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LAND USE COMMISSION  
STATE OF HAWAII  
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BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition

of

UNIVERSITY OF HAWAI'I COMMUNITY  
COLLEGES

To Amend the Agricultural Land Use District  
Boundary into the Urban District for  
approximately 148.37 acres at Puhi, Lihue,  
Island of Kaua'i, State of Hawai'i, TMK: (4)  
3-4-07:01, 02, 03, and 06.

DOCKET NO. A16-801

PARTIAL STIPULATION OF  
PETITIONER'S PROPOSED FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER FOR A STATE  
LAND USE DISTRICT BOUNDARY  
AMENDMENT, FILED ON APRIL 19,  
2017, BETWEEN UNIVERSITY OF  
HAWAII COMMUNITY COLLEGE AND  
THE OFFICE OF PLANNING, STATE OF  
HAWAI'I;

ATTACHMENT "A";

CERTIFICATE OF SERVICE

PARTIAL STIPULATION OF PETITIONER'S PROPOSED FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER FOR A STATE  
LAND USE DISTRICT BOUNDARY AMENDMENT, FILED ON APRIL 19, 2017,  
BETWEEN UNIVERSITY OF HAWAII COMMUNITY COLLEGE  
AND THE OFFICE OF PLANNING, STATE OF HAWAI'I

The UNIVERSITY OF HAWAII COMMUNITY COLLEGE (“Petitioner”) and the OFFICE OF PLANNING, STATE OF HAWAII (“OP”) (collectively, the “Parties”), by and through their respective attorneys, hereby stipulate and agree to the conditions contained in Petitioner’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment, filed with the Land Use Commission on April 19, 2017, as amended by the following:

1. Petitioner’s Proposed Condition No. 1 shall be amended as follows:

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 Kauai Community College (KCC) LRDP begins, the County Planning Department and County Department of Water ~~[will]~~ shall 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]~~ Department of Water.

2. Petitioner’s Proposed Condition No. 2 shall be amended as follows:

2. Water Conservation. When development of major projects shown in the KCC LRDP begins, water efficient fixtures and practices ~~[will]~~ shall be implemented and alternative water resources ~~[will]~~ shall be considered, wherever practicable. Petitioner ~~[will]~~ shall comply with energy efficiency and environmental standards and shall implement water conservation measures including water efficient plumbing fixtures, high efficiency or drip irrigation systems, and drought tolerant landscaping for ~~[State]~~ new 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. Petitioner's Proposed Condition No. 3 shall be amended as follows:

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~~] shall 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 Puali Stream, a subsequent Environmental Assessment or Environmental Impact Statement [~~will~~] shall 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~~] shall 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 nonpoint sources of pollution.

4. Petitioner's Proposed Condition No. 4 shall be amended as follows:

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~~] shall be mitigated by complying with the State DOH Administrative Rules, Title 11, Chapter 60, "Air Pollution Control". The construction contractor(s) [~~will~~] shall be responsible for complying with the State DOH regulations that prohibit visible dust emissions at property boundaries. Compliance with State regulations [~~will require~~] shall include 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.

5. Petitioner's Proposed Condition No. 5 shall be amended as follows:

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.]~~ Petitioner shall coordinate with DOT to update the 2010 Traffic Impact Assessment Report prior to the development of a major project triggering an environmental assessment or an Environmental Impact Statement. [Such an] The update to the Traffic Impact Assessment Report shall [discuss] include the expansion plans of Petitioner's facilities, and the following projects: 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 LRDP.]~~ plan, design, and construct all improvements required to mitigate the impacts generated or related transportation impacts by Petitioner's expansion plans, as approved by the DOT.

6. Petitioner's Proposed Condition No. 6 shall be amended as follows:

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

~~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 Lihue 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. its comment and approval.]~~ the State Department of Transportation and the Federal Aviation Administration's various Hawaii Revised Statutes, Hawaii Administrative Rules, and Federal directives, memorandum, and laws, regarding new construction and installation of equipment, buildings, photovoltaic panels, and other relevant activities, including endangered, threatened, and listed wildlife species in the Petition Area, relating to its proximity to the Lihue Airport.

7. Petitioner's Proposed Condition No. 7 shall be amended 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 State Historic Preservation Division (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 [~~State Historic Preservation Division~~] 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.~~]

8. The following new Condition No.8 shall be inserted as follows:

8. Archaeological Resources.

a. 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 SHPD. 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 the Kauai Community Colleges/State of Hawaii, and determine whether a buffer area should be located on the KCC land. Until such time that the archaeological preservation plan is prepared and approved by the SHPD, no facility development or ground disturbance activities shall occur within 100 feet of the perimeter of the cemetery parcel defined by Tax Map Key (4) 3-4-07:05.

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

9. *Petitioner's Proposed Conditions Nos. 8 and 9 shall be amended as follows:*

~~[8.]~~ 9. **Endangered Species.** [When development of major projects shown in the KCC LRDP begins, Petitioner shall develop mitigation measures to address any potential impacts on endangered species in the Petition Area, if any, and shall as necessary consult with the DLNR, the DLNR Division of Fish and Wildlife, and the U.S. Fish and Wildlife Service to develop such mitigation measures, as may be appropriate.] Petitioner shall undertake 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 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.

~~[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.]~~



For the Commission's convenience, Attachment "A" is provided as a clean version of all stipulated conditions, both amended and unamended.

