

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on September 23, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. CONTINUED HEARING AND ACTION
A17-804 HAWAIIAN MEMORIAL LIFE PLAN, LTD. (OAHU)
Petition for District Boundary Amendment to
Consider Petition to Amend the Conservation
Land Use District Boundary into the Urban
Land Use District for Approximately 53,449
acres of Land at Kane'ohe, Island of O'ahu,
State of Hawai'i TMK (1)4-5-033:por.001

V. Recess

BEFORE: Jean Marie McManus, CSR #156

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1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
3 NANCY CABRAL, Vice Chair (Big Island)
4 EDMUND ACZON Vice Chair (Oahu)
5 GARY OKUDA (Oahu)
6 ARNOLD WONG (Oahu)
7 DAN GIOVANNI (Kaua'i)
8 DAWN CHANG (Oahu)

9 STAFF:

10 LINDA CHOW, ESQ.
11 Deputy Attorney General

12 DANIEL ORODENKER, Executive Officer
13 RILEY K. HAKODA, Planner/Chief Clerk
14 SCOTT DERRICKSON, AICP/Planner

15 DAWN APUNA, ESQ.
16 Deputy Attorney General
17 LORENE MAKI, Planner
18 State of Hawaii, Office of Planning

19 DUANE PANG, ESQ.
20 Deputy Corporation Counsel
21 BLANCHE CHONG, DPP
22 EUGENE TAKAHASHI, Deputy Director
23 KATHY SOKUGAWA, Acting Director
24 Department of Planning and Permitting
25 City and County of Honolulu

BENJAMIN MATSUBARA, ESQ.
CURTIS TABATA, ESQ.
Attorneys for Petitioner

GRANT YOSHIMORI, Pro Se
For Intervenor Hui O Pikoiloo

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1 CHAIRPERSON SCHEUER: Aloha mai kakou,
2 good morning.

3 This is the September 23rd, 2020 Land Use
4 Commission meeting, and it is being held using
5 interactive videoconference technology linking
6 videoconference participants and other interested
7 individuals of the public via the "ZOOM" internet
8 conferencing program. We're doing this to comply
9 with State and County official operational directives
10 during the COVID-19 pandemic. Members of the public
11 are able to view this meeting via the ZOOM platform
12 as well.

13 For all meeting participants, I would like
14 to stress the importance of speaking slowly, clearly
15 and directly into your microphone. Before speaking,
16 please identify yourself for the record, and also
17 please be aware that all meeting participants are
18 being recorded in the digital record of this ZOOM
19 meeting. Your continued participation is your
20 implied consent to be part of the public record of
21 this event. If you do not want to be part of the
22 record, you should exit the meeting now.

23 This ZOOM conferencing technology allows
24 the Parties and each Commissioner individual remote
25 access to the meeting proceedings via our own

1 personal digital devices.

2 Please note that for matters due entirely
3 outside of our own control, occasional disruptions to
4 connectivity may occur for one or more members of the
5 meeting at any given time. If such disruptions
6 occur, please let us know and be patient as we try
7 and restore the audio/visual signals to effectively
8 conduct this meeting during our pandemic.

9 My name is Jonathan Likeke Scheuer, and I
10 currently serve as the LUC Chair. Along with me,
11 Commissioners Aczon, Chang, Okuda and Wong, the LUC
12 Executive Officer Daniel Orodener, LUC Chief Planner
13 Scott Derrickson, Chief Clerk Riley Hakoda, the LUC's
14 Deputy Attorney General Linda Chow, and the Court
15 Reporter Jean McManus are on O'ahu. Commissioner
16 Cabral is on Hawaii Island, and Commissioner Giovanni
17 is on Kauai.

18 We currently have eight seated, and
19 Commissioner Lee Ohigashi is excused from today's
20 proceedings.

21 First order of business is the adoption of
22 September 9th and 10th minutes.

23 Mr. Hakoda or Mr. Derrickson, have there
24 been any written testimony submitted on this matter?

25 CHIEF CLERK: There has been no testimonies

1 submitted.

2 CHAIRPERSON SCHEUER: On the adoption of
3 the minutes, thank you.

4 Any member of the public who wishes to
5 testify on the adoption of the minutes from
6 September 9th and 10th? If so, if you are attending
7 the meeting, use the raise-hand function, and I'll
8 admit you into the meeting where I will swear you in
9 and allow you to offer testimony on this matter.

10 Seeing none.

11 Are there any corrections or comments on
12 the minutes? Seeing none.

13 Is there a Motion to Adopt?

14 COMMISSIONER WONG: This is Commissioner
15 Wong. I move to adopt the minutes.

16 COMMISSIONER GIOVANNI: I second the
17 motion.

18 CHAIRPERSON SCHEUER: Motion has been made
19 to adopt by Commissioner Wong, seconded by
20 Commissioner Giovanni.

21 Is there any further discussion? Seeing
22 none. Mr. Orodener, please poll the Commission.

23 EXECUTIVE OFFICER: Thank you, Mr. Chair.
24 Motion is to Adopt the Minutes.

25 Commissioner Wong?

1 COMMISSIONER WONG: Aye.

2 EXECUTIVE OFFICER: Commissioner Giovanni?

3 COMMISSIONER GIOVANNI: Aye.

4 EXECUTIVE OFFICER: Commissioner Okuda?

5 COMMISSIONER OKUDA: Yes.

6 EXECUTIVE OFFICER: Commissioner Chang?

7 COMMISSIONER CHANG: Aye.

8 EXECUTIVE OFFICER: Commissioner Aczon?

9 VICE CHAIR ACZON: Aye.

10 EXECUTIVE OFFICER: Commissioner Cabral?

11 VICE CHAIR CABRAL: Yes.

12 EXECUTIVE OFFICER: Commissioner Ohigashi

13 is excused.

14 Chair Scheuer?

15 CHAIRPERSON SCHEUER: Aye.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair,
17 the motion passes unanimously.

18 CHAIRPERSON SCHEUER: Thank you.

19 Next is the tentative meeting schedule.

20 Mr. Orodanker.

21 EXECUTIVE OFFICER: Thank you, Mr. Chair.

22 Tomorrow we will be once again meeting by
23 ZOOM for the Central Maui Landfill Motion for
24 Reconsideration.

25 On October 7th, we will take up the Halekua

1 Development Motion to Amend. And the Hanohano Motion
2 to Release that is possibly by ZOOM as well. At this
3 point we're planning on continuing by ZOOM.

4 October 8th we will adopt the Order in the
5 Hawaiian Memorial Park matter, once again by ZOOM.
6 And possibly take up any loose ends from the Kihei
7 High School matter.

8 On October 21st, right now that is open,
9 but there is possibility that date will be filled by
10 various projects that are in the works.

11 On October 22nd, we currently have the
12 Newton Family, Hawaiian Islands Land Trust Motion to
13 Amend.

14 On November 4th we have the Halekua
15 Development, and on November 5th Hawaiian Islands
16 Land Trust for finalization.

17 On November 18th, we have Pulama Lanai
18 matter scheduled as we do on the 19th.

19 And then December we have the Windward
20 Hotel matter on Maui on December 2nd, and on December
21 3rd, the Barry Trust matter.

22 On December 16th the Church matter, and on
23 December 17th adoption of the Order for Barry Trust.

24 And that takes us to the end of the year.

25 CHAIRPERSON SCHEUER: Thank you very much,

1 Mr. Orodener.

2 Commissioners, any questions for Dan about
3 our upcoming schedule?

4 Our next agenda item is the continued
5 HEARING AND ACTION meeting on Docket A17-804 Hawaiian
6 Memorial Life Plan, Ltd., to consider a Petition to
7 Amend The Conservation Land Use District Boundary
8 Into The Urban Land Use District for Approximately
9 53.449 acres of Land at Kane'ohe, Island of O'ahu,
10 State of Hawai'i, TMK (1)4-5-003 (sic) a portion of
11 Lot 1.

12 Will the Parties for Docket No. A17-804
13 please identify themselves for the record? You each
14 may need to enable your audio.

15 MR. TABATA: Thank you, Chair.

16 Curtis Tabata and Benjamin Matsubara
17 appearing on behalf of the Petitioner Hawaiian
18 Memorial Life Plan, Ltd.

19 CHAIRPERSON SCHEUER: Good morning. City
20 and County.

21 MR. PANG: Thank you, Mr. Chair. Good
22 morning. Duane Pang, Deputy Corporation Counsel, on
23 behalf of the Department of Planning and Permitting.

24 CHAIRPERSON SCHEUER: Good morning, Mr.
25 Pang.

1 MS. APUNA: Good morning, Chair,
2 Commissioners, Deputy Attorney General Dawn Apuna on
3 behalf of the State Office of Planning.

4 CHAIRPERSON SCHEUER: Good morning, Ms.
5 Apuna.

6 MR. YOSHIMORI: Good morning, everyone.
7 This is Grant Yoshimori for the Intervenor Pro Se.

8 CHAIRPERSON SCHEUER: Good morning, Mr.
9 Yoshimori.

10 Let me update the record.

11 On August 12, 2020, the Commission met
12 using ZOOM technology for an action meeting on this
13 docket. The parties were provided a filing schedule
14 for their final documents, and advised that closing
15 arguments would be heard today.

16 From August 11th until recently, any public
17 comments via email and written correspondence on this
18 matter have been made a part of the record and posted
19 to the website.

20 From September 3rd through 9th, 2020, the
21 Commission received the following documents:

22 The Parties' Stipulation and Comments and
23 Objections to Petitioner's Proposed Findings of Fact,
24 Conclusions of Law and Decision and Order.

25 DPP email noting that it was not filing

1 objections to Intervenor's Proposed Findings of Fact,
2 Conclusions of Law, and Decision and Order and
3 deferred to the Petitioner on that matter.

4 The Petitioner's Objections to Intervenor's
5 Findings of Fact, Conclusions of Law and Decision and
6 Order.

7 The Intervenor's Comments on Objections,
8 and;

9 The Petitioner's Rebuttal to Intervenor's
10 Comments and Objections.

11 On September 14, the Commission mailed our
12 September 23rd-24th Notice of Agenda to the Parties
13 and Statewide, O'ahu and Maui regular and email
14 mailing lists.

15 Now, let me run over the procedures for
16 today. And those of you who noted in the Q and A
17 section that you would like to testify, this will
18 address your concerns.

19 First, I will recognize any written public
20 testimony received on this matter and identifying the
21 person or organization that has submitted the
22 testimony.

23 Please note that previous testimony was
24 allowed during the first portions of this docket, and
25 we will allow oral testimony again today prior to

1 these closing arguments.

2 Following the allowing in of people who
3 have registered to testify or submitted written
4 testimony, I will then call for attendees in the
5 meeting room to raise their hand, if they have not
6 registered to testify, to testify.

7 For all testifiers, I will bring you into
8 the main meeting room one by one, swear you in and
9 provide you three minutes to testify.

10 Following the conclusion of public
11 testimony on this matter, the Petitioner, followed by
12 City and County of Honolulu, Office of Planning and
13 then the Intervenor will make their closing
14 arguments.

15 From time to time I will note for the
16 public that we will be taking breaks, approximately
17 ten minutes every hour.

18 I'm now going to note the public testimony
19 that's been received on this matter, and if you are
20 here and present and would like to give oral
21 testimony, I would like you to raise your hand in the
22 attendee meeting function.

23 Pane Meatoga of the Hawaii Operating
24 Engineers Industry Stabilization Fund. So please
25 refrain from raising your hand until I call your

1 name. I'm having a bit of a dual screen challenge
2 for a second.

3 Joy Kimura, Hawaii Laborers and Employers
4 Cooperation and Education Trust Fund. Are you here
5 and wish to give testimony?

