defective. There are inconsistencies in Petitioner's pleadings as to whether portion 06 is included in the Petition Area. Petitioner continues to include portion 06 in its pleading captions. Petitioner's Exhibits 4, 7, 8, and 9 do not clearly exclude portion 06 yet explicitly exclude portions 05 and 07. Petitioner's Notice of Hearing included portion 06 and identified the Petition Area as 149.37 acres, whereas a Petition Area of 148.37 acres is used elsewhere in the Petition.

To clarify that portion 06 is not included in the Petition Area and to correct this problem at this stage of the process, OP recommends that, should the boundary amendment be approved, the Commission approve portions 01, 02, and 03 and specifically and explicitly deny portion 06 of TMK (4) 3-4-07. The Commission's silence as to explicitly denying portion 06 may allow for interpretation that portion 06 was approved as part of the boundary amendment.

FOFs 29 and 30 should be amended accordingly as follows:

"29. During the hearing before the Commission on March 23, 2017, the record was ~~corrected to clarify~~ clarified that one of the parcels originally included in the Initial Petition Area, namely Tax Map Key (4) 3-4-07:06, is outside of the Initial Petition Area. [Tr. 60:20-21]

30. The Initial Petition Area was ~~amended to consist of~~ consists only of Kaua'i Tax Map Key Nos. (4) 3-4-07:01, 02, and 03 and ~~containing~~ a ~~reduced~~ project area of approximately 148.37 acres ("Petition Area"). [Pet. Ex. 4, page 2]"

...

32. Petitioner provided a survey map of the Petition Area to be reclassified into the State Land Use Urban District. [Pet. Ex. 5, page 2]

FOF 32: Pursuant to HAR § 15-15-50(c)(3), if the subject property is a portion of one or more tax map key parcels, a petition for boundary amendment shall include a map and description of the subject property and each increment in metes and bounds prepared by a registered professional land surveyor. Petitioner's Exhibit 5 survey map was not signed by the licensed professional land surveyor and therefore may not have been properly prepared by a registered professional land surveyor.

...
41. As evidenced by Petitioner's Exhibits 8 and 9 and outlined in a heavy black line, UHCC is proposing to redesignate 148.37 acres of the 199 acres comprising the KCC campus. This Petition seeks to redesignate the 148.37 acres of the KCC campus which would be consistent with the "Urban" land-use designation established in the Kaua'i General Plan. [Pet. page 5]

FOF 41: Again, Petitioner has not properly amended its Petition to exclude portion 06 from the Petition Area. Exhibits 8 and 9 do not clearly evidence exclusion of portion 06 from the Petition Area.

...
FOFs 44-46, 48, 55-61, 63, 65-71, 81-83, 93-115, 117-121, 123-139, 141, 143, 144, and 146-150: The citations to these findings rely solely on the language of the Petition. To better establish the veracity of these FOFs, Petitioner should have referenced the appropriate factual representations made by witnesses and/or exhibits to support the FOFs in each citation.

...
75. An archaeological literature review and field inspection of the Petition Area was also conducted by CSH in August 2010. The nine historic features which were identified were plantation era features including five irrigation ditches, three reservoirs one of which is abandoned, an abandoned wooden flume and the Puhi Camp Cemetery. Subsequently, in consultation with SHPD, a campus-wide Archaeological Inventory Survey (AIS) encompassing approximately 199 acres was conducted and approved by SHPD/State Department of Land and Natural Resources ("DLNR") on April 15, 2016. [Pet. Ex. 3 and 16; FEA 3:24-29]

FOF 75: OP recommends adding the following sentence to the end of FOF 75:

"Four historic sites were found within the Petition Area: a historic trash deposit, irrigation complex still in use, Puhi Camp Cemetery, also still in use, and a Hawaii Territory Survey marker and transit station."

...
78. Puhi Cemetery is not within the Petition Area. The boundary of the Puhi Cemetery is visible on the surface, but cemeteries are not always wholly within its physical or defined boundaries. [H. Hammatt, 3/23/2017, 34:5-11]

FOF 78: OP recommends amending FOF 78 as follows:

78. **Puhi Cemetery is not within the Petition Area, however, it is recommended for preservation and to be utilized for educational and interpretive purposes related to the plantation era.** The boundary of the Puhi Cemetery is visible on the surface, but cemeteries are not always wholly within its physical or defined boundaries. [H. Hammatt, 3/23/2017, 34:5-11]

...
79. Petitioner has no plans to conduct or engage in any activities that would materially impact the Puhi Cemetery area. [H. Hammatt, 3/23/2017, 35:7]

FOF 79: H. Hammatt does not have the authority to make representations, such as confirming the future plans of Petitioner, on behalf of the Petitioner.

