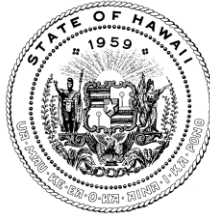


DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

KALEO L. MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
HIGHER EDUCATION**

**Monday, February 10, 2020
1:15 PM**

State Capitol, Conference Room 229

**In consideration of
SENATE BILL 2755
RELATING TO PUEO RESEARCH**

Senate Bill 2755 proposes to appropriate funds to the Department of Land and Natural Resources (Department) to support research in collaboration with the University of Hawaii (UH) on a state-wide species assessment of the pueo or Hawaiian short-eared owl (*Asio flammeus sandwichensis*). **The Department supports this measure provided that its passage does not replace or adversely impact priorities indicated in the Executive Supplemental Budget request.**

The Department sees a need for a species assessment on the pueo to inform the species status and improve conservation of the only native raptor that occurs on all of the main Hawaiian Islands. On the island of O'ahu the pueo is listed as endangered by the State yet a comprehensive assessment of the species has never been conducted. In 2017, the Department, in collaboration with UH, conducted a study on O'ahu to examine the island-wide distribution of pueo. The results of this study provided important information on the distribution and habitats used by pueo on O'ahu but was unable to provide a meaningful island-wide population number. A thorough species assessment on O'ahu and state-wide will provide the foundational information on decisions regarding protections under our State endangered species laws for all pueo populations and help identify species needs for their conservation benefit.

This measure would provide the funding support for a comprehensive species status assessment of the pueo state-wide. Without this information we will be unable to understand pueo population trends and less able to focus management actions and protection measures that are

likely to benefit population needs of the pueo. The information gained from such efforts will allow for better informed management decisions directly benefitting the pueo.

Thank you for the opportunity to comment on this measure.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Water and Land
and
Senate Committee on Higher Education
Monday, February 10, 2020 at 1:15 p.m.

By
Nicholas Comerford, Dean
College of Tropical Agriculture and Human Resources
And
Michael Bruno, PhD
Provost
University of Hawai'i at Mānoa

SB 2755 – RELATING TO PUEO RESEARCH

Chairs Kahele and Kim, Vice Chairs Keith-Agaran and Kidani, and members of the Senate Committee on Water and Land and Senate Committee on Higher Education:

Thank you for this opportunity to provide testimony in support of SB 2755, relating to pueo research. The College of Tropical Agriculture and Human Resources at the University of Hawai'i at Mānoa supports this measure.

We are supportive of actions to prevent extinction of Hawai'i's iconic and valued pueo, and are pleased to see continuing support of this effort through the appropriation of funds in SB 2755.

The pueo, or Hawaiian short-eared owl (*Asio flammeus sandwichensis*), is an endemic subspecies of ecological and cultural importance in the Hawaiian Islands. It is the only native raptor that lives across all of the islands, playing an important role in controlling invasive mammals, birds, and insects. Pueo are a form of 'aumakua, and their presence is valued by Hawaiians and other Hawai'i residents alike.

However, a statewide species assessment has never been done, despite the pueo's unique role in our Hawaiian ecosystems. Studies of nesting and foraging in the last two years, and a population study on O'ahu, have helped to identify important habitats for the pueo, but statewide population numbers are unknown. Thus, we have no baseline from which to assess increases or decreases in the population size. Currently the subspecies is state-listed as endangered on O'ahu, and potential population declines highlight the need for effective management actions to reduce extinction risk.

In Hawai'i, pueo survival may be impacted by a combination of factors, including predation by invasive mammals, food availability, disease, as well as anthropogenic causes such as car strikes. It is imperative that pueo research takes place across the

Hawaiian islands, as population size and causes of mortality may vary across the state. SB 2755 would identify population numbers and distribution across the Hawaiian Islands, and determine whether pueo warrant additional state or federal protections. This knowledge will direct managers toward actions most likely to stabilize populations and reduce extinction risk. The research funded under SB 2755 will provide valuable information that may be used in other sectors as well, including state-led pueo conservation efforts, pueo as biocontrol for agriculture, and as a culturally and socially important native raptor.

Thank you for the opportunity to testify in support of SB 2755 provided that its passage does not replace or adversely impact priorities in our BOR Approved Budget.



**Conservation Council
for Hawai'i**

Hawai'i's voice for wildlife

Kō Hawai'i / leo no nā holoholona lōhiu



**Submitted to the Senate Committee on Water and Land
Submitted to the Senate Committee on Higher Education
Hearing: February 10, 2020, 1:15pm
Conference Room 229
SB 2755: Relating to Pueo Research**

The Conservation Council for Hawaii (CCH) supports SB 2755 for the purpose of protecting our beloved Pueo. CCH would like to suggest that through this research not only are the “numbers” important, we believe that the habitats in which Pueo would normally be found in are equally important to report on as far as health of the forest, ecosystem, water supply, prey source/population and human impact. Reporting any direct correlations the above findings may have on Pueo populations will help us to better understand what further efforts need to be taken to preserve this species.

Thank you for the opportunity to submit testimony in support of SB 2755.

**Telephone/Fax: 808.593.0255 | email: info@conservehi.org | web:
conservationcouncilhawaii.org**

P.O. Box 2923 | Honolulu, HI 96802 | Office: 250 Ward Ave. Suite 215 | Honolulu, HI 96814

President Rachel Sprague | Vice President: Lisa Hinano Rey | Secretary: Julie Leialoha

Treasurer: Sunshine Woodford | Directors: Robin Kaye, Steven Lee Montgomery

National Wildlife Representatives: Les Welsh, Rachel Sprague

Executive Director: Moana Bjur | Operations and Events Director: Jonnetta Peters



SB-2755

Submitted on: 2/6/2020 4:34:36 PM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Testifying for Animal Rights Hawai'i	Support	No

Comments:



Hawaii's Thousand Friends

300 Kuulei Rd. Unit A #281 * Kailua, HI 96734 * Phone/Fax (808) 262-0682 E-Mail: htff3000@gmail.com

February 10, 2020

COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair
Committee Members

COMMITTEE ON HIGHER EDUCATION

Senator Donna Mercado Kim, Chair
Senator Michelle N. Kidani, Vice Chair

SB 2755

RELATING TO PUEO RESEARCH

Hawaii's Thousand Friends supports SB 2755, which appropriates funds to the Department of Land and Natural Resources (DLNR) and the UH College of Tropical Agricultural and Human Resources to conduct a state-wide species assessment of pueo *with the requirement* that funding *be directed to O`ahu first*.

Little was known about the endemic O`ahu Pueo, which is the only pueo in the State listed as endangered before the DLNR and UH College of Tropical Agricultural and Human Resources conducted a study titled *Population size, distribution and habitat use of the Hawaiian Short-eared Owl (Asio flammeus sandwichensis) on O`ahu*.

During the year long study 2017-2018 scientists conducted 105 surveys at 35 sites which is about 1% total area of O`ahu and "detected Pueo at six different sites out of thirty-five, including one wetland site, two agricultural sites, one grassland site, one scrubland site, and one native vegetation site" with Pueo most often detected in open vegetation including agricultural lands, grasslands and wetlands.

Based on observed densities, the study estimates the number of Pueo inhabiting O`ahu to be between *8 and 2199 individuals with a likely population of 807 individuals*.

The study notes that "Movements and breeding phenology of the Pueo...are still poorly known" and that "Pueo densities are highest in agricultural lands, but given the low numbers of Pueo detected (a maximum of four individuals at one site), and the limited land surface surveyed in the study (less than 1%), further studies are needed to determine preferred habitats, and those habitats most important to survival and reproduction."

With observation time limited to approximately one site a day and only at approximately ninety minutes before twilight observers survey time was limited to less than 1% of the total area of O`ahu. With additional personnel skilled in distinguishing Barn Owls from Pueo surveys could be increased thus providing a more accurate count of O`ahu Pueo.

We urge the committees to direct the majority of funding, if not all of the funding, to the City and County of Honolulu first so that researchers can expand on their previous study by conducting more visual surveys over a greater percentage of the island to better estimate and understand the O`ahu Pueo population size, habitat and foraging needs as recommended in the report.

SB-2755

Submitted on: 2/6/2020 8:33:12 PM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments:

SB-2755

Submitted on: 2/9/2020 9:59:23 AM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Individual	Support	No

Comments:

Aloha Chairs Kahele and Kim, Vice Chairs, and Esteemed Members of the Committees on Water and Land, and Higher Education,

I write in support of Senate Bill 2755. The pueo is a sub-species of the short-eared owl (*Asio flammeus sandwichensis*). This sub-species is endemic to the main Hawaiian Islands, meaning that it is found naturally in no other place. It is of cultural significance to the people of Hawai'i.

