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June 14, 2021

VIA E-MAIL AND HAND-DELIVERY

LAND USE COMMISSION
STATE OF HAWAII
2021 JUN 14 P 3:39

Daniel E. Orodenker, Executive Officer
Land Use Commission, State of Hawai'i
Leiopapa A. Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Re: Land Use Commission Docket No. A03-745 – Hanohano LLC

Dear Executive Officer Orodenker:

As you know, our office represents Petitioner Hanohano LLC ("**Petitioner**") in connection with State of Hawai'i Land Use Commission ("**Commission**") Docket No. A03-745.

On October 28, 2020, the Commission issued its *Order Granting in Part and Denying in Part Hanohano LLC's Motion to Release and Modify Conditions* ("**2020 Order**"). Condition No. 26 of the 2020 Order provided that:

> Petitioner shall record in the Bureau of Conveyances of the State of Hawai'i an amended and restated Certificate of Conditions recognizing the Commission's release of conditions and modification of conditions, as ordered pursuant to this Decision and Order, and restating the conditions reaffirmed by the Commission, if any, pursuant to this Decision and Order. The amended and restated Certificate of Conditions shall fully supersede and release the Certificate of Conditions that was recorded as Document No. 2005-105309.

On June 9, 2021, Petitioner recorded with the Bureau of Conveyances of the State of Hawai'i an Amended and Restated Certificate of Conditions as Regular System Document No. A-78300656 ("**A&R Certificate**"), a copy of which is enclosed herein as **Enclosure 1**. The recorded A&R Certificate is in the same form that you approved by letter dated May 26, 2021, but with the necessary information included to reflected the release of Condition No. 6e, as ordered by the Commission's Chair by letter dated May 26, 2021.

Additionally, as requested in your May 26, 2021 letter, enclosed herein as **Enclosure 2** is an email from Petitioner to the Kualono Homeowners' Association ("**Association**") regarding the transfer of the obligation to file annual reports from Petitioner to the Association. As we previously informed you, Petitioner will no longer be providing annual reports to the Commission in Docket No. A03-745.

Should you have any questions, please feel free to contact me directly at (808) 523-2589 or dsimon@carlsmith.com.

Sincerely,

Jennifer A. Lim
Derek B. Simon

Enclosures:

cc. Clients

THE ORIGINAL OF THIS DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES
DOCUMENT NO. Doc A - 78300656
DATE June 9, 2021 10:05 AM

LAND COURT | REGULAR SYSTEM

Return By Mail [X] Pick-Up [ ] To:

CARLSMITH BALL LLP
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawai'i 96813

Attention: Jennifer A. Lim
Telephone: (808) 523-2500

TITLE OF DOCUMENT:

AMENDED AND RESTATED CERTIFICATE OF CONDITIONS

PARTIES TO DOCUMENT:

DECLARANT: HANOHANO LLC

TAX MAP KEY(S): (2) 2-3-11: 001, 002, 076, 077, 078, 079, 080, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129 and 130

(This document consists of 8 pages.)

4837-9968-3281.5.070268-00001

ENCLOSURE 1

AMENDED AND RESTATED CERTIFICATE OF CONDITIONS

THIS AMENDED AND RESTATED CERTIFICATE OF CONDITIONS (this "**Amended Certificate**") is made this 4 day of June, 2021, by HANOHANO LLC, as Petitioner ("**Petitioner**") in the State of Hawai'i Land Use Commission (the "**Commission**") Docket No. A03-745.

W I T N E S S E T H:

WHEREAS, the Commission reclassified approximately 28.695 acres of land situate at Keahua, Kula, Island and County of Maui, State of Hawai'i, then-identified by Tax Map Key ("**TMK**") Nos. (2) 2-3-011:001 and 002 (the "**Petition Area**") and shown in **Exhibit A** attached hereto and incorporated herein by reference, from the State Land Use ("**SLU**") Agricultural District into the SLU Urban District, subject to certain conditions ("**Conditions**") enumerated in its Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment, that was certified, filed and effective on May 17, 2005 (the "**2005 D&O**");

WHEREAS pursuant to the 2005 D&O, Petitioner recorded against the entire Petition Area that certain Certificate of Conditions, recorded on May 26, 2005, in the State of Hawai'i Bureau of Conveyances (the "**Bureau**") as Regular System Document No. 2005-105309 (the "**Original Certificate**");