Cultural and Historic FOF: OP recommends adding the following FOF under subheading 3. "Cultural and Historic":

"#: SHPD recommended the following mitigation measures:

- a. **Development of an archaeological preservation plan for the Puhi Camp Cemetery (B0006) which meets the requirements of Hawaii Administrative Rules Section 13-277. The archaeological preservation plan shall include subsurface testing outside of the Puhi Camp Cemetery lot to determine whether any graves are located on lands owned by the Kauai Community Colleges/State of Hawaii, and whether a buffer area should be located on the Kauai Community Colleges land.**
- b. **Development of a campus design for the portion of Site 2179, an irrigation complex still in use, for educational and interpretive purposes in conjunction with the Long Range Master Plan for KCC or prior to the approval of a building permit or ground disturbances for any new major buildings within KCC, whichever occurs first. [Pet. Ex. 3 and 16; FEA 3:24-29; OP Ex. 1; Tr. 121:6-25; 122:1-14]**

4. Scenic

...

b. Fauna

...

92. The development of proposed projects contained in KCC's LRDP could adversely affect Hawaiian hoary bats is during the clearing and grubbing phases of such development. Hawaiian hoary bats roost in both exotic and native woody vegetation and leave their young unattended in "nursery" trees and shrubs when they forage. [Pet. Ex. 3, pages 17-24; Pet. Ex. 26 page 3]

FOF 92: There appears to be a typo in FOF 92. The word "is" should be removed.

Fauna FOFs: Under the subheading "Fauna", OP recommends adding the following FOFs:

"#. The National Wetlands Inventory Maps identified three wetlands within the Petition Area. Two of the wetlands are forks in Puhī Stream, and one is an abandoned reservoir which is currently used as a detention basin. [Pet. Ex. 3, pages 3-15 and 3-16]

#. There are several endangered bird species detected in the Petition Area, 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 Petition area. The Hawaiian Hoary bat was not observed, however, mitigation measures are outlined within the FEA for the species. Petitioner indicated that they will institute an endangered species awareness program. [Pet. Ex. 3, pages 3-21 and 3-22]

#. To minimize potential impacts to the Hawaiian goose, a qualified biologist should survey the area for nesting activity prior to and during any construction, between October and March. The Hawaiian goose has an extended breeding season between August and April. The U.S. Fish and Wildlife Service (USFWS) recommended that a biologist familiar with the nesting habits of the Hawaiian goose survey the area prior to the initiation of any work. If a nest is discovered, work should cease immediately and USFWS should be contacted for further guidance. Further, if a Hawaiian goose should appear within 100-feet of ongoing work, all activity should be temporarily suspended until the Hawaiian goose/geese leaves the area. [OP Ex. 1, pages 5-6; Tr. 119:21-25; 120: 1-14]

#. Petitioner proposed to shield lighting should construction be required at night, to mitigate seabird mortality. USFWS recommended that construction occur only in the daylight, and that all exterior lighting at the Petitioner's facilities be positioned to minimize and mitigate seabird mortality. [OP Ex. 1, page 5]"

...

109. Updates to a traffic report are usually triggered by enrollment increases. A substantial increase in KCC's enrollment should be a trigger for an updated traffic report. An increase of about 400 FTE students should be a trigger for an updated traffic report. [P. Pascua, 3/23/2017 64:8-12; 66: 13-16; 68:23-25; 69:1]

FOF 109: FOF 109 should be amended in its entirety to read as follows:

"A TIR update can be triggered by student enrollment increases, a Chapter 343, HRS process, or by the completion of Petitioner's long-range development plan. [Tr. 64:8-12; 66: 13-16; 68:23-25; 69:1; 123: 21-25; 124: 1-6)]"

Traffic FOFs: Under subheading 6, "Traffic & Transportation", OP recommends adding the following FOFs related to traffic:

"#. The DOT recommended that the TIR should be updated to include the expansion plans of Petitioner's facilities and a discussion of the Hanamaulu Bypass Project alignment and the Kuhio Highway widening from Anomui Street to Kipu Road area from two lanes to four lanes, including the proposed expansion of Island School facilities. [OP Ex. 1, pg. 9; Tr. 123: 12-21]

#. The Petition Area is located approximately two (2) miles from Lihue Airport. The Federal Aviation Administration and the State Department of Transportation require general compliance with their rules and memoranda regarding construction in the vicinity of the airport and its effects on wildlife. [OP Ex. 1, pg. 8; Tr. 122:1-25; 123: 1-11]"

...

III. DECISION AND ORDER

1. Water Source. Water service for the KCC campus is provided by the County Department of Water's system. When development of major projects shown in the KCC LRDP begins, the County Planning Department and County Department of Water will be consulted with regarding the County's Water Use and Development plan. When plans for specific

facilities are developed, the Petitioner will provide water demands and calculations to the County and State.

2. Water Conservation. When development of major projects shown in the KCC LRDP begins, water efficient fixtures and practices will be implemented and alternative water resources will be considered, wherever practicable. Petitioner will comply with energy efficiency and environmental standards for state facilities. In addition, when development of major projects shown in the KCC LRDP begins, Petitioner shall implement water conservation measures including water efficient plumbing fixtures, high efficiency or drip irrigation systems, and drought tolerant landscaping.

3. Storm Water Management and Drainage. When development of major projects shown in the LRDP begins, a full range of erosion and sediment controls will be instituted during grading and excavation operations for such projects, as appropriate, and in compliance with the County's grading ordinance and the state Department of Health's National Pollutant Discharge Elimination System Permit for Storm Water Associated with Construction Activities ("NPDES"). For any major project near or along Pu'ali Stream, a subsequent Environmental Assessment or Environmental Impact Statement will be prepared pursuant to Chapter 343, Hawaii Revised Statutes. Should it be determined that the drainage system for the KCC campus is inadequate, Petitioner will work with the County Department of Public Works for a broader downstream study to determine appropriate mitigation measures. Petitioner shall maintain existing drainage patterns. To the extent feasible, Petitioner shall implement Best Management Practices and incorporate Low Impact Development practices for onsite stormwater capture and reuse into Petition Area's site design and landscaping to control water quality and mitigate

4. Noise and Dust Control. When development of major projects shown in the KCC LRDP begins, potential noise and dust impacts during construction of such projects 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.

D&O Conditions 1-4: OP recommends that the word "will" be replaced with the word "shall" throughout D&O Conditions 1 through 4 for consistency and to clarify that the conditions are not merely future events, but duties imposed upon Petitioner.

5. Highway and Roadway Improvements. When development of major projects shown in the KCC LRDP begins, Petitioner will update the Traffic Impact Report for KCC that was conducted in December 2010. Such an update shall discuss the Lihue-Hanamaulu Bypass Project – alignment possibilities connecting to Kaunualii Highway, and Kaunualii Highway widening from Anonui Street to the Kipu Road area from two to four lanes. Petitioner shall submit its design and construction plans to the State Department of Transportation (“DOT”) for review and comment and will work with DOT to address potential adverse impacts arising from such major projects as shown in the KCC LRDP and implement measures to mitigate any adverse impacts attributable to such major projects shown in the KCC LRD.

D&O Condition 5: Based on OP's proposed amended FOF 109 and OP's recommended FOFs relating to traffic, OP recommends amending D&O Condition 5 as follows:

"5. Highway and Roadway Improvements. ~~When development of major projects shown in the KCC LRDP begins~~ **Prior to development of the first major project indicated in the LRDP,** Petitioner will **shall coordinate with DOT to** update the Traffic Impact Report for KCC that was conducted in December 2010. Such an update shall discuss the Lihue-Hanamaulu Bypass Project – alignment possibilities connecting to Kaunualii Highway, and Kaunualii Highway widening from Anonui Street to the Kipu Road area from two to four lanes, **and the proposed construction and expansion of Island School facilities.** Petitioner shall submit its design and construction plans to the State Department of Transportation (“DOT”) for review and comment and will work with DOT to address potential adverse impacts arising from such major projects as shown in the KCC LRDP and implement measures to mitigate any adverse impacts attributable to such major projects shown in the KCC LRD. **plan, design, and construct all improvements required to mitigate the impacts generated or related transportation impacts by Petitioner’s expansion plans, as reviewed and approved by DOT.**"