Like all Hawaiian forest bird species, the pueo has come under assault from the threats of avian malaria (though not to the degree of other native birds), habitat destruction, invasive rodents (there are no native rodents in Hawai'i), the small Asian mongoose (*Herpestes javanicus*, also invasive), and a unique problem popularly described as 'sick-owl syndrome'.

Because our native owls can be cryptic, difficult to find and enumerate, this measure intends to seek a statewide count and current range for the surviving pueo. As pueo live naturally in native forests and persist on lands converted to agriculture, mainly rangeland and former cane and pineapple fields, partnership between the Department of Land and Natural Resources and the College of Tropical Agriculture and Human Resources, at the University of Hawai'i, is a practical inclusion in this measure's provisions.

With more information about our pueo, statewide, I hope that we can work to protect this majestic and important species from the threats and harm we as the land's stewards have caused. In so protecting the pueo, we may benefit untold species, mountain and plain.

Again, I support SB3755.

Thank you,
Dylan P. Armstrong

SB-2755

Submitted on: 2/8/2020 5:03:24 PM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherry Pollack	Individual	Support	No

Comments:

SB-2755

Submitted on: 2/8/2020 4:37:30 PM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn Morello	Individual	Support	No

Comments:

There is a deep culture and connection to the land, water and animals present on the Hawaiian Islands. As we have seen in the (recent) past, many birds have gone extinct and some are currently battling extinction mainly due to human activities. This includes (but is not limited to) building projects, mismanagement of lands, the use of toxic chemicals to control weeds, and the arrival of predators through human activity (rats, mongoose and cats). Without SB2755 there would be no way to monitor the effects of these primary sources of stress on pueo. The ongoing effort of pueo research has helped protect the endemic owl, but every island is different. The problems facing pueo are much more severe on Oahu with the huge number and influence of people living and visiting the island. On the island of Hawaii, the habitat for pueo is much more open and much less stressed. However, the saddle road (where most pueo populations live) is an ever present danger to low flying owls. Numerous owls are hit every year and the numbers are being reduced.

Without funding for pueo research by DLNR and the university of Hawaii, we will not understand the real risk these owls face. An assessment of their overall health as a population is vital to their survival. If funds are not provided for even one year, the studies will miss important information with respect to habitat, numbers, offspring, feeding, and mating habits. These factors are critical to any study of animals in the wild. Constant information and input is needed to accurately assess their population.

Beyond just learning about owls, DLNR also provides outreach for teaching about pueo to the community. These outreach programs help reach the community and raise awareness to the practices people can put in place to help owls adapt to humans and survive on every island. There is still a lot more DLNR can do with protection and education and the availability of these funds for their work will obviously make a direct impact on these programs.

Imagine having your children grow up never seeing a pueo. A bird that holds so much lore in Hawaiian culture and history. That would be a shame for the future of the islands. On a personal note, I am a photographer on the Big Island and the days I spend searching for pueo and taking photos of them are some of the best days of the year. Their unique attitudes, their sounds, their movements, the eye to eye connection you make with these owls are all very special things. Imagine tourists coming and not

getting the chance to see a pueo? Imagine having more rodents to deal with because the pueo are gone?

We need to take care of these creatures and provide the resources needed to do just that. That's why SB2755 is so important. Without the understanding and safeguarding of the pueo, they will one day disappear, and then it is too late to act. I encourage you to act now and help protect the short eared owls in the Hawaiian islands. If not now when?

Glenn Morello

SB-2755

Submitted on: 2/8/2020 11:50:11 AM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rynette Keen	Individual	Support	No

Comments:

As a Native Hawaiian, I am in full support of this bill to evaluate the current status of the Hawaiian Pueo (Owl). Due to the many spray overs on islands such as Molokai, I have first-hand experience as to the effect these spray overs have on our native wildlife. I ask you all also to support this measure. Mahalo

SB-2755

Submitted on: 2/8/2020 8:32:04 AM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

And when people around the islands, report and try to save the Pueo perhaps the DLNR and other state agencies should help them?

SB-2755

Submitted on: 2/7/2020 5:49:47 PM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rivera	Individual	Support	No

Comments:

The Hawaiian short-eared owl is one of only two native raptors left in the Hawaiian Islands, the rest have went extinct due to human activity. Once prevalent across the islands, limited research shows that the pueo is now endangered as well, and the species on the track of going extinct like hundreds of other Hawaiian avian species.

This is the only opportunity in history that we have to change this trajectory of this positive extinction trend in our state. Granting funds to properly assess the conservation status of this irreplaceable bird is absolutely required. This is the first step, and further action is needed, but this step is required.

SB-2755

Submitted on: 2/10/2020 9:07:40 AM

Testimony for WTL on 2/10/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melissa Price	Individual	Support	Yes

Comments:

SB2755 would provide funds for evaluating pueo status across the Hawaiian Islands. Globally, Short-eared Owls are in decline for unknown reasons, and the same appears to be true on at least some of the Hawaiian islands. As our only native raptor that nests on every island (the Hawaiian Hawk, or 'io, occurs on the Big Island), Pueo are both important to people on a personal level, and are important for controlling invasive insects, rodents, and birds. A statewide assessment of Pueo has never taken place, despite this position of ecological and cultural importance. Thus, concerns regarding whether pueo are declining have no defined baseline for comparison, which is necessary to determine whether they are increasing or decreasing in number. This statewide assessment would provide a baseline of population size, and guide DOFAW and other land and wildlife managers in regards to future conservation actions.

LATE

January 22, 2020

TO:

Bin C. Li
Administrative Proceedings Coordinator
Department of Land & Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813
Tel 808-587-1496
Bin.C.Li@hawaii.gov

FROM:

Tom Berg
91-203 Hanapouli Circle #39U
Ewa Beach, HI 96706
Tel 808-685-1932
tomberg00@yahoo.com

RE: REQUEST FOR ASSISTANCE TO ACCESS RECORDS (U RFA-P 20-19)

PREFACE

Hawaii's Attorney General Ms. Clare Connors opined in 2019 that the University of Hawaii West Oahu Non-Campus Private Development Land (UHWO/herein property) was properly assessed for pueo inhabitation in 2007 when the Final Environmental Impact Statement for the undeveloped state-owned property was executed and the results affirmed no pueo or its habitat was present. Subsequently, findings from recent survey(s) 2017/2018 by Project Pueo re-affirmed conditions have not changed. Therefore, per Connors, the property has been correctly classified as being void of pueo inhabitation and as such, no protective and or preservation measures are required to mitigate for pueo in preparation for the development slated.

*See letter dated February 26, 2019 by Attorney General Clare Connors
to State Representatives Rida Cabanilla and Bob McDermott*
<https://www.flipsnack.com/F6DAEF5BDC9/re-joint-pueo-ltr-to-ag.html>

In contrast, Mr. Michael Kumukauoha Lee had advanced a narrative of the property that contradicted the assessment by Ms. Connors. Ms. Connors formulated her assessment on the information provided to her by Chair of Department of Land and Natural Resources (DLNR), Ms. Suzanne Case. Mr. Lee and I provided hundreds of hours of video and photographic documentation to Ms. Case spanning the period from September 2015 to December 2, 2019, that depicted multiple pairs of pueo active in a courship breeding ecology on the property- especially during the Fall Season. Ms. Case rejected the evidence, stating it carried "no weight, had no merit, and the claim pueo were at UHWO, a baseless claim."

Mr. Lee passed away on August 31, 2019, and provided the following message on my telephone answering machine that I discovered after his passing. His message revolved around the DNLR & Project Pueo not providing the data and specific details to how their pueo studies (surveys) were conducted that had concluded: "...no pueo utilize the property."

Video capture of call by Michael Lee August 2019: <https://www.youtube.com/watch?v=Z1d9I8df3As>

REQUEST FOR APPEAL WITH OFFICE OF INFORMATION PRACTICES
on the grounds DLNR did not address all matters of importance that effects
the very viability and existance of the pueo at UHWO in the
taxpayer funded Project Pueo exercise that was used as
the vehicule to justify the extirpation of the species.

The response by DLNR to answer questions regarding survey protocol deployed to the property to assess for pueo inhabitation are as follows:

1. Provide illustration and or map of where observer in survey exercise was stationed on property.

Status: DLNR provided GPS coordinates. This satisfies this segment of the inquiry since Project Pueo did not utilize any maps in their Reports.