6 Ko'olaupoko Hawaiian Civic Club. Would
7 that be Ms. Cypher, or is that a different testifier?

8 CHIEF CLERK: Different testimony, Chair.

9 CHAIRPERSON SCHEUER: Justin Soriano. I
10 see you're an attendee. Do you wish to give
11 testimony? If so, use the raise-hand function. Mr.
12 Soriano?

13 Marcelinda Soriano. Gloria Ariagaran.
14 Gloria Ariagaran.

15 Merle N. Wilmeth. Tim Deegan. Tim Deegan.

16 All these written testimonies have been
17 received by the Commission.

18 Bonnie Deegan. Michael Deegan. Barbara
19 Zeisel, or Zeesel. Again, if I call your name and
20 you wish to testify, use the raise-hand function in
21 ZOOM.

22 Mo Radke. Mo Radke. Cindy Suzuki. Cindy
23 Suzuki. Debra Stephenson, Debra Stephenson.

24 I'm going to admit you in as a panelist.
25 Please enable your microphone and your video. Ms.

1 Stephenson, can you enable your microphone and your
2 video?

3 THE WITNESS: I've got my microphone.
4 Video is not on.

5 CHAIRPERSON SCHEUER: It should appear as
6 an option in the right-hand corner of your screen
7 right next to enabling your microphone.

8 There we go. Almost worked.

9 THE WITNESS: It almost did.

10 CHAIRPERSON SCHEUER: One more time and
11 then we will have to accept your testimony via audio
12 only. Are you ready to proceed?

13 THE WITNESS: Yes.

14 CHAIRPERSON SCHEUER: Do you swear or
15 affirm the testimony you're about to give is the
16 truth?

17 THE WITNESS: Yes.

18 CHAIRPERSON SCHEUER: Okay. So please
19 state your name and address for the record, then you
20 will have three minutes to state your position.

21 DEBRA STEPHENSON

22 Was called as a public witness by and on behalf of
23 the Public, was sworn to tell the truth, was examined
24 and testified as follows:

25 DIRECT EXAMINATION

1 THE WITNESS: My name is Debra Stephenson,
2 and my address is 278 Kakaiaka Street, Kailua, Hawaii
3 96734.

4 CHAIRPERSON SCHEUER: Please proceed.

5 THE WITNESS: So many generations of my
6 family have purchased plots and/or funeral plans from
7 Hawaiian Memorial since 1960s. They planned ahead
8 for the end of life for themselves and their loved
9 ones by being prepared and bought many plots in
10 adjacent locations so that they could be close.

11 Some died, owning more plots than they
12 needed, and those were turned over to younger
13 descendants who, like most of that generation,
14 planned not to be buried, but to be cremated with
15 their ashes spread.

16 While this is in no way based on
17 statistics, overwhelming comments from my generation
18 and those younger than me, is that most of us do not
19 want to be buried in the ground.

20 This being said, several of my own family
21 members have since been trying to sell their plots
22 for over a decade, but have not had any success. A
23 quick glance for the sale section in Craigslist shows
24 a lot of ads advertising plots for sale, not only for
25 Hawaiian Memorial, but other cemeteries as well.

1 The competition amongst sellers to sell
2 their plots for a decent price is fierce. I've been
3 informed that the existing capacity of occupied plots
4 at Hawaiian Memorial is about 63 percent. That means
5 that 37 percent of the remaining plots are
6 unoccupied.

7 Currently, Hawaiian Memorial allows a
8 maximum per plot of, number one, one casket and one
9 urn, or two caskets, or three, four urns.

10 Years ago my elderly parents decided they
11 did not want to be buried, so I contacted Hawaiian
12 Memorial to see if they could connect us to any new
13 buyers. I was told they do not assist in
14 coordinating the sell of plots from existing owners.

15 I'm sure that many of the existing owners
16 would be happy to pay a brokerage fee to the cemetery
17 for their assistance so sellers could unload an asset
18 that they do not want to hang onto and do not intend
19 to use.

20 Instead of destroying many acres of
21 forested property, which holds the stream that leads
22 to the ocean, a rare species of damselfly and many
23 other native animals and plants, the cemetery should
24 look to the large numbers of unoccupied plots and
25 assist owners to sell to buyers. And also to

1 increase the density allowed in one plot.

2 The plan to expand is yet another corporate
3 grab at the greed, at the expense of our continually
4 diminishing conservation spaces on this island.

5 Hawaiian Memorial should be just as
6 responsible stewards of our lands as our residents
7 are trying to be. I'm asking that you please deny
8 their request. Thank you.

9 CHAIRPERSON SCHEUER: Thank you very much,
10 Ms. Stephenson, for your testimony. Please hold on.
11 For all testifiers, after you testify, we provide all
12 the parties as well as the Commissioners
13 opportunities to ask you any questions. Petitioner.

14 MR. TABATA: No questions.

15 MR. PANG: No questions from the City.

16 MS. APUNA: No questions.

17 MR. YOSHIMORI: Intervenors have no
18 questions.

19 CHAIRPERSON SCHEUER: Commissioners?
20 Commissioner Cabral.

21 VICE CHAIR CABRAL: Thank you for your
22 testimony. I can appreciate the concern. You
23 reference sort of a lot of lots that are trying to be
24 sold.

25 Are you aware of any numbers of trying to

1 be sold, or how many are you personally trying to
2 resell at this time for yourself or for your family?

3 THE WITNESS: Approximately ten for myself,
4 and I guess on a daily basis if you were to check
5 just Craigslist, that is where I've done a brief
6 review of how many were available, not only with
7 Hawaiian Memorial, but other cemeteries as well.

8 VICE CHAIR CABRAL: Thank you.

9 THE WITNESS: You're welcome.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Cabral.

12 Commissioners, any questions? If not,
13 thank very much, Ms. Stephenson, for your testimony.
14 I'm going to move you back to being an attendee, and
15 next call on Mahealani Cypher.

16 Thank you for raising your hand. I am
17 admitting you to the room where you can enable your
18 audio and video.

19 I can hear you now.

20 THE WITNESS: I don't know if you can see
21 me.

22 CHAIRPERSON SCHEUER: We cannot see you
23 yet.

24 THE WITNESS: I don't know why. Start
25 video.

1 CHAIRPERSON SCHEUER: There we are.

2 Good morning, aloha.

3 THE WITNESS: Aloha mai kakou.

4 CHAIRPERSON SCHEUER: Do you swear or
5 affirm that the testimony you're about to give is the
6 truth?

7 THE WITNESS: Yes.

8 CHAIRPERSON SCHEUER: Please state your
9 name and address for record and you have three
10 minutes.

11 MAHEALANI CYPHER

12 Was called as a witness by and on behalf of the
13 Public, was sworn to tell the truth, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 THE WITNESS: My name is Mahealani Cypher,
17 born and raised in Kaneohe. I live in Kaneohe on
18 Lipalu Road. I don't know if you need the exact
19 address, but I can provide that at a later time.

20 I am representing the Ko'olau Foundation
21 today, and I wanted to just give a little bit of
22 introduction.

23 I have -- my family has lived in Kaneohe
24 for many generations, and I have been a resident of
25 Kaneohe since the 1940s. And ever since 1972 I have

1 been an advocate for wise planning for Kaneohe and
2 for the Windward side. Even winning awards for some
3 of my articles in the Sun Press Newspaper regarding
4 community planning, so I am totally aware of the need
5 to find balance in planning decisions.

6 And at that time there were a lot of large
7 developments planned for Kaneohe, and many of us had
8 to fight hard against developers who had all kinds of
9 plans to put things all over the place all the way up
10 the Windward Coast.

11 One of the things we did was get these
12 developers to agree to limit development in Kaneohe
13 area, to just fill in spaces and not expand large
14 development.

15 At that time there was a lot of debate over
16 why Pohai Nani was able to build high-rise on
17 Conservation land. That was kind of interesting.

18 The Ko'olau Foundation remains in strong
19 support of this docket matter and finds the proposed
20 expansion of Hawaiian Memorial Cemetery to be both
21 acceptable and appropriate.

22 Our organization is a strong advocate for
23 the preservation of Hawaiian history, heritage and
24 cultural values. We dedicate much of our work to the
25 maintenance of cultural sites and advocacy for the

1 preservation of Hawaii's wahi pana and wahi kapu,
2 legendary and sacred places of our islands, in
3 keeping with our commitment to support Hawaiian
4 values to demonstrate respect for our kupuna and the
5 resting places of our ancestors and loved ones of
6 today.

7 That is why expanding the cemetery to lands
8 adjacent to the current HMP lands is urgently
9 important. With burial spaces on Oahu increasing and
10 as the baby boomer generations prepares to leave us,
11 it truly matters to us that preparations be made for
12 adjusting this need early before all available space
13 is used up.

14 In addition, the Applicant stated
15 commitment to establish a cultural preserve at
16 Kawa'ewa'e Heiau demonstrates that understanding of
17 the need to respect and honor our cultural legacies.

18 For these reasons, accepting the Applicants
19 assurances of future intentions regarding historic
20 preservations, and addressing cultural concerns, the
21 Ko'olau Foundation urges the Land Use Commission to
22 approve this application.

23 Mahalo for this opportunity to offer our
24 mana'o.

25 CHAIRPERSON SCHEUER: Thank you very much,

1 Ms. Cypher, and thank you for ensuring that you're
2 able to testify today.

3 Are there questions for the witness?

4 MR. TABATA: No questions.

5 MR. PANG: No questions for the City.

6 MS. APUNA: No questions.

7 MR. YOSHIMORI: Intervenors have no
8 questions.

9 CHAIRPERSON SCHEUER: Commissioners,
10 starting with Commissioner Okuda.

11 COMMISSIONER OKUDA: Thank you very much,
12 Mr. Chair.

13 Thank you, Ms. Cypher, for your testimony.
14 I appreciate the work you've done as a person who
15 also grew up on the Windward side.

16 I have only one short question.

17 Did you hear the testimony of the prior
18 witness, Ms. Stephenson?

19 THE WITNESS: Yes, I did.

20 COMMISSIONER OKUDA: Do you or the
21 Foundation have any information or evidence
22 contradicting what she stated, which is there is an
23 active market for the resale of cemetery plots, and
24 as an example she gave -- she's attempting to sell
25 ten plots. She raised this point.

1 Are you aware of any evidence to the
2 contrary?

3 THE WITNESS: I really am not prepared to
4 dispute or debate with the other testifier. I am
5 concerned that having ten plots to sell sounds like
6 exploitation of burial places. I'm not comfortable
7 with that. Usually it's something you pass onto
8 families. If you have one or two plots for your
9 family members, those things make sense. But ten is
10 kind of a lot, but that's just a comment, not a
11 criticism.

12 COMMISSIONER OKUDA: I'm just trying to
13 find out whether there is any evidence to contradict
14 what she said.

15 My other question is this. Have you
16 participated in any way in the discussions between
17 the Ko'olaupoko Hawaiian Civic Club and Hawaiian
18 Memorial Park with respect to specifics regarding the
19 Cultural Preserve and management of the Cultural
20 Preserve?

21 THE WITNESS: Only very peripheral, because
22 I don't think there has been anything seriously
23 discussed other than a commitment made. So that's
24 all I can say. I've been involved in those
25 discussions.

1 COMMISSIONER OKUDA: When you say you've
2 been involved in those discussions, what kind of
3 discussions have you been involved with?

4 THE WITNESS: Just talking about making
5 sure that the heiau is preserved. And we actually
6 worked with the civic club to set up a clean-up day
7 where we invited the community that lives right
8 nearby and people from Hawaiian Memorial Park to join
9 us in doing some maintenance work.

10 This was years ago. Too bad we weren't
11 able to replicate that again. But that was something
12 we had hoped to do to involve all the different
13 parties in a way to find peace regarding Kawa'ewa'e.

