

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
 OF THE STATE OF HAWAII

IN THE MATTER OF:)	DOCKET NO. A17-804
)	
HAWAIIAN MEMORIAL LIFE PLAN,)	INTERVENORS'
LTD., a Hawaii Corporation)	RESPONSE TO OBJECTIONS ON
)	INTERVENORS' 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 Kāneʻohe, Island of Oʻahu, State of)	
Hawaiʻi, Tax Map Key: (1) 4-5-003:por.001)	
_____)	

INTERVENORS' RESPONSE TO OBJECTIONS ON INTERVENORS'
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, Intervenors Pro Se (collectively "Intervenors"), and submit the following response to objections on the Intervenor's 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.

1. Response to the Petitioner's Objection on Intervenors' FOF #26

Intervenors thank Petitioner for highlighting Mr. Morford's revised testimony from June 10, 2020. Intervenors point out that Mr. Morford was asked what percentage of the gross revenues from the sale of cemetery plots or inurnment rights arising *from the expanded cemetery*, will remain in Hawai'i. Mr. Morford responded that 85 to 90 percent of **CURRENT** gross revenues remain in Hawai'i. Petitioner did not answer the question regarding the proposed expansion's gross revenues. Also, the Petitioner also stated that they **WOULD NOT** agree to an LUC condition requiring the Petitioner to keep 85 to 90 percent of the expansion's gross revenues in Hawai'i (Morford, Tr. June 10,2020 17:7-19, Emphasis added by Intervenors).

In addition to that, the Petitioner was unable to provide an estimate of the anticipated expansion revenues. Mr. Ezer testified that gross revenue could be up to \$500 Million (Ezer. Tr. June 09,2020 96:17-97:6). Mr. Holliday provided a conflicting amount, stating that gross revenues would be calculated as the operating revenues of \$155 million PLUS some unstated amount related to sales revenue of plots. (Holliday Tr. June 09, 2020 147:2-5; 148:24-149:1).

In summary, Intervenor's Finding of Fact #26, stated two things 1). Petitioner provided conflicting testimony on the potential gross revenues from the conservation-zoned area, and 2). Petitioner did NOT provide an estimate for the percentage of revenues from the expanded cemetery that would remain in Hawai'i. Intervenor maintains that the Petitioner has not shown how much money will be kept in the State from the proposed development if the boundary amendment is granted.

2. Response to the Petitioner's Objection on Intervenors' FOF #32

Regardless of Ms. Sokugawa's testimony, the fact remains that the Ko'olaupoko Sustainable Communities Plan has very specific language relating the buffers required by Hawaiian Memorial. As Councilmember Pine stated, the City Council's intent with the Hawaiian Memorial language was to set the buffer at 2,000 feet from the Pohai Nani property line (Int. Ex. 7).

The Petitioner is not providing the required buffer, and it was acknowledged by the City.

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*). As City and County of Honolulu's Acting Division Chief of Planning, Ms. Dina Wong stated: "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).

3. Response to the Petitioner's Objection on Intervenors' FOF #34

Contrary to Petitioners objection that Intervenors are "relying on proposed development of plots and the MINIMUM demand forecast", Intervenors' Exhibit 15

Page 1 clearly shows Intervenor’s calculations showing a SURPLUS of burial plots in both Scenario 1 ****AND**** Scenario 2 through 2040.

Petitioner’s second claim that Mr. Holliday’s CBRE Market Study Table 14 shows available supply on Oahu is actually 16,500 supply, instead of the reported 105,500 supply is disingenuous. Petitioner used the 105,500 Total Available and Proposed supply to compute future burial plot demand. The 105,500 supply was reported in the EIS, and used to compute net demand of 39,525 in scenario1 and 60,295 in scenario 2 (Pet. Ex. 6, Table 2.8). The computed 40,000 to 60,000 figures were also repeated **as recently as Petitioner’s Proposed Finding of Fact #78** “future shortfall of demand for about 40,000 to 60,800 burial plots by 2040”.