Note: GPS coordinates provided in the EXCEL FILE of the Report substantiated the observer(s) not only failed to cover the areas where five nesting sites were documented by Mr. Lee, but also reveal that the observer(s) who were informed where to look for pueo by Mr. Lee, intentionally avoided those sites. This is very disturbing and most alarming- a sign of malice.

Conclusion: After being sent over one hundred videos of where pueo are on the property and provided with maps where to locate them, Project Pueo instead of taking heed, purposely shunned those sites and per the Report, never walked around, near, or through the five nesting sites for any observation exercise per the Report. Pueo feathers, germinating from both adult and fledgling, were often present at the five nesting sites for quantification and left intact by Mr. Lee in situ for the observers to identify and record.

Mr. Lee, on January 1st of 2018, performed a **Chant to Pueo** exactly where the pueo have been witnessed for years as engaging in courting activities. This was the site where in the early morning hours from 4am to just before 7am, during the Fall Season, one could watch pairs of pueo chase each other and flap their wings in mid-air as displays of courtship behavior.

Chant to Pueo @ Courting/Mating Site UHWO
<https://www.youtube.com/watch?v=d9yoxIGeNCA>

The aforementioned video was provided to Project Pueo in January of 2018 – however, per the GPS coordinates given by Project Pueo, it is clear, Project Pueo when on the property in 2018, ensured they avoided that very spot 100% in every and all observation exercises. This too, is another sign of malice as embraced by Project Pueo and its team of researchers that used our tax dollars to advance a false narrative that Project Pueo executed a thorough, extensive, and methodical survey for pueo inhabitation on the property.... when the truth is, they did not.

DLNR Chair Suzanne Case informed Attorney General Connors in the February 26, 2019 letter, that the property was surveyed for nests as well as for a courting and breeding ecology. Mr. Li states here, that is not accurate and as such, no survey to examine the property for nests and for a courting/breeding ecology actually transpired on the property.

Email from Mr. Li (DLNR) illustrating a conflict in the validity of the Report:

From: Li, Bin C <bin.c.li@hawaii.gov>
To: Tom Berg <tomberg00@yahoo.com>
Sent: Thursday, January 9, 2020, 03:13:56 PM HST
Subject: RE: [EXTERNAL] Re: Your record request re UHWO Pueo project

Aloha Mr. Berg,

The survey protocol was the same for both studies except for the second phase we were looking for signs of breeding such as wing clapping or prey provisioning to then hopefully find nests to monitor.

We never did find a nest or prey provisioning.

We also did some daily activity surveys where we surveyed for longer periods of time to get an indication of pueo daily activity, **but these surveys did not occur on UHWO lands.**

Hope this info helps. Thank you.

Bin C. Li
Administrative Proceedings Coordinator
Department of Land & Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813
Tel 808-587-1496, Fax 808-587-0390
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Historical Context: In 1996, the State of Hawaii, after receiving an estimated 1,300 acres of fallow farmland to be added to its inventory- acreage that included the UHWO property, ordered a Biological Survey to see what plants and animals were present. This survey was conducted by Mr. Ken Nagata. Nagata stated he found owl pellets and turned them over to DLNR, of whom DLNR had jurisdiction of the entire 1,300 acres- DLNR was the property owner at that time.

FACT: DLNR refused to examine the pellets to determine if they were of pueo or barn owl origin.

This negligence, or rather motive by DLNR to not give the pueo standing and extend its rightful protective measures on the property began in 1996 when Nagata concluded that the property “Would make an excellent bird refuge.” Unfortunately, DLNR ignored those findings.

DLNR responded to Nagata’s calling to protect that habitat with approving its destruction in the Final Environmental Impact Statement (FEIS) for the property. DLNR signed the FEIS in 2006 checking off a box that reads: No endangered or threatened species use the property and therefore, with no habitat present to serve any species of concern to the State on the property, DLNR approves the property being fully developed.

From the beginning of time, to August of 2017, DLNR never set foot on the property to determine for itself, if endangered plants and animals are on the property. When Nagata turned over the owl pellets to DLNR in 1996 for DLNR to examine - with the purpose to determine if the endangered pueo were active on the property, DLNR discarded the pellets and dissed any and all potential of the property having worth to the endangered species.

To add injury, DLNR had signed off on the property in 2006 as being classified as “wasteland” in the FEIS- claiming the property in totality, served no purpose for wildlife.

Comment/Summary: When the raw, fallow agricultural land on the property sat idle for over 20-years, it blossomed into a haven for wildlife. Tall grasses and old growth trees lined the gulches and a 150-acre patch of a dense foliage thicket had matured. Nagata quantified over 18 species of birds - including the indigenous Black Crowned Night Heron using this dense foliage on the property where Kaloi Gulch converges with Hunehune Gulch.

Nagata was prohibited from investigating pueo nests per his contract, and as such, when he found the owl pellets, he was elated- ecstatic, and went to the trouble to collect the pellets, bag them, and turn them over to DLNR for study to see if generated from the pueo. For DLNR to ignore that effort, exhibits a pattern of deceit, fraud, and ill-will- nothing short of acting in bad faith.

This is why the request for where on the property did the survey by Project Pueo transpire is so important- since such question has revealed an answer- the answer being that DLNR refused to examine the Kaloi Gulch/Hunehune Gulch convergence area where DLNR was informed where to go.....and per the OIP complaint, we now know Project Pueo failed to cover the areas where pueo were historically witnessed via the GPS coordinates provided by Project Pueo.

2. Identify participants permitted on property for survey- what were their credentials and why and or how were these individuals chosen to participate in the survey conducted?

Status: DLNR provided initials of those on the property that participated. Listing of complete names are not necessary. However:

Lacking are listing the credentials of the participants for all survey exercises at UHWO. **I still request an answer to this inquiry.**

Lacking are the explanation of the procedures that allowed pre-selected member(s) of the community to be invited for the study.

Unanswered: How were participants from the public chosen for the study and what was the basis for excluding me from the study- with myself having firsthand accounts of where the pueo are? Such inquiry has gone unabated and **I still request an answer.**

I had obtained thousands of hours of timelapse photography of pueo @ UHWO- with an example here: <https://www.youtube.com/watch?v=GiHOev2uh7U>

In addition, I was constantly on the property- for both pre-sunrise and post-sunset periods, and was on the property on the dates Project Pueo claims they were on the property. And from my experience, no one from Project Pueo was actually on the property where the pueo were - maybe they sat in their car, **for the Report does not disclose if the observer walked the property, or stayed stationary in one spot and I still request an answer.**

Mr. Lee and I had positioned 20-trail cameras around the nesting sites- cameras with wide angle lenses and with motion detectors taking a photo every ten-minutes, 24-hours a day, seven-days a week, for roughly three years. No personnel with Project Pueo were ever recorded as anywhere near the five known nesting sites. With this data, I honestly believe Project Pueo either acted with malice, or negligence, since certainly, the cameras would have captured their presence, and they did not, ever. Rather, the cameras picked up farmers and their tractors in motion besides wildlife.

What we do know, is Project Pueo never visited the five known nesting sites on the property per the GPS data.

Comment/Summary: It appears DLNR does not want to answer the OIP complaint regarding why Project Pueo refused to collaborate with me, and instead, chose to solicit KW who I contend, had no expertise and no firsthand evidence to warrant KW be the chosen one to contribute to the survey. *So why did Project Pueo pick KW and not me to help Project Pueo find pueo on the property?* **I still request an answer as to why I was not allowed to participate with Project Pueo in the survey exercises.**

3. Explain why the survey/study ceased in April of 2018 for the property and why Project Pueo failed to conduct the courting /breeding ecology aspect for the property during the Fall Season of 2018?

Status: DLNR came to UHWO three times in 2017 during the Fall Season - with no exercise thereof to examine the property for any nests, and or courting and or breeding ecology during that time. **So why did DLNR, having a 100% sighting rate of pueo on the property in August of 2017, refrain from returning to the property in the Fall of 2018 to conduct the more extensive research? Why was UHWO excluded from the more detailed, in-depth survey? Who made that decision and on what grounds when DLNR had exhibited a 100% sighting rate in August of 2017 to work with for the next phase of the survey during the Fall of 2018?**

On August 18, 2016, a town hall meeting was held on the pueo @ UHWO. In attendance were DLNR and USFWS that were shown evidence of pueo on the property by Mr. Lee. **During the course of the meeting, DLNR and USFWS stated they will not visit the property to observe for pueo unless they get funding to do so.**

Michael Kumukauoha Lee informs DLNR/USFWS pueo at UHWO on 8/18/2016
<https://www.youtube.com/watch?v=sfW8FG11XiI>

DLNR responds by stating, “We will not send any personnel from DLNR to the property.”