WHEREAS, Petitioner filed with the Commission a Motion to Release and Modify Conditions on August 10, 2020 ("**Motion**"), requesting the Commission to: (a) release Conditions Nos. 1, 3, 5 through 23, and 25; and (b) make limited modifications to Conditions Nos. 4 and 26;

WHEREAS, as documented in the Motion, the Petition Area has been subdivided in compliance with the 2005 D&O, and the relevant parcels within the Petition Area are now identified by TMK Nos. (2) 2-3-11: 001, 002, 076, 077, 078, 079, 080, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129 and 130;

WHEREAS, by Order Granting in Part and Denying in Part Hanohano LLC's Motion to Release and Modify Conditions, certified, filed and effective October 28, 2020 ("**2020 Order**"), the Commission granted in part and denied in part Petitioner's Motion;

WHEREAS, the 2020 Order ordered that: (a) Conditions Nos. 1, 3, 4f, 4h, 6a through 6d, 7, 9 through 13, 16, 17, 21, 22, and 25 be released;

WHEREAS, the 2020 Order ordered that: (b) Conditions Nos. 4a, 4b, 4c, 4d, 4e, 4g, 4i, and 26 be modified as set forth therein;

WHEREAS, the 2020 Order ordered that: (c) Conditions Nos. 2, 5, 6e, 8, 14, 15, 18, 19, 20, 23, and 24 be retained as imposed under the 2005 D&O;

WHEREAS, the 2020 Order provided that the Commission Chair shall order the release of Condition No. 6e once evidence is submitted to the Commission that the dedication of the right-of-way and setback has been completed to the satisfaction of the State of Hawai'i Department of Transportation;

WHEREAS, the dedication of the right-of-way and setback was completed by way of Limited Warranty Deed recorded with the State of Hawai'i Bureau of Conveyances on April 5, 2021, as Regular System Document No. A-77650566, a copy of which was filed with the Commission on April 21, 2021;

WHEREAS, the Commission Chair ordered release of Condition No. 6e on May 26, 2021;

WHEREAS, under Hawaii Administrative Rules § 15-15-91, conditions imposed by the Commission shall run with the land and shall be binding upon the petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer;

WHEREAS, this Amended Certificate shall replace, supersede and release the Original Certificate in its entirety;

NOW THEREFORE, Petitioner hereby declares that the Petition Area is subject to the following conditions (conditions listed herein as designated by their current numbering, with the numbering of the 2005 D&O provided in parenthesis):

1.(2.) Ohana Units. Not more than forty-nine (49) "dwelling units" (as this term is defined in §19.04.040, Maui County Code) shall be constructed or maintained on the Property, and not more than one (1) dwelling unit shall be constructed or maintained on each Residential Lot. No "accessory dwellings" (as this term is defined in §19.04.040, Maui County Code) or ohana units shall be permitted in the Project.

2.(4.) Archaeological. To protect the native Hawaiian practitioner's exercise of customary and traditional practices in the subject area; to ensure appropriate public access to the Heiau located within the Property; to ensure the availability of natural and cultural resources for present and future generations; to promote the practice of ohana and conservation values with respect to the physical and cultural landscape:

2a.(4a.) Petitioner shall establish on the Heiau/Retention Basin Lot, permanent 60 foot wide and 100 foot wide buffer zones around the Heiau, with a rock wall of not less than four (4) feet high demarcating the perimeter of the 60 foot buffer zone. Within six months of Petitioner receiving notice that the adjacent property has changed ownership, Petitioner shall use reasonable efforts to request the consent and cooperation to extend the 100 foot wide buffer on that adjoining lot and shall continue to use such reasonable efforts with each successive owner of the adjacent parcel until such request is agreed to.

2b.(4b.) Petitioner shall include in the CC&Rs provisions which prohibit public access, through the use of appropriate signage, to the 60 foot wide buffer zone, and, with the exception of the wall around the 60 foot buffer zone and irrigation lines in the area between the perimeters

of the 60 foot wide buffer zones, shall further prohibit the construction of any structures within the entire 100 foot wide buffer zones.

2c.(4c.) Petitioner shall cause the formation of a three (3) person committee, composed of two representatives of the Homeowners' Association and one representative of the Hawaiian Civic Club, Aha Moku Council, or similar Hawaiian entity (the "Curator Selection Committee"), to select the Curator, who shall (a) oversee the maintenance of the Heiau by the Homeowners' Association; and (b) direct and coordinate the perpetual maintenance by the Homeowners' Association of the native plantings in the 60 foot wide buffer zone. The Curator Selection Committee shall seek input from Office of Hawaiian Affairs on its proposed selection of a Curator prior to retaining such Curator.

