

HUI O PIKOILOA, an unincorporated association,  
LIANNE CHING, BETTYE HARRIS, RICHARD MCCREEDY, JULIANNE  
MCCREEDY, JESSE REAVIS, and  
GRANT YOSHIMORI  
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Telephone No.: (808) 236-0502  
INTERVENORS PRO SE

2020 SEP -4 A 10:40

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

IN THE MATTER OF:	)	DOCKET NO. A17-804
	)	
HAWAIIAN MEMORIAL LIFE PLAN,	)	INTERVENORS'
LTD., a Hawaii Corporation	)	COMMENTS AND OBJECTIONS
	)	TO PROPOSED FINDINGS OF
To Amend The Conservation Land Use	)	FACT, CONCLUSIONS OF LAW,
District Boundary Into The Urban Land Use	)	AND DECISION AND ORDER
District For Approximately 53.449 Acres Of	)	
Land At Kāne'ohe, Island of O'ahu, State of	)	
Hawai'i, Tax Map Key: (1) 4-5-003:por.001	)	
_____	)	

INTERVENORS' COMMENTS AND OBJECTIONS TO FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

Come now GRANT YOSHIMORI, RICHARD MCCREEDY, JULIANE  
MCCREEDY, LIANNE CHING, BETTYE HARRIS, AND JESSE REAVIS, Intervenor  
Pro Se (collectively "Intervenors"), and submit the following comments and objections to  
the proposed findings of fact, conclusions of law and decision and order to the Land Use  
Commission of the State of Hawai'i (the "Commission") in the above-entitled matter.

COMMENTS AND OBJECTIONS TO  
PETITIONER'S AND CITY AND COUNTY'S

FINDING OF FACTS, CONCLUSIONS OF LAW AND DECISION AND ORDER

1. Petitioner's Finding of Fact #67 Bullet 2

Intervenor's could not find the text in the referenced testimony of Mr. Lim (Pet. Ex. 34):

*"Management would identify areas that are restricted or limited from general access (e.g. upper areas above 350-foot elevation) unless access is justified and can be included in a Preservation Plan developed."*

2. Petitioner's Finding of Fact #73

This fact neglects to subtract burial supply from the demand. Petitioner states that Petitioner's Exhibit 59 shows a **demand** for O'ahu burial plots through 2040 will be 103,442 to 137,840. Petitioner's Exhibit 59 Table 14 also shows the estimated total **supply** of 105,500. Subtracting supply from demand results a **net burial plots of a 2,058 SURPLUS plots to 32,340 plots (assuming only one-person per burial plot)**. Additionally, if you increase burials to two-people per burial plot, it results in a **SURPLUS plots in both scenarios**.

3. Petitioner's Finding of Fact #74 through #76

Finding of Facts #74, #75, and #76 are already factored in the Exhibit 59's estimates mentioned in Finding of Fact #73. The Petitioner's Exhibit 59's updates yield a net burial plots of 2,058 SURPLUS plots to 32,340 plots

(assuming only one-person per burial plot). Additionally, if you increase burials to two-people per burial plot, it results in SURPLUS plots in both scenarios.

#### 4. Petitioner's Finding of Fact #78

The stated burial plot shortfall is incorrect. The Petitioner states that there will be a shortfall of demand for about 40,000 to 60,800 burial plots by 2040 based on Petitioner's Exhibit 6, Page 2-18. Petitioner corrected the CBRE study with Exhibit 59. With the corrections from Exhibit 59, **the corrected demand is a 2,058 SURPLUS plots to 32,340 plots (again, assuming only one-person per burial plot)**. Additionally, if you increase burials to two-people per burial plot, it results in **SURPLUS plots in both scenarios**. The following annotated Table 2.8 shows the corrections resulting from the updated figures in Exhibit 59.

Table 2.8 Excerpts from Petitioner's Exhibit 6 (with annotated corrections from Ex. 59)

Table 2.8. Projection of Potential Absorption Using Residual Method (2018 to 2040)							Correction Per Ex. 59
Description	2018 to 2020	2021 to 2025	2026 to 2030	2031 to 2035	2036 to 2040	Totals	
<b>Scenario One - Minimum Demand</b>							
Assumed Supply of Burial Space	13,761	22,935	22,935	22,935	22,935	105,500	
O'ahu Net Burial Spaces Demand	14,732	27,471	30,186	34,460	38,176	145,025	103,442
Shortage or (Excess) Supply	971	4,536	7,252	11,525	15,241	39,525	(2,058)
<b>Scenario Two - Maximum Demand</b>							
Assumed Supply of Burial Space	13,761	22,935	22,935	22,935	22,935	105,500	
O'ahu Net Burial Spaces Demand	15,128	29,338	33,841	40,367	47,120	165,795	137,840
Shortage or (Excess) Supply	1,367	6,403	10,907	17,432	24,186	60,295	32,340



Original Table 12 (Pet. Ex. 6, Appx B, Pg. 34)