USFWS states protocol/ inventory to be deployed needs to be YEAR-ROUND to be accurate- to cover all seasons.

At 3:42 in video, observation protocol is to be year-round and include ALL SEASONS- yet, Project Pueo failed to adhere to this protocol, why?
<https://www.youtube.com/watch?v=NR4v7TzkAmQ>

With the aforementioned information, it was expected that DLNR would adhere to a protocol and conduct observation exercises in equal fashion over the changing seasons- and not omit one season over another from its study.

Lacking are the explanation as to why the property was not included in any survey protocol during the Fall Season of 2018 and **I still request an answer.**

Lacking are the explanation as to why DLNR Chair Ms. Suzanne Case made the claim to Attorney General Clare Connors that pueo were not observed as present on the property when per Project Pueo, Project Pueo came to the property twice during the Fall Season in 2017 and on both visits, quantified and confirmed pueo are indeed on the property- a 100% sighting rate was substantiated for the property over the Fall Season- yet, DLNR advanced a falsified, fraudulent narrative, that the property had been void of any sightings as told to the Attorney General.

Lacking are an explanation as to when did funding for Project Pueo- or any pueo surveys or research efforts come to an end for the island of Oahu? **I still request an answer.**

Fact: Project Pueo came to the property only three times during the Fall Season in 2017- with two in August, and one visit in November. Project Pueo refused to go to UHWO during the Fall months of September and October in 2017, and avoided UHWO in totality for all of 2018 after April.

The schemata/chart below was not included in the Reports. It was through the OIP effort, that DLNR finally disclosed how lopsided and flawed its protocol was:

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
Site	Date	Pueo Observed Outside Survey?	Pueo Observed During Survey?	Courtship Seen?	Survey Type?	GPS coordinates	Start Time	Start (h)	Stop Time	Stop (h)	Minutes	Observers	Cloud Cover	Rain	Wind	Species	First observation of the day	Detection Start Time
1																		
2	UHWO	8/2/17	N	Y	N	Evening 21.35117° N, 158.05527° W	18:00	1080	19:32	1172	92	J, C, KW	MC	None	2	Pueo	Yes	19:34
3	UHWO	9/19/17	N	Y	N	Evening 21.35117° N, 158.05527° W	17:30	1050	19:00	1140	90	J, C, KJ, JH	PC	None	3	Pueo	Yes	18:55
4	UHWO	11/6/17	N	N	N	Evening 21.35117° N, 158.05527° W	16:50	1010	18:20	1100	90	J, C, KD, SW	Clear	None	4			
5	UHWO	1/9/18	N	N	N	Evening 21.34739 N, 158.05826 W	16:33	993	18:30	1110	117	SW						
6	UHWO	1/9/18	N	N	N	Evening 21.35118 N, 158.05504 W	16:22	982	18:30	1110	128	KD	Mostly Clou	Light Drizl	3			
7	UHWO	1/11/18	N	N	N	Evening 21.34784 N, 158.05378 W	16:50	1010	18:40	1120	110	AS	Clear	None	2			
8	UHWO	1/17/18	N	N	N	Morning 21.34784 N, 158.05378 W	6:36	396	7:15	435	39	KD	Partly Clou	None	3			
9	UHWO	1/20/18	N	N	N	Morning 21.34657 N, 158.05905 W	6:33	393	7:15	435	42	KD	Mostly Clou	None	3			
10	UHWO	1/20/18	N	N	N	Morning 21.34739 N, 158.05826 W	6:35	395	7:25	445	50	KD	Partly Clou	None	2			
11	UHWO	2/17/18	N	N	N	Evening 21.34552 N, 158.05822 W	17:59	1079	19:15	1155	76	KD	Partly Clou	None	3			
12	UHWO	3/2/18	N	N	N	Evening 21.35118 N, 158.05504 W	17:49	1069	19:14	1154	85	KD	Mostly Clou	None	3			
13	UHWO	3/7/18	N	N	N	Evening 21.35118 N, 158.05504 W	18:01	1081	19:11	1151	70	KD	Partly Clou	None	5			
14	UHWO	3/10/18	N	N	N	Evening 21.35118 N, 158.05504 W	17:41	1061	19:26	1166	105	KD, LR	Partly Clou	None	5			
15	UHWO	3/26/18	N	N	N	Evening 21.35118 N, 158.05504 W	17:48	1068	19:16	1156	88	KD	Partly Clou	None	4			
16	UHWO	4/5/18	N	N	N	Evening 21.34784 N, 158.05378 W	18:03	1083	19:32	1172	89	KD, LR	Partly Clou	None	4			
17																		

Fact: Pueo rotate its inhabitation sites in accordance with the changing seasons. It was proven by Mr. Lee and myself, that if an accurate and thorough inventory/obervation exercise was to transpire for pueo on the property, it needed to be performed during the Fall Season when Mr. Lee and I had proven that is the season the pueo utilize the property for a courting and breeding ecology.

Mr. Lee and I proved the pueo are absent on the property after mid-December- with the pueo taking a hiatus from UHWO for some five-months and return to find a mate in late June, and then engage in courting in August, and then raise a brood through September, October. Beginning in late November, sightings start to become less frequent and that is when activity slows down.

During late December through May months, Mr. Lee and I tracked the pueo that used to be at UHWO during the Fall Season, moving on to Ho’opili property to the north and east of UHWO- whereby the pueo would forage up Honouliuli Stream.

Predominately, the pueo would only come to UHWO during the Winter/Spring season to “raid” the nests of barn owls and my cameras picked that activity up- with the visits being short stints, and most rare. Once fed, the pueo would leave the property and not hang around during these months. ***Why Project Pueo focused 40% of its time in the field on just one of the most unproductive months in the calendar year, January, proves the protocol used was amateurish, and not fully thought out/most incomplete.***

Project Pueo relied upon the January month as the main thrust for the basis of their surveys. And with that protocol, had demonstrated an inferior, flawed study methodology was used to improperly conclude, “No pueo use the property.”

Had Project Pueo exercised the same effort in the Fall Season as they had done for the month of January, such as visit the property six times in either the August, September, October, November months respectively, the observers would have recorded what I recorded- hundreds of hours of pueo chasing each other with multiple pairs on the property seen in every direction near the five nesting sites and definitely engaged in a courting /breeding ecology.

Here is one of many examples of pueo engaged in courting activity- with the chase, wing flaps, and overhead displays/dancing in air- performed during the Fall Season of 2017- **thus, why didn't Project Pueo, after seeing the pueo in August of 2017, stick it out and remain on property for the complete Fall Season of 2017?** Instead, Project Pueo enacted a cease and desist policy to ensure no further examination of pueo shall transpire in the Fall Season.

Had Project Pueo observers remained on the property, they would have recorded this- and such event as depicted here, would be the new narrative from DLNR to the Attorney General:

“What we have here, is proof pueo are using UHWO as a courting ecology.”

****September 16, 2017 /Courting Ecology Exhibit ****

<https://www.youtube.com/watch?v=mOP53byydds>

(I have dozens of videos covering the June through July months as well, but such are examples within the Summer Season, and for purposes here, the scope of subject is to include the Fall Season of 2017 to substantiate DLNR should have executed the more in-depth courting and breeding ecology survey for this property and done so in the Fall Season.)

Many of the videos listed here contain pueo flying out of their nesting spots- like the September 9th video demonstrates.



The September 14, 2017 video illustrates the destruction of two pueo nesting sites – whereby UHWO Chancellor Benham after being shown videos of pueo active in their nests, immediately had ordered the area used by the pueo to be defoliated in its entirety. Every old growth tree you see in these videos, was eventually cut down by Benham- every blade of grass removed. Truly, a spiteful act.

