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LAND USE COMMISSION
STATE OF HAWAII

2019 DEC -9 A 9:56

Attorneys for Director of the
Department of Planning and Permitting

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

HAWAIIAN MEMORIAL LIFE PLAN,
LTD.

To Amend the Conservation Land Use
District Boundary Into the Urban Land Use
District for Approximately 53.449 Acres of
Land at Kaneohe, Island of Oahu, State of
Hawaii, Tax Map No. (1) 4-5-033: por. 001

DOCKET NO. A17-804

DIRECTOR OF THE DEPARTMENT OF
PLANNING AND PERMITTING'S
POSITION STATEMENT; CERTIFICATE
OF SERVICE

DIRECTOR OF THE DEPARTMENT OF PLANNING
AND PERMITTING'S POSITION STATEMENT

Comes now, the Department of Planning and Permitting of the City and County of Honolulu ("DPP"), by and through its attorneys, PAUL S. AOKI, Acting Corporation Counsel, and DUANE W. H. PANG, Deputy Corporation Counsel, and hereby submits its Position Statement, pursuant to Hawaii Administrative Rule ("HAR") 15-15-57 and the Pre-Hearing Order issued on December 3, 2019.

A. POSITION OF DEPARTMENT OF PLANNING AND PERMITTING

DPP **supports** the Petition of Hawaiian Memorial Life Plan, Ltd. (“Petitioner”), to reclassify approximately 53.449 acres of land at Kaneohe, Koolau Poko, Oahu, from the Conservation Land Use District to the Urban Land Use District (the “Project”). The Petitioner’s proposed Project includes a 28.2-acre expansion of the existing cemetery; an adjoining 14.5-acre cultural preserve, which is proposed to accommodate traditional Hawaiian burials; a 7.75-acre buffer/open space area situated between the cemetery expansion and adjacent single-family dwellings; and approximately three acres for internal driveways (collectively the “Petition Area”). If approved, the reclassification will increase the acreage of Oahu’s Urban District and place these lands under the zoning jurisdiction of the City and County of Honolulu (“City”).

Hawaii Revised Statutes (“HRS”) §46-4(a) provides that “[z]oning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county.” The Revised Charter of the City and County of Honolulu (“RCH”) §6-1507 provides that the City’s general plan and development plans, also known as sustainable communities plans, “are to recognize and anticipate the major problems and opportunities concerning the social, economic and environmental needs and future development of the city and to set forth a desired direction and patterns of future growth and development.” The City’s development plans also require “maps, statements of standards and principles with respect to land uses, statements of urban design principles and controls, and priorities as necessary to facilitate . . . major development activities.” RCH §6-1509.

The DPP testified before the Land Use Commission (“LUC”) on April 23, 2019, that the Project is consistent with City Ordinance No. 17-42, the Koolau Poko Sustainable Communities

Plan (“KPSCP”), dated August 2017. The KPSCP, which is not a regulatory document, sets forth regional land use policies and guidelines, and specifically indicates that the Petitioner’s lands are proposed for cemetery expansion. The 28.2-acre expansion of the cemetery and 14.5 acres for the proposed Kawaewae Heiau cultural preserve are included within the KPSCP’s Community Growth Boundary (“CGB”). In addition, pursuant to Section 3.1.3, Elements of Open Space of the KPSCP, guidelines for cemeteries emphasize very low lot coverage ratios; minimally visible above-grade structures; measures to mitigate, reduce, or rectify adverse impacts on sensitive species or the environment; and specific to any proposed expansion of Hawaiian Memorial Park, a 150-foot buffer from homes, a 2,000-foot buffer from Pohai Nani senior living community, and a phased approach to cemetery interment so that the land adjacent to the residential homes on Lipalu Street are the last to be used in order to minimize potential impact to neighboring residents.

The KPSCP guidelines also state that Hawaiian Memorial Park should record with the State of Hawaii Bureau of Conveyances or the State of Hawaii Land Court, or both, as appropriate, a conservation easement on the entirety of the 156-acre undeveloped portion of the Pikoiloa Tract property (Tax Map Key 4-5-033: 001) that would limit any other future development on the property, except for the 28.2-acre portion of the property that encompasses the proposed expansion site, and the 14.5-acre portion of the property that encompasses the proposed Kawaewae Heiau cultural preserve.

We note that the Final Environmental Impact Statement (“FEIS”) for the proposed Project and the Second Amendment to Petition for Land Use District Boundary Amendment on pages 2-49 and page 262, respectively, states that the details of this conservation easement would be developed later between the Petitioner and the Hawaiian Islands Land Trust (“HILT”) upon

reclassification approval of this Petition. Furthermore, the FEIS states that it is expected that the easement would be a condition of approval by the LUC.

Specifically, the KPSCP contains four guidelines for cemeteries in general, and two guidelines that pertain to the Hawaiian Memorial Park expansion, as follows:

Cemeteries

- Maintain the open space character of the cemeteries through very low lot coverage ratios.
- Where located in the State Conservation District or in a preservation area designated by this Plan, above-grade structures shall be limited to maintain the open space character of the cemetery.
- Limit above-grade structures to grave markers of modest size; and necessary administrative and maintenance support buildings that are minimally visible from public rights-of-way, entries and vista points.
- Where direct, indirect, or cumulative impacts of any proposed cemetery expansion will affect rare, threatened, or endangered species; or where direct, indirect, or cumulative impacts of any proposed cemetery expansion on sensitive areas are identified in any environmental setting; measures to mitigate, reduce, or rectify any adverse impacts shall be formulated.

