

HUI O PIKOILOA, an unincorporated Association, LIANNE CHING, BETTYE HARRIS, RICHARD MCCREEDY, JULIANNE MCCREEDY, JESSE REAVIS, and GRANT YOSHIMORI
c/o 45-464 Lipalu Street
Kaneohe, HI 96744
Telephone No.: (808) 236-0502

INTERVENORS PRO SE

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

IN THE MATTER OF:) DOCKET NO. A17-804
)
HAWAIIAN MEMORIAL LIFE PLAN,)
LTD., a Hawaii Corporation) PETITION TO INTERVENE;
) CERTIFICATE OF SERVICE
To Amend The Conservation Land Use)
District Boundary Into The Urban Land Use)
District For Approximately 53.449 Acres Of)
Land At Kāneʻohe, Island of Oahu, State of)
Hawaiʻi, Tax Map Key: (1) 4-5-003:por.001)
)

PETITION TO INTERVENE

The HUI O PIKOILOA, an unincorporated association (the “Hui”), LIANNE CHING, individually and as a member of the Hui (“Ching”), BETTYE HARRIS, individually and as a member of the Hui (collectively, “Harris”), RICHARD MCCREEDY and JULIANNE MCCREEDY, husband and wife, individually and as members of the Hui (collectively, “McCreedy”), JESSE REAVIS, individually and as a member of the Hui (“Reavis”), and GRANT YOSHIMORI, individually and as a member of the Hui (“Yoshimori”) (Ching, Harris, McCreedy, Reavis, and Yoshimori are collectively the “Pikoiloa Intervenors”), hereby respectfully file their Petitions to Intervene in HAWAIIAN MEMORIAL LIFE PLAN, LTD.'s (hereafter referred to as

"HMP") Petition for Land Use District Boundary Amendment. This Petition is submitted pursuant to Section 15-15-52(c) of the Hawaii Administrative Rules ("HAR").

I. INTRODUCTION

HMP filed its Petition for a Land Use District Boundary Amendment on November 13, 2017 pursuant to HAR § 15-15-46, requesting that the State Land Use Commission ("Commission") reclassify approximately 53.449 acres of Conservation District land at Kaneohe, Ko'olaupoko, Oahu into the Urban District (the "Expansion Project"). The Final Environmental Impact Statement for the Expansion Project was recently accepted by the Commission.

The Pikoiloa Intervenors are concerned residents of the Pikoiloa Subdivision which is located adjacent to the Petition lands and the Expansion Project. The Hui and the Pikoiloa Intervenors filed their Notice of Intent to Intervene with the Commission on December 11, 2017.

The Pikoiloa Intervenors oppose the Expansion Project and request the opportunity to intervene in the subject proceeding including the ability to introduce evidence and question witnesses at a hearing on the impacts of the Expansion Project and the reclassification of the Conservation District lands.

The Hui O Pikoiloa is a community organization composed of residents of the adjacent Pikoiloa subdivision and other nearby residential subdivisions that support the retention of the Petition lands in its current Conservation District classification. Intervenor Yoshimori is the authorized designated representative of the Hui O Pikoiloa which is an unincorporated association at the time of the filing of this Petition to Intervene.

The mailing address for Intervenor Yoshimori and the Hui O Pikoiloa is 45-464 Lipalu St., Kaneohe, HI 96744. The mailing and residential addresses for the other Pikoiloa Intervenors are as follows:

Richard McCreedy and Julianne McCreedy: 45-423 Ohaha St., Kaneohe, HI 96744

Lianne Ching: 45-431 Ohaha St., Kaneohe, HI 96744

Bettye Harris: 45-178 Ohaha Pl., Kaneohe, HI 96744

Jessie Reavis: 45-173 Ohaha St., Kaneohe, HI 96744.

II. STANDARD FOR INTERVENTION

HAR § 15-15-52(c) states:

Persons who may intervene upon timely application include:

- (1) All departments and agencies of the State and of the county in which the land is situated; and
- (2) All persons who have a property interest in the land, or who otherwise can demonstrate 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.

HAR § 15-15-52(f) states that petitions for intervention shall make reference to the following:

- (1) NATURE OF THE PETITIONER'S STATUTORY OR OTHER RIGHT;
- (2) NATURE AND EXTENT OF THE PETITIONER'S INTEREST, AND IF AN ABUTTING PROPERTY OWNER, THE TAX MAP DESCRIPTION OF THE PROPERTY; AND
- (3) EFFECT OF ANY DECISION IN THE PROCEEDING ON THE PETITIONER'S INTEREST.

III. ARGUMENT: THE PIKOILOA INTERVENORS MEET THE STANDARD FOR INTERVENTION

I. NATURE OF THE INTERVENOR'S STATUTORY OR OTHER RIGHT

The Hui and the Pikoiloa Intervenors have a right to intervene under HAR § 15-15-52 (f) as well as by statute; see Hawaii Revised Statutes (“HRS”) § 205-4(e)(3). Pursuant to HRS § 205-4(e)(3), as owners of property that either abuts or is in close proximity to the Petition area, the Hui and the Pikoiloa Intervenors have a property interest directly and immediately affected by the Expansion Project, and clearly

distinguishable from the general public. See Town v. Land Use Commission, 55 Haw. 538, 524 P.2d 84 (1974) (the Hawaii Supreme Court determined that owners of adjoining property have a property interest that may be affected by an amendment of a district boundary). The Hui and the Pikoiloa Intervenors submit they have standing to intervene.

II. NATURE AND EXTENT OF PETITIONER'S INTEREST

As stated above, the Pikoiloa Intervenors all own property that either abuts or is in close proximity to the Petition area, and thus have a property interest directly and immediately affected by the Expansion Project, and clearly distinguishable from the general public.