PROJECTION OF NET DEMAND FOR NON-VETERAN CEMETERY INTERMENTS ON OAHU 2018 THROUGH 2040						
	2018-2020	2021-2025	2026-2030	2031-2035	2036-2040	Totals
<b>Scenario One: Minimum Demand (Table 2)</b>						
Projected Number of Interred Cremations	13,694	25,434	29,110	33,260	37,778	139,275
Projected Number of Burials	9,490	16,160	16,500	16,675	16,578	75,402
<b>Total Interments</b>	<b>23,184</b>	<b>41,594</b>	<b>45,609</b>	<b>49,935</b>	<b>54,355</b>	<b>214,678</b>
Less Burial Spaces Purchased and Previously Unused (1)	(6,600)	(11,000)	(11,000)	(11,000)	(10,400)	(50,000)
Less Veterans Interred at Veterans Cemeteries	(382)	(673)	(723)	(775)	(829)	(3,383)
Less Oahu Residents Interred on Other Islands (2)	(1,500)	(2,500)	(3,750)	(3,750)	(5,000)	(16,500)
Plus Allowances for Off-Shore Persons Being Buried on Oahu (Ten Per Year)	30	50	50	50	50	230
<b>Total Periodic Net Demand for Additional Burial Spaces On Oahu</b>	<b>14,732</b>	<b>27,471</b>	<b>30,186</b>	<b>34,460</b>	<b>39,176</b>	<b>145,025</b>
<b>Scenario Two: Maximum Demand (Table 3)</b>						
Projected Number of Interred Cremations	15,385	28,674	32,954	37,872	43,524	158,409
Projected Number of Burials	8,180	14,762	16,286	17,946	19,751	76,924
<b>Total Interments</b>	<b>23,564</b>	<b>43,436</b>	<b>49,239</b>	<b>55,818</b>	<b>63,275</b>	<b>235,332</b>
Less Burial Spaces Purchased and Unused (1)	(6,600)	(11,000)	(11,000)	(11,000)	(10,400)	(50,000)
Less Veterans Interred at Veterans Cemeteries	(382)	(673)	(723)	(775)	(829)	(3,383)
Less Oahu Residents Interred on Other Islands (2)	(1,500)	(2,500)	(3,750)	(3,750)	(5,000)	(16,500)
Plus Allowances for Off-Shore Persons Being Buried on Oahu (15 Per Year)	45	75	75	75	75	345
<b>Total Periodic Net Demand for Additional Burial Spaces On Oahu</b>	<b>15,128</b>	<b>29,338</b>	<b>33,841</b>	<b>40,367</b>	<b>47,120</b>	<b>165,795</b>

Corrected Table 12 (Pet. Ex. 59)

PROJECTION OF NET DEMAND FOR NON-VETERAN CEMETERY INTERMENTS ON OAHU 2018 THROUGH 2040						
	2018-2020	2021-2025	2026-2030	2031-2035	2036-2040	Totals
<b>Scenario One: Minimum Demand (Table 2)</b>						
Projected Number of Interred Cremations	13,694	25,434	29,110	33,260	37,778	139,275
Projected Number of Burials	5,282	8,429	7,767	6,821	5,520	33,819
<b>Total Interments</b>	<b>18,976</b>	<b>33,863</b>	<b>36,876</b>	<b>40,081</b>	<b>43,298</b>	<b>173,095</b>
Less Burial Spaces Purchased and Previously Unused (1)	(6,600)	(11,000)	(11,000)	(11,000)	(10,400)	(50,000)
Less Veterans Interred at Veterans Cemeteries	(382)	(673)	(723)	(775)	(829)	(3,383)
Less Oahu Residents Interred on Other Islands (2)	(1,500)	(2,500)	(3,750)	(3,750)	(5,000)	(16,500)
Plus Allowances for Off-Shore Persons Being Buried on Oahu (Ten Per Year)	30	50	50	50	50	230
<b>Total Periodic Net Demand for Additional Burial Spaces On Oahu</b>	<b>10,524</b>	<b>19,740</b>	<b>21,453</b>	<b>24,606</b>	<b>27,119</b>	<b>103,442</b>
<b>Scenario Two: Maximum Demand (Table 3)</b>						
Projected Number of Interred Cremations	15,385	28,674	32,954	37,872	43,524	158,409
Projected Number of Burials	5,465	9,702	10,470	11,262	12,070	48,969
<b>Total Interments</b>	<b>20,849</b>	<b>38,376</b>	<b>43,424</b>	<b>49,134</b>	<b>55,594</b>	<b>207,378</b>
Less Burial Spaces Purchased and Unused (1)	(6,600)	(11,000)	(11,000)	(11,000)	(10,400)	(50,000)
Less Veterans Interred at Veterans Cemeteries	(382)	(673)	(723)	(775)	(829)	(3,383)
Less Oahu Residents Interred on Other Islands (2)	(1,500)	(2,500)	(3,750)	(3,750)	(5,000)	(16,500)
Plus Allowances for Off-Shore Persons Being Buried on Oahu (15 Per Year)	45	75	75	75	75	345
<b>Total Periodic Net Demand for Additional Burial Spaces On Oahu</b>	<b>12,413</b>	<b>24,278</b>	<b>28,026</b>	<b>33,684</b>	<b>39,440</b>	<b>137,840</b>