August 1, 2017

<https://www.youtube.com/watch?v=63VGcl6IH5Y>

August 6, 2017

<https://www.youtube.com/watch?v=fbC5od6ZnEo>

August 7, 2017

<https://www.youtube.com/watch?v=rkvjLtayYx8>

August 7, 2017

<https://www.youtube.com/watch?v=hB5CodSYjIg>

August 10, 2017

<https://www.youtube.com/watch?v=OH3iOLrpToA>

August 18, 2017

<https://www.youtube.com/watch?v=9fQTWOLsNj0>

August 20, 2017

<https://www.youtube.com/watch?v=IizZJK3hNAA>

September 5, 2017

<https://www.youtube.com/watch?v=P2kv6PlckL8>

September 6, 2017

<https://www.youtube.com/watch?v=xdJY4Fw9-F4>

September 9, 2017

<https://www.youtube.com/watch?v=tod8TxZyVv8>

September 10, 2017

<https://www.youtube.com/watch?v=qgoLvJ9zgGk>

September 14, 2017

<https://www.youtube.com/watch?v=BDjLE1Jn4zs>

September 20, 2017

<https://www.youtube.com/watch?v=iSJUfJ9Fknk>

September 23, 2017

<https://www.youtube.com/watch?v=czbgFy2h0Gs>

September 25, 2017

<https://www.youtube.com/watch?v=LF3zJhm6zU>

September 28, 2017

<https://www.youtube.com/watch?v=J5fjfbZatrs>

September 30, 2017

<https://www.youtube.com/watch?v=FPm4pRVFFcs>

October 3, 2017

<https://www.youtube.com/watch?v=E2jqjMXFi8Q>

October 4, 2017

<https://www.youtube.com/watch?v=ghTgAtQEzCQ>

October 14, 2017

<https://www.youtube.com/watch?v=SgsYEX6wUHe>

October 16, 2017

<https://www.youtube.com/watch?v=8-E1V5-doAs>

October 17, 2017

https://www.youtube.com/watch?v=_IanAsZ1bWY

Project Pueo, DLNR, USFWS, and UH Manoa were apprised by Mr. Lee and myself to evaluate the property during the Fall Season for a courting and breeding ecology. In response, Project Pueo, DLNR, USFWS, and UH Manoa took on a policy and directive (protocol) to purposely avoid the property during the Fall Season of 2018, and do so in totality.

I still request an answer as to why protocol was breached. The very protocol USFWS Ms. Jenny Hoskins had stated that in order for the survey/study to be accurate and be considered a thorough assessment - it would need to involve a protocol that **would include examination year-round on the property**, and this methodology- for the courting /breeding ecology study exercise, was not conducted at UHWO- **why?**

Project Pueo came to UHWO only three times in total during the Fall Season – and all in 2017 when no courting and breeding ecology study was undertaken by the researchers.

Fact: Researches stayed in one spot, not investigating the site for any courting or breeding ecology, and or to determine for the presence of nests, per the protocol, per the Reports. The population survey count exercise, was all that was done at UHWO- and it was a 100% confirmation – pueo are there.....yet, Project Pueo sought a policy to NOT ever examine the property for any pueo in the Fall Season beyond the initial 2017 population exercise for the property, period.

Of grave concern, and of legal issue, is that DLNR Chair Suzanne Case relayed falsified information to the Attorney General to sway the true narrative of the property with the egregious statement: “The property was thoroughly examined for pueo- extensive surveys were conducted - and no pueo are on the property- no pueo use the property.” This is patently false, and opens DLNR up for a lawsuit – by its fabricating and concocting a falsified narrative that no pueo were observed on the property.

Project Pueo, when they were sent scores of evidence by Mr. Lee and I to work with proving that in order to quantify the presence of a courting /breeding ecology at UHWO, the exercise needs to transpire during the Fall Season- **then why didn't it? I still await an answer.**

Micheal Kumukauoha Lee performed a chant on the property January 1, 2018, at the location where pueo were seen for years during the Fall Season; courting, mating, and raising a brood: <https://www.youtube.com/watch?v=d9yoxIGeNCA>

Project Pueo refused to coordinate, correspond, and reciprocate with this data provided to them. Per the Report, no observer was stationed near the known nesting sites as reflected in the GPS coordinates by Project Pueo.

Why did Project Pueo avoid investigating any of the five nesting sites in its Report? **I still request an answer.**

Why did the exercise to determine if a courting and breeding ecology was present or not at UHWO, not transpire at all during the Fall Season when Project Pueo was informed: *“That’s when you can see pairs courting- chasing each other- feeding each other - and roosting/sleeping together- and frequenting the same nesting areas like clockwork each Fall Season flying in and out of the same patches in the tall grass.”* **I still await an answer.**

Of importance to note, is that the following videos from the Fall Season of 2016 were provided to DLNR and USFWS so as to prep them to set protocol for Project Pueo to conduct their survey(s) in the Fall Season for UHWO specifically. Unfortunately, Project Pueo deployed the opposite protocol, and was on the property the least during the Fall Season.

Maps of each sighting, including data as to where the sightings transpired and subsequently recorded, was provide to DLNR- with DLNR refusing to respond and ignoring all the video/timelapse/photographic evidence in its entirety....and **I still await an answer** as to why did DLNR act with Malice of Aforethought, Institutional Bias, Administrative Prejudice, and Willful Indifference with its flagrant disregard and discriminatory practice to shun the evidence of the endangered pueo under siege, threatened with encroachment and DLNR violate the State’s Endangered Species Law knowingly and willingly....**why did DLNR dismiss this evidence?**

- August 9, 2016 @ UHWO
<https://www.youtube.com/watch?v=f3T-VhYEi2c>
- August 15, 2016 @ UHWO
<https://www.youtube.com/watch?v=8DIYNDLYI6A>
- August 17, 2016 @ UHWO
<https://www.youtube.com/watch?v=U4JYSOhFgV0>
- August 20, 2016 @ UHWO
<https://www.youtube.com/watch?v= JS3GClmESc>
- August 27, 2016 @ UHWO
<https://www.youtube.com/watch?v=dEqIzG26H24>
- August 28, 2016 @ UHWO
https://www.youtube.com/watch?v=vzRWuv_0dyA
- August 30, 2016 @ UHWO
<https://www.youtube.com/watch?v=XRFYH-OcEaM>
- August 31, 2016 @ UHWO
<https://www.youtube.com/watch?v=AznT06PmzoA>
- September 19, 2016 @ UHWO
<https://www.youtube.com/watch?v=4UzUmqU3IYM>
- September 21, 2016 @ UHWO
<https://www.youtube.com/watch?v=VqxsK6Jpy9Q>
- September 29, 2016 @ UHWO
https://www.youtube.com/watch?v=buFCNg_SWiU
- October 7, 2016 @ UHWO
<https://www.youtube.com/watch?v=zRbGdGF6X1I>

- October 11, 2016 @ UHWO
<https://www.youtube.com/watch?v=WsbeL8fR5yA>
- November 2, 2016
<https://www.youtube.com/watch?v=SxmrXPuWyI4>
- December 2, 2016
<https://www.youtube.com/watch?v=uDtwLzalkKc>
- December 5, 2016 @ UHWO
<https://www.youtube.com/watch?v=dvOAggnCft4>
- December 7, 2016 @ UHWO
https://www.youtube.com/watch?v=3X_5MB5nEu8
- December 8, 2016 @ UHWO
<https://www.youtube.com/watch?v=yvyyEEY4CyE>
- December 9, 2016 @ UHWO
<https://www.youtube.com/watch?v=KkKphe2eNKc>
- December 12, 2016 @ UHWO
<https://www.youtube.com/watch?v=VzWNryHImVw>
- Super Moon December 13, 2016 @ UHWO
https://www.youtube.com/watch?v=zVxBZ_ws_qQ
- December 18, 2016 @ UHWO
<https://www.youtube.com/watch?v=x4MRAy8VUig>
- Winter Solstice December 21, 2016
<https://www.youtube.com/watch?v=22GycOiaJzw>
- Christmas Day December 25, 2016 @ UHWO
<https://www.youtube.com/watch?v=QfrDx7DVEjA>

Lacking are the dates for funding for the Reports- such as when did the funding start, and when did the funding stop for the endeavor to quantify for a courting/breeding ecology at UHWO – or did such not transpire at UHWO? **I still request an answer** --for DLNR Chair Ms. Suzanne Case stated to the Attorney General, Ms. Clare Connors, in the letter dated February 26, 2019, that UHWO had undergone extensive surveys- when per the Report, this is patently false.

And furthermore, the email from Mr. Li, of DLNR, on January 9, 2019, confirms, all investigatory measures deployed for UHWO came to a close well before any courting/breeding ecology exercise was deployed- as in, it never transpired at UHWO...hence, Chair Case lied to Attorney General Connors when Case stated, “The property was given a rigorous, extensive, detailed study using professionals to gauge for pueo activity and found no pueo at UHWO.”