14 COMMISSIONER OKUDA: And you're aware that
15 Hawaiian Memorial Park is a wholly-owned subsidiary
16 of Service Corporation International, which sometimes
17 goes by the acronym SCI, correct?

18 THE WITNESS: I'm reading that on some of
19 your documents, yes.

20 COMMISSIONER OKUDA: Do you have any
21 knowledge, since you're reading it in some of our
22 documents, are you aware that sometimes SCI
23 represents itself as the world's largest funerary
24 cemetery and mortuary company?

25 THE WITNESS: I have no comments on that.

1 I don't know.

2 Why would I be concerned about that?

3 COMMISSIONER OKUDA: In whatever
4 discussions you are aware of between Hawaiian
5 Memorial Park and Ko'olaupoko Hawaiian Civic Club,
6 has the club been represented by professionals such
7 as attorneys, planners, or anyone like that? Just so
8 that we have a level negotiating field between the
9 club and what might be a pretty big company.

10 THE WITNESS: Well, I'm a member of that
11 club, as well as a member of the Ko'olau Foundation,
12 so I'm not a professional planner, but I have been a
13 community planner for many, many years.

14 I don't think that meets the standards that
15 you're talking about, but we are not afraid to deal
16 with people of any level. We have done this for many
17 years.

18 COMMISSIONER OKUDA: And that's good,
19 because I think all of us should not be afraid of
20 taking positions that we want to take.

21 Since you've been a member of the club, are
22 you aware of any specific discussions about the
23 potential liability exposure the club would face by
24 taking on the responsibility of management of the
25 Cultural Preserve?

1 THE WITNESS: The club does have Ko'olau
2 Foundation and the Ko'olaupolo Hawaiian Civic Club,
3 they both have general liability insurance, and I'm
4 sure if they need to have additional insurance, they
5 would pursue that.

6 COMMISSIONER OKUDA: And has there been any
7 discussion, to your knowledge, about the impact on
8 your general liability insurance policy premiums by
9 the fact that there is at least documented potential
10 rock-falling issues regarding the subject property?

11 THE WITNESS: I'm not sure of the rockfall
12 area of concern. I'm not sure if that is part of the
13 property that would be in the Cultural Preserve. Not
14 sure.

15 COMMISSIONER OKUDA: Just trying to find
16 out any discussion about impact on insurance cost, or
17 whether or not, in fact, there might even be a
18 possibility or risk that you could not obtain
19 insurance, or insurance would not be renewed.

20 I'm just trying too find out whether there
21 was a discussion about that or there wasn't.

22 THE WITNESS: There was no discussion of
23 that because that's something that came up in the
24 last few months.

25 But what I would like to say is that if the

1 club or the foundation assumed control of these lands
2 that are in a preserve, I think a condition would be
3 that the Hawaiian Memorial Park would have to retain
4 some responsibility for those kinds of conditions.

5 COMMISSIONER OKUDA: And has the Hawaiian
6 Memorial Park or SCI made such a commitment, to your
7 knowledge?

8 THE WITNESS: Not to my knowledge. That's
9 still to be discussed, because there's not anything
10 firm that's been decided regarding that arrangement,
11 any kind of an arrangement.

12 COMMISSIONER OKUDA: Thank you very much,
13 Ms. Cypher, and thank you from one who grew up on the
14 Windward side as to what you have done for the
15 community.

16 Thank you, Mr. Chair. No further
17 questions.

18 CHAIRPERSON SCHEUER: Commissioner Chang.

19 COMMISSIONER CHANG: Good morning,
20 Mahealani.

21 THE WITNESS: Good morning, Dawn.

22 COMMISSIONER CHANG: Good to see you. I
23 just have a question.

24 Are members of the Hawaiian Civic Club, the
25 Ko'olaupoko Hawaiian Civic Club, are they cultural

1 practitioners of the heiau?

2 THE WITNESS: Not all. Some of them gather
3 greens from the heiau. I used to take members up
4 there to teach them about the practices and purposes
5 and mo'olelo. I don't do that any more because I
6 can't get around too easily, getting older. I don't
7 hike too much.

8 But there are many practitioners in the
9 club, some of who are Kumu Hula, and as such they
10 would be going to the heiau for gathering practices.

11 COMMISSIONER CHANG: Have you been able to
12 work out an understanding with Hawaiian Memorial Park
13 that both members of the club who are cultural
14 practitioners, or club members themselves have
15 permission to go up to the heiau and continue those
16 practices?

17 THE WITNESS: Yes. We have been given
18 permission by Hawaiian Memorial.

19 COMMISSIONER CHANG: Do you believe in
20 whether this -- whether the Petitioner's request is
21 granted or not, do you believe that Hawaiian Memorial
22 Park will continue to honor that granting of
23 permission to access the cultural -- the heiau and
24 those cultural resources?

25 THE WITNESS: I think they would honor it

1 to allow us to continue to visit.

2 COMMISSIONER CHANG: Thank you so much,
3 Mahealani. Very good to see you.

4 CHAIRPERSON SCHEUER: Anything further,
5 Commissioners?

6 If not, thank you very much for your
7 testimony, Ms. Cypher.

8 THE WITNESS: Aloha.

9 CHAIRPERSON SCHEUER: Aloha.

10 Dean Hazama is our next testifier. Ms.
11 Cypher, I'll move you to be an attendee.

12 Mr. Hazama, are you here? If so, raise
13 your hand using the raise-hand function.

14 Christopher Delaunay from Pacific Resource
15 Partnership or any representative of PRP. Are you
16 here to give oral testimony following on your written
17 testimony? If so, use the raise-your-hand function
18 in the attendee room.

19 Seeing none, that's the conclusion of
20 people who have submitted written testimony or
21 registered to testify.

22 I'm now going to ask for everybody who's in
23 the room right now who wishes to testify in this
24 matter to use your raise-your-hand function.

25 I know that Mr. O'Connor and Mr. Matayoshi

1 had earlier indicated their desire to testify. So
2 I'm going to ask you to leave your hands up. I will
3 admit one by one followed by Mr. O'Connor, followed
4 by Mr. Matayoshi, followed by Judy Limas, followed by
5 Wilfred Chang.

6 When I admit you into the room, you will be
7 able to turn on your audio and video. Please do so
8 as you're admitted in. I will then swear you in.

9 Good morning. I can see and hear you. I
10 will swear you in, then ask you to state your name
11 and address for the record, then you'll have three
12 minutes followed by questions.

13 Aloha. Do you swear or affirm that the
14 testimony you're about to give is the truth?

15 THE WITNESS: Yes.

16 CHAIRPERSON SCHEUER: Please proceed.

17 ROBERT O'CONNOR

18 Was called as a witness by and on behalf of the
19 Public, was sworn to tell the truth, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 THE WITNESS: My name is Robert O'Connor.
23 I live at 46-286 Ahuimanu Place, Kaneohe 96744.

24 Curious if I can share my screen. Is that
25 something I have the ability to do?

1 CHAIRPERSON SCHEUER: No. You have photos
2 that you want to submit?

3 THE WITNESS: I have a short PowerPoint and
4 map specifically that I wanted to show, but I can
5 speak to it, if I'm not able to share it.

6 CHAIRPERSON SCHEUER: Let me see if I can
7 adjust that. Try to share now. I will note that if
8 for whatever reason you're sharing anything
9 inappropriate, I will kick you out of the meeting,
10 but I'm not saying that you're planning to, but just
11 giving fair warning.

12 THE WITNESS: I don't see that option on
13 here to share.

14 CHAIRPERSON SCHEUER: It should be
15 available to you.

16 THE WITNESS: There it is. Everything on
17 your screen. Can you see that?

18 CHAIRPERSON SCHEUER: No. What happened
19 was we lost your video.

20 Mr. O'Connor, I'm going to ask you to
21 describe it. So if you can re-enable your video and
22 describe this, and then provide to the Commission in
23 an email what you want to share after you're done
24 with your testimony.

25 THE WITNESS: Can you still hear me?

1 CHAIRPERSON SCHEUER: I can still hear you.
2 Please proceed.

3 THE WITNESS: So I'm a recent UH grad. I
4 studied geography, looking at the impacts of human
5 induced construction and other things going on in
6 Kaneohe Bay, and basically wanted to speak to the
7 cumulative impacts that are going on in the bay and
8 what this project might mean to that.

9 Specifically, there's a couple things that
10 haven't been mentioned in EIS that I'm concerned
11 with, and I don't know if they have been addressed
12 specifically, but within the bay there has been a lot
13 of human induced impacts, whether it be vessel
14 groundings, nonpoint sources of pollution.

15 Historically the Marine Corps base, and all
16 the urbanization, there's been a steady decline in
17 reef health within the bay, and specifically this
18 happens because of urbanization onshore and grading
19 of land.

20 And I think it's important to note that not
21 only is the habitat endangering the Hawaiian green
22 sea turtle, but also critical habitat for Hawaiian
23 monk seals, and they're a federally protected
24 species, and that critical habitat is just adjacent
25 and includes all of Kaneohe Bay next to the area

1 where this is happening.

2 The mitigation efforts that I've seen in
3 the EIS are not effective for mitigating this, in
4 case there's a large rainfall during the process or
5 even after the process if it is not done right.

6 The coral protection hasn't been addressed.
7 If there is any sedimentation that runs off due to
8 this project, which is likely to happen, that can
9 serve to smother the coral and impact the fish
10 habitat in that area.

11 And there is also adjacent essential fish
12 habitat, what we call EFH that could be impacted, and
13 these are all federally protected areas.

14 So I did have a map that shows all these
15 different layers, and I'm willing to share that. And
16 I also have some documentation about the endangered
17 Hawaiian monk seal, and why that's federally managed
18 and what impacts this project can have to that.

19 So I propose you deny this request, and I'm
20 willing to take any questions that have to do with
21 what I just spoke about.

22 And just like to reiterate, I got my
23 master's degree at UH studying impacts such as this.
24 Also marine scientist outside of that, and a Kaneohe
25 resident. Thank you.

1 CHAIRPERSON SCHEUER: Mahalo. Are there
2 questions for the witness from the Petitioner?

3 MR. TABATA: No questions.

4 MR. PANG: No questions from the City.
5 Thank you.

6 MS. APUNA: No questions.

7 MR. YOSHIMORI: Intervenors have no
8 questions. Thank you.

9 CHAIRPERSON SCHEUER: Commissioners. Any
10 questions for Mr. O'Connor?

11 Mr. O'Connor, did you comment on the EIS
12 that was done during the comment period?

13 THE WITNESS: I did submit written
14 testimony at one point addressing some of these
15 concerns, and I think that is in the public record.

16 CHAIRPERSON SCHEUER: Thank you. Thank you
17 very much for your testimony this morning.
18 Appreciate it.

19 THE WITNESS: Thank you.

20 CHAIRPERSON SCHEUER: I'm going to change
21 your role back to being attendee, and admit
22 Representative Matayoshi.

23 Good morning, aloha.

24 THE WITNESS: Good morning, everybody.

25 CHAIRPERSON SCHEUER: Can you speak a

1 little bit louder or turn up the gain on your
2 microphone?

3 THE WITNESS: Is this better?

4 CHAIRPERSON SCHEUER: That's better, thank
5 you.

6 I know it's always awkward when I'm
7 swearing in a legislature. Here you're just a member
8 of the public.

9 Do you swear or affirm that the testimony
10 you're about to give is the truth?

11 THE WITNESS: I do.

12 CHAIRPERSON SCHEUER: State your name and
13 address for the record and you have three minutes.

14 SCOT Z. MATAYOSHI

15 Was called as a witness by and on behalf of the
16 Public, was sworn to tell the truth, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: I guess you can use my
20 capitol address, 415 South Beretania Street, Room
21 331, Honolulu, Hawaii 96813.