2d.(4d.) (Deleted pursuant to the 2020 Order).

2e.(4e.) The Curator shall monitor the preservation and maintenance of the Heiau to maintain consistency with the requirements under the Preservation Plan. The Curator, or the Curator Selection Committee based upon information provided by the Curator, shall, upon request, provide a report to the Commission describing on the maintenance and preservation of the Heiau and any other traditional and customary native Hawaiian practices and cultural resources on the Property.

2f. (4f.) (Deleted pursuant to the 2020 Order).

2g.(4g.) The Homeowners' Association shall maintain in perpetuity the Heiau/Retention Basin Lot. The CC&R's will include a condition to the effect that the Homeowners' Association shall bear the cost including reasonable out of pocket costs, if any, of the Curator, such that the Curator may perform the duties prescribed in this Decision and Order.

2h.(4h.) (Deleted pursuant to the 2020 Order).

2i.(4i.) (Deleted pursuant to the 2020 Order).

3.(5.) Unidentified Archaeological Finds. If any previously unidentified human burial, or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, or loi walls (collectively the "Historic Sites") are found during construction on the Property or any Residential Lot, work shall immediately stop and SHPD shall be notified of such Historic Sites. The requirements of Chapter 6E, HAW, REV, STAT., and the rules promulgated thereunder, applicable to the Historic Sites shall be satisfied before construction resumes, SHPD shall determine and approve the significance of the Historical Sites, and construction work shall re-commence at the Property only after both approval by an authorized archaeologist has been obtained and appropriate mitigative measures for the Historic Sites have been implemented.

4.(8.) Responsibility of the Homeowner's Association to maintain the Property. All landscaping in the Project but outside of the Residential Lots, and all easements, cul-de-sac turn arounds, and emergency vehicle, pedestrian and utility rights of way established by Petitioner as a part of the Project shall be maintained in good repair as long as the Project exists.

5.(14.) Best Management Practices. Petitioner shall implement at the Property applicable best management practices to reduce or eliminate soil erosion and ground water pollution and effect dust control measures during and after the construction of the Project in accordance with the DOH's guidelines and shall assure best management practices are followed by individual lot owners through appropriate deed restrictions.

6.(15.) Water Conservation Measures. Petitioner shall implement water conservation measures and best management practices for the Project such as use of indigenous and drought tolerant plants and turf, and shall incorporate such measures into common area landscape planting.

7.(18.) Notification of Potential Nuisances. Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots of potential odor, noise and dust pollution resulting from adjacent agricultural uses.

8.(19.) Hawaii Right to Farm Act. Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots that the Hawaii Right to Farm Act, Chapter 165, HAW. REV. STAT., limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

9.(20.) Preservation of Access. The access rights of native Hawaiians who customarily and traditionally have used the Property for access onsite or to other areas for subsistence, cultural, and religious practices shall be preserved.

10.(23.) Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the Planning Department in connection with the status of the Project, administration for the maintenance of the Heiau and its preservation program, and Petitioner's progress in complying with the Conditions. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval and entry of this Decision And Order.

10a.(23a.) Upon the sale of all of the Residential Lots and establishment of the Homeowner's Association, the Petitioner will transfer to the Homeowner's Association the responsibility of providing annual reports to the Commission.

11.(24.) Release of Conditions. Petitioner shall have the right to seek from the Commission full or partial release of any of the Conditions as to all or any portion of the Property upon assurance acceptable to the Commission of satisfaction of such Conditions.

12.(26.) Recordation of Conditions. Petitioner shall record in the Bureau of Conveyances of the State of Hawai'i an amended and restated Certificate of Conditions recognizing the Commission's release of conditions and modification of conditions, as ordered pursuant to this Decision and Order, and restating the conditions reaffirmed by the Commission, if any, pursuant to this Decision and Order. The amended and restated Certificate of Conditions shall fully supersede and release the Certificate of Conditions that was recorded as Document No. 2005-105309.

IN WITNESS WHEREOF, the parties have executed these presents on the 4th day of June, 2021.

