BS

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In The Matter Of The Petition Of	)	DOCKET NO. A07-777
	)	
HAWAIIAN MEMORIAL LIFE PLAN, LTD., A Hawai`i Corporation	)	ORDER GRANTING IN PART AND DENYING IN PART GRANT YOSHIMORI, MAVIS SUDA, RICHARD MCCREEDY, JULIANE MCCREEDY, LIANNE CHING, ERNEST HARRIS, BETTYE HARRIS, JESSE REAVIS, AND HUI O PIKOILOA'S TIMELY PETITION TO INTERVENE IN HAWAIIAN MEMORIAL LIFE PLAN, LTD.'S PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT
To Amend The Conservation Land Use District Boundary Into The Urban Land Use District For Approximately 56.459 Acres Of Land At Kāne`ohe, Ko`olaupoko, O`ahu, Hawai`i, Tax Map Key: 4-5-33: Por. 1	)	

ORDER GRANTING IN PART AND DENYING IN PART GRANT YOSHIMORI, MAVIS SUDA, RICHARD MCCREEDY, JULIANE MCCREEDY, LIANNE CHING, ERNEST HARRIS, BETTYE HARRIS, JESSE REAVIS, AND HUI O PIKOILOA'S TIMELY PETITION TO INTERVENE IN HAWAIIAN MEMORIAL LIFE PLAN, LTD.'S PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE STATE LAND USE COMMISSION, HONOLULU, HAWAII.

Feb. 27, 2009 by _____

DATE **EXECUTIVE OFFICER**

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In The Matter Of The Petition Of	)	DOCKET NO. A07-777
	)	
HAWAIIAN MEMORIAL LIFE PLAN, LTD., A Hawai`i Corporation	)	ORDER GRANTING IN PART AND DENYING IN PART GRANT YOSHIMORI, MAVIS SUDA, RICHARD MCCREEDY, JULIANE MCCREEDY, LIANNE CHING, ERNEST HARRIS, BETTYE HARRIS, JESSE REAVIS, AND HUI O PIKOILOA'S TIMELY PETITION TO INTERVENE IN HAWAIIAN MEMORIAL LIFE PLAN, LTD.'S PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT
To Amend The Conservation Land Use District Boundary Into The Urban Land Use District For Approximately 56.459 Acres Of Land At Kāne`ohe, Ko`olaupoko, O`ahu, Hawai`i, Tax Map Key: 4-5-33: Por. 1	)	

ORDER GRANTING IN PART AND DENYING IN PART GRANT YOSHIMORI, MAVIS SUDA, RICHARD MCCREEDY, JULIANE MCCREEDY, LIANNE CHING, ERNEST HARRIS, BETTYE HARRIS, JESSE REAVIS, AND HUI O PIKOILOA'S TIMELY PETITION TO INTERVENE IN HAWAIIAN MEMORIAL LIFE PLAN, LTD.'S PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT

On January 28, 2009, Grant Yoshimori, Mavis Suda, Richard McCreedy, Juliane McCreedy, Lianne Ching, Ernest Harris, Bettye Harris, Jesse Reavis, and Hui O Pikoiloa[1] (collectively "Movants") filed a timely Petition To Intervene In Hawaiian Memorial Life Plan, Ltd.'s Petition For Land Use District Boundary Amendment ("Petition To Intervene") pursuant to section 15-15-52, Hawai`i Administrative Rules ("HAR").

[1] Hui O Pikoiloa is an unincorporated community organization of concerned residents of the Pikoiloa Subdivision and other community members.

In their Petition To Intervene, Movants stated that as owners of single-family residential lots that either abut or are within 400 feet of the Petition Area, they have a direct and indirect interest that is clearly distinguishable from the general public which would be adversely impacted by the proposed expansion of the Hawaiian Memorial Park Cemetery. Movants further asserted that some members of the Hui O Pikoiloa exercise native gathering and access rights in the Petition Area and utilize Kāne`ohe Bay for recreational purposes. Movants noted that the reclassification of the Petition Area will have an immediate and direct affect on owners of property who reside in close proximity to the Petition Area, including (1) an increased risk of flooding, rock falls, and mudslides; (2) impacts on native gathering and access rights for ahupua`a residents; (3) impacts to native flora and fauna, the microclimate, scenic resources, and property values; (4) increased construction traffic and noise; (5) loss of Conservation District lands; (6) increased criminal activity in the neighborhood; and (7) health and environmental consequences.

On February 5, 2009, the City and County of Honolulu Department of Planning and Permitting ("DPP") filed a statement of no opposition to the Petition To Intervene.

The Commission considered the Petition To Intervene at its meeting on February 6, 2009, in Honolulu, Hawai`i. Grant Yoshimori appeared on behalf of the Movants. William W. L. Yuen, Esq., and Jay Morford appeared on behalf of Hawaiian Memorial Life Plan, Ltd. ("Petitioner"). Bryan C. Yee, Esq., and Abbey Mayer appeared on behalf of the State Office of Planning ("OP"). Jesse K. Souki, Esq., and Mike Watkins appeared on behalf of the DPP.

At the meeting, Mr. Yoshimori stated that he was speaking on behalf of the Movants in this proceeding and was the designated spokesperson for Hui O Pikoiloa. Mr. Yoshimori then elaborated on the nature and extent of the Movants' interest in this matter and

the effect the reclassification of the Petition Area would have on the Movants' interest. Mr. Yoshimori further explained that there are no other means of effectively protecting the interests of the Movants as there are no other parties in the proceeding that effectively represent the interests held by the Movants. Mr. Yoshimori also pointed out that the intervention of the Movants in the proceeding will result in the development of a complete record before the Commission and will serve the public's interest by ensuring that the concerns of the Movants are adequately represented. Finally, Mr. Yoshimori represented that if the Movants are granted intervenor status in this matter, he will be the single spokesperson for the Movants.