22 So I did submit testimony earlier, and I
23 had submitted additional testimony as well.

24 I want to make clear that my concern, my
25 primary, really my main concern is the safety of the

1 houses around the area that's being proposed to be
2 developed.

3 Initially when I looked up the plan, I
4 didn't think that there was -- I didn't think there
5 were too many issues, including while building, but I
6 did talk more recently to the a civil engineering
7 friend of mine, and I had him kind of take a look at
8 the plan as well, and he raised some concerns for the
9 surrounding area.

10 To just give you a little bit of
11 background, I do represent this area, so I have been
12 talking to the residents around there. And there
13 have been issues with flooding in that area, that's a
14 big concern.

15 In fact, one of the guys who lives there
16 had to recently dig a trench around his house because
17 his house got flooded during the last winter rains.

18 As we know, due to global warming, rains
19 are getting worse and expect to get worse as well.
20 There are safeguards in place in the plan itself, but
21 the concern was more the calculations of the size of
22 the retention basins and whether those would be
23 adequate to retain the significant amount of water,
24 or amount of water significant enough to prevent the
25 flooding from nearby houses.

1 Legally, I think that the -- when the area
2 is unimproved, it's hard for the residents to argue
3 that the flooding was caused by Hawaiian Memorial
4 Park, or to hold them liable. But if they do improve
5 the area, then as far as I know, Hawaiian Memorial
6 Park will be responsible for the runoff. And I
7 wanted to make sure that the plan adequately
8 addressed that.

9 As of right now, I don't think it does.
10 Whether it will in the future, or whether they can
11 make changes to it to adequately protect the
12 surrounding area, I have yet to be seen, but I very
13 much encourage that obviously to protect the houses.

14 As the plan is right now, I just can't
15 support it. Again, this is really coming from the
16 houses around the area preventing them from flooding.

17 There is a house I know of with a woman who
18 is too old, too frail to be evacuated quickly if the
19 water starts coming down.

20 So that's my testimony. I did want to make
21 sure that the Commission knew that it is changed from
22 my original testimony just due to added information
23 and me consulting with civil engineering friends
24 about it.

25 They're also moving a lot of dirt. I mean,

1 I'm not saying that can't be done safely, but they're
2 moving a lot of dirt to do this too.

3 I'm open to any questions. I have to go
4 pretty soon, I've got a majority caucus at 9:45.

5 CHAIRPERSON SCHEUER: Thank you. Are there
6 questions for the Representative from the Petitioner?

7 MR. TABATA: No questions.

8 MR. PANG: No questions from the City.

9 MS. APUNA: No questions.

10 MR. YOSHIMORI: Intervenors have no
11 questions. Thank you, Representative.

12 CHAIRPERSON SCHEUER: Commissioners,
13 starting with Commissioner Okuda.

14 COMMISSIONER OKUDA: Thank you very much,
15 Mr. Chair.

16 Representative Matayoshi, I will try to be
17 fast and brief.

18 I know your family has a long history on
19 Hawaii Island, and I think once I told you that my
20 family is very grateful to your great grandfather who
21 was a physician who took care of my grandmother.

22 But switching more to your presence on
23 Oahu, how long have you been a Kaneohe resident?

24 THE WITNESS: For a couple years now. My
25 district is Kailua and Kaneohe, so I lived in the

1 Kailua portion when I actually started running for
2 office.

3 COMMISSIONER OKUDA: I grew up in Kailua.
4 Let me ask you this. As a State
5 Representative, have you gotten a sense of how the
6 community feels about this expansion or proposed
7 expansion of Hawaiian Memorial Park?

8 THE WITNESS: Yeah, I mean, I've got a
9 sense of it. I also knock on a lot of doors. You
10 know, I want to be careful not to over-inflate.
11 Sometimes when people are shouting, it's not a
12 majority of the people shouting, but it can seem like
13 a lot more than are actually behind or on either side
14 of an issue.

15 So I mean, I have gotten somewhat of a
16 sense of what the community members would like. I've
17 also talked personally with people I know and are
18 friends with, friends with who live right around the
19 borders of this, and they allowed me into the
20 backyards to actually go hike around the area and see
21 it for myself. So that's what I'm basing my
22 testimony on.

23 COMMISSIONER OKUDA: What is your sense of
24 what you gathered from your interaction or outreach
25 with the community just as a legislator?

1 THE WITNESS: I'm not sure I completely
2 understand what information you want from me.

3 COMMISSIONER OKUDA: Just trying to find
4 out, are you able to comment how the community feels
5 about this project? Because for me personally, I'm
6 hearing all sorts of different things depending on
7 who the proponents or opponents are, and I think
8 you're kind of a neutral person.

9 THE WITNESS: In the surrounding area, and
10 I always like to take the surrounding community
11 areas, their opinions, with a little more weight,
12 because it directly affects them. You know, someone
13 who is living in Olomana shouldn't be able to weigh
14 in what is happening to someone else's backyard.
15 They can have opinion and are completely welcome to
16 that. I don't weigh in as heavily on that.

17 In the surrounding area, I would say that
18 there are a significant number of residents that care
19 very much, are very much opposed to the expansion for
20 one reason or another. It could be viewplane, it
21 could be saving the forest, could be the damselfly.
22 There are a lot of issues out there that have been
23 raised with my office.

24 I would think that there is a significant
25 other portion of the population who maybe haven't

1 heard of it, or has no opinion, and maybe they don't
2 live right up against the mountain side and are not
3 necessarily subject to these floods. So if it is not
4 right in your face, sometimes people just think it's
5 someone else's problem.

6 But a lot of the neighborhood can see the
7 area, and I have received testimony from individuals
8 living in Pohai Nani as well who don't want to see
9 expansion.

10 That being said, we need to weigh that
11 against whether there is an actual need in the
12 community for this expanded capacity for Hawaiian
13 Memorial Park, which is why the first testifier, that
14 was fascinating.

15 I hadn't even thought about it or looked at
16 it, but I did in the last five minutes look at
17 Craigslist and there are a significant number of
18 plots out there. Some of them are doubled. You
19 know, Craigslist, you can post whatever you want.

20 So some of them are people posting more
21 than once, or looks like maybe they didn't know how
22 to post, so it's the same post, just no picture, one
23 with picture.

24 But if there is really capacity, I think
25 that's worth at least looking into.

1 If we really are running out of space at
2 Hawaiian Memorial Park, I think there is an interest
3 in the -- to have more space, because people on the
4 Windward side like to stay on the Windward side even
5 after they're not alive any more.

6 But if there is a secondary market out
7 there which is as vast as we think, or what the
8 testifier claimed, I think that should be something
9 taken into consideration.

10 COMMISSIONER OKUDA: Thank you very much,
11 Representative, and thank you to your great
12 grandfather for the care he showed my grandparents.

13 CHAIRPERSON SCHEUER: Commissioner Aczon.

14 VICE CHAIR ACZON: Thank you, Mr. Chair.

15 Good morning.

16 On your testimony, I heard two concerns,
17 and I don't know if you heard the prior expert
18 testimonies about how to dispose those excess dirt.

19 But my question is mainly on your second
20 concern about the drainage and the retention basins.
21 I understand that there's some concerns on those.

22 But if the Petitioner make adjustment to
23 alleviate your concern, and if they even put on
24 condition that they will do it, would you still be
25 opposing the project?

1 THE WITNESS: If they were to recalculate
2 the retention basin, I mean it's kind of a long
3 process. But if they do adequately protect the
4 houses, then I have less of a problem with this.

5 Whether it's needed now though is another
6 good point that I thought was brought up. Whether we
7 need to expand it.

8 Essentially I know me and my
9 contemporaries, we don't want to be buried either.
10 You know, we're really just burn us and spread the
11 ashes kind of thing.

12 So I would hate to get rid of more
13 conservation land if it is not needed, and if there
14 is adequate space. If there's not adequate space and
15 there is demand, sure, yeah, if the houses are
16 adequately protected.

17 In fact, I want more than just say the
18 amount of risk there right now, I would like them,
19 because they're going to be developing this area,
20 putting the houses at risk, I would like them to
21 assure us that the houses are not going to be
22 flooded, and really calculate in the anticipated
23 increase in rainfall that we are probably going to be
24 experiencing through global warming.

25 My primary concern is protecting the

1 houses. If they do a good job and can prove through
2 science and engineering the houses are adequately
3 protected, then I have no problem.

4 If the spaces are not needed, that's
5 something we should really consider. We don't want
6 to be taking down conservation land with no purpose.

7 If there is a reason to protect the houses,
8 fine. If the real impetus is for the need of
9 creating these new grave plots is not there, then it
10 undermines the entire purpose of extending the
11 border.

12 VICE CHAIR ACZON: I'm pretty sure we are
13 going to have more discussion on those, but I didn't
14 hear your answer whether you're going to be still
15 oppose the project if those concerns are being
16 addressed. Will you be still oppose the project?

17 THE WITNESS: Like I said, my main concern
18 is the houses. If they're going to protect the
19 houses, I'm not going to oppose it on the engineering
20 grounds.

21 That new argument though really did ring
22 pretty true with me. If there is no demand for the
23 plots, then that is another concern for me. And it
24 was not in my testimony, just brought up by the
25 testifier, but to me that was a pretty good point

1 that I think we should consider.

2 VICE CHAIR ACZON: Thank you,
3 Representative Matayoshi. Thank you, Mr. Chair.

4 CHAIRPERSON SCHEUER: Commissioners, other
5 questions for the witness?

6 I have a couple of questions,
7 Representative.

8 Starting with the demand, have you closely
9 followed our lengthy proceedings on this docket?

10 THE WITNESS: I have not. I'm actually
11 back in my law firm now too, so it's hard to juggle
12 everything, but did something happen that was --

13 CHAIRPERSON SCHEUER: I just want you to be
14 aware that both the Intervenor as well as the
15 Petitioner have provided expert witnesses addressing
16 the topic that the first witness today spoke on, over
17 whether or not there is sufficient demand on this.

18 And so I do believe that there's robust
19 evidentiary record before us, and contentions on all
20 sides, but a robust record and analyses.

21 Regarding safety to the homes, we don't
22 know each other, but my background is in
23 environmental policy and conservation and I work in
24 climate change issues, among other things.

25 You're 100 percent correct that we are

1 going to experience more flooding in Hawaii while
2 precipitation overall is going down, events are
3 becoming more intense.

4 So for many communities, including the
5 communities you represent, this is the case no matter
6 what. There are places that haven't flood before,
7 that may flood now because of simply environmental
8 change, and then layer in, okay, now you're changing
9 the landscape.

10 The question I have for you is the standard
11 that you suggested was that if the developer can
12 assure that these homes will be safe.

13 I think if they did nothing, there's no way
14 they can assure the homes will be safe, because of
15 changing climate. And I suppose theoretically
16 possible engineering designs that can do 100 percent,
17 yes, we know that every drop will be promptly
18 diverted, but we also know rain events get higher and
19 higher, more intense, and there's probably some level
20 at which there is a tradeoff between what you can
21 engineer, what you can fund, and the amount of
22 additional safety.

23 So what you think is beyond what is in the
24 law a reasonable standard for this Commission to
25 consider, short of absolute guarantee that --

1 THE WITNESS: And I don't -- you're
2 right -- I don't expect them to give absolute
3 guarantee. I don't mean for them to build a moat
4 around the Memorial Park to make sure not a single
5 drop gets by.

6 When I was talking to the surrounding
7 residents, whoever developed that area, put in a
8 drainage canal that's now overgrown, I mean, I saw a
9 full on tree growing in that thing. So it's clearly
10 not working any more, and even when it was put in
11 place, it was only put in place for a ten-year flood.