## 5. Petitioner's Finding of Fact #79

Petitioner states that the Cultural Preserve will include a preservation plan which will guide and regulate cultural activities and will coordinate responsibilities with the Petitioner. However, the Petitioner has not provided a

preservation plan or management plan to the Commission, stating that the preservation and management plan will be drafted post-LUC hearings by the Ko‘olaupoko Hawaiian Civic Club and Petitioner (Watson Tr. June 24, 2020, 73:15-21); as such, the Commission will be unable to independently assess the impacts of the proposed reclassification on customary and traditional practices as ruled in Ka Pa‘akai O Ka ‘Aina. In addition, the Court in that case stated that “Allowing a petitioner to make such after-the-fact determinations may leave practitioners of customary and traditional uses unprotected from possible arbitrary and self-serving actions on the petitioner’s part”.

6. Petitioner’s Finding of Fact #81

Petitioner states that the boundary amendment is necessary for the Cultural Preserve because cemeteries are not allowed within the State Conservation District. Actually, under a special subzone, cemeteries are allowed in the conservation district. HAR §13-5-15 has an existing Conservation Special Subzone (Haka Site Special Subzone) which is a “Subzone designation for cemetery purposes as delineated on map entitled "O-12, Kaneohe, Oahu;” In addition, Petitioner can alternatively apply for a Conservation District Use Permit via §13-5-31 HAR, to allow cultural practitioners to perform traditional Hawaiian burials without a District Boundary Amendment.

7. Petitioner’s Finding of Fact #84

Intervenors disagree with the statement that the project would not significantly change nor adversely impact the character of this Petition Area. This site would undergo extensive grading activities (cut/fill). (Pet. 2nd Amendment to

DBA, Pg.11). The project includes grading of 33.6 acres (Pet. Ex. 6, Pg. 2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22). Petitioner's expert witness (on planning and land use) admitted that visual analysis is subjective. (Ezer, Tr., June 9, 2020, 94:1-2).

8. Petitioner's Finding of Fact #87

There is no data provided within the CBRE report which supports the statement that "The project will not meaningfully impact property values or real estate taxes of the northerly-abutting single-family homes that will have a buffer area from the cemetery expansion."

9. Petitioner's Finding of Fact #88

Petitioner limits the number of people per plot by internal company policy, not by State or legal requirements. (Morford, Tr. August 12, 2020, 102:11-17). Increasing density would provide for additional inventory, thus allowing current HMP employment levels and activities to continue.

10. Petitioner's Finding of Fact #103

Although not a wetland, AECOS determined that the Petition Area is within the Kāwā stream watershed (Pet. Ex. 6 Appx O Pg. 2). In addition, portions of the Lipalu Channel are likely Federal Jurisdictional Waters under both the Clean Water Rule and the re-codified pre-existing Clean Water Act rules as it is a tributary to Kāwā stream, which discharges into Kāne'ohe Bay (Pet. Ex. 37 Pg. 5).



11. Petitioner's Finding of Fact #123

This finding assumes the Blackline Damselfly's acreage needs are low and are similar to a different damselfly species: *Coenagrion mercurial*. However, this is an unsupported assumption. In the sentence preceding the quoted written-testimony, the Petitioner's expert witness testified "To the question 'What acreage of forest is needed for flying and foraging adults of this species?' I find no data on this Hawaiian damselfly adults' needs" (Pet. Ex. 35, Pg. 5, Para. 2).

12. Petitioner's Finding of Fact #124

Petitioner states they are providing a 164-foot buffer around the well and seep, however Petitioner's expert witness testified that the Blackline Damselflies likely use a couple of acres of the existing Petition Area. (Montgomery, Tr. 6/10/2020, 120:10-13).

13. Petitioner's Finding of Fact #125

Petitioner states that the proposed buffer area (164 feet) and grading improvements would not impact the Damselfly or alter its seep habitat due to avoidance and proposed minimization measures. Yet, the U.S. Fish and Wildlife Service stated that much of the proposed terrain reconfiguration lies immediately upslope of the habitat supporting the population of the ESA-listed blackline Hawaiian damselfly, and that any impacts of such activities to the local hydrology feeding the spring would be immediately detrimental to the potential long-term survival of the population. (OP Ex. 6, Pg. 4).

14. Petitioner's Finding of Fact #127

This Finding of Fact lists minimization measures coordinated with the State Department of Land and Natural Resources, Division of Forestry and Wildlife. However, these mitigation measures have not been reviewed by the U.S. Fish and Wildlife Service (Funakoshi Tr. July 22, 2020 25:3-5).

15. Petitioner's Finding of Fact #129

Petitioner states that the avoidance and minimization mitigation measures provide the species a very solid chance of persisting. This position is contrary to U.S. Fish and Wildlife Service position that much of the proposed terrain reconfiguration lies immediately upslope of the habitat supporting the population of the ESA-listed blackline Hawaiian damselfly, and that any impacts of such activities to the local hydrology feeding the spring would be immediately detrimental to the potential long-term survival of the population. (OP Ex. 6, Pg. 4). In addition, the Petitioner has also stated that should the District Boundary Amendment be denied, the Petitioner is willing to coordinate with the DLNR and the U.S. Fish and Wildlife Service on appropriate cost-effective measures to ensure the protection of the damselfly. (Morford Tr. August 12, 2020, 115:22-117:1).

