



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A17-804
	)	
HAWAIIAN MEMORIAL LIFE PLAN, LTD.	)	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 Kāne'ohe, Island of Oahu, State of	)	
Hawai'i, Tax Map Key: (1) 4-5-033: por. 001	)	
_____	)	

PETITIONER'S OBJECTIONS TO INTERVENORS' PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION AND ORDER FILED AUGUST 26, 2020

AND

CERTIFICATE OF SERVICE

BENJAMIN M. MATSUBARA, #993-0  
CURTIS T. TABATA, #5607-0  
Matsubara, Kotake & Tabata  
888 Mililani Street, Suite 308  
Honolulu, Hawai'i 96813

Attorneys for Petitioner  
HAWAIIAN MEMORIAL LIFE  
PLAN, LTD.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A17-804
	)	
HAWAIIAN MEMORIAL LIFE PLAN, LTD.	)	PETITIONER'S OBJECTIONS TO
	)	INTERVENORS' PROPOSED
To Amend The Conservation Land Use	)	FINDINGS OF FACT,
District Boundary Into The Urban Land Use	)	CONCLUSIONS OF LAW AND
District For Approximately 53.449 Acres Of	)	DECISION AND ORDER FILED
Land At Kāne'ohe, Island of Oahu, State of	)	AUGUST 26, 2020
Hawai'i, Tax Map Key: (1) 4-5-033: por. 001	)	
_____	)	

PETITIONER'S OBJECTIONS TO INTERVENORS' PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION AND ORDER FILED AUGUST 26, 2020

Comes now, Petitioner HAWAIIAN MEMORIAL LIFE PLAN, LTD. ("Petitioner"),  
by and through its attorneys, MATSUBARA, KOTAKE & TABATA, and hereby  
respectfully submits its Objections to Intervenor's Proposed Findings of Fact,  
Conclusions of Law and Decision and Order ("Intervenor's Proposed D&O").

**I. INTRODUCTION**

Intervenor's Proposed D&O is flawed for mischaracterizing the evidence or  
ignoring the weight of the evidence, as well as incorrectly applying the law. Petitioner  
objects to Intervenor's Proposed D&O based on the following reasons.

**II. DISCUSSION**

**Project Revenues**

Intervenors' FOF 26 incorrectly states that Petitioner was unable to say what percentage of revenue from the sale of cemetery plots would remain in Hawai'i. Mr. Jay Morford, President of Hawaiian Memorial Life Plan, Ltd., stated that between 85 and 90 percent of the revenues from cemetery plots or inurnment rights arising from the expanded cemetery would remain in Hawai'i. [Transcript June 10, 2020 page 17:line 7 through page 17:line 15 ("Tr. 6/10/20 17:7-17:15")]

### **Ko'olaupoko Sustainable Communities Plan**

Intervenors' proposed finding of fact ("FOF") 32 states that the Hawaiian Memorial Expansion Project ("Project") violates the Ko'olaupoko Sustainable Communities Plan ("KSCP"), and cites to the letter from Ms. Dina Wong of the Department of Planning and Permitting ("DPP") dated October 23, 2018.

Intervenors ignore the written testimony of Kathy Sokugawa, Acting Director of DPP, where she stated that the Project is consistent with the KSCP. [Written Testimony of Kathy Sokugawa p. 3] Furthermore, when confronted with Ms. Wong's letter at the hearing on June 24, 2020, Acting Director Sokugawa testified that the Project is not inconsistent with the KSCP, and the KSCP is not a regulation and is instead guidelines, and that the Project is consistent with those guidelines. [Tr. 6/24/20 215:16-216:21]

### **Need for the Proposed Project**

Intervenors' FOF 34 is incorrect in stating that there will be a surplus of burial plots on Oahu in year 2040 by relying on proposed development of plots and the minimum demand forecast. Intervenors did not produce an expert witness in the field of market research and is relying solely on the testimony of Mr. Thomas Holiday.

Mr. Holiday's market study stated that the existing and available supply of Oahu interment options through year 2040 is 16,500. [Pet. Ex. 59 Table 14] Mr. Holiday explained that the proposed interment options were reported to make full disclosure, but the proposed interment options need to overcome entitlement needs, soil issues, topography issues, infrastructure costs, capital investment, that they are not reality, and that the total supply of burial plots outside of the Project is 16,500 burial sites. [Tr. 6/9/20 127:2-128:13]

Intervenors also selectively use only the minimum net demand forecast of 103,442 additional burial spaces needed for Oahu by year 2040, and they ignore the maximum net demand of 137,840. [Pet. Ex. 59 Table 12] When both the minimum and maximum ranges are discussed in connection with the existing available supply, Oahu is faced with a shortfall of burial sites in the range of 86,942 to 121,340 by year 2040. [Pet. Ex. 59 Tables 12 and 14]

Intervenors' FOF 37 mischaracterizes the testimony of Jay Morford by not explaining the reasons for limiting the number of inurnments in one burial plot. Mr. Morford explained that people who own interments have interment rights to authorize

interments in a gravesite, and the more people who own rights in the same gravesite, the more interment right owners you are going to have, which can create conflicts within the family if you have disputes on who wants to be interred at that site. [Tr. 6/9/20 219:16-219:24] This is standard within the industry and Petitioner's existing business practice to protect both the families and the cemetery to reduce conflicts and disputes within families.