Intervenor’s Comment #4 on *Petitioner’s Finding of Fact, Conclusion of Law, and Decision and Order*, corrected the 40,000 and corrected the 60,800 burial plots calculation, using the revised figures from Petitioner’s Exhibit 59.

Table 2.8 Excerpts from Petitioner’s Exhibit 6 (with annotated corrections from Ex. 59) – Per Intervenor’s Comment #4 on Petitioners FOF, COL, and D&O

Table 2.8. Projection of Potential Absorption Using Residual Method (2018 to 2040)							
Description	2018 to 2020	2021 to 2025	2026 to 2030	2031 to 2035	2036 to 2040	Totals	Correction Per Ex. 59
Scenario One - Minimum Demand							
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)
Scenario Two - Maximum Demand							
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

With the corrections from Petitioner’s revised numbers in Petitioner’s 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**

With regard to Petitioner's statement that "intervenor did not produce an expert witness in the field of market research"; the fact that Intervenor did not produce an expert witness, does not prohibit Intervenor from commenting on errors in Petitioner's witness's exhibits. Intervenor's rights to comment on proposed findings of fact, conclusions of law, and decision and orders are granted via §15-15-85 (a) HAR.

4. Response to the Petitioner's Objection on Intervenor's FOF #37

Petitioner's FOF #37 is a fact: 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). Petitioner's objection states reasons why HMP adheres to the policy. However, Petitioner has previously stated that with the current plot sizes, Petitioner has the ability to put 24 urns in a burial plot (Morford, Tr. June 9, 2020, 2019:10-13). Petitioner did not address nor consider other possibilities. For example, the possibility of allowing existing interment right holders to exchange exclusive plot interment rights for a revenue-share to sell unused plot capacity to others – a potential win-win situation for the existing interment right holders, Hawaiian Memorial, future Hawaiian Memorial customers, and the global environment.

5. Response to the Petitioner's Objection on Intervenor's FOF #50

When asked "who would be responsible for maintaining this adequate level of water into the damselfly habitat?", Petitioner's witness, Mr. Nance responded "I have not discussed that aspect with anyone" (Nance, Tr. June 9, 2020, 109:20-191:9). To

refute that statement, Petitioner quotes testimony saying “Hawaiian Memorial will follow and be responsible for all recommendations made by its expert witnesses”. While Petitioner’s statement is vague, the Intervenor’s will accept Petitioner’s assertion that Petitioner will be responsible for maintaining adequate water levels should the DBA be granted.

6. Response to the Petitioner’s Objection on Intervenor’s FOF #70, #71, and #72.

Firstly, Petitioner states that compliance with Ka Pa‘akai was required and addressed in the Final Environmental Impact Statement. The Petitioner’s claim that acceptance of the final EIS addresses Ka Pa‘akai requirements is faulty. The Ka Pa‘akai O Ka ‘Aina v. Land Use Commission, arose from a petition to reclassify land from the Conservation District to the Urban District. The ruling was directed at the Land Use Commission’s decision; the Ka Pa‘akai ruling did not change the EIS requirements. Acceptance of an EIS does not equate to compliance with Ka Pa‘akai. According to HRS §343-2, “‘Acceptance’ means a formal determination that the document required to be filed pursuant to section 343-5 fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement.”

Secondly, Petitioner states that equating Hawaiian Memorial’s Project with KD’s conceptual resource management plan is misleading, and states that Dr. Watson had done the Ka Pa‘akai case’s mandated “three part test”. Yet, the Petitioner was unable to answer many questions related to “the extent to which those resources,

including traditional and customer native Hawaiian rights will be affected or impaired”. Here a list of some of the undetermined items:

- Determining who is a “practitioner”, and who will have access to the cultural preserve has not been determined (Watson, Tr. June 24, 2020 72:14-24)
- The manager of the cultural preserve has not yet been determined (Watson, Tr. June 24, 2020 72:3-72:4; 107:1-8)
- The holder of the conservation easement has not yet been determined. (Morford, Tr., June 9, 2020 235:19-236:1)
- Who will be buried in the heiau complex and the process for application has not been determined. (Watson, Tr. June 24, 2020 71:19-72:2)

Petitioner stated that a preservation and management plan will be developed later (Ezer Tr. January 22, 2020 185:2-10; Watson Tr. June 24, 2020 64:17-21), and that Petitioner anticipates having a “heavy hand” in developing the technical aspects of the preservation plan and the management plan. (Watson, Tr. June 24, 2020 73:5-21).