From: Li, Bin C <bin.c.li@hawaii.gov>
To: Tom Berg <tomberg00@yahoo.com>
Sent: Thursday, January 9, 2020, 03:13:56 PM HST
Subject: RE: [EXTERNAL] Re: Your record request re UHWO Pueo project
Aloha Mr. Berg,
To the former question, the survey protocol was the same for both studies except for the second phase we were looking for signs of breeding such as wing clapping or prey provisioning to then hopefully find nests to monitor. We never did find a nest or prey provisioning. We also did some daily activity surveys where we surveyed for longer periods of time to get an indication of pueo daily activity, but these surveys did not occur on UHWO lands.
Hope this info helps. Thank you.
Bin C. Li
Administrative Proceedings Coordinator
Department of Land & Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813
Tel 808-587-1496, Fax 808-587-0390
Bin.C.Li@hawaii.gov

In addition, where and from what source, did DLNR get funds to go to Nanakuli and capture, tag, and band a pueo for tracking after April 2018 when DLNR and Project Pueo had exhibited the protocol to conduct research for UHWO had “run out of funds” and declined to investigate the property after April 2018?
Put another way, in August of 2016, when the town hall meeting had transpired on pueo at UHWO, DLNR had stated that there was zero funding to send any personel to UHWO- as in no funding was available to confirm pueo inhabiting the site.

DLNR stated that monies are needed to conduct any and all on-site visits. The question then to ask is, **who funded the tagging of pueo in 2019 in the Nanakuli area- who sponsored and paid for this exercise when the same effort was asked of DLNR/USFWS to do the same at UHWO?**

I still request an answer- when did the Project Pueo study formally come to a close- terminate, and why was the study aborted at UHWO (April 2018) ahead of other sites being evaluated for a courting /breeding ecology?

When USFWS was apprised that if they came to UHWO and trapped a pueo- that such event would contradict the Final Environmental Impact Statement (FEIS) for the property that concluded, "No pueo inhabit the area," USFWS then decided to change its tune and made certain it did not visit the property so as to jeopardize the FEIS findings and create "a headache" for UH Systems by proving the pueo was indeed there.

Had USFWS come to the property, and then tagged a pueo, it would have triggered a Supplemental Environmental Impact Statement (SEIS) be executed for the property per HRS Chapter 343, Environmental Protection Law, and Administrative Rules Chapter 200, Title 11.

Prior to the Nanakuli tagging in 2019 of a pueo- by DLNR, no pueo had ever been tagged in Hawaii and if such event had transpired at UHWO, the event would be a major, monumental exhibit that pueo are utilizing the property. UH Systems as the property owner, would then have to re-plan its development schemes and properly execute a Habitat Conservation Plan for the pueo and mitigate its habitat destined to be destroyed. UH does not want this expense and therefore, did everything in its power to ensure, no thorough examination of the property would actually transpire by USFWS, Project Pueo, UH Manoa, and DLNR.

From: Hoskins, Jenny <jenny_hoskins@fws.gov>
To: "tomberg00@yahoo.com" <tomberg00@yahoo.com>
Sent: Friday, September 30, 2016, 09:14:47 AM
Subject: Re: THIS MORNING'S PUEO VIDEO: THREE SIGHTED @ UHWO

Hi Tom,

I would like to go out to the site with you some time and see where you think pueo are nesting. Since I live on Hawaii Island, rather than Oahu, I would need to schedule a flight over, possibly a little later this fall. Today is the end of our fiscal year, so we are in a blackout period with our travel system for about a week. After that ends we can talk about setting up a visit.

Mahalo

Jenny Hoskins, USFWS Migratory Birds and Habitat Programs, Hilo, HI

From: "Hoskins, Jenny" <jenny_hoskins@fws.gov>
To: Tom Berg <tomberg00@yahoo.com>
Sent: Monday, October 24, 2016 7:25 AM
Subject: Re: URGENT NEWS

Aloha Tom,

It isn't clearly known how much pueo move between seasons, but if they are typical to their mainland short-eared owl relatives, then they may use different areas during the breeding and non-breeding seasons. The only way we will know this for sure is by trapping and radio-tagging one or more individuals and following them throughout the year.

From: Jenny Hoskins <jenny_hoskins@fws.gov>
To: Tom Berg <tomberg00@yahoo.com>
Cc: Michael Lee <keakuaskahu777@yahoo.com>
Sent: Wednesday, December 7, 2016, 10:09:11 AM
Subject: Re: UHWO: I can confirm four pueo at once- call it a flock!

Hi Tom

Thanks for this information. I'm contacting the person I would coordinate trapping on Oahu with to see what we can do. I will let you know if we can work something out.

Per HRS, and as conveyed by the Hawaii State Senate Majority Research Office, a nesting site or active nest with eggs and fledglings is not required in order for DLNR to deploy protective measures for pueo.

Rather, the threshold, or directive by law, is that where pueo are found, that is considered pueo habitat. Per the law, endangered species habitat shall and must be protected when such species is on undeveloped, state-owned property, like UHWO non-campus, private development land.

See the link below that illustrates DLNR broke the law (illegal to destroy endangered species habitat) when DLNR knowingly and willingly permitted to let UH Systems destroy the pueo habitat confirmed by Project Pueo in its August of 2017 sightings on the property:

https://www.flipsnack.com/F6DAEF5BDC9/endangered-species-protection-on-state-land_senate-majority.html

OIP and the Ombudsman was provided with the documentation to substantiate UH Systems had acted in bad faith and broke the law when UH defoliated the pueo habitat after being apprised pueo are there using the property. The Ombudsman responded, “We are prevented by law, from investigating the Governor and his Cabinet /Administration – even if violating HRS Chapter 343. Our hands are tied.”

Lacking are an explanation from the Report by Project Pueo/DLNR/USFWS/UH Manoa on the encroachment of the study area to extirpate pueo from the property so that no pueo could be quantified in future, subsequent studies.

Evidence on UH Systems destroying pueo habitat (2017-2018) was provided to DLNR and DOCARE, and yet, no action to order a cease desist transpired- but rather, the pueo habitat was destroyed during the same time Project Pueo had commenced its research and stated it was on the property.

The following confirms, UH Systems in relation to pueo inhabitation being quantified on the property, had purposely, with intent, acted with Malice of Forethought, Administrative Bias, Institutional Prejudice and Willful Indifference as described in detail by Mr. Lee in the two-part video. The imminent harm to pueo was ignored in totality by DLNR and no charges were brought by DLNR to bring UH Systems into compliance:

Part One; Mike Lee Exposes DLNR

<https://www.youtube.com/watch?v=7z8-7u3Q0Bo>

Part Two; Mike Lee Exposes DLNR

<https://www.youtube.com/watch?v=Db46xPfazVQ>

In August of 2016, the 150-acre pueo preserve as established per HB2629 (2018) was completely intact. **To stop pueo from being seen on the property, UH Systems reacted to Mr. Lee and my evidence of pueo on the 150-acres by orchestrating a policy to destroy and defoliate the property used by the pueo.**

Starting with the appointment of UHWO Chancellor Maenette Benham in January of 2017, Benham had deployed a practice to take all fallow agricultural lands that house pueo on the property, and destroy it as quickly as possible by bringing that land back into intensive ag production where trees and grasses once were. Pueo don't eat cash crops- they don't eat farm food, and are sickened by the farmer's chemicals and rat bait poison strewed about- and the farmer's dogs allowed to roam untethered, throughout the property.

Benham purposely, with full approval, allowed the dogs to remain on the property for months on end in order that the dogs could find, and kill/remove all evidence of any ground nesting pueo that could delay UHWO's development plans for the non-campus, private development land.

Benham defoliated the 150-acre pueo habitat by design and with intent. She was recorded taking personel to known pueo nesting sites and demanding the area be completely cleared of all folaige as seen in the photo at right- as was captured by a trail camera hidden on the property. Just a few weeks earlier- now bulldozed over clean, a nest used to exist 10-feet from where UHWO personnel are seen in the photo.