HANOHANO LLC,
a Hawaii limited liability company

By: LE2008 INVESTMENT, LLC
a Washington limited liability company
Its Member

By: Pacific Rim Land, Inc.
a Washington Corporation
Its Manager

By: _____
Name: Leilani Pulmano
Title: Vice President, Real Estate

Petitioner

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this 4th day of June, 2021, before me personally appeared Leilani Pulmano to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

DESIREE A. P. LOPES NOTARY PUBLIC No. 88-174 STATE OF HAWAII

Notary Public, State of Hawaii
Name: Desiree A.P. Lopes
My commission expires: 03/30/2024

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: AMENDED AND RESTATED CERTIFICATE OF CONDITIONS

Document Date: 6.4.21
No. of Pages (including this page): 8

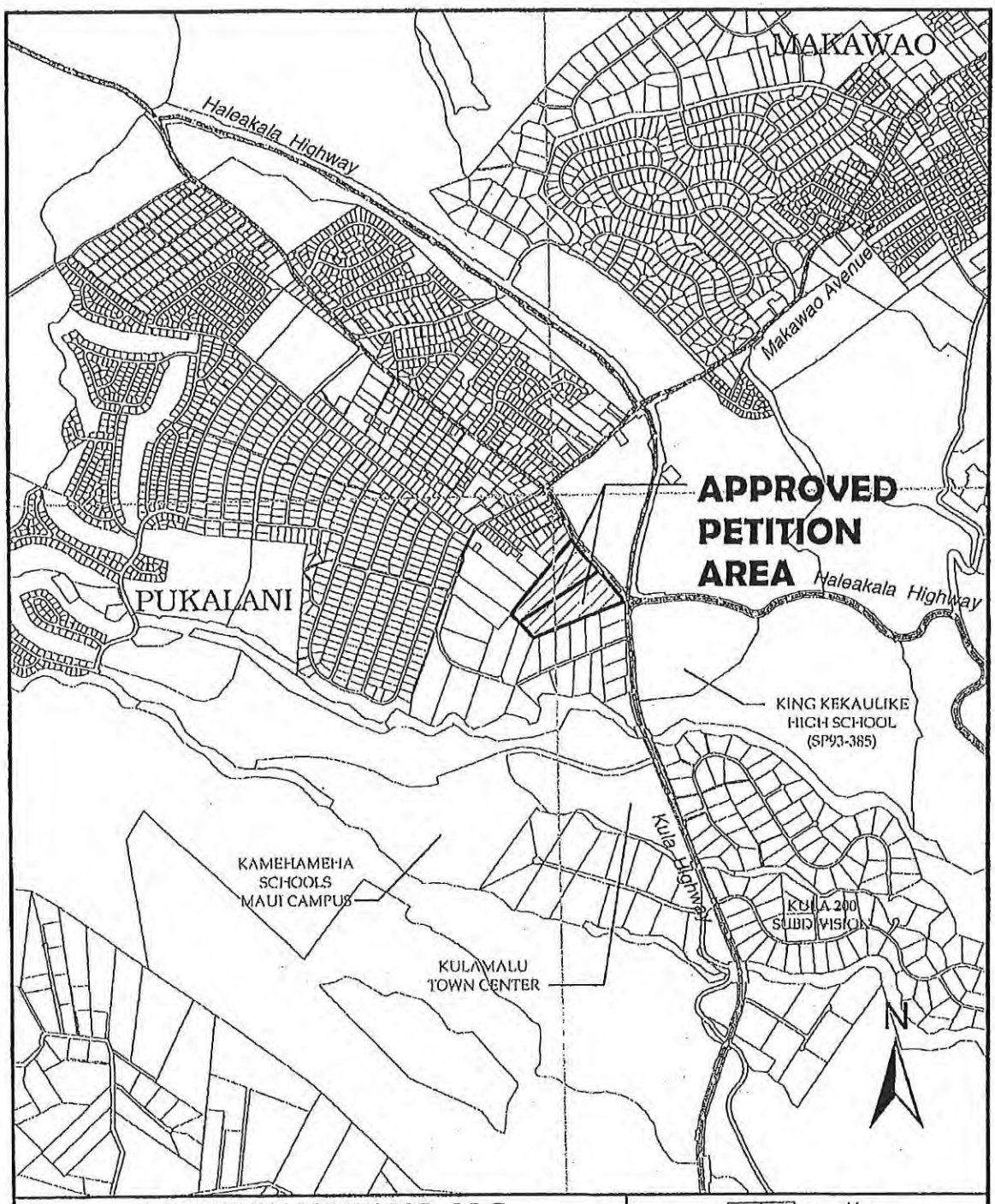
Jurisdiction (in which notarial act is performed): Second Circuit