16. Petitioner's Finding of Fact #154

This finding states that project improvements are expected to have an overall beneficial impact on the currently impaired water quality of Kāwā Stream, and that it should improve TMDL by reducing stormwater discharge. However, Petitioner's expert witness testified that during the construction phase of the



project, if there were an event exceeding the two-year 24-hour storm basin capacity, it would potentially increase the TMDL load from the project site to Kāwā Stream. (Spengler, Tr. 6/10/2020, 161:1-7).

In addition, the preliminary engineering report states that during construction sediment basins designed for a 2-year, 24-hour storm will be used, but this is insufficient should a storm of greater intensity occur during the 12 to 16-month anticipated construction period. It is likely that construction will be ongoing through at least one rainy season, if not two. (Higham Tr. July 22, 2020, 127:16-24).

17. Petitioner's Finding of Fact #157

Petitioner states that the project would have beneficial long-term water quality effects by reducing the velocity of runoff and the corresponding amount of TSS and nutrients discharged into drainageways and Kāwā Stream. However, with two corrections made to the runoff rates and runoff volumes as proposed by the Intervenor's expert Civil Engineer witness, the correction would result in little if any reduction in the Petitioner's original calculated post development runoff. (Higham Tr. July 22, 2020, 142:12-19)

In addition, had the proposed drainage tributary of 93.2 acres been only 7 acres larger, the City and County would require using Plate 6 to calculate the runoff. Using Plate 6 to calculate the runoff flow (i.e if the project were 7 acres larger), **the calculated runoff would be five times higher** than the calculation from the Rational Method submitted by the Petitioner. (Int. Ex. Witness Testimony 4, Pg. 3).

18. Petitioner's Finding of Fact #179

This states that Cultural Practitioners were concerned that cemetery expansion grading plans would impact flora such as Laua'e and Pala'ā. Without a Preservation or Management plan, the Commission will be unable to independently assess the impacts of the proposed reclassification on customary and traditional practices as ruled in Ka Pa'akai O Ka 'Aina, including this particular Cultural Practitioner concern regarding impacts to Laua'e and Pala'ā.

19. Petitioner's Finding of Fact #182

This states that the Ka Pa'akai analysis conducted as part of the CIA concluded that the project would not adversely impact traditional and customary native Hawaiian rights. However, as there has been no Resource Management Plan nor a Preservation Plan submitted to the Commission, the Commission is unable to review and to independently assess the impacts of the proposed reclassification on such customary and traditional practices.

In the Ka Pa'akai O Ka 'Aina decision, Discussion B.4., the Court stated in that case, "the LUC found that KD (the Petitioner) 'will develop and implement' its RMP, which 'would in the future' coordinate development with native Hawaiian rights to coastal access for the purpose of traditional cultural practice." The Court said that "the LUC's verbatim adoption of KD's conceptual RMP and KS/BE's future study, without any analysis of the project's impact, violates the LUC's duty to independently assess the impacts of the proposed reclassification on such customary and traditional practices".

In this petition, Hawaiian Memorial, like KD, is requesting that the LUC

adopt a future, UNSEEN Management and Preservation plan, which would not allow the Commission to independently assess the impacts of the proposed reclassification on customary and traditional practices as ruled in Ka Pa‘akai O Ka ‘Aina.

20. Petitioner’s Finding of Fact #183

In listing measures related to the Cultural Preserve, Petitioner states that they would allow for restoration of the cultural landscape including but not limited to the ‘auwai, which is associated with the well and seep. The potential restorations have not been reviewed for impact to the endangered Damselfly habitat by the State Department of Land and Natural Resources, Division of Forestry and Wildlife, nor the U.S. Fish and Wildlife Service.

21. Petitioner’s Finding of Fact #195 through #200

Petitioner states that although the project would alter the Petition Area’s present visual appearance and forest character, this change would not have an adverse effect on existing views and viewing locations identified. However, Petitioner’s expert witness (on planning and land use) admitted that visual analysis is subjective. (Ezer, Tr., June 9, 2020, 94:1-2);

The Petitioner has also stated that this site would undergo extensive grading activities (cut/fill). (Pet. 2nd Amendment to DBA, Pg.11); and that the project includes grading of 33.6 acres (Pet. Ex. 6, Pg. 2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22).



22. Petitioner's Finding of Fact #209

This fact states "with the exception of receptors located 85 feet from the project earthwork boundary, construction noise levels are not expected to exceed the FTA's noise impact threshold of 90dBA for residential land uses." The fact does not discuss the impact to the Lipalu Street residents located WITHIN the 85 feet project earthwork boundary, who may be exposed to 91dBA (Pet. Ex. 40, Pg. 4).

23. Petitioner's Finding of Fact #233

While the drainage calculations were prepared in accordance with the City DPP's Storm Drainage Standards for the 10-year and 100-year, 1-hour-storm events, the project as currently proposed puts downstream homeowners at an increased risk when a large or concentrated storm hits the area (Higham Tr. July 22, 2020 143:11-15).