12 I would like protections put in place to at
13 least guarantee that the -- again, I'm not an
14 engineer, but I would like them to guarantee against
15 at least 50 or 100-year flood --

16 CHAIRPERSON SCHEUER: Representative, you
17 froze right on the punch line of your testimony.

18 THE WITNESS: That's what always happens in
19 the movies.

20 So, yeah, I think given that 100-year event
21 are happening more and more frequently now, I think
22 it would be safe to say if they provided that kind of
23 degree of protection to the houses, I would certainly
24 appreciate it. I know there is very little to no
25 protection for the houses right now.

1 So if the plan is going to better protect
2 the houses to a significant degree, I think that
3 would be what the Commission should be looking for,
4 that they're doing the work to also protect and
5 contribute to the community around the site itself.

6 CHAIRPERSON SCHEUER: Thank you for that
7 clarification of your testimony. I just wanted to
8 make sure you weren't saying that there had to be --

9 THE WITNESS: 100 percent is impossible.

10 CHAIRPERSON SCHEUER: Thank you.

11 Anything further, Commissioners? If not,
12 thank you very much for taking the time to testify.

13 We are more fun to hang out with than the
14 majority caucus.

15 THE WITNESS: They aren't fun, forget those
16 guys. I appreciate you all for your work on this, I
17 really appreciate it. You're more fun.

18 CHAIRPERSON SCHEUER: I'm going to admit
19 you back to being an attendee.

20 I'm now going to bring in Judy Limas. If
21 you can turn on your audio and video.

22 Good morning. I can see you.

23 THE WITNESS: Good morning, everyone.

24 CHAIRPERSON SCHEUER: Do you swear or
25 affirm the testimony you're about to give is the

1 truth?

2 THE WITNESS: Yes, I do.

3 JUDY LIMAS

4 Was called as a witness by and on behalf of the
5 Public, was sworn to tell the truth, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 THE WITNESS: Thank you for the
9 opportunity, everyone.

10 My name is Judy Limas. I'm a resident of
11 Kaneohe. I've lived here since 2008, 45-214 Puali
12 Koa Place, Kaneohe.

13 I am a marine biologist and I am a former
14 member of the Kaneohe Bay Regional Council, and I am
15 testifying today just in sort of as a witness, I
16 guess, to the Kaneohe Master Plan as it were.

17 I served on the Kaneohe Bay Regional
18 Council since 2014 to 2020, just recently cycled off.

19 I want to make clear I am a Member of
20 University of Hawaii, faculty member there as a
21 marine biologist. I am not testifying on behalf of
22 the University, I'm testifying as a private citizen.

23 So my testimony really, the gist of this is
24 that the proposed expansion that is on the table
25 really runs counter to the general position and the

1 recommendations of the Kaneohe Bay Master Plan. That
2 master plan was written in 1992, and I fully
3 acknowledge that it does need to be revised. And
4 there are elements of it that are quite dated.
5 However, the principles that were used in drafting
6 that master plan remain an issue.

7 So the strong evidence assembled by the
8 task force that created that master plan indicated
9 that water and ecological quality in the bay has been
10 deteriorating since the mid 1980s and it continues to
11 deteriorate.

12 And I would like to just read a couple of
13 passages from the master plan that I think are
14 relevant to this discussion.

15 The task force that developed the Kaneohe
16 Bay Master Plan took the following positions on land
17 use issues.

18 First, protect natural streams and preserve
19 existing streamwater flows into Kaneohe Bay.

20 Second, preserve in their natural state
21 existing wetlands, natural (indecipherable) -- and
22 hillsides with slopes of 20 percent or more.

23 Restrict development in the watershed in
24 accordance with the Ko'olaupoko Development Plan.

25 Also the conceptual solutions that the task

1 force used for public open space and access regarding
2 steep slopes was that areas in excess of 20 percent
3 slope be designated as conservation district by the
4 State, and that graded areas should be limited to
5 ensure runoff is manageable.

6 Second, that maintaining open space is
7 critical to preserve both the permeability of the
8 watershed, which can help offset the effects of
9 urbanization and channelization and the existing
10 rural character of the bay.

11 And then thirdly, the general
12 recommendations overall in their general
13 recommendations -- excuse me -- there were many
14 recommendations for changing land use district
15 designations for key areas of Kaneohe Bay, but they
16 were always from Urban to Conservation and not
17 reverse, and one of those areas included the Kaneohe
18 Kawa Stream confluence area.

19 The other point I would like to make --

20 CHAIRPERSON SCHEUER: Three minutes.

21 THE WITNESS: Thank you very much for the
22 time.

23 CHAIRPERSON SCHEUER: If you want a moment
24 to make a concluding statement.

25 THE WITNESS: Sure. I'll just say the

1 water quality issues, the statement in the plan
2 indicates that the carrying capacity of the ecosystem
3 for further urban development, based on responses to
4 specific parameters is unknown.

5 Aggregate changes in reef community
6 structure indicate that the ecosystem may be
7 approaching its adaptive limits. The
8 (indecipherable) signals and the note of
9 uncertainties necessitate conservative land use
10 decisions.

11 Future urbanization can be controlled, but
12 existing urbanization can possibly be mitigated but
13 not reversed. That's a direct quote from the plan.

14 Thank you very much for your time, and I'm
15 sorry I went over.

16 CHAIRPERSON SCHEUER: Thank you. You were
17 very close.

18 Questions for the witness, Mr. Tabata?

19 MR. TABATA: No questions.

20 CHAIRPERSON SCHEUER: Mr. Pang?

21 MR. PANG: No questions.

22 CHAIRPERSON SCHEUER: Thank you.

23 MS. APUNA: No questions.

24 MR. YOSHIMORI: Intervenors have no
25 questions. Thank you.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Commissioner Okuda.

3 COMMISSIONER OKUDA: Thank very much, Ms.
4 Limas. Should I call you Ms. Limas or doctor?

5 THE WITNESS: It is Dr. Limas, but I
6 usually go by Judy.

7 COMMISSIONER OKUDA: Okay, but you're a
8 doctorate in what area, may I ask?

9 THE WITNESS: It is in marine biology.

10 COMMISSIONER OKUDA: You know, the
11 Petitioner in this case has submitted engineering and
12 other expert testimony which seems to argue that,
13 number one, there would really not be harmful effects
14 from this development, and in certain areas the
15 development may, in fact -- because of certain things
16 that their consultants or experts presented --
17 there's a possibility that it may actually better
18 water quality for a number of reasons.

19 Have you looked at the specific consultant
20 reports or expert reports submitted by the Petitioner
21 on those issues?

22 THE WITNESS: I'm sorry to say I have not,
23 and I am not an engineer, and I don't have any sort
24 of experience in that area, so I don't know that I
25 can speak to that.

1 I can say just from experience, I think
2 general experience, I think that we have seen over
3 the years that urbanization, even though when there
4 are engineered solutions to issues that propose that
5 they would make things better, they often actually do
6 not work the way that they were designed.

7 That's all I can say about that, but I'm
8 not an engineering expert.

9 COMMISSIONER OKUDA: And having grown up on
10 the Windward side, I remember Kaneohe Bay a lot
11 differently than it is now.

12 But my question is the type of urbanization
13 being proposed. And I don't mean to over generalize
14 it, but the cemetery is not a giant concrete pad, or
15 the proposed development is not a giant concrete pad,
16 it really is controlled -- I don't want to call it
17 like a vegetation -- but like a controlled lawn.

18 The fact that that type of proposed
19 development differs from, for example, urbanization
20 that looks like Windward Mall, would that affect your
21 professional judgment in any way about the potential
22 impacts of the Kaneohe Bay?

23 THE WITNESS: Thank you for that question.

24 I believe that there is a difference
25 between impermeable and permeable surfaces in

1 development. And they do change, in my
2 understanding, the impacts on water quality, and I do
3 have a little bit of an understanding about
4 development of impermeable surfaces from the time I
5 spent in Southern California.

6 However, one thing that I would say, and
7 that you already pointed out, is that this is
8 essentially a mono culture of turfgrass, which is not
9 unsimilar to golf courses in that they need to be
10 maintained. They do actually increase runoff. I
11 think that there's a good record for that in studies.
12 And they are often fertilized to maintain the
13 esthetics of that.

14 And one of the things that the Kaneohe Bay
15 Master Plan did comment on was golf courses. It
16 doesn't say anything about cemeteries in the master
17 plan, but it does comment on golf courses, and in my
18 personal opinion, I believe that those are very
19 similar in the way they are managed and the potential
20 impacts.

21 COMMISSIONER OKUDA: Final question. In
22 the documentation that you've personally seen
23 regarding Kaneohe Bay, was there any evidence of the
24 present configured Hawaiian Memorial Park Cemetery
25 contributing in any negative way to water quality or

1 the ecosystem in Kaneohe Bay?

2 THE WITNESS: I do not have any information
3 to that effect, no. I'm not aware of that, other
4 than I think the potential for it, given the
5 channelization of our streams.

6 I think the Kaneohe Bay Master Plan, if I
7 can go back to that, was -- the caution there was the
8 development and changing of slopes. And so I think
9 that that might be a difference in this expansion
10 versus what was developed originally in the Hawaiian
11 Memorial Park.

12 COMMISSIONER OKUDA: Thank you very much,
13 Dr. Limas. Thank you, Mr. Chair. No further
14 questions.

15 CHAIRPERSON SCHEUER: Thank you,
16 Commissioner Okuda.

17 Commissioner Chang.

18 COMMISSIONER CHANG: Thank you, Judy, I
19 greatly appreciate you taking the time to be here
20 this morning.

21 I was just wondering, you were mentioning
22 that -- that this was inconsistent with the
23 Ko'olaupoko -- maybe let me ask you this.

24 Do you know whether this plan is consistent
25 with the Ko'olaupoko Sustainable Communities Plan?

1 THE WITNESS: That's an excellent question
2 and I have not looked at the Ko'olaupoko Sustainable
3 Development Plan in, I would say, recently that I
4 could answer that question with confidence.

5 COMMISSIONER CHANG: Thank you so much for
6 your testimony.

7 CHAIRPERSON SCHEUER: Commissioners,
8 further questions for Dr. Limas?

9 What is the date of the most recent version
10 of the Kaneohe Bay Master Plan?

11 THE WITNESS: It's 1992. Hasn't actually
12 been revised since then. I want to say it was in
13 May, 1992.

14 CHAIRPERSON SCHEUER: I'm familiar with
15 that version of the plan. I didn't know whether
16 there was a more updated version.

17 THE WITNESS: There hasn't been. It was
18 discussed actually when I was on the council, and
19 unfortunately the council had some interruptions due
20 to lack of representation on it, but I believe that
21 it is actually on the docket again to revisit that
22 for updating.

23 CHAIRPERSON SCHEUER: Do you know if the
24 plan talked about beyond land use controls by
25 government? Did the Kaneohe Bay Master Plan talk

1 about the use of conservation easements at all?

2 THE WITNESS: I believe that there is
3 something in there about some conservation easements,
4 may be relevant to northern parts of the bay. I
5 don't recall it being discussed in southern parts of
6 the bay, but I would be happy to look if you would
7 like me to.

8 CHAIRPERSON SCHEUER: Are you familiar with
9 the proposal in front of us in exchange for a partial
10 urbanization, and absolutely changing into the Urban
11 District and changing of steep slopes, that there is
12 a permanent easement put on the remainder of the
13 property? Are you familiar with that provision?

14 THE WITNESS: I am familiar with that
15 provision. And I think that that's an excellent
16 element of that provision, but I also would just say
17 that the grading of the slope is still, I think, of
18 concern.

19 CHAIRPERSON SCHEUER: Thank you very much
20 for your testimony today.

21 THE WITNESS: Thanks very much.

22 CHAIRPERSON SCHEUER: We really appreciate
23 it. I'm going to move you back into being an
24 attendee.

25 I'm going to admit the last person who

1 raised their hand, Wilfred Chang, and after that we
2 will take a break. When you're admitted to the
3 meeting, please enable your audio and video.