### **Damsely Protection**

Intervenors' FOF 50 inaccurately states that there has been no determination of who will be responsible for maintaining the adequate level of water for the damsely habitat. The Petitioner has stated that Hawaiian Memorial will follow and be responsible for all recommendations made by its expert witnesses. [Tr. 8/12/20 94:14-94:17] The recommendations include a permanent water line to ensure the flow of water to the damsely seep, as well as a temporary water line during construction. [Pet. Ex. 35 p. 8]

Intervenors' FOF 52 and 53 mischaracterizes the Project's impact to the endangered damsely. Herringbone subsurface drains will be installed to err on the side of caution, so that if the layer of soil that is conveying the subsurface flow is compressed and has reduced permeability, and the flow to the seep is otherwise impeded in some way, these drains systems would gather up that flow and deliver it down to maintain the flow of water to the seep. [Tr. 6/9/20 176:7-177:3]

Furthermore, Intervenors' own witness, Mr. Nathan Yuen, a Naturalist expert witness, testified that a water hose delivering clean water to the seep will greatly improve the damselfly's chance of survival, because if the water supply were to dry up, then the damselflies will die. [Tr. 8/12/20 30:25-33:18]

### **Ka Pa`akai**

Intervenors' FOF 70, 71 and 72 inaccurately discusses *Ka Pa`akai O Ka`Aina v. Land Use Commission*, 94 Hawaii 31, P.3d 1068 (2000).

First, compliance with the *Ka Pa`akai* case was required and addressed in Petitioner's Final Environmental Impact Statement ("FEIS") which was accepted by the LUC pursuant to order dated April 26, 2019 [Pet. Ex. 6, Appendix K; Pet Ex. 22]

Second, attempting to equate Hawaiian Memorial's Project with the conceptual resource management plan in the *Ka Pa`akai* case is misleading.

In *Ka Pa`akai*, the Hawaii Supreme Court issued for the first time its three part test which the LUC has since required all petitioners to conduct as a part of a cultural impact assessment.

The *Ka Pa`akai* analysis requires petitioners to determine: 1) the identity and scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; 2) the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action;

and 3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist. *Ka Pa`akai*, 94 Hawaii at 1084. This was done by Hawaiian Memorial through its cultural expert Dr. Trisha Kehaulani Watson in her Cultural Impact Assessment and her written testimony. [Pet. Ex. 6, Appendix K; Pet. Ex. 43]

### **Rockfall Mitigation**

Intervenors' FOF 85 inaccurately describes the rockfall mitigation in the cultural preserve as only warning signs. Intervenors fail to mention that active management of the cultural preserve will limit access to the exercise of traditional and customary cultural practices and prohibit access to the boulder deposit area, and that such management practices would be sufficient to mitigate any potential injury in the area. [Tr. 6/24/20 61:6-63:3]

### **Drainage**

Intervenors' FOF 101 uses a conclusory statement that the Project will put downstream homeowners at increased risk. Intervenors' own witness, Mr. John Higham, testified that the undisturbed areas that are undevelopeds generate more water runoff than grassed cemetery land. [Tr. 7/22/20 157:3-157:20] This is the same as the testimony of Ms. Jami Hirota who stated that by decreasing the slope and increasing the permeability through turf grass, the runoff coefficient is reduced, and more water is captured on-site. [Tr. 6/10/20 45:14-45:21] In other words, both experts

affirmed that the Project will reduce the storm water runoff when compared to today's existing conditions.

### **Conformance to Urban District Standards**

Intervenors' analysis of urban district standards is misguided in the areas of drainage, rockfall management and mitigation, and slope analysis. Both drainage and rockfall management and mitigation are discussed above and are hereby incorporated by reference and restated.

Intervenors' slope analysis fails to acknowledge that post development slopes will be no greater than 20%. [Pet. Ex. 32 p. 2]

### **Hawai`i State Plan**

Intervenors' analysis of the Hawai`i State Plan is incorrect. Intervenors claim that the Project is inconsistent with the Hawai`i State Plan with respect to drainage, damselfly protection, conservation, and cultural resources.

Drainage and damselfly protection are discussed above and are incorporated herein by reference and restated.