6. Lihue Airport. Petitioner shall comply with laws, rules directives, memorandum pertaining to the DOT and the Federal Aviation Administration that apply to the development of major projects shown in the KCC LRDP, including all relating to: (a) new construction and

installation of equipment, buildings, photovoltaic panels, and other relevant activities, (b) the proximity of such major projects to DOT's Līhu'e Airport, and (c) the protection, handling, and/or removal of any endangered, threatened, and listed wildlife species on or within the Petition Area. Petitioner shall conduct a glint and glare analysis for KCC's proposed photovoltaic facility and submit the analysis to the DOT for review and comment and will work with DOT to address potential adverse impacts arising from such proposed photovoltaic facilities, as shown in the KCC LRDP, and implement measures to mitigate any adverse impacts attributable to such major projects shown in the KCC LRDP.

D&O Condition 6: Based on OP's proposed "Traffic & Transportation" FOFs, OP recommends amending D&O Condition 6 as follows:

" Lihue Airport. Petitioner shall comply with laws, rules directives, memorandum pertaining to the DOT and the Federal Aviation Administration that apply to the development of major projects shown in the KCC LRDP, including all relating to: (a) new construction and installation of equipment, buildings, photovoltaic panels, and other relevant activities, (b) the proximity of such major projects to DOT's Līhu'e Airport, and (c) the protection, handling, and/or removal of any endangered, threatened, and listed wildlife species on or within the Petition Area.

Petitioner shall conduct a glint and glare analysis for KCC's proposed photovoltaic facility and submit the analysis to the DOT for review and comment and will work with DOT to address potential adverse impacts arising from such proposed photovoltaic facilities, as shown in the KCC LRDP, and implement measures to mitigate any adverse impacts attributable to such major projects shown in the KCC LRDP. If glint and glare from the PV system is determined to create a hazardous condition, Petitioner shall immediately mitigate the hazard at their expense."

7. Previously Unidentified Burials and Archaeological/Historic Sites. When development of major projects shown in the KCC LRDP begins, 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 SHPD, Kauai Island Section, shall be contacted immediately. The treatment of any remains will be in accordance with procedures approved by the Kaua'i Island Burial Council and SHPD. Without any limitation to any other condition found herein, if any burials or

archaeological or historic sites are discovered during the course of construction, 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. When development of major projects shown in the LRDP begins in the reasonable vicinity of Puhi Cemetery, Petitioner shall consult with SHPD to determine what, if any, mitigation may be appropriate to address the potential adverse impacts upon Puhi Cemetery, and whether a buffer area should be located on Petitioner's land. Petitioner shall allow persons reasonable access through the Petition Area to access family members who may be buried at Puhi Cemetery. Petitioner shall develop a campus design for the irrigation complex still in use, for educational and interpretive purposes, pursuant to its LRDP.

D&O Condition 7: Based on OP's proposed Cultural and Historic FOF, OP recommends amending Condition 7 as follows:

"7. Previously Unidentified Burials and Archaeological/Historic Sites. When development of major projects shown in the KCC LRDP begins, 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 SHPD, Kauai Island Section, shall be contacted immediately. The treatment of any remains will be in accordance with procedures approved by the Kaua'i Island Burial Council and SHPD. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction, 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. ~~When development of major projects shown in the LRDP begins in the reasonable vicinity of Puhi Cemetery, Petitioner shall consult with SHPD to determine what, if any, mitigation may be appropriate to address the potential adverse impacts upon Puhi Cemetery, and whether a buffer area should be located on Petitioner's land. Petitioner shall allow persons reasonable access through the Petition Area to access family members who may be buried at Puhi Cemetery.~~

Petitioner, in cooperation with the landowner of Puhi Cemetery (B0006), shall complete an archaeological preservation plan for the Puhi Camp Cemetery for review and approval by the State Historic Preservation Division. The archaeological preservation plan

shall meet the requirements of HAR § 13-277, shall include subsurface testing outside of the Puhi Camp Cemetery lot to determine whether any graves are located on lands owned by KCC, and determine whether a buffer area should be located on KCC land.