4 THE WITNESS: Good morning.

5 CHAIRPERSON SCHEUER: Aloha.

6 Do you swear or affirm the testimony you're
7 about to give is the truth?

8 THE WITNESS: Yes, I do.

9 CHAIRPERSON SCHEUER: Please state your
10 name and address for the record.

11 WILFRED CHANG

12 Was called as a witness by and on behalf of the
13 Public, was sworn to tell the truth, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 THE WITNESS: My name is Wilfred Chang, my
17 address -- I'll use my business address -- 451
18 Atkinson Drive. I'm ILWU International
19 Representative for Hawaii.

20 The reason why I'm testifying is because I
21 was asked on behalf of our membership to make up the
22 grounds crew at Hawaiian Memorial, as well as our
23 membership in the areas of Kaneohe.

24 We do have longshoremen. We do have people
25 working for housing and trucking and hospitality and

1 hospitals that reside in Kaneohe, so I'm taking this
2 opportunity to provide support for this amendment
3 that is being asked by Hawaiian Memorial.

4 Hawaiian Memorial has been a union of ours
5 since I believe the late '60s, early '70s. They have
6 been in existence for over 50 years.

7 I wanted to take this opportunity to speak
8 on the company as what it provides for the community
9 as far as of the workforce, our membership. I don't
10 know if you guys realize, but 100 percent of the
11 workforce is local. They come from Kaneohe as far as
12 Waimanalo, Kahalu'u, and the Ko'olaupoko area.

13 What is of concern to me, and again, please
14 forgive me, I'm not from that area, I'm from Pearl
15 City, however, the community has led strong support
16 in this project. I don't understand why the company
17 is being vilified.

18 They have been going above and beyond --
19 not going to get into the specifics about dynamics
20 about science, leave that to the professionals. I'm
21 sure they did their due diligence.

22 But what I will speak on is ability for our
23 membership to provide for their families for the
24 future, past, present and future. We have had two
25 members recently retire, been there for 50 years.

1 They were able to provide a great living for their
2 families.

3 So in short, we are in support of this
4 project. Please give strong consideration to this
5 project. We're open to any questions.

6 CHAIRPERSON SCHEUER: Thank you for your
7 testimony.

8 Petitioner, questions for the witness?

9 MR. TABATA: No questions.

10 MR. PANG: No questions from the City.
11 Thank you.

12 MS. APUNA: No questions.

13 MR. YOSHIMORI: Intervenors have no
14 questions. Thank you.

15 CHAIRPERSON SCHEUER: Commissioners, any
16 questions for Mr. Chang?

17 If not, thank you very much for your
18 testimony today. We appreciate it.

19 THE WITNESS: Pleasure. Thank you.

20 CHAIRPERSON SCHEUER: I'm going to move Mr.
21 Chang to being an attendee. Anybody remaining in the
22 attendee to this meeting who wishes to testify in
23 this matter, raise your hand now using the
24 raise-your-hand function. Seeing none.

25 I'm going to close public testimony in this

1 matter, call for a ten-minute break to 10:23 and we
2 will start with the closing arguments of the
3 Petitioner. We're in recess.

4 (Recess taken.)

5 CHAIRPERSON SCHEUER: We are back on the
6 record. It's 10:23 a.m..

7 Before Mr. Tabata, before you proceed, can
8 you give me an overview, and I ask all the parties,
9 how many minutes you think you need for closing
10 argument absent questions?

11 MR. TABATA: I'm shooting for ten minutes.

12 MR. PANG: City, very briefly, three to
13 five minutes.

14 CHAIRPERSON SCHEUER: Two hours, Ms. Apuna?

15 MS. APUNA: Two minutes.

16 CHAIRPERSON SCHEUER: Mr. Yoshimori.

17 MR. YOSHIMORI: Intervenors estimate
18 14 minutes.

19 CHAIRPERSON SCHEUER: Not 13-and-a-half?
20 14, okay. This sounds good.

21 Thank you for that heads up. We will see
22 how far we can get before our next break.

23 Mr. Tabata.

24 CLOSING ARGUMENT

25 PETITIONER

1 MR. TABATA: Thank you, Chair.

2 Hawaiian Memorial is requesting approval of
3 its Petition for District Boundary Amendment for the
4 reclassification of approximately 53.449 acres to the
5 Urban District.

6 If Hawaiian Memorial's Petition is
7 approved, Hawaiian Memorial will proceed with the
8 expansion of the existing cemetery, the creation of
9 Cultural Preserve, the execution of a Conservation
10 Easement, the construction of Drainage Improvements,
11 a Protection Plan for the Blackline Hawaiian
12 damselfly, as well as continued future cemetery
13 operations that will be made possible with the
14 expansion.

15 The cemetery expansion will add 27.5 acres
16 of new cemetery lands for future interments,
17 including burials and cremation interments. The
18 expansion will result in approximately 30,000 new
19 burials that will allow Hawaiian Memorial to care for
20 our families' needs well into the future.

21 More opportunities will be created to
22 provide families with the option of being interred
23 together in Kaneohe.

24 In addition to traditional burials,
25 cremation options will be available, including

1 cremation gardens like the one we viewed at Ocean
2 View Garden during the LUC site visit.

3 The expanded cemetery will, like the
4 existing cemetery, be covered by an Endowment Care
5 Fund that will ensure the future maintenance of the
6 cemetery in perpetuity.

7 The 145-acre Cultural Preserve would
8 facilitate the restoration and management of
9 Kawa'ewa'e Heiau, and access to the Cultural Preserve
10 would be provided through the main entrance of
11 Hawaiian Memorial Park to allow cultural
12 practitioners and Kumu Hula to continue their
13 practice of gathering plants and care for the
14 resources for cultural practices.

15 The Cultural Preserve will also allow for
16 traditional cultural practices, including burial
17 practices in the Preserve. And this is an express
18 wish for the Hawaiian practitioners.

19 Management of the Cultural Preserve by the
20 Ko'olaupoko Hawaiian Civic Club will address issues
21 relating to cultural practices, access, maintenance,
22 education, and the management of areas subject to
23 rockfall.

24 The Conservation Easement would cover
25 approximately 156.5 acres of land, and would include

1 the cemetery expansion area, the Cultural Preserve,
2 as well as 114.5 additional acres of Hawaiian
3 Memorial's parcel.

4 The Conservation Easement would guarantee
5 in perpetuity that the land will not be developed for
6 any other purpose.

7 The prohibitions in the Conservation
8 Easement would constitute a relinquishment of any
9 existing or potential development rights, other than
10 the cemetery expansion.

11 So even though certain development may be
12 allowed on Conservation District land, the
13 Conservation Easement would prohibit any future
14 development and preserve the land in its natural
15 state.

16 The Project will include drainable
17 improvements that will reduce the stormwater runoff
18 by four percent and runoff volume by five percent.
19 This reduction will be achieved by decreasing the
20 slope of the land and improving the permeability of
21 the soil, resulting in more water being kept on the
22 property.

23 Drainage improvements will include
24 retention/detention basins and vegetative buffers.
25 The basins will be built with 12,700 cubic feet of

1 capacity, and vegetative buffers will be placed
2 between the expanded cemetery and lower-lying areas.

3 Best management practices, or BMPs, will be
4 used during construction to mitigate against runoff,
5 and as required by the City's rules, construction
6 will only be allowed to proceed in five-acre
7 increments to minimize the area of exposed earth at
8 any given time during construction.

9 We have provided the Commission with our
10 Preliminary Engineering Report which describes our
11 proposed drainage improvements. If our Project is
12 approved, a grading permit will be required along
13 with more detailed engineering. The City's drainage
14 rules, which have the force and effect of law, will
15 be applied and enforced by the Department of Planning
16 and Permitting, Civil Engineering Branch.

17 Protection for the Blackline Hawaiian
18 Damselfly is also a part of the Hawaiian Memorial
19 Project. The proposed Project will allow Hawaiian
20 Memorial to install improvements to ensure the
21 survival of the damselfly by installing a waterline
22 to guarantee water flow into the seep, installing
23 herringbone subsurface drains to aid in water flow,
24 the building of fences to keep out wild pigs, placing
25 small sticks at the water edge to help the young

1 damselfly avoid predators, and monitoring to keep out
2 invasive species, watch the water flow, and manage
3 the area.

4 These protections will give the damselflies
5 a better chance at survival in light of drought,
6 trespassers, pigs, ants, and invasive species like
7 mosquito fish.

8 Hawaiian Memorial has been operating as a
9 cemetery since 1958. It has, throughout the years,
10 cared for our families and neighbors, and the
11 Petitioner has been, and is, the employer to over 200
12 individuals.

13 Petitioner's parent company, Services
14 Corporation International or SCI, is a publicly
15 traded corporation that will contribute the
16 \$30 million in development cost if this Project is
17 approved.

18 If the Project is approved, our market
19 study forecasts absorption of the expanded cemetery
20 in approximately 23 years. That's 23 additional
21 years of families caring for their loved ones, and 23
22 additional years of continued employment. The
23 cemetery will one day become full and further
24 expansion will not be possible. But that day need
25 not be today.

1 When that day arrives, we can take comfort
2 in knowing that the financial strength of SCI with
3 the fact that Hawaiian Memorial is an Endowment Care
4 Fund cemetery, will ensure that our interments will
5 be maintained and cared for in perpetuity with trust
6 monies dedicated solely for that purpose.

7 We have all seen disturbing images on TV of
8 neglected or vandalized graves, together with
9 distraught family members. That, unfortunately, can
10 be the result of cemeteries that are not Endowment
11 Care Fund cemeteries.

12 When petitioners come before this
13 Commission to ask for approval, it can be a challenge
14 to know whether the proposed project is viable. As
15 regulators, planners and lawyers, we tend to get
16 jaded and view projects with skepticism.

17 But Hawaiian Memorial's expansion project
18 is not speculative. Hawaiian Memorial is a proven
19 long-standing business and an established employer.
20 Hawaiian Memorial is not proposing a new or
21 controversial use. The Project is a continuation of
22 a 60-year old cemetery, and according to public
23 testifier John Puchalski, Kaneohe Town was built
24 around Hawaiian Memorial Cemetery.

25 Other public testimony in support of the

1 Project included Gold Star Families, Kaneohe
2 residents, labor unions, people with relatives
3 interred at Hawaiian Memorial, and members of
4 Ko'olaupoko Hawaiian community. This cross-section
5 of our island shows us that Hawaiian Memorial has
6 earned its place in our community.

7 Finally, we would like to thank the
8 Commission, its staff, and the parties for everyone's
9 hard work. The COVID-19 pandemic has forced us to
10 accept disruptions or make adjustments, and so it is
11 notable that the Land Use Commission has been able to
12 transition to continue to do business.

13 The docket on this Petition has been
14 ongoing for about one year, and for some of us it's
15 been anywhere from four to ten years of laying the
16 groundwork to bring this Petition for district
17 boundary amendment before this Commission.

18 The vast majority of proposed projects
19 never get this far. Most projects fail in the early
20 stages for various reasons, including infrastructure
21 costs, land acquisition, lack of financing, the need
22 for a community plan amendment, the need for an EIS,
23 the lack of public support, or simply the inability
24 to accept a process that can sometimes require a
25 decade to complete.

1 There are dozens of pieces that need to
2 come together before a project can be brought before
3 the Land Use Commission.

4 There are many supporters, friends,
5 colleagues, and employees to be thanked, without whom
6 we would not be able to make this request.

7 We would especially like to thank the
8 Department of Planning and Permitting and Office of
9 Planning for helping shape the project with their
10 comments and issues and for their support of our
11 project once we had addressed their issues.

12 It should be acknowledged that OP and DPP
13 have the difficult job of coordinating the review as
14 State and County agencies, as well as representing
15 the agencies' issues and concerns, which are in
16 addition to their own.

