



UNIVERSITY of HAWAII*
KAUA'I
COMMUNITY COLLEGE

Office of the Chancellor

December 28, 2022

Mr. Daniel E. Orodenker, Executive Officer
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804



SUBJECT: 2022 ANNUAL REPORT: LAND USE COMMISSION DOCKET NO. A16-801 – UNIVERSITY OF HAWAII, KAUA'I COMMUNITY COLLEGE

Dear Mr. Orodenker:

In compliance with Condition No. 13 of the Findings of Fact, Conclusions of Law, and Decision and Order, and Certificate of Service, dated August 11, 2017, in Docket No. A16-801, the University of Hawai'i – Kaua'i Community College (KCC) on behalf of the University of Hawai'i (UH) is pleased to provide this update for 2022 concerning the current status of compliance with the conditions of approval to the State Land Use Commission (SLUC), the State Office of Planning (OP), and the County of Kaua'i, Planning Department (CK).

I. Project Background and Progress

On November 4, 2016, the University of Hawai'i Community College (UHCC, or "Petitioner"), filed a Petition for Land Use District Boundary Amendment ("Petition"), pursuant to Hawai'i Revised Statutes ("HRS") Section 205-4, and Hawai'i Administrative Rules ("HAR") Chapter 15-15 ("LUC Rules"), to amend the land use district boundary to reclassify approximately 148.37 acres of land, situated at Puhi, Lihu'e, Island of Kaua'i, State of Hawai'i, Tax Map Key Nos. (4) 3-4-07:01, 02, and 03 ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District. The reclassification is necessary to allow for the current campus uses and future expansion of the KCC. Subsequently, the SLUC issued their Findings of Fact, Conclusions of Law, and Decision and Order, and Certificate of Service for the Petition Area. The 2017 Decision and Order for Docket No. A16-801 sets forth sixteen (16) conditions of approval.

This is the first annual progress report for the property under this new docket number. Previous annual progress reports were not submitted due to oversight by the UH of the requirement. Since the approval of the 2017 Decision and Order, the KCC campus has been working on updating their campus master plan. New construction on the campus has been limited to the installation of a new photovoltaic system in August 2022 and limited maintenance and repair of campus facilities.

II. Status of Compliance with the Conditions

Listed below are each of the sixteen (16) conditions imposed by the SLUC in the August 2017 Decision and Order and the status of activities pertaining to compliance with each of the conditions.

Condition 1:

Water Source. *When development of major projects shown on Petitioner's LRDP begins, the County Planning Department and County Department of Water 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 Department of Water.*

Compliance: There is no action at this time to report on this condition. When development of major projects occurs, the UHCC/KCC intends to comply with this condition.

Condition 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 sources shall be considered, whenever 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.*

Compliance: There is no action at this time to report on this condition. When development of a major project occurs, the UHCC/KCC intends to comply with this condition.

Condition 3:

Storm Water Management and Drainage. *When development of major projects shown in the KCC 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 Association with Construction Activities. For any major project near or along Pū'ali Stream, an Environmental Assessment or Environmental Impact Statement shall be prepared pursuant to Chapter 343, HRS. Should it be determined that the drainage system for the Petition Area 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 nonpoint sources of pollution.*

Compliance: There is no action at this time to report on this condition. When development of a major project occurs, the UHCC/KCC intends to comply with this condition.

Condition 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, sand sprinkling of loose or exposed soil or ground surface areas, and dust-generating equipment during construction.*

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Compliance: There is no action at this time to report on this condition. When development of a major project occurs, the UHCC/KCC intends comply with this condition.

Condition 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: Līhu'e-Hanamā'ulu Bypass Project - alignment possibilities connecting to Kaumuali'i Highway, Kaumuali'i Highway widening from Anonui Street to the Kīpū 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 DOT.*

Compliance: In preparation of a zone change application for the KCC campus, the UHCC's consultant, PBR HAWAII, consulted with the State of Hawai'i, Department of Transportation (HDOT) regarding the 2010 Traffic Impact Assessment Report (TIAR). The HDOT requested an updated TIAR be prepared for the zone change application. A draft TIAR was prepared by Austin Tsutsumi Associates, Inc. for the campus and transmitted to the State of Hawai'i, Department of Transportation on November 8, 2022. The updated TIAR included the latest master plan for KCC's campus facilities and included discussion regarding the Hanamā'ulu Bypass Project, Kaumuali'i Highway widening from Anonui Street to Kīpū Road, and Island School's expansion plans. The UHCC is currently awaiting feedback from the HDOT regarding their comments related to the updated TIAR.

Condition 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 DOT 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 its expense. Petitioner shall comply with the State DOT and the Federal Aviation Administration's applicable statutes, rules, regulations directives, and memoranda regarding new construction and installation of equipment, buildings, photovoltaic panels, and other relevant activities, including relating to endangered threatened, and listed wildlife species in the Petition Area, relating to its proximity to the Līhu'e Airport.*

Compliance: The UHCC has requested a proposal to conduct a glint and glare analysis for the solar photovoltaic facility. The UHCC will submit the analysis to the State Department of Transportation (HDOT) for their comment and approval.