The archaeological preservation plan shall be developed in conjunction with the LRDP update for KCC or prior to the approval of a building permit or ground disturbances for any new major buildings within KCC, whichever occurs first.

Petitioner shall develop a campus design for the portion of Site 2179, the irrigation complex still in use, for educational and interpretive purposes, pursuant to its in conjunction with the LRDP for KCC or prior to the approval of a building permit or ground disturbances for any new major buildings within KCC, whichever occurs first."

9. Flora and Fauna. Petitioner shall ensure that all exterior lighting fixtures are down-shielded, cut-off luminaires or indirect lighting types, or separately circuited to minimize the harmful effects of lighting on endangered avifauna. If construction activities occur during Nēnē nesting season, which typically runs from October through March, the portion of the Petition Area involved or upon which such projects are to be located should be surveyed by a qualified biologist before the onset of the construction, to determine if any active Nēnē nesting activity is occurring within that portion of the Petition Area upon which such projects are to be located.

If active Nēnē nesting occurs while construction activities are ongoing, a Nēnē monitor should be on site to assist in protecting the birds from harm. During construction of such projects, an endangered species awareness program will be developed which includes general information on the endangered species act and protected species, specific restrictions that will be in force on the portion of the Petition Area upon which such projects will be developed to protect endangered species, and a set of protocols on who, and how construction personnel will respond to any downed or injured endangered species that may occur. All construction personnel will be required to be familiar with the endangered or threatened species program and protocols that will need to be followed.

If heavy vegetation of the periphery of the Petition Area needs to be cleared, that clearing should not occur during the pupping/rearing season for the Hawaiian hoary bat, which generally

runs between May 15 and August 31. Woody plants greater than 15 feet tall should not be removed during this period.

D&O Condition 9: Based on OP's proposed Fauna FOFs, OP recommends amending Condition 9 as follows:

9. Flora and Fauna. For any nighttime work required during construction, and for long term operation of the proposed facility, Petitioner shall ensure that all exterior lighting fixtures are down-shielded, cut-off luminaires or indirect lighting types, or separately circuited to minimize the harmful effects of lighting on endangered avifauna, including nocturnally flying Hawaiian Petrels and Newell's Shearwaters with external lights and man-made structures. If construction activities occur during Nēnē nesting season, which typically runs from October through March, the portion of the Petition Area involved or upon which such projects are to be located should be surveyed by a qualified biologist before the onset of the construction, to determine if any active Nēnē nesting activity is occurring within that portion of the Petition Area upon which such projects are to be located.

If active Nene nesting occurs while construction activities are ongoing, a Nene monitor should be on site to assist in protecting the birds from harm. During construction of such projects, an endangered species awareness program will be developed which includes general information on the Endangered Species Act and protected species, specific restrictions that will be in force on the portion of the Petition Area upon which such projects will be developed to protect endangered species, and a set of protocols on who, and how construction personnel will respond to any downed or injured endangered species that may occur. All construction personnel will be required to be familiar with the endangered or threatened species program and protocols that will need to be followed.

To avoid potential impacts to the Hawaiian hoary bat, if heavy vegetation of the periphery of the Petition Area needs to be cleared, that clearing should shall not occur during the pupping/rearing season for the Hawaiian hoary bat, which generally runs between May 15 and August 31, between June 1 to September 15 when bats may be carrying young and potentially could be at risk by such clearing activities. Woody plants greater than 15 feet tall should not be removed during this period.

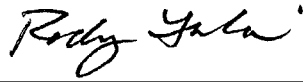
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Conclusion

OP respectfully requests that the Commission adopt the Petitioner's Proposed D&O with the comments and objections as stated herein.

Dated: Honolulu, Hawaii, May 4, 2017.

OFFICE OF PLANNING
STATE OF HAWAII

Leo 

LEO R. ASUNCION
Director

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

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Island of Kauai, State of Hawaii,)	AMENDMENT CERTIFICATE OF
TMK: (4) 3-4-07:01, 02 03, and 06.)	SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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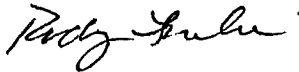
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DATED: Honolulu, Hawaii, May 4, 2017.

OFFICE OF PLANNING
STATE OF HAWAII



L.R.

LEO R. ASUNCION
Director