17 Therefore, Petitioner Hawaiian Memorial
18 Park, Ltd., respectfully requests that this Honorable
19 Commission approve this request to reclassify
20 approximately 53.449 acres of land to the Urban
21 District.

22 If there are any questions, we will be
23 happy to try to answer them. Thank you all very
24 much.

25 CHAIRPERSON SCHEUER: Thank you, Mr.

1 Tabata.

2 Our first questions come from Commissioner
3 Giovanni, followed by questions from Commissioner
4 Okuda.

5 COMMISSIONER GIOVANNI: Thank you, Chair.
6 Thank you, Mr. Tabata.

7 Mr. Tabata, are you familiar, or do you
8 recall the expert witness testimony provided by the
9 Intervenor regarding the meteorological events that
10 might be forthcoming as a consequence of climate
11 change?

12 MR. TABATA: Yes. Mr. Businger.

13 COMMISSIONER GIOVANNI: Is it fair to
14 characterize that testimony as an indication that
15 most 24-hour storms, and the 100-year storms will be
16 more violent and more frequent in the future?

17 MR. TABATA: I believe there was no
18 evidence contradicting Dr. Businger.

19 COMMISSIONER GIOVANNI: Is that a yes?

20 MR. TABATA: That's a yes.

21 COMMISSIONER GIOVANNI: Are you also
22 familiar with the expert testimony by the Intervenor
23 that suggested that using the City and County's
24 standards for sizing of the retention basins, based
25 on the 94-acre parcel study, were insufficient and

1 they were suggesting that they might be undersized by
2 a factor of five- to tenfold?

3 MR. TABATA: I recall John Higham, their
4 engineer, testified that the basins should be
5 expanded by five times, and he came with a number, I
6 guess -- sorry.

7 Our basins are sized at 12,700 cubic feet.
8 So five times of that, according to Mr. Higham, our
9 basins should be 63,500 cubic feet.

10 COMMISSIONER GIOVANNI: So in general -- I
11 don't want to get into the specific sizing -- but the
12 testimony suggested a more stringent standard be
13 applied as compared to the one recognized by your
14 preliminary civil engineering work. And that would
15 result in a larger retention basin.

16 Do you recall that general testimony? He's
17 referring to something called the Plate 6 methodology
18 which was more stringent than what you suggested.

19 MR. TABATA: Right. John Higham's
20 testimony, as well as Jami Hirota's testimony, I
21 think they both acknowledge that the use of Plate 6
22 would be required if we had over 100 acres of
23 drainage area, which we do not. We're at about
24 93 acres.

25 So according to the rules, we are properly

1 using the rational method. But nevertheless, John
2 Higham's testimony is clear, he believes it should be
3 five times bigger, the basins, that is.

4 COMMISSIONER GIOVANNI: That's correct, and
5 I agree with your recollection.

6 Do you also recall the exchange between Mr.
7 Matsubara and myself on this topic?

8 MR. TABATA: I believe that was towards the
9 end of the proceeding, something to do with a
10 condition I think.

11 COMMISSIONER GIOVANNI: I asked if the
12 Petitioner would, in his judgment, would accept a
13 more stringent condition to use the Plate 6
14 methodology as opposed to the rational methodology.
15 And my characterization -- and I'll say it and you
16 can either agree with it or dispute it.

17 Mr. Matsubara said that they would comply
18 with the rational method, and if it was imposed by
19 condition of this Land Use Commission, that may or
20 may not -- we may or may not have the authority to do
21 that, and that might be subject even being challenged
22 in the Supreme Court.

23 And to avoid that contingency, one way to
24 avoid that would be if the Petitioner voluntarily
25 agreed to use the more stringent Plate 6 methodology

1 which would result in larger retention volumes.

2 Do you recall that exchange?

3 MR. TABATA: Yes, I do. And Mr. Matsubara
4 was correct in that the use of the condition would
5 need to be based on the law, and that we would follow
6 the law.

7 And it's also correct, however, that if we
8 agree to a condition, then that can serve as the
9 basis for applying it and enforcing it.

10 So, yes, if we agreed to the condition,
11 then it can be applied. I agree.

12 COMMISSIONER GIOVANNI: Are you willing to
13 agree to a condition such as that, the more stringent
14 methodology for sizing the retention ponds?

15 MR. TABATA: We would certainly appreciate
16 having the opportunity to consider it.

17 You know, if there is a -- if you're
18 looking for us to expand it to a certain size, if we
19 agree to it, we need to make sure that we can comply
20 with it, and we would like some time to talk to our
21 civil engineer, if possible a short recess, and get
22 back to you, you know, shortly.

23 COMMISSIONER GIOVANNI: Do you remember the
24 conversation between Mr. Matsubara and I when he said
25 that my questioning was putting you him in the

1 proverbial position between a rock and hard place?

2 MR. TABATA: Yeah, we are trying to get out
3 of that place right now.

4 COMMISSIONER GIOVANNI: Is it clear that
5 the location to get out of that position, was to
6 voluntarily agree to a more stringent methodology for
7 sizing the retention ponds?

8 MR. TABATA: Absolutely. We would like to
9 agree to that, however, we would like to have a
10 number, if it's 63,500 or what, and have a chance to
11 speak with our engineer. I think it's reasonable, if
12 you can give us ten minutes or 15 minutes. I just
13 want to make sure we can comply with that large a
14 basin.

15 COMMISSIONER GIOVANNI: Chair, I'm willing
16 to afford the time. I think this is a critical issue
17 which will affect my vote on this Petition, and I
18 would like to hear back if ten minutes is sufficient,
19 I don't know if it is.

20 But to me, in the absence of a hard and
21 firm commitment by the Petitioner, it will affect my
22 position on this docket.

23 CHAIRPERSON SCHEUER: Commission, my
24 inclination is that -- well, that the Petitioner
25 could have anticipated this line of questioning, but

1 that I'm willing to give ten more minutes. I'm going
2 to a ten-minute recess immediately for them to
3 consult and come back with their response and then
4 continue with their questioning.

5 Is that acceptable, Commissioners?

6 COMMISSIONER GIOVANNI: Sure. Thank you,
7 Chair.

8 CHAIRPERSON SCHEUER: We are in a
9 ten-minute recess until 10:52.

10 (Recess taken.)

11 CHAIRPERSON SCHEUER: Let's go back on the
12 record.

13 It is 10:51 A.M. You had nine minutes.

14 Can you respond to Mr. Giovanni's question?
15 And he'll be allowed to continue questioning then.

16 MR. TABATA: Yes, thank you.

17 We got to speak with our engineer, and we
18 believe we can construct the basins to capacity of
19 the 63,500 that John Higham recommends. So if we're
20 given a condition that requires us to build our
21 retention/detention basins to 63,500, we offer that,
22 and we believe we can accept it and comply with it.

23 COMMISSIONER GIOVANNI: I think -- I don't
24 think we have enough specific information on record
25 to just adopt a specific number. But I think we

1 could agree to accept the more stringent methodology
2 to be used that may produce a number such as that,
3 which would be the normal course for the process.

4 The numbers that comes out of a Plate 6
5 analysis for 100-acre-plus excavation may result in
6 63,000 or more than 63,00 or less than 63,000. I
7 have not done that analysis and I've not seen any
8 evidence that supports that number specifically,
9 other than the conjecture of the expert testimony
10 that was provided by the Intervenor.

11 So with that, are you saying you are
12 willing to accept and utilize the more stringent
13 Plate 6 methodology to determine the appropriate and
14 adequate size of the retention basins?

15 MR. TABATA: What I'm told is that if we go
16 with Plate 6, it may not result in any larger
17 detention basins.

18 COMMISSIONER GIOVANNI: It may not, no, but
19 it's more stringent.

20 MR. TABATA: What I'm told, is it affects
21 the entire drainage system. It's going to require us
22 to enlarge the pipes, deal with the higher flows of
23 Plate 6, and then send it to the City's drain and
24 then let them deal with it. That's what I'm told.

25 So if we want to enlarge our drainage

1 basin, this is the opportunity to require us to
2 enlarge it, according to the Intervenor's own expert
3 witness.

4 I don't know -- we don't know what it will
5 look like if the only metric we're forced to comply
6 with is Plate 6. It won't just affect the basin,
7 it's the entire system.

8 COMMISSIONER GIOVANNI: As maybe it should.

9 MR. TABATA: And it may not affect the --

10 COMMISSIONER GIOVANNI: You heard the
11 testimony today from Representative Matayoshi, this
12 is the number one issue that had compelled him to
13 come and provide public today. It's very unfortunate
14 that the topography of that land funnels the drainage
15 directly in the backyards of homes that are already
16 built right below where this project would occur.

17 So it does require special and adequate and
18 stringent attention to this detail. I know it's
19 costly, but it's the only thing that, in my view,
20 must be addressed in an adequate fashion to assure
21 the safety of the people living below the project.

22 MR. TABATA: First of all, Commissioner,
23 I'm not arguing with you. I want to get to the same
24 place you're getting, which is decrease as much as
25 possible the flow of water, but the drainage rules

1 are set up so that we do not increase the flow, that
2 is the standard.

3 And the problem with Plate 6 is that there
4 is no way to judge what to measure post development.
5 So if we use Plate 6, we're going to have the same
6 number, 1,000 cubic feet per second before
7 development and after development. So we don't know
8 how it's going to effect any decrease in runoff.

9 That's what the rules say. That's the
10 standard by which this Commission has always raised
11 drainage issues. We are required to not increase the
12 drainage flow, that's why our basins may not
13 increase, but because we have to deal with more
14 water, our pipes will be resized. Transfer more
15 water downstream to the City's facility, which are in
16 the residential neighborhood.

17 So if our goal is to keep as much water on
18 our property as possible so that we do not send it
19 downstream, the only thing we can see is dealing with
20 John Higham's testimony, his recommendation to
21 increase the basins five times as big. That's the
22 only way I see we get to that end point.

23 COMMISSIONER GIOVANNI: Let's go a
24 different direction, Mr. Tabata, along the lines you
25 suggest.

1 I don't have his testimony in front of me,
2 but I believe he was speculating to a range not just
3 merely a five X value, I think it was like five X to
4 ten X or something to that effect.

5 Is that your recall as well?

6 MR. TABATA: No. July 22nd, page 143 of
7 the transcript.

8 COMMISSIONER GIOVANNI: If you have that
9 available, can you read it for the benefit of the
10 Commission?

11 MR. TABATA: Let me bring it up. If I
12 share screen --

13 CHAIRPERSON SCHEUER: Yes, please. You're
14 allowed.

15 MR. TABATA: Thank you very much. This is
16 page 143 of the testimony taken on July 22nd, John
17 Higham's testimony. It starts at line 7.

18 "I think they should be required to
19 increase the size of their anticipated 12,700 cubic
20 feet permanent basin by five times to an actual
21 minimum of 63,500 cubic feet."

22 That's what we're looking at. That's the
23 number we just talked, spoke to our engineer about to
24 see that we can actually build that, and we think we
25 can do it.

1 COMMISSIONER GIOVANNI: Thank you. I'm
2 going to give back my time now.

3 Thank you, Chair; thank you, Mr. Tabata.

4 THE WITNESS: Thank you, Commissioner.

5 CHAIRPERSON SCHEUER: Commissioner Okuda,
6 followed by Commissioners Chang and Cabral.

7 Commissioner Okuda, do you have a sense of
8 the amount of time that you would like to spend?

9 COMMISSIONER OKUDA: Yes, less than five
10 minutes. I know it will shock everyone.

11 CHAIRPERSON SCHEUER: No judgment, I'm just
12 trying to manage the flow of the meeting.

13 COMMISSIONER OKUDA: I understand, Mr.
14 Chair.

15 CHAIRPERSON SCHEUER: Please proceed.

16 COMMISSIONER OKUDA: Mr. Tabata -- and I
17 thank Commissioner Giovanni for those questions, that
18 limits my questions just to five minutes or less.