Conservation goals will be attained through the execution of a conservation easement, which will create a permanent protection for the remainder of the resources and ensure that in perpetuity there would be no additional development in the Petition Area and all of the remaining parcel. [Tr. 6/24/20 57:14-57:20]



Cultural resources would be protected through the cultural preserve which would benefit associated historic sites including Kawa`ewa`e Heiau, and would facilitate heiau restoration and management. [Pet. Ex. 43 p. 5]

### **Coastal Zone Management Program**

Petitioner is consistent with the policies and goals of the coastal zone management program. Historic properties are addressed by the Project with the creation of a cultural preserve, and Petitioner's Archaeological Inventory Survey has been accepted by the State Historic Preservation Division. [Pet. Ex. 42 and 43] Visual resources will not be significantly impaired and have been thoroughly discussed in the FEIS. [Pet. Ex. 6]

### **Ko`olaupoko Sustainable Communities Plan**

Petitioner incorporates herein by reference and restates the discussion above regarding the KSCP.

### **Conclusions of Law**

Intervenors' conclusions of law are incorrect based upon the issues discussed above, including but not limited to the *Ka Pa`akai* case, historic and cultural resources, urban district standards, State and County plans, rockfall, drainage, conservation and natural resources. Petitioner incorporates by reference herein the discussion above, as well as Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order.

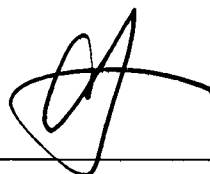
### **III. CONCLUSION**

Petitioner objects to Intervenors' Proposed D&O as stated above. Intervenors' claims and misinterpretations of the evidentiary record and the law are unsupported given the Project's elements including the continued operation of an existing and proven business and employer, proposed cultural preserve and conservation easement, a drainage system designed to reduce existing storm water runoff, and a protection plan that incorporates pro-active measures to ensure the continued survival of the endangered damselfly.

DATED: Honolulu, Hawai'i, September 4, 2020.

Of Counsel:

MATSUBARA, KOTAKE & TABATA  
A Law Corporation



---

BENJAMIN M. MATSUBARA  
CURTIS T. TABATA

Attorneys for Petitioner

HAWAIIAN MEMORIAL LIFE PLAN, LTD.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A17-804  
)  
HAWAIIAN MEMORIAL LIFE PLAN, LTD. ) 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 )  
Hawai`i, Tax Map Key: (1) 4-5-033: por. 001 )  
\_\_\_\_\_)

CERTIFICATE OF SERVICE

I hereby certify that a file-marked of the foregoing document was duly served upon the following **AS INDICATED BELOW** on September 4, 2020.

DAWN TAKEUCHI-APUNA, ESQ.  
Deputy Attorney General  
Department of the Attorney General  
425 Queen Street  
Honolulu, Hawai`i 96813

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED  
*dawn.t.apuna@hawaii.gov*

MARY ALICE EVANS, DIRECTOR  
Office of Planning, State of Hawai`i  
235 South Beretania Street  
Room 600, Leiopapa A Kamehameha Bldg.  
Honolulu, Hawai`i 96813

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

KATHY K. SOKUGAWA, ACTING DIRECTOR  
City and County of Honolulu  
Department of Planning and Permitting  
650 South King Street, 7th Floor  
Honolulu, Hawai`i 96813

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED  
*bchong2@honolulu.gov*

PLANNING COMMISSION  
City and County of Honolulu  
650 South King Street, 7th Floor  
Honolulu, Hawai`i 96813

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED  
*bchong2@honolulu.gov*

PAUL S. AOKI, ESQ.  
Acting Corporation Counsel  
DUANE W. H. PANG, ESQ.  
Deputy Corporation Counsel  
City and County of Honolulu  
Department of Corporation Counsel  
530 South King Street, Room 110  
Honolulu, Hawai`i 96813


CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED  
*paoki@honolulu.gov*  
*dpang1@honolulu.gov*

HUI O PIKOILOA, an unincorporated  
Association, LIANNE CHING, BETTYE  
HARRIS, RICHARD MCCREEDY, JULIANE  
MCCREEDY, JESSE REAVIS, and  
GRANT YOSHIMORI  
c/o 45-464 Lipalu Street  
Kaneohe, Hawai`i 96744

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED  
*gyoshimo@hotmail.com*  
*gyoshimo@gmail.com*

DATED: Honolulu, Hawai`i, September 4, 2020.

Of Counsel:  
MATSUBARA, KOTAKE & TABATA  
A Law Corporation

  
\_\_\_\_\_  
BENJAMIN M. MATSUBARA  
CURTIS T. TABATA  
Attorneys for Petitioner  
HAWAIIAN MEMORIAL LIFE PLAN, LTD.