The proposed petition area is reported to have a drainage tributary of 93.2 acres (Pet. Ex. 6, Appx D, Pg. 7). The Preliminary Engineering report used the Rational Method to calculate the runoff flows as stated by the City and County of Honolulu drainage standards (Hirota, Tr. 44:22-24). Had the proposed petition area been only 7 acres larger, the City and County would require using Plate 6 to calculate the runoff. Using Plate 6 to calculate the runoff flow (i.e if the project were 7 acres larger), **the calculated runoff would be five times higher** than the calculation from the Rational Method submitted by the Petitioner. (Int. Ex. Witness Testimony 4, Pg. 3).

24. Petitioner's Finding of Fact #236, #237, #238, #239, and #240

This fact states that the rate of stormwater runoff and the volume of runoff being discharged from the Petition Area will be reduced with the project.

However, with two corrections made to the runoff rates and runoff volumes as proposed by the Intervenor's expert Civil Engineer witness, the correction would result in little if any reduction in the Petitioner's original calculated post development runoff. (Higham Tr. July 22, 2020, 142:12-19)

25. Petitioner's Finding of Fact #243 and #244

The Petitioner proposes three permanent retention/detention basins, and that these and other basins shall initially be constructed to handle sediment-laden runoff resulting from grading. The retention/detention basins will drain completely within 48 hours when full, and 24 to 36 hours when half full. However, Intervenor's expert Civil engineering witness testified that there is insufficient information about the proposed retention / detention basins to determine if they are sufficient to protect the downstream homes. (Higham Tr. July 22, 2020, 142:20-24).

In addition, the currently planned retention/detention basins could possibly be filled within two minutes. Once filled, the basins will act as if they are not there. (Higham Tr. July 22, 2020 137:20-138:25).

Intervenor's meteorology expert witness testified that the proposed retention / detention basins are designed for a 100-year, one-hour duration storm event of 4.5 inches (Pet. Ex 6, Pg. 3-95). This design is not reasonable, as it does not account for rain before and after the one-hour storm event, however, if

there is such an extreme thunderstorm, there will be rain before and after that hour. The design should plan for a 24-hour rainfall event at a minimum. A 100-year, 24-hour rainfall event would equate to 15 inches. (Businger Tr. August 12, 2020 56:1-57:12).

26. Petitioner's Finding of Fact #245

Petitioner concludes that based upon proposed drainage improvements, no further mitigative measures are necessary. However, given the fact that Hawai'i can expect to see more frequent and intensive events with rainfall exceeding the planned retention/detention capacity of 4.5 inches in one hour (Businger Tr. August 12, 2020 57:25- 58:13); given the fact that if the project were 7 acres larger), the project would be required to use Plate 6, in which **the calculated runoff would be five times higher** than the calculation from the Rational Method submitted by the Petitioner (Int. Ex. Witness Testimony 4, Pg. 3); and given the fact the Petitioner's calculated post development runoff would provide little if any reduction in the calculated post development runoff (Higham Tr. July 22, 2020, 142:12-19); this project as currently proposed, puts downstream homeowners at an increased risk when a large or concentrated storm hits the area (Higham Tr. July 22, 2020 143:11-15).

27. Petitioner's Finding of Fact #271

Petitioner states that the project achieves a balance between the need to develop additional burial space and the need to sustain Petition Area natural resources. However, Petitioner has not proven a need for additional burial spaces, and in fact, per Intervenor's Comment #5, Petitioner has shown that there will be a



surplus of burial spaces through the year 2040. Irreversibly grading 33.6 forested acres for unnecessary burial spaces, of which the Petitioner is not able to provide the percentage of revenue from the sale of those additional burial spaces would remain in Hawai'i, is not a sustainable use of the State's natural resource.

28. Petitioner's Finding of Fact #274

The request to reclassify the Petition Area to the Urban District is NOT consistent with HRS Section 205-2, as the proposed development is inconsistent with the City's Ordinances. Specifically, the Proposed development violates the Ko'olaupoko Sustainable Communities Plan requiring a 2,000-foot buffer from the Pohai Nani senior living community. "The proposed expansion is only about 1,350 feet away from the Pohai Nani senior living community when measured from the Pohai Nani parcel boundary and about 1,700 feet from the Pohai Nani residential tower. In addition, as the 2,000 foot buffer guidelines was established to address concerns of the Pohai Nani community with respect to the proximity of burials to their residences, the proposed cultural preserve where traditional Hawaiian burials are being sought is only 1,400 feet from the Pohai Nani tower." (Pet. Ex. 6 Appx A-2, Dina Wong letter)

In addition, "The Ko'olaupoko Sustainable Communities Plan has a condition about limitations of above-grade structures to markers of modest size and necessary support structures. The gazeboes for the cemetery expansion is not in keeping with that provision" (Sokugawa Tr. June 24,2020,215:11-15).

29. Petitioner's Finding of Fact #275

Intervenors disagree with Petitioner's conclusion that the petition area is in conformance to HAR section 15-15-18, standards for determining "U" Urban District Boundaries.