Condition 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 SHPD, Kaua'i Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from SHPD that mitigation measures have been implemented to its satisfaction.*

Compliance: In the event that historic resources, including human skeletal remains are identified during construction activities, the UHCC and its successors and assigns will comply with this condition.

Condition 8:

Archaeological Resources.

- a. *Petitioner, in cooperation with the landowner of Puhi Camp 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 burials are located on lands owned by the Petitioner, and determine whether a buffer area should be located on the Petition Area. 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.*

Compliance: An archaeological preservation plan for the Puhi Camp Cemetery has yet to be completed. Until such plan has been completed, no facility development or ground disturbance activities will occur within 100 feet of the perimeter of the cemetery parcel.

- 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 Petition Area, whichever occurs first.*

Compliance: In conjunction with the preparation of the KCC LRDP, a campus design for the portion of Site 2179, which is an irrigation complex still in use, will be incorporated into the master plan as an educational component of the campus.

Condition 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 Petition Area 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 Petition Area. All construction personnel shall be required to be familiar with the program, guidelines, restrictions and protocols that will need to be followed.*

Compliance: When construction of the project commences, an endangered species awareness program will be developed for the campus. The program shall include general information on the Endangered Species Act and protected species, specific restrictions on the Petition Area to protect endangered species, and protocols on how job site personnel will respond to downed or injured endangered species that may occur on the Petition Area. All construction personnel will 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 Nēnē nesting season of October through March on Kaua'i, the project site should be surveyed by a qualified biologist before the*

commencement of construction to determine if any active nesting activity is occurring on the site. If active Nēnē nesting does occur during construction, a biological monitor shall be on-site to ensure that no harm befalls the birds.

Compliance: If construction activity is planned to occur during the Nēnē nesting season, the UHCC/KCC will comply with this condition.

- c. *For any nighttime work required during construction, and for long term operation of the proposed Project, 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.*

Compliance: The UHCC/KCC will comply with this condition if nighttime work is required during construction.

- 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.*

Compliance: The UHCC/KCC will limit the clearing of dense vegetation, including woody plants greater than 15 feet along the periphery of the Petition Area between June 1 to September 15.

Condition 10:

Adjacent Agricultural Lands. *For all land in the Petition Area or any portion thereof that is adjacent to land in 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 § 165-2; and*

Compliance: The UHCC and its successors and assigns intend to comply with this condition. KCC does not anticipate any new plans or programs that will interfere or restrain agricultural operations currently occurring on adjacent or contiguous lands within the State Land Use Agricultural District.

- 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 Hawai'i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, 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.*

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Compliance: When appropriate, the UH and its successors and assigns intend to comply with this condition and will notify necessary parties of the disclosures required by this condition and that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS Chapter 165, the Hawai'i Right to Farm Act.

Condition 11:

Native Hawaiian Access Rights. Pursuant to Article XII, Section 7 of the Hawai'i 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.

Compliance: The UHCC/KCC intends to comply with this condition and, as needed, will coordinate with appropriate parties on campus related to this matter.

Condition 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.

Compliance: Since the State of Hawai'i Land Use Commission issued their Findings of Fact, Conclusion of Law, and Decision and Order in 2017, the UHCC/Kaua'i CC and their consultant team have been working on updating the master plan for the campus, including minor adjustments to the plan and associated square footages of the various campus uses. While the location of various campus facilities (including the proposed location of the PV system) have been refined and adjusted on the plan, the overall master plan concept of a community college campus remains materially the same as had been presented before the State Land Use Commission. The current draft master plan anticipates an ultimate campus population of 1,500 full-time equivalent (FTE) students (roughly 2,571 students). The UHCC will coordinate with the SLUC on issues related to substantial compliance as the master plan is implemented.

Condition 13:

Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, State Office of Planning, and the Kaua'i 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 due on or before the anniversary of the Decision and Order and submitted in a form prescribed by the Executive Officer of the Commission.

Compliance: This letter represents the first annual report submitted in compliance with this condition.

Condition 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.

Compliance: When requesting the release of a condition, the UHCC will file the appropriate motions upon formal acknowledgement from the proper agencies of their satisfaction.

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Condition 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 Hawai'i 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.*

Compliance: In satisfaction of this condition, the UH filed a Declaration of Imposition of Conditions Applicable to Amendment of District Boundary from Agriculture to Urban on December 28, 2017, with the Bureau of Conveyances as document T-10223378.

Condition 16:

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

Compliance: In satisfaction of this condition, the UH filed a Declaration of Imposition of Conditions Applicable to Amendment of District Boundary from Agriculture to Urban ("2nd Declaration") on December 28, 2017, with the Bureau of Conveyances as document T-10223378, pursuant to HAR §15-15-92(6).

Please do not hesitate to contact Mr. Calvin Shirai of our office at 808-245-8230 if there are any questions, or if the SLUC requires further information regarding this report. We appreciate and look forward to your acceptance of this annual report.

Sincerely,



Chancellor, Kaua'i Community College

Cc: Mr. Scott Glenn, Director Designate, State Department of Business, Economic Development and Tourism Office of Planning and Sustainable Development, Land Use Division

Mr. Ka'āina Hull, Director, County of Kauai, Planning Department