Intervenor maintains that 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.

7. Response to the Petitioner’s Objection on Intervenors’ FOF #85

To help protect from rockfall hazard, Petitioner states that they will limit access to

the exercise of traditional and customary cultural practices. There are two issues with this solution.

1). The limitation of access does not prohibit access. This means people will be entering an area where the only physical mitigation from falling boulders is a warning sign. 2). Under Ka Pa‘akai O Ka ‘Aina, limiting access to historic and cultural sites requires that the details of the restriction be put forth to the LUC to assess the extent to which those traditional customary native Hawaiian rights will be affected or impaired.

8. Response to the Petitioner’s Objection on Intervenors’ FOF #101

Petitioner is falsely stating that Intervenors’ witness, Mr. Higham, stated that the Project will reduce storm water runoff.

Mr. Higham’s actual statement was that “undeveloped area has more runoff than grassed cemetery land, **ACCORDING TO THE PER**”, and the Petitioner incorrectly and falsely concludes that because of that statement, Mr. Higham “affirmed that the Project will reduce storm water runoff when compared to today’s existing conditions”.

Mr. Higham’s summarized his oral testimony with three points, and a conclusion:

Point 1: With two corrections Mr. Higham identified to the Preliminary Engineering Report, that there would be little if any reduction in the calculated post development runoff,

Point 2: There is insufficient information provided about the proposed retention/detention basins to determine whether or not it is sufficient to protect the downstream homes,

Point 3: The project should be required to increase the size of the basins by five times.

Conclusion: And yes, Mr. Higham did then make a conclusory statement “I believe this project, as currently proposed, puts downstream homeowners at an increased risk when a large or concentrated storm hits the area.” (Higham Tr. 7/22/2020, 142:10-143:15)

9. Response to the Petitioner’s Objection on Intervenors “Conformance to Urban District Standards”

Intervenors believe we have accurately stated the facts which reflect the project’s non-conformance to the Urban District Standards.

Also, Petitioner incorrectly asserts that “post-development slopes will be no greater than 20%”. The proposed cultural preserve area is also being requested to be in the Urban District, and the cultural preserve includes lands with slopes between 40-70% (Pet. Ex. 6 Fig. 3.3), which is in conflict with §15-15-18 HAR (8). In addition, if §15-15-18 HAR (8) is intended for *pre-development* slope conditions, even **more** of the proposed petition area would be conflicting with this standard.

10. Response to the Petitioner’s Objection on Intervenors “Hawai‘i State Plan”

Intervenors believe we have accurately stated the facts which reflect the project’s non-conformance to the Hawai‘i State Plan.

11. Response to the Petitioner’s Objection on Intervenors “Coastal Zone Management Program”

Intervenors believe we have accurately stated the facts which reflect the project's non-conformance to the Coastal Zone Management Program.

12. Response to the Petitioner's Objection on Intervenors "Ko'olaupoko Sustainable Communities Plan"

Intervenors believe we have accurately stated the facts which reflect the project's non-conformance to the Ko'olaupoko Sustainable Communities Plan.

13. Response to the Petitioner's Objection on Intervenors "Conclusions of Law"

Intervenors believe we have accurately stated the facts and conclusions in our proposed Conclusions of Law.

DATED: Honolulu, Hawai'i, September 9, 2020.



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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 9, 2020, addressed to:

LAND USE COMMISSION
Department of Business, Economic
Development & Tourism
P.O. Box 2359
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