**Criterion No. 1** – The petition area is not characterized by "city-like" concentrations of people, structures, urban level of services and other related land uses. The petition area is surrounded by Conservation District lands to the north and east (Pet. Ex. 6, Fig 6.1).

**Criterion No. 2** – The Petition Area would not provide reserve areas for foreseeable urban growth. In fact, the Petitioner is planning to place a conservation easement, if the DBA is granted.

**Criterion No. 3** – The Petition Area is not reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects.

Flooding is possible in the petition area, as a majority of the petition area is in the Zone D, or "undetermined" FIRM Flood Zone, where "flooding is possible" (Pet. Ex. No. 6, Pg. 3-25).

The project as currently proposed puts downstream homeowners at an increased risk when a large or concentrated storm hits the area (Higham Tr. July 22, 2020 143:11-15).

In Geolabs' rockfall simulation for the Cultural Preserve area (Slope Profile E), approximately 86% of the simulated rockfalls involving boulders of 3 and 5 feet in dimension could pass below the Preserver's upslope area. (Lim Tr.

January 22, 2020 222:23-223:2; Pet. Ex. 34, Pgs. 2-3). The only proposed mitigation for this area is rockfall-hazard warning signage (Lim Tr. 223:13-16; Pet. Ex 34, Pg. 3)

**Criterion No. 4** – While a portion of the petition area is adjacent to a residential area, a majority of the petition area is surrounded with other Conservation District zoned properties (Pet. Ex. 6, Fig 6.1).

**Criterion No. 5** – Although the Ko‘olaupoko Sustainable Communities Plan (KSCP) shows the Community Growth Boundary with the petition area, the current proposed plan violates other aspects of the Ko‘olaupoko Sustainable Communities Plan. The KSCP requires a 2,000-foot buffer from the Pohai Nani senior living community. “The proposed expansion is only about 1,350 feet away from the Pohai Nani senior living community when measured from the Pohai Nani parcel boundary and about 1,700 feet from the Pohai Nani residential tower. In addition, as the 2,000 foot buffer guidelines was established to address concerns of the Pohai Nani community with respect to the proximity of burials to their residences, the proposed cultural preserve where traditional Hawaiian burials are being sought is only 1,400 feet from the Pohai Nani tower.” (Pet. Ex. 6 Appx A-2, Dina Wong letter)

In addition, “The Ko‘olaupoko Sustainable Communities Plan has a condition about limitations of above-grade structures to markers of modest size and necessary support structures. The gazeboes for the cemetery expansion is not in keeping with that provision” (Sokugawa Tr. June 24,2020,215:11-15).

**Criterion No. 6** – This criterion does not apply to the petition area, as the



petition area is part of a major segment of Conservation District.

**Criterion No. 8** – These petition area is not suitable for urban purposes, as a majority of the proposed expansion area has soils with slopes between 30% to 65%, or slopes between 40% to 70% (Pet. Ex. 6 Fig. 3.3; Pet. Ex. 6, Fig 3.1). If these lands are used as part of the Project, they would include grading of 33.6 acres (Pet. Ex. 6, Pg.2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22).

Other reasons for being undesirable and unsuitable for urban development is that Flooding is possible in the petition area, as a majority of the petition area is in the Zone D, or “undetermined” FIRM Flood Zone, where “flooding is possible” (Pet. Ex. No. 6, Pg. 3-25). The project as currently proposed puts downstream homeowners at an increased risk when a large or concentrated storm hits the area (Higham Tr. July 22, 2020 143:11-15). And there is rockfall risks, as approximately 86% of the simulated rockfalls involving boulders of 3 and 5 feet in dimension could pass below the Preserver’s upslope area. (Lim Tr. January 22, 2020 222:23-223:2; Pet. Ex. 34, Pgs. 2-3).

30. Petitioner’s Finding of Fact #276.

**Section 226-3: Overall Theme.** Petitioner states that the project aids O’ahu families by providing additional burial space in anticipation of a shortfall. However, Petitioner corrected the CBRE study with Exhibit 59. With the corrections from Exhibit 59, the corrected demand is a 2,058 SURPLUS plots to 32,340 plots (again, assuming only one-person per burial plot). Additionally, if

you increase burials to two-people per burial plot, it results in SURPLUS plots in both scenarios.

**Section 226-4: State Goals.** Petitioner states project improvements will inevitably alter the character of the Petition Area's physical environment. Intervenor agrees with that statement, but disagree with Petitioner's conclusion that "it would not be in a manner that adversely impacts the well-being of O'ahu residents." There is risk of flooding, rockfall hazards, and damage to the endangered damselfly habitat.

**Section 226-6: Objectives and Policies for the Economy.** Petitioner states that the project will allow long-term operation and maintenance of the cemetery expansion area. However, the Petitioner limits the number of people per plot by internal company policy, not by State or legal requirements. (Morford, Tr. August 12, 2020,102:11-17). Increasing density would provide for additional inventory, thus allowing current HMP employment levels and activities to continue. In addition, Petitioner was unable to say what percentage of revenue from the sale of cemetery plots would remain in Hawai'i. (Holliday Tr. June 9, 2020 149:21-25).