This joint stipulation is executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this joint stipulation, it shall not be necessary to produce or account for a copy of more than one such counterpart and the signature pages of the remaining counterparts. This joint stipulation may also be executed by transmission of the signed signature page of any counterpart by facsimile or other electronic transmission including electronic portable document format. Such facsimile or electronic transmission will be deemed to be an original.

DATED: Honolulu, Hawai'i, July 6, 2017

DOUGLAS S. CHIN  
Attorney General of Hawai'i

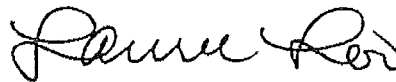


DAWN T. APUNA  
BRYAN C. YEE  
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Attorneys for OFFICE OF PLANNING,  
STATE OF HAWAII

DATED: Lihue, Kaua'i, Hawai'i, July 7, 2017

UNIVERSITY OF HAWAII COMMUNITY  
COLLEGES



LAUREL LOO  
Attorney for Petitioner

## ATTACHMENT "A"

Docket No. A16-801

Kauai Community College

### Proposed Stipulated Conditions

1. Water Source. When development of major projects shown in the Kauai Community College (KCC) Long Range Development Plan (LRDP) begins, the County Planning Department and County Department of Water shall be consulted regarding the County's Water Use and Development Plan. When plans for specific facilities are developed, the Petitioner shall provide water demands and calculations to the County Department of Water.

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

3. Storm Water Management and Drainage. When development of major projects shown in the LRDP begins, a full range of erosion and sediment controls shall 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. For any major project near or along Puuli Stream, a subsequent Environmental Assessment or Environmental Impact Statement shall be prepared pursuant to Chapter 343, Hawaii Revised Statutes. Should it be determined that the drainage system for the KCC campus is inadequate, Petitioner shall 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 shall be mitigated by complying with the State DOH Administrative Rules, Title 11, Chapter 60, "Air Pollution Control". The construction contractor(s) shall be responsible for complying with the State DOH regulations that prohibit visible dust emissions at property boundaries. Compliance with State regulations shall include 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.

5. Highway and Roadway Improvements. Petitioner shall coordinate with DOT to update the 2010 Traffic Impact Assessment Report prior to the development of a major project triggering an environmental assessment or an Environmental Impact Statement. The update to the Traffic Impact Assessment Report shall include the expansion plans of Petitioner's facilities, and the following projects: Lihue-Hanamaulu Bypass Project-alignment possibilities connecting to Kaunualii Highway, 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 plan, design, and construct all improvements required to mitigate the impacts generated or related transportation impacts by Petitioner's expansion plans, as approved by the DOT.

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

Petitioner shall comply with the State Department of Transportation and the Federal Aviation Administration's various Hawaii Revised Statutes, Hawaii Administrative Rules, and Federal directives, memorandum, and laws, regarding new construction and installation of equipment, buildings, photovoltaic panels, and other relevant activities, including endangered, threatened, and listed wildlife species in the Petition Area, relating to its proximity to the Lihue Airport.

7. 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 State Historic Preservation Division (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.

8. Archaeological Resources.

a. Petitioner, in cooperation with the landowner of Puhī Cemetery (B0006), shall complete an archaeological preservation plan for the Puhī Camp Cemetery for review and approval by the SHPD. The archaeological preservation plan shall meet the requirements of HAR § 13-277, shall include subsurface testing outside of the Puhī Camp Cemetery lot to determine whether any graves are located on lands owned by the Kauai Community Colleges/State of Hawaii, and determine whether a buffer area should be located on the KCC land. Until such time that the archaeological preservation plan is prepared and approved by the SHPD, no facility development or ground disturbance activities shall occur within 100 feet of the perimeter of the cemetery parcel defined by Tax Map Key (4) 3-4-07:05.

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

9. Endangered Species. Petitioner shall undertake 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 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.

10. Adjacent Agricultural Lands. For all land in the Petition Area or any portion thereof that is adjacent to land the State Land Use Agricultural District, Petitioner shall comply with the following:

a. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management principles on adjacent or contiguous lands in the State Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS section 165-2; and

b. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Agricultural District are protected under HRS chapter 165, the Hawaii Right to Farm Act. The notice shall disclose to all prospective buyers, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

11. Native Hawaiian Access Rights. Pursuant to Article XII, Section 7 of the Hawaii State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians

who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

12. 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.

13. Annual Reports. When development or major projects shown in the KCC LRDP begins, Petitioner shall timely provide without any prior notice, annual reports to the Commission, Office of Planning, and the County Planning Department, and their respective successors, in connection with the status of the development of the Petition Area 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.

14. Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.

15. Notice of Imposition of Conditions. Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawaii a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.

16. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition

of

UNIVERSITY OF HAWAI'I COMMUNITY  
COLLEGES

To Amend the Agricultural Land Use District  
Boundary into the Urban District for  
approximately 148.37 acres at Puhi, Lihue,  
Island of Kaua'i, State of Hawai'i, TMK: (4)  
3-4-07:01, 02, 03, and 06.

DOCKET NO. A16-801

CERTIFICATE OF 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.

UNIVERSITY OF HAWAII  
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MICHAEL DAHILIG, DIRECTOR  
Planning Department, County of Kauai  
4444 Rice Street  
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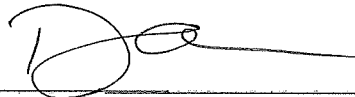
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KAUAI COUNTY PLANNING COMMISSION  
c/o Planning Department, County of Kauai  
4444 Rice Street  
Lihue, Kauai, HI 96766

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DATED: Honolulu, Hawai'i, July 10, 2017.



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