<https://www.youtube.com/watch?v=QoE1bdaqUvg>



The Taking of Hanalei Gulch / Puna County

<https://www.youtube.com/watch?v=6U2-RErW6JM>



<https://www.youtube.com/watch?v=9I-Ozp7fwUM>



I still request an answer to the question – *why did DLNR/Project Pueo/UH Manoa and USFWS, not comment, or send any notice to UH Systems that upon the very first attempt by DLNR/USFWS/UH Manoa and Project Pueo setting foot on the property, the observer(s) saw the pueo? Why wasn't protective measures immediately provided to the habitat where Project Pueo first saw pueo, as the law dictates?*

And on the second visit, the observer(s) saw the pueo again, and then for some strange unaccountable reason, lacking any explanation, Project Pueo/DLNR/USFWS and UH Mano waited three months to return to the property- why? **Why the delay- why the refusal by Project Pueo to return to the property in a timely fashion after having two immediate confirmed sightings of pueo on the property? Who directed the study to purposely avoid going back to the property in the Fall? I still await an answer.**

Could the answer be, that the destruction of pueo habitat by UH Chancellor Benham/UH Systems- would be witnessed by the observer(s) and that is why both parties conspired to ensure, no observation takes place when trees and grasses are being removed from pueo nesting sites? In addition to the two videos on the previous page depicting pueo habitat destroyed, the evidence is clear, it was done knowingly and willingly:

September 11, 2017

<https://www.youtube.com/watch?v=ZfgHnT03x5Y>

June 6, 2017

<https://www.youtube.com/watch?v=EA1BAKu-FVO>

June 24, 2017

<https://www.youtube.com/watch?v=oI9SbUqIJ2M>

January 7, 2018

<https://www.youtube.com/watch?v=i12dFN05924>

January 15, 2018

<https://www.youtube.com/watch?v=eYHhUpLyUxk>

January 24, 2018

<https://www.youtube.com/watch?v=QRKXnBUvnDs>

On May 23, 2018 -Michael Kumukaouha Lee revealed the destruction of pueo habitat being orchestrated by UH Systems when Lee gave a presentation to the Kapolei Neighborhood Board. The presentation illustrated when the known nesting sites were destroyed, by whom, and what known nesting site remains and where it is:

AGENDA

<http://www.honolulu.gov/cms-nco-menu/site-nco-sitearticles/31461-makakilo-kapolei-nb-may-agenda.html>

POWER POINT PRESENTATION; MIKE LEE

<https://www.flipsnack.com/F6DAEF5BDC9/kapolei-nb-may-2018-uhwo-pueo-habitat.html>

Yet, UH Systems, Project Pueo, DLNR, UH Manoa and DOCARE, refused to act on the presentation made by Mr. Lee. UH destroyed the last remaining habitat by design, with intent to extirpate the pueo from the property- DEAD OR ALIVE. And on December 2, 2019, UHWO Chancellor Benham had ordered the last nest, active it was, to be destroyed. As of today, not one inch remains of the original 150-acre pueo preserve as identified in HB2629. Benham cleared every bit of it.

Via this OIP complaint gone unanswered for the most part, I hereby **still request an answer** from DLNR/Project Pueo as to **what was the reasoning for not coming to UHWO in the Fall of 2018 when all were apprised in 2016, 2017, and 2018-** “That’s when the pueo are here and most abundant. You will be gaurunteed a sighting if you go to the property in the Fall,” stated Mike Lee and Tom Berg to authorities monitoring the study.

In response, Project Pueo ensured, absolutley no site visit by any Project Pueo personnel would transpire on the property in the Fall of 2018. **Who made this decision and why? When DLNR was given a vast pool of video /trail camera photos and timelapse recordings of pueo most active in the Fall Season at UHWO, why did DLNR respond with:**

“We are not coming back to UHWO to study pueo that would include any Fall Season after our three visits in the Fall of 2017 had confirmed on two of the visits, pueo are there. We are not intersted in the property being abundant with pueo during the Fall Season of 2018, for such confirmation would prove the pueo are indeed returning to the same property and this act would require UHWO to execute a SEIS. For with such, a return of pueo in two subsequent years over the same period would qualify the property as serving pueo and classify the property as pueo habitat. And as such, we don’t want that made known and thereby, we will not return to the property as that would jepardize UHWO from making money on the property- by having to execute the SEIS.

Albeit Project Pueo, USFWS, UH Manoa and DLNR refused to examine the property during the Fall Season of 2017 beyond just three visits- with all visits being executed in the evening, **here is what was present on the property during those five months of August, September, November, and December of 2017 that Project Pueo missed by design- due to Project Pueo refusing to be on the property in the morning hour period for the entire study when the study was performed in the Fall Season.**

With the survey only transpiring during the evening for all of 2017, the protocol again, was breached. The protocol to detect pueo was grossly incomplete and not thorough at all by any degree- as courting displays were recorded during the sunrise period when Project Pueo, UH Manoa, DLNR, and USFWS refused to set foot on the property in all of 2017 (in the morning). And don’t forget, the same cast of characters simply refused to visit the property in all of 2018 past April, ensuring the most abundant display of pueo behavior in the Fall Season, would be missed by those compiling the Report for Project Pueo.

Yet, the study, its resources used, and the personel paid, had extended the project scope well beyond April of 2018- so why then, is it that DLNR could not fund more than three visits to the property in all of 2017, and aborted going to UHWO after April 2018. *Was this the intent- to cease and desist examining the property at UHWO after April of 2018 while yet extending funding into 2019 for the same research to be conducted elsewhere- anywhere but UHWO?*

In 2018, while Project Pueo aborted returning to the property past April 2018, the pueo came back as it did for hundreds of years to make a nest in the Fall Season- its last nest on the property- due to UHWO Chancellor Benham bulldozing the nest with a backhoe after being emailed to please protect it.

All known pueo habitat in existence at UHWO has been destroyed by Benham- and with video proof, I caught her UHWO hire/farmer commissioned to bulldoze every tree along the embankment of both Kaloi and Hunehune Gulch down- and they dumped the trees in the gulch itself, blocking the water drainage route- another violation of the Clean Water Act...all caught on camera. The trees are still in the gulch blocking the water/drainage for the entire southern portion of the property.

Benham was shown these videos, of which she then used as the tool to locate the pueo and kill them on December 2, 2018, and wipe out their habitat in totality:

June 28, 2018- Pueo Pair Arrive Early in Season to Mate
<https://www.youtube.com/watch?v=jyCaWHkHwK8>

September 4, 2018
<https://www.youtube.com/watch?v=QkwZJyEwfVU>

September 5, 2018
<https://www.youtube.com/watch?v=9Ofhq71RpI0>

September 11, 2018
<https://www.youtube.com/watch?v=srsf3V6z-7w>

September 15, 2018 /Timelapse of Nest Site
<https://www.youtube.com/watch?v=vXpDKMWJ2BY>

October 9, 2018
https://www.youtube.com/watch?v=7aUOQ_s6Fso

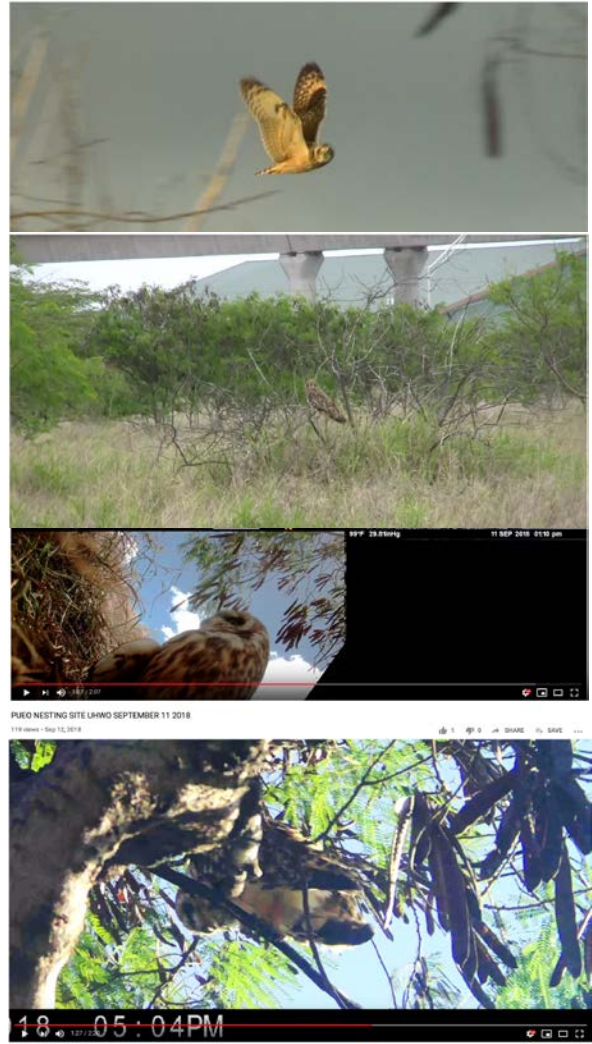
October 19, 2018
<https://www.youtube.com/watch?v=bPFL0CeiA9Q>

November 1, 2018
<https://www.youtube.com/watch?v=3Us2iAscYeY>

November 6, 2018
<https://www.youtube.com/watch?v=uTPGo64JkW4>

November 8-11/Timelapse 2018
<https://www.youtube.com/watch?v=NzrQ9oQNGdc>

November 22, 2018
https://www.youtube.com/watch?v=vSB_5xW2J7A



ATTORNEY GENERAL/DLNR CHAIR MALICE

Attorney General Ms. Clare Connors, wants the public to believe, that pueo were never quantified on the property, either by DLNR, Project Pueo, USFWS, UH Manoa or by any other means. That no documentation exists of substance that would exhibit otherwise to change that opinion.