**Section 226-11: Objectives and Policies for the Physical Environment (Land, Shoreline, Marine).** Petitioner says that the project is a prudent use of land-based resources based upon an important community need. However, Petitioner's Exhibit 59 shows there is no need for additional burial spaces. In addition, the project violates many of the objectives of §226-11.

(1) Project does not exercise an overall conservation ethic, as Petitioner is

requesting development of an existing conservation district

(3) Project does not take into account physical attributes of the areas as

Flooding is possible in the petition area, as a majority of the petition area is in the Zone D, or “undetermined” FIRM Flood Zone, where “flooding is possible”

(Pet. Ex. No. 6, Pg. 3-25). The project as currently proposed puts downstream homeowners at an increased risk when a large or concentrated storm hits the area (Higham Tr. July 22, 2020 143:11-15). And there is rockfall risks, as approximately 86% of the simulated rockfalls involving boulders of 3 and 5 feet in dimension could pass below the Preserver’s upslope area. (Lim Tr. January 22, 2020 222:23-223:2; Pet. Ex. 34, Pgs. 2-3).

(6) The project does not encourage the protection of endangered animal species and habitats. The U.S. Fish and Wildlife Service stated that any impacts of such activities to the local hydrology feeding the spring would be immediately detrimental to the potential long-term survival of the endangered damselfly population. (OP Ex. 6, Pg. 4).

**Section 226-12: Objective and policies for the physical environment--scenic, natural beauty, and historic resources.** The proposed project is contrary to the promotion of preservation of views and vistas to enhance enjoyment of mounts and scenic landscapes. The project includes grading of 33.6 acres (Pet. Ex. 6, Pg. 2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22). In addition, instead of preserving historic resources, the proposed project site has 24 documented historic sites, nine of the sites are within the proposed area



for cemetery expansion and will be destroyed by grading. (Thurman, Tr.

6/24/2020 32:20-23)

**Section 226-13: Objectives and Policies for the Physical Environment**

**(Land, Air, Water Quality).** Petitioner states that grading improvements will improve drainage conditions, and improve stormwater runoff, however, Intervenor's expert Civil Engineer witness, testified that there will be little if any reduction in the Petitioner's original calculated post development runoff. (Higham Tr. July 22, 2020, 142:12-19)

**Section 226-25: Objectives and Policies for Socio-Cultural Advancement -**

**Culture.** The Petitioner has not provided a preservation plan or management plan to the Commission, stating that the preservation and management plan will be drafted post-LUC hearings by the Ko'olaupoko Hawaiian Civic Club and Petitioner (Watson Tr. June 24, 2020, 73:15-21); the Commission will be unable to independently assess the impacts of the proposed reclassification on customary and traditional practices as ruled in Ka Pa'akai O Ka 'Aina.

**Section 226-104: Population Growth and Land Resources; (b) Guidelines**

**for Regional Growth.** Intervenor's disagree with Petitioner quoting this guideline (b) (2) as relevant to the proposed project. Guideline (b)(2) says to "make available marginal or nonessential agricultural lands". The petition area is in the conservation district.

Guideline (b)(9) directs future urban development away from critical environmental areas, again the U.S. Fish and Wildlife Service stated that any impacts of such activities to the local hydrology feeding the spring would be

immediately detrimental to the potential long-term survival of the endangered damselfly population. (OP Ex. 6, Pg. 4).

Guideline (b)(10) directs to identify critical environmental areas. Petitioner is saying there is “no critical habitat” within the petition area, yet the habitat for the endangered damselfly is within the area. In addition, this guideline also directs to identify watershed regions, and the petition area is located within the larger Kāne‘ohe watershed. (Pet. Ex. 6, Pg. 3-63)

Guideline (b)(12) directs to utilize limited land resources wisely, but Petitioner does not address the utilization of limited resource question, but instead discusses adverse impacts to the environment as a reason the resources are “used wisely”.

**Section 226-108: Sustainability.** Petitioner states the project aligns with this guideline as it balances the need for burial and the need to sustain natural resources. Again, Petitioner’s Exhibit 59 shows there is no need for additional burial spaces. In addition, Petitioner was unable to say what percentage of revenue from the sale of cemetery plots would remain in Hawai‘i. (Holliday Tr. June 9, 2020 149:21-25), so we cannot quantify the economic trade-off of State’s Conservation Land loss, against the economic gain to the State.

**Section 226-109: Climate Change.** Petitioner responded that their drainage improvements address climate change. However, the guideline (5) clearly states “Encourage the preservation and restoration of natural landscape features such as forests”, “that have the inherent capacity to avoid, minimize, or migrate the impacts of climate change”. This project will remove 33.6 acres of forest,

which is contrary to this guideline. Intervenor's expert witness testified that to fight climate change, we need to limit deforestation (Businger Tr. 59:21-25).