Hawaiian Memorial Park

- Any proposed expansion by Hawaiian Memorial Park must include a 150-foot buffer from residential homes, a 2,000-foot buffer from the Pohai Nani senior living community, and a phased approach to sales and marketing to ensure that the land adjacent to the residential homes on Lipalu Street is the last portion of land used for cemetery interment, in order to minimize potential impacts to neighboring residents.
- Hawaiian Memorial Park shall record with the State of Hawaii Bureau of Conveyances or the State of Hawaii Land Court, or both, as appropriate, a conservation easement on the entirety of the 156-acre undeveloped portion of its Pikoiloa Tract property (TMK No. 4-5-033: 001) that would limit any other future development on the property, except for the 28.2-acre portion of the property that encompasses the proposed Hawaiian Memorial Park expansion site and the 14.5-acre portion of the property that encompasses the proposed Kawaewae Heiau cultural preserve.

It should be noted that should the subject Petition be approved, Conservation District lands reclassified to Urban, would be subject to uses and standards set forth under the P-2 General Preservation District, per Chapter 21 of the Revised Ordinances of Honolulu ("ROH"). Cemeteries and cultural preserves are uses permitted in the P-2 General Preservation District, and thus would not trigger the need for additional discretionary land use approvals where the City has the ability to impose conditions.

As stated in the adopting ordinance for the KPSCP in Section 24-6.2(c) of the ROH, "the provisions of this article and the Koolau Poko SCP are not regulatory. Rather they are established with the explicit intent of providing a coherent vision to guide all new public and private sector development within Koolau Poko." As such, and given that no discretionary land use approvals at the City level are needed, the guidelines contained in the KPSCP pertaining to cemeteries and specifically the expansion of the Hawaiian Memorial Park could not be required unless they were adopted by the LUC as conditions of its Decision and Order approving the subject Petition.

Furthermore, while the City supports the subject Petition, we have concerns regarding the loss of forest as a result of the cemetery expansion which is contrary to the City's efforts to encourage the planting and preservation of trees to offset the effects of carbon production or the loss of resources that sequester carbon. While we are encouraged by the Petitioner's plan to mitigate potential impacts through: 1) the open landscaped character of the cemetery consisting mainly of grass; 2) seeds or cuttings from existing indigenous and endemic plant species to be replanted around the cemetery expansion area; 3) establishment of the cultural preserve to continue cultural practices and collecting plants; and 4) the Petitioner's partnership with the Hawaiian Islands Land Trust to create a conservation easement for 156.5 acres of the 164.4-acre

parcel, we suggest that the Petitioner provide additional information to address the effects of the Project on carbon sequestration and options to offset the loss of forest and tree canopy.

Given the above, the City recommends the following be considered as conditions of approval of the subject Petition:

1. Establishing a buffer between the proposed cemetery expansion, Pohai Nani project, and other adjacent residential properties shall be required.
2. The Petitioner shall record with the State of Hawaii Bureau of Conveyances or the State of Hawaii Land Court, or both, as appropriate, a conservation easement and related declaration of restrictive covenant on the entirety of the 156.5-acre undeveloped portion of its Pikoiloa Tract property (TMK No. 4-5-033: 001) that limits, in perpetuity, any other future development on the property, except for the 28.2-acre portion of the property that encompasses the proposed Hawaiian Memorial Park expansion site, and the 14.5-acre portion of the property that encompasses the proposed Kawaewae Heiau cultural preserve.

A copy of the recorded conservation easement and declaration of restrictive covenant shall be submitted to the City and County of Honolulu, Department of Planning and Permitting, prior to the issuance of any grading permit or any other permit which involves ground disturbance.

Should the Petitioner desire to make any major changes to the conservation easement or the declaration of restrictive covenant, a request to amend the Decision and Order shall be made to the LUC.

3. Prior to the issuance of a grading permit, the Petitioner shall submit to the City and County of Honolulu, Department of Planning and Permitting, a landscape plan and schedule of planting. Within the Petition Area, the loss of mature trees, defined as having a trunk diameter of six inches or greater, shall be replaced on a one-for-one basis, at a minimum, with preferably field stock trees that will have approximately similar size canopy coverage within a reasonable period of time. The location of replacement trees are not limited to the Petition Area.

B. WITNESSES

KATHY SOKUGAWA
Acting Director, Department of Planning and Permitting
(or representative)


C. EXHIBITS

Koolau Poko Sustainable Communities Plan, City and County of Honolulu Ordinance 17-42. <http://www.honolulu.gov/Portals/0/pdfs/planning/Koolaupoko/2017-08.KPSCP.pdf>

DPP further reserves the right to identify any rebuttal witnesses and/or rebuttal exhibits as permitted in the Pre-Hearing Order dated December 3, 2019.

DATED: Honolulu, Hawaii, December 9, 2019.

PAUL S. AOKI
Acting Corporation Counsel

By 
DUANE W. H. PANG
Deputy Corporation Counsel
Attorneys for Director of the
Department of Planning and Permitting

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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the **DIRECTOR OF THE DEPARTMENT OF PLANNING AND PERMITTING'S POSITION STATEMENT** was duly served by either hand-delivery or U. S. Mail, postage prepaid, by certified mail, return receipt requested, to the following on the date below, addressed as follows:

	<u>DELIVERY</u>	<u>MAIL</u>
Mary Alice Evans Director Office of Planning 235 South Beretania Street, 6th Floor Honolulu, Hawaii 96813	X	
Dawn Takeuchi-Apuna, Esq. Deputy Attorney General Department of the Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawaii 96813	X	

DELIVERY

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Hui O Pikoiloa
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DATED: Honolulu, Hawaii, December 9, 2019.

PAUL S. AOKI
Acting Corporation Counsel

By



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