Each of the Pikoiloa Intervenors own single-family residential lots that either adjoin or are within 400 feet of the Petition area, and therefore have direct and indirect interest which would be adversely impacted by development of the Expansion Project on TMK (1) 4-5-33-01. And these interests are clearly distinguishable from that of the general public. The tax map key descriptions for the Pikoiloa Intervenors are as follows:

Intervenor Yoshimori: Tax Map Key No.: (1) 4-5-93-03 (abutter)

Intervenor Harris: Tax Map Key No.: (1) 4-5-092-014 (abutter)

Intervenor Reavis: Tax Map Key No.: (1) 4-5-092-012 (abutter)

Intervenor Ching: Tax Map Key No.: (1) 4-5-092-034 (within 400')

Intervenor McCreedy: Tax Map Key No.: (1) 4-5-092-036 (within 400').

Additionally, Intervenor Ching is a cultural hula practitioner who has and continues to exercise her native right to gather laua'e fern (*Phymatosorus grossus*) and pala'ā fern (*Sphenomeris chinensis*) from the Petition area, both of which are used in her hula practice. Ching's native gathering rights is an interest recognized by the Hawai'i State Constitution which may be adversely impacted by the Expansion Project. Although the laua'e fern is not a native plant, it was recognized by the Commission in the Findings of Fact, Conclusions of Law, Decision and Order regarding the Petition filed by HMP, Docket No. A07-777, dated November 6, 2009 (the "2009 Commission Decision") as a culturally acceptable replacement for a native plant. Further pursuant to the 2009

Commission Decision, the pala'ā fern is valued as a native hula and lei fern as both an adornment to hula dancers and to altars to the hula goddess, Laka, and cultural practitioners are concerned that the availability of this native fern is declining dramatically. Intervenor Ching respectfully submits to the Commission that her native gathering rights will be directly and immediately affected by the Expansion Project so as to clearly distinguish her interests from that of the general public.

Other members of the Hui have interests distinguishable from the general public similar to Ching's interest that may be directly and immediately affected by the Expansion Project. The Hui and the Pikoiloa Intervenors reserve the right to supplement and amend the foregoing matters in its formal petition to intervene following the filing of the final Petition with the Commission and the publishing of notice of hearing pursuant to HAR § 15-15-51.

III. EFFECT OF THE DECISION ON PETITIONER'S INTEREST

The reclassification decision for the Petition area will have an immediate and direct effect on the Pikoiloa Intervenors, all of whom reside in close proximity to the Expansion Project. These adverse impacts include the following:

- Increasing flooding risks and similar hazards to nearby properties;
- Adding risks of rock falls and mud slides in the area;
- Impacts on native gathering and access rights for ahupua'a residents;
- Impacts on native plants and fauna;
- Increased construction traffic and noise;
- Loss of conservation district lands;
- Adversely impacting the microclimate;
- Visual impacts; and
- Impacting property values;

There are no other means of effectively protecting the interest of the Pikoiloa Intervenors. Based on the claims being made by HMP, it is imperative that Pikoiloa Intervenors be allowed intervention in the subject proceedings to protect their property interests. Pikoiloa Intervenors request the right to present evidence and call witnesses,

including the right to cross-examine other witnesses involved in this proceeding, to support their claims that the Expansion Project will have a significant and adverse impact on their respective interest. There are no other parties that effectively represent the interests held by Pikoiloa Intervenors which are clearly distinguishable from those of the agencies currently involved in the subject proceedings. Finally, allowing this Petition to Intervene will also result in the development of a complete record on which the Commission can base a reasoned decision.

Allowing this intervention will serve the public's interest in ensuring that the direct and immediate concerns relating to flooding, rockfalls, historic preservation, native rights, protection of endangered species, and impacted property values of the residents of the subdivisions adjacent or in close proximity to the Petition area are adequately represented. The Pikoiloa Intervenors must be allowed the opportunity to present evidence and cross-examine witnesses on the Expansion Project in order to protect their interest in these proceedings. Additionally, allowing the Pikoiloa Intervenors to intervene would allow the Commission to receive meaningful input in the proceedings and would aid the Commission in making its determination.

IV. CONCLUSION

Based on the above, Pikoiloa Intervenors respectfully request that the Commission grant this Petition to Intervene.

Dated: Kaneohe, Hawaii: October 07, 2019

Respectfully submitted,

PIKOILOA INTERVENORS:



GRANT YOSHIMORI, Individually and
as Representative of HUI O PIKOILOA



LIANNE CHANG


RICHARD MCCREEDY


JULIANNE MCCREEDY


JESSE REAVIS


BETTYE HARRIS

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Island of Oahu, State of Hawai'i, Tax Map Key: (1) 4-5-)
003:por.001)

CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of the within document was made by depositing the same with the U. S. mail, postage prepaid, or by hand delivery, on October 10, 2019, addressed to:

Director
Office of Planning
235 S. Beretania St. 6th Floor
Honolulu, Hawaii 96813

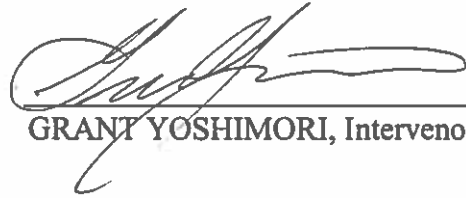
Director
City and County of Honolulu
Department of Planning and Permitting
650 South King Street
Honolulu, HI 96804-2359

Chair
City and County of Honolulu Planning
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Honolulu, HI 96813
Attorneys for Petitioner

DATED: Honolulu, Hawaii, October 10, 2019.

A handwritten signature in black ink, appearing to read 'Grant Yoshimori', is written over a horizontal line. The signature is stylized and cursive.

GRANT YOSHIMORI, Intervenor Pro Se