31. Petitioner's Finding of Fact #275

**Conservation Lands: Issue Area II: Management; Objective 11B.** Petitioner states that the proposed project is in conformance with this Objective as they are implementing MINIMIZATION measures. The project is contrary to Implementing Action IIB(1)b, which says to develop coordination with federal and county agencies and interests groups to protect threatened and endangered species and habitats. In this case, the U.S. Fish and Wildlife Service has not reviewed the Office of Planning's recommended habitat mitigations(Funakoshi Tr. July 22, 2020 25:3-5); and in fact, FWS has stated that any potential negative impacts of such activities to the local hydrology feeding the spring would be immediately detrimental to the potential long-term survival of the population. (OP Ex. 6, Pg. 4).

**Historic Preservation: Issue Area I: Preservation of Historic Sites; Objectives A, B, and C.** The Petitioner has done a tremendous job in identifying new historic sites, which help support Objective A to expand historic site inventories. However, as the Petitioner has not yet submitted a management plan, nor a CONCEPTUAL management plan to the Commission (Watson Tr. June 24, 2020, 73:15-21); thus the Objective C, Management and Treatment of Historic Properties, cannot be assessed.

32. Petitioner's Finding of Fact #278

There are several areas where the project conflicts with the Coastal Zone



Management Program.

**Historic Resources** - This project is contrary to this policy as nine of the sites are within the proposed area for cemetery expansion and will be destroyed by grading. (Thurman, Tr. 6/24/2020 32:20-23).

**Scenic and Open Space Resources** - This proposal destroys the natural scenic beauty of the petition area (Welch, Tr., July 22, 2020, 85:17-18). The project includes grading of 33.6 acres (Pet. Ex. 6, Pg.2-31), and a majority of the western hillside will be excavated to achieve height reductions between 40 and 100 feet (Hirota Tr. June 10, 2020 37:17-22).

33. Petitioner's Finding of Fact #279 and City and County's Finding of Fact #5

Petitioner and City states that the project is consistent with the Ko'olaupoko Sustainable Communities Plan, however the proposed project violates the Ko'olaupoko Sustainable Communities Plan (KSCP) on Section 3.1.3 Elements of Open Space Resources. The KSCP states that 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 (City. Ex. Ko'olaupoko Sustainable Communities Plan, Page 3-19). Acting Planning Division Chief observed that the proposed expansion is only about 1,350 feet away from the Pohai Nani senior living community when measured from the PN parcel boundary.

In addition, the proposed project violates the Ko'olau Poko Sustainable Communities Plan (KSCP) on Section 3.1.3 Elements of Open Space Resources

with regard to above-grade structures. Director Sokugawa testified that “the Ko‘olaupoko Sustainable Communities Plan has a condition about limitations of above-grade structures to markers of modest size and necessary support structures. The gazeboes for the cemetery expansion is not in keeping with that provision” (Sokugawa Tr. June 24,2020, 215:11-15).

34. City and County’s Finding of Fact #10

Intervenor would like to emphasis agreement with this Finding of Fact - that the cemetery expansion will cause the loss of forest 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.

35. Petitioner’s Conclusion of Law #1

We disagree with this conclusion of law. We instead offer the Intervenor’s proposed Conclusion of Law #1, which states:

Pursuant to Chapter 205, HRS, and the Hawai‘i Land Use Commission Rules under Chapter 15-15, HAR., and upon consideration of the Land Use Commission decision-making criteria under Section 205-17, HRS, this Commission finds upon a clear preponderance of evidence that the reclassification of the Property consisting of approximately 53.449 acres of land situated at Kāne‘ohe, Ko‘olau Poko, O‘ahu, Hawai‘i, O‘ahu Tax Map Key No. 4-5-33; por. 01, from the Conservation Land Use District to the Urban Land Use District, is not reasonable, does not conform to the standards for establishing the urban district boundaries, is violative of Section 205-2, HRS, and is not consistent with the Hawai‘i State Plan as set forth in Chapter 226, HRS.

36. City and County's Conclusion of Law #1

Intervenor disagree with the conclusion of law, and instead offer the Intervenor's proposed Conclusion of Law #1.

37. Petitioner's and City and County's Decision and Order

Intervenors disagree with the proposed Decision and Order of the Petitioner and the City and County. Intervenors instead offer the Intervenors' proposed Decision and Order, which states:

"IT IS HEREBY ORDERED that the Petition for reclassification is denied and that the property being the subject of Docket No. A17-804, filed by Hawaiian Memorial Life Plan consisting of approximately 53.449 acres of land at Kāne'ohe, Ko'olaupoko, O'ahu, Hawai'i, identified as Tax Map Key No. 4-5-33:01, shall hereby remain in the Conservation Land Use District"

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



GRANT YOSHIMORI  
Intervenor Pro Se



HUI O PIKOILOA, an unincorporated association,  
LIANNE CHING, BETTYE HARRIS, RICHARD MCCREEDY,  
JULIANNE MCCREEDY, JESSE REAVIS, and  
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INTERVENORS PRO SE

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

IN THE MATTER OF:	)	DOCKET NO. A17-804
	)	
HAWAIIAN MEMORIAL LIFE PLAN, LTD.,)	)	
a Hawaii Corporation	)	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	)	
	)	
	)	

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**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, by hand delivery, or by email, on  
September 4, 2020, addressed to:

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DATED: Honolulu, Hawaii, September 4, 2020.



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GRANT YOSHIMORI, ET. AL.

Intervenors