Ms. Connors wants people to believe this narrative, that the property was void of any presence of any endangered species habitat because she relied on the information regarding the property's characteristics from the FEIS of 2007, and the Reports by Project Pueo of 2018/2019.

Furthermore, Ms. Connors came to such findings on the narrative provided directly to her from DLNR's Chair, Ms. Suzanne Case- with Ms. Case claiming, "The property was extensively surveyed," when we now know, that is a not a truthful statement- no courting and or breeding ecology survey was ever conducted on the property. As such, Ms. Case advanced a deceitful statement made in bad faith and with intent to defraud the Attorney General of the truth. The truth being, the very minute Project Pueo came on the property for the very first time in August of 2017, they had a 100% confirmed sighting of the pueo on the UHWO property. On the second visit- again, another confirmed sighting. **Yet, Ms. Case wrote to Ms. Connors, that no such identification on the property transpired.**

When USFWS announced at the August 18, 2016 Town Hall Meeting held at UHWO on the subject of pueo on the property, USFWS stated that in order to properly assess if a property is being utilized by the pueo, the observer should conduct the observation exercise year-round, due to the pueo being a "plot-hopper," using one patch of land for one activity during one season, and then moving to another patch to engage in another activity during another seasonal period, otherwise, the observer is apt to "miss that bird."

For the FEIS, PBR Hawaii conducted the observation exercise to quantify if pueo were present on the property with an observation exercise that transpired in the month of April only---no other months were used to observe---and with that, the observation only for a few hours, on just two mornings, and never done at sunrise, and or the sunrise period.

Hence, with DLNR stating that it was a satisfactory FEIS exercise to look for pueo for just 6 hours in total, and done by driving in a car to look on just two mornings, very disturbing indeed when DLNR /USFWS has stated, the inventory needs to be conducted year-round.

Yes, DLNR signed-off on the FEIS stating in writing, that this effort by PBR Hawaii was a perfect inventory exercise- a model of great thoroughness, a model of extensive research deployed, and conclusive at that.

When DLNR was apprised by Mr. Michael Kumukauoha Lee that DLNR should have intervened, and ordered an amended FEIS to require PBR Hawaii to expand its inventory efforts and observe for pueo inhabitation in other seasons as well, DLNR ignored that plea, claiming the 6-hours done over two-day's time to look for pueo on 500-acres of raw land, extremely thorough.

RECAP

The Office of Information Practices is being summoned to assist me have DLNR answer the three points of inquiry included herein and delivered in previous emails asking for answers.

DLNR has thus far, not complied to the request to identify those on UHWO property doing the observation exercise – such as who was chosen for the study, what were their qualifications to be chosen- such as who is KW, and why was KW chosen to accompany Project Pueo on the property, and I was rejected- denied participation? What justified DLNR/Project Pueo not allowing me to show them directly, where the pueo are active and nesting on the property? To date, DLNR will not answer this, and is withholding this information from the public.

Also gone unabated, ignored by DLNR, is the answer as to why Project Pueo aborted expending resources to do more in-depth surveys at UHWO, while yet expending resources past 2018, to even tag a pueo elsewhere in 2019?

What was the basis for a cease and desist – the termination of the survey for UHWO in April of 2018? Why were other surveyed properties provided with more extensive research, studies past April of 2018, and UHWO avoided?

Why did Project Pueo refuse to observe for pueo in the morning hours in the entire Fall Season of 2017, and only conduct its survey in the evening hours, during the population survey count exercise? It is in the morning hours I have evidence of the courting ecology- dozens of videos proving it- yet DLNR refused to go to the property in the morning hours in the entire Fall Season of 2017, and refused to even go to the property in the Fall of 2018 at all. And still, Project Pueo told the DLNR Case, who told the Attorney General, the surveys executed at UHWO were exhaustive, in-depth, thorough, and most extensive. This is patently false and DLNR's email to me on January 7, 2020, reflects that- with DLNR saying, "We did not do those more in-depth types of surveys at UHWO."

Of grave concern, is I have commissioned other ornithologists from the mainland to observe my videos depicting pueo chasing each other and engaged in wing flapping displays and the mid-air stationary flapping of wings over the head of a stationed pueo on the ground- and after viewing these videos, these ornithologists have concluded 100%, **that was evidence of a courting ecology, period.**

In contrast, Ms. Case of DLNR, Afsheen Siddiqi of DLNR, David Smith of DLNR, and all of Project Pueo, and including USFWS Ms. Hoskins, have exclaimed that after watching the same videos– saw no evidence of pueo in chase, saw no pueo in wing flapping activity. It appears Ms. Case, USFWS, and UH Manoa/Project Pueo, has an agenda to do harm and violate the intent of HRS Chapter 343.

Hence, what we have here, as Mr. Michael Kumukauoha Lee has clearly demonstrated and proven without a doubt, is that DLNR has acted with Malice of Aforethought, Willful Indifference, Administrative Bias, and Institutional Prejudice to knowingly cause harm to an endangered species that DLNR is by statute bound to protect.

CONCLUSION

Albeit Mr. Michael Kumukauoha Lee is deceased and cannot continue to expose DLNR for malice, all one has to do, is look at the videos and decide for yourself- who is telling the truth, Mr. Lee, or DLNR's Project Pueo with Project Pueo concluding the property does not contain one inch of pueo habitat.

Connect the dots- if Project Pueo were comprised of honest people, they would have conducted observation exercises during the morning hours in 2017 and again in 2018 during the Fall Season when the taxpayers of Hawaii have proved, the pueo are there- with hundreds if not thousands of hours of eye witness accounts and surveillance to back it up. Project Pueo, on purpose, avoided the property when Lee and I proved, pueo are thriving there. Why would Project Pueo screw the pueo at UHWO- can you say paid off? I got proof.

Mr. Lee, and many, many others have testified to various government entities for a decade plus, we got pueo in Ewa, and dammit, protect them.

In response, DLNR refused to go to the state-owned undeveloped property to confirm this- for years, claiming, "We will only go to investigate that property if you (Legislature) give us money and fund the exercise." And when the funds came, DLNR ensured, the protocol used, was flawed, and incomplete.

In this closing example, **I have thousands of hours of two-pueo using this one tree cluster FOR THREE SOLID YEARS OVER THE FALL SEASON-** with one pueo coming during the Spring /Summer Season- waiting for its mate- and then around Fall Season, with its mate substantiated on the property, they court/mate and raise their broods in the August, September, October, and November to early December months- then leave – take a hiatus. **I have the photo of its fledgling.** Here is the loner pueo engaged at the property in a foraging ecology- all new videos- not included in any previous page. Note, I have dozens of other videos showing pueo feeding each other – but they are night shots and the video is dark, but show them going in and out of same tree cluster where you see pueo here to feed each other:

This tree – where you see the pueo fly out of, was ordered cut down by UHWO Chancellor Benham December 2, 2018 after she was notified the pueo live here at this spot-

<https://www.youtube.com/watch?v=n8MXcYcQFL8>

Pueo leaving a tree ten yards from the very tree in the video above- Benham defoliated this entire habitat:

<https://www.youtube.com/watch?v=IckLukGfV0E>

Pueo flying out of same cluster of trees Benham had ordered cut down December 2, 2018:

<https://www.youtube.com/watch?v=t233RGXKN88>

Pueo leaves same tree cluster Benham had ordered cut down- pueo flees to rail structure:

<https://www.youtube.com/watch?v=Uu9e2G4xttw>

Same trees as in above videos Benham had ordered removed:

<https://www.youtube.com/watch?v=IcrXqcdnYHI>

Pueo taking exit over Kaloi Gulch from same patch of tree cluster- all trees removed by Benham:

<https://www.youtube.com/watch?v=1iUasy9EV6w>

Pueo same patch of trees removed by Benham:

<https://www.youtube.com/watch?v=f3T-VhYEi2c>

DLNR, please
stop lying.

I await your
response.

TOM BERG
808-685-1932