6.4.21

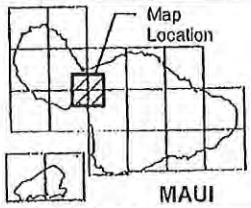
Signature of Notary Date of Notarization and Certification Statement

DESIREE A. P. LOPES NOTARY PUBLIC No. 88-174 STATE OF HAWAII

Desiree A.P. Lopes
Printed Name of Notary



A03-745 HANOHANO, LLC,
a Hawaii limited liability company
MAP NO. 1
TAX MAP KEY NO.: 2-3-11: 1 & 2
Keahua, Kula, Maui, Hawaii
Scale: 1" = 2,000 ft.
Exhibit "A"



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Derek B. Simon

From: Leilani Pulmano <leilanip@pacificrimland.com>
Sent: Monday, November 09, 2020 2:44 PM
To: Sandra Martinsen; Brendan Kennedy; Kahanu Noa; wcambra2@hawaii.rr.com
Subject: Kualono Land Use Commission D&O
Attachments: A03-745 signed Order Grant-Deny in Part Motion to Release Conditions 201028.pdf; 2021 Annual Report Template.docx

Aloha,

May I please be added to the Board meeting this Wednesday to update the Board on the attached State Land Use Commission (LUC) Decision & Order (D&O)regarding the release of the conditions? I'm also attaching a template for future annual reports that the HOA will be responsible for preparing and submitting to the LUC. Please use this email as our official transmittal to the HOA of the amended D&O and the responsibility to submit annual reports.

I look forward to providing additional information on Wednesday to the Board.

Mahalo,

Leilani Pulmano | PACIFIC RIM LAND, INC.
Project Manager

1300 N. Holopono Street, Suite 201
P.O. Box 220, Kihei, Maui, Hawaii 96753

Office: 808-874-5263 | **Direct: 808-270-5936**
E-mail: LeilaniP@pacificrimland.com

From: Sandra Martinsen <SMartinsen@associahawaii.com>
Sent: Tuesday, September 29, 2020 9:05 AM
To: Leilani Pulmano <leilanip@pacificrimland.com>; Brendan Kennedy <brendank@goodfellowbros.com>; Kahanu Noa <kahanuola12@gmail.com>; wcambra2@hawaii.rr.com
Subject: RE: OCT 7-8 LUC meeting agenda

Good morning,
This has been posted to Town Square.
Aloha,
Sandra

From: Leilani Pulmano <leilanip@pacificrimland.com>
Sent: Tuesday, September 29, 2020 8:09 AM
To: Brendan Kennedy <brendank@goodfellowbros.com>; Kahanu Noa <kahanuola12@gmail.com>; Sandra Martinsen <SMartinsen@associahawaii.com>; wcambra2@hawaii.rr.com
Subject: FW: OCT 7-8 LUC meeting agenda

[EXTERNAL EMAIL] This email originated from outside of Associa.

Aloha,

ENCLOSURE 2

Please see the attached agenda for the State LUC on releasing the conditions for Kualono. The meeting on our agenda item will be on Oct 7 at 9:00 am via Zoom. Please forward to homeowners.

Mahalo,

Leilani Pulmano | PACIFIC RIM LAND, INC.

Project Manager

1300 N. Holopono Street, Suite 201
P.O. Box 220, Kihei, Maui, Hawaii 96753

Office: 808-874-5263 | **Direct: 808-270-5936**
E-mail: LeilaniP@pacificrimland.com

From: Hakoda, Riley K <riley.k.hakoda@hawaii.gov>
Sent: Tuesday, September 29, 2020 7:22 AM
Subject: OCT 7-8 LUC meeting agenda

Attached is the OCT 7-8 2020 LUC meeting agenda that was recently mailed out

Riley K. Hakoda
State of Hawaii
Land Use Commission
Mail: PO Bx 2359, Honolulu, HI 96804
Bldg. Address:
235 S. Beretania Street, Rm 406
Honolulu, HI 96813
Ofc phone: 808 587-3824
Fax phone: 808 587-3827
Cell phone: 808 462-1311
Email: riley.k.hakoda@hawaii.gov
Land Use Commission general email mailbox: DBEDT.luc.web@hawaii.gov
Website: www.luc.hawaii.gov

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