Following Mr. Yoshimori's presentation on the Movants' Petition To Intervene, Petitioner stated that it opposed the intervention of the eight individuals identified in the Petition To Intervene. Petitioner suggested that if the Commission allowed them to intervene, only one of the eight individuals be entitled to cross-examine the witnesses of the other parties, and that service of any pleadings be permitted only on Mr. Yoshimori as the Movants' representative. Petitioner expressed opposition to the intervention by Hui O Pikailoa as there has been no showing that the association exists and that there will be direct harm to the rights of the association that will not otherwise be protected by the intervention of the individual Movants.

The DPP referenced their statement of no opposition to the Petition To Intervene filed on February 5, 2009.

The OP stated that they do not oppose the Petition To Intervene; however, they are concerned about the number of individuals that are requesting intervention. OP further noted that they believed Hui O Pikailoa may be the more appropriate entity to intervene inasmuch as all of the individual Movants are members of the association, and therefore it could adequately represent the interests of all the individual Movants. The OP requested that if Mr. Yoshimori is

the spokesperson for the Movants as he represented, each of the individual Movants and the association should agree that he will be the Movants' representative in all matters before this Commission.

Upon questioning by the Commission, Mr. Yoshimori confirmed that the individual Movants identified in the Petition To Intervene are members of Hui O Pikailoa. Mr. Yoshimori further clarified that Hui O Pikailoa consists of a larger group of members aside from the individual Movants. He added that he does not have an actual listing of members of Hui O Pikailoa as it is a loosely formed organization without any board or officers to represent the interests of Pikailoa residents. He explained that they have held several meetings in which people have come forth, and thus are considered part of Hui O Pikailoa. Upon further questioning, he noted that at the first meeting they had when they organized Hui O Pikailoa, he was nominated to be the leader and representative for the group.

Following discussion, a motion was made and seconded to (i) grant the Petition To Intervene with respect to Grant Yoshimori, Mavis Suda, Richard McCreedy, Juliane McCreedy, Lianne Ching, Ernest Harris, Bettye Harris, and Jesse Reavis, subject to the condition that these individual Movants shall be represented in all matters before this Commission by Grant Yoshimori, on the grounds that the individual Movants have demonstrated that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public; that the position of the individual Movants concerning the proposed change is not substantially the same as the position of a party already admitted in the proceeding; and that admission of the individual Movants, subject to the above condition, will not render the proceedings inefficient and unmanageable; and (ii) deny the Petition to Intervene with respect to Hui O Pikailoa on the grounds that, as an

unincorporated association, it may not have the status of a person for purposes of intervention. There being a vote tally of 5 ayes and 4 absent, the motion carried.

ORDER

This Commission, having duly considered the Movants' timely Petition To Intervene, the arguments of the parties present in the proceeding, and a motion having been made at a meeting on February 6, 2009, in Honolulu, Hawai`i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS that Movants' timely Petition To Intervene be GRANTED with respect to Grant Yoshimori, Mavis Suda, Richard McCreedy, Juliane McCreedy, Lianne Ching, Ernest Harris, Bettye Harris, and Jesse Reavis, subject to the condition that these individual Movants shall be represented in all matters before this Commission by Grant Yoshimori.

IT IS FURTHER ORDERED that Movants' timely Petition To Intervene be DENIED with respect to Hui O Pikoiloa.

ADOPTION OF ORDER

The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

DONE at Honolulu, Hawaii, this 27 day of February, 2009, per motion on February 6, 2009.

APPROVED AS TO FORM

Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAI`I

By _____
DUANE KANUHA
Chairperson and Commissioner

Filed ~~and effective~~ on: OD
February 27, 2009

Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In The Matter Of The Petition Of	)	DOCKET NO. A07-777
	)	
HAWAIIAN MEMORIAL LIFE PLAN, LTD., A Hawai`i Corporation	)	CERTIFICATE OF SERVICE
	)	
To Amend The Conservation Land Use District Boundary Into The Urban Land Use District For Approximately 56.459 Acres Of Land At Kāne`ohe, Ko`olaupoko, O`ahu, Hawai`i, Tax Map Key: 4-5-33: Por. 1	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING IN PART AND DENYING IN PART GRANT YOSHIMORI, MAVIS SUDA, RICHARD MCCREEDY, JULIANE MCCREEDY, LIANNE CHING, ERNEST HARRIS, BETTYE HARRIS, JESSE REAVIS, AND HUI O PIKOILOA'S TIMELY PETITION TO INTERVENE IN HAWAIIAN MEMORIAL LIFE PLAN, LTD.'S PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL.	ABBEY MAYER, Director Office of Planning P. O. Box 2359 Honolulu, Hawaii 96804-2359
DEL.	BRYAN C. YEE, Esq. Deputy Attorney General 425 Queen Street Honolulu, Hawaii 96813
REGULAR MAIL:	DAVID TANOUE, Director Department of Planning and Permitting 650 South King Street Honolulu, Hawaii 96813
REGULAR MAIL:	CARRIE OKINAGA, Esq. Corporation Counsel City and County of Honolulu 530 South King Street Honolulu, Hawaii 96813
CERTIFIED MAIL:	WILLIAM W.L. YUEN, Esq. Ching Yuen & Morikawa ASB Tower, Suite 2700 1001 Bishop Street Honolulu, Hawaii 96813
CERTIFIED MAIL:	GRANT YOSHIMORI 45-464 Lipalu Street Kaneohe, Hawaii 96744

Honolulu, Hawai`i, February 27, 2009

ORLANDO DAVIDSON
Executive Officer