19 Let me assure you, Mr. Tabata, and to Mr.
20 Matsubara, I haven't made up my mind at all, so
21 please don't take my next question as indicating
22 anything like that.

23 Now, if this Petition is denied, it will
24 have -- it would not be a reflection on the quality
25 of legal representation by you and Mr. Matsubara,

1 because, at least for me, publicly and privately, I
2 hold you folks in high esteem, your words can be
3 trusted.

4 This is my question. I understand that
5 clients can fire or terminate their attorneys at any
6 time, but if the Petition is granted with or without
7 conditions, part of the facts that the Petition is
8 granted very well may be on the fact that I or other
9 Commissioners, or many Commissioners, trust you, Mr.
10 Tabata and Mr. Matsubara.

11 So let me ask you this.

12 When this Land Use Commission proceeding is
13 completed, do you still intend to represent Hawaiian
14 Memorial Park and SCI as going forward regarding this
15 matter; or is it the present intention that your
16 representation ends with this Land Use Commission
17 action?

18 MR. TABATA: Well, if this client will have
19 us, we would continue to work. And I will say this
20 also, that the fact that Jay Morford is the President
21 of Hawaiian Memorial plays a tremendous part in
22 whether or not Ben and I continue working and
23 representing them.

24 COMMISSIONER OKUDA: Do you or Mr.
25 Matsubara have any present intention not to continue

1 representing Hawaiian Memorial Park with respect to
2 this matter?

3 MR. TABATA: No, sir. We fully intend to
4 continue representing them if they will have us.

5 COMMISSIONER OKUDA: And that will be at
6 least in the foreseeable future to the completion of
7 all representations, whenever that may be, hopefully
8 before we're dead?

9 MR. TABATA: Yes, Commissioner, hopefully
10 before that.

11 COMMISSIONER OKUDA: Thank you, Mr. Chair.
12 I have no further questions.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Okuda.

15 Commissioner Chang.

16 COMMISSIONER CHANG: Thank you very much,
17 Mr. Chair. And thank you, Mr. Tabata. I have
18 several questions.

19 I wanted to followup on Commissioner
20 Giovanni's question.

21 As I recall Mr. Higham's testimony, he did
22 propose, as remedies, one, to move to a larger
23 retention basin; and two, the area D creates greater
24 mitigation behind the three neighbor's outlets.

25 Is that something that you would also

1 consider?

2 MR. TABATA: We would definitely want to do
3 whatever we can. The neighbor's outlets, I believe
4 that's a City and County facility. We do not own
5 them.

6 I'm sure Hawaiian Memorial would be willing
7 to do the work, but it's getting access to it, I
8 mean, that's out of our control.

9 COMMISSIONER CHANG: And I guess I
10 understand. It's very obvious, Mr. Yoshimori, the
11 Intervenors, they have been committed to this project
12 and to raising their concern. And, quite frankly, I
13 think Mr. Yoshimori has been quite effective as a pro
14 se.

15 Will Hawaiian Memorial Park commit to
16 continue working with these neighbors? And I know
17 that's just words, but truly engaging with them to
18 address their concerns, especially in relationship to
19 the runoff and the drainage?

20 MR. TABATA: Absolutely. Hawaiian Memorial
21 has never refused to have discussion, consultation
22 with anyone. So, yes. The answer is yes.

23 COMMISSIONER CHANG: And what I'm hoping
24 that it amounts to is more than just discussions, but
25 a genuine engagement where you can find some mutual

1 grounds to reach some kind of an amicable remedy to
2 some of their concerns.

3 And as Commissioner Okuda acknowledged,
4 that you will continue to serve as long as Mr.
5 Morford or Hawaiian Memorial will have you. I too
6 trust that you will ensure that happens.

7 My other questions relate to -- a lot of
8 your testimony was if the Petition is approved, then
9 Hawaiian Memorial Park would do the following.

10 So with respect to the damselfly habitat --
11 and I too, like Commissioner Okuda, I have not made
12 up my mind -- but if it is not approved, will
13 Hawaiian Memorial Park make a commitment as the
14 owners of that land, who now have knowledge of this
15 habitat, to take appropriate measures to protect that
16 habitat?

17 MR. TABATA: Well, we are on notice. We'll
18 make sure we do not disturb the area. There's been
19 -- our expert, Steve Montgomery, when he heard about
20 the damselfly, he went down and he found that someone
21 had placed branches and rubbish around the seep, or
22 on the seep, and he had to clear it out.

23 So, I mean, there has been measures taken
24 to do what we can to protect the seep. The problem
25 with having us do something like agree to all the

1 protections that we propose is that it's labor
2 intensive, there's cost involved.

3 So that's why the granting of this Petition
4 and the Project is critical in order for us to
5 conduct all of those protections that we're
6 proposing.

7 COMMISSIONER CHANG: Mr. Tabata, I'm not
8 suggesting that, you know, Hawaiian Memorial Park
9 would be required to put in the herringbone and all
10 those other measures, but it's more -- because you
11 had heard concerns by the Commission about there's
12 really no law that enforces just passive neglect,
13 doing nothing.

14 But Hawaiian Memorial Park is now on notice
15 that there is this critical habitat. So if it's more
16 than just Mr. Montgomery, but part of Hawaiian
17 Memorial Park's maintenance crew that does monitor
18 that site regularly to ensure that, in consultation
19 with DOFAW, that there are measures to protect that
20 habitat that doesn't require a lot of cost of just
21 maintenance.

22 Is that something that Hawaiian Memorial
23 Park would do?

24 MR. TABATA: Yes. Hawaiian Memorial Park
25 will continue to be a steward of its lands. Do

1 whatever it can within reason to protect the
2 damselfly as well as the cultural resources at the
3 heiau. They will do whatever they can, even if the
4 Commission were to deny our project. We will
5 continue to do what we can to protect the resources
6 on the land, yes.

7 COMMISSIONER CHANG: Thank you. That was
8 the other question regarding the heiau.

9 Obviously, Hawaiian Memorial Park has
10 developed the relationship with the Ko'olaupoko
11 Hawaiian Civic Club, they have work days and they
12 have expressed an interest in also working
13 collaboratively to steward that heiau.

14 So these are cultural and natural resources
15 that the landowner may not be required to do
16 anything, but now they're on notice, and again, I'm
17 not saying they haven't done anything for the heiau,
18 but I would -- my questions are more in line of
19 stewardship.

20 So if it's not granted, they will continue
21 to steward those resources, independent of the
22 approval or disapproval of the boundary amendment?

23 MR. TABATA: That's correct. We are
24 members of this community. We will do, like we have
25 always done, and work with our neighbors, our

1 community and take care of our resources.

2 COMMISSIONER CHANG: And I appreciate that
3 because they have demonstrated that in their past
4 behavior. I just want to make sure that that
5 continues on, and there's a record to that.

6 Does Petitioner have any objections to
7 Office of Planning or DPP's additional
8 recommendations?

9 MR. TABATA: No. All their proposed
10 conditions, we have agreed to them, I believe.

11 COMMISSIONER CHANG: Thank you. I just
12 wanted to get that for the record. Thank you so
13 much, Mr. Tabata. I have no other questions.

14 MR. TABATA: Thank you.

15 CHAIRPERSON SCHEUER: Thank you very much,
16 Commissioner Chang.

17 Commissioner Cabral.

18 VICE CHAIR CABRAL: Thank you, Chair and
19 Mr. Tabata.

20 I guess my question goes back to
21 Commissioner Giovanni's concerns about the
22 differences in retention and detention basins, and to
23 make sure that we really are going to do adequate
24 holding of the water, I think, to make sure that we
25 don't -- that we do better.

1 Trying to review all my notes from all
2 these different hearings, because I do live in a
3 flood zone myself, that it can happen naturally, it's
4 happening already now, or it could happen in an
5 increased manner with increased rainfall, but the
6 point of -- my point, if this Petition goes through,
7 I would like to think that the efforts made by
8 Hawaiian Memorial would help to control that and to
9 help protect and prevent flooding of the properties
10 below.

11 So I just want to -- I had a question but
12 you've already answered it with Commissioner
13 Giovanni's information, but I wanted to just
14 reiterate that the concern I have is that we really
15 do above and beyond what nature is doing right now in
16 regards to the potential flood to the areas below.
17 That would be my only comment. Thank you.

18 MR. TABATA: Thank you. We agree. We
19 think the best way to achieve that decrease, to keep
20 the water on the property, which is through the
21 basins. Thank you.

22 CHAIRPERSON SCHEUER: Anything further,
23 Commissioner Cabral?

24 VICE CHAIR CABRAL: No, thank you. The
25 information we got from Commissioner Giovanni

1 answered a lot of my questions, because I do have my
2 own scribbled notes here about 12,700 times 5 equals
3 63,500 cubic feet was a proposal then. And I kind of
4 somewhat like the idea that you would try and hold it
5 on your properties better than just constantly
6 flooding the City and County pipes below, because I
7 can't imagine they're going to be able to contain
8 what they're already being fed plus this massive
9 amount of water on a continuous basis, so I think
10 greater retention basins on the property might be a
11 really good attempt to control flooding. Thank you.

12 CHAIRPERSON SCHEUER: Thank you.

13 Commissioner Giovanni.

14 COMMISSIONER GIOVANNI: Thank you, Chair.

15 I want to shift gears, Mr. Tabata, and I
16 was very pleased to see in your proposed order a
17 condition in which Petitioner would not dispose of
18 any materials at the PVT landfill. Thank you for
19 that.

20 However, I think that condition might be a
21 bit narrow and I would like to explore that.

22 Are you familiar that PVT is currently the
23 only construction and demolition landfill on Oahu?

24 MR. TABATA: Yes.

25 COMMISSIONER GIOVANNI: Are you also aware

1 last week they announced that they will not seek an
2 expansion of that facility?

3 MR. TABATA: I remember some announcement,
4 yes.

5 COMMISSIONER GIOVANNI: It was published in
6 the Star Advertiser, among other places. So
7 basically what that means is Oahu is going to be in
8 search of a new facility somewhere, somehow,
9 somewhere, because we cannot have any assurance that
10 the PVT landfill will serve the communities' needs
11 indefinitely. And by virtue of them announcing that
12 they're not going to expand that facility, the
13 possibility exists that there will be another one in
14 our future sooner or later.

15 So would you be agreeable to modification
16 of that condition to make it more generic in such
17 that your project will not dispose of any materials
18 in a construction and demolition landfill on Oahu,
19 period?

20 MR. TABATA: We understand the concern.
21 There is, on the horizon, a limited life for PVT.

22 If possible though, we would like to make
23 use of that capacity if necessary, as a last resort.
24 Just so that we are treated the same as everybody
25 else on this island, but we will be willing to accept

1 a restriction that we look for other alternatives
2 first, and then that be our last alternative for any
3 materials other than the soils that we pointed out.

4 It's a practical consideration, and it's
5 something that we -- it's tremendously important to
6 us we have that ability.

7 COMMISSIONER GIOVANNI: Mr. Tabata, I want
8 to make sure you're not going backwards on us here.

9 First of all, let me clarify. What is your
10 commitment and your willingness in terms of accepting
11 a condition on the order not to dispose of materials
12 at the PVT construction and demolition landfill?

13 Is it limited? You are agreeing only not
14 to put soil there, or more than that; or are you
15 still looking at possibly putting soil there as a
16 last resort?

17 MR. TABATA: No, no. No soils, no clean
18 soils, no clean fill will be sent to PVT. That's
19 something that we are firm on as the proposed
20 condition states. No excess fill, no soil, no excess
21 soil.

22 But when we say any materials, any
23 construction debris, that's different.

24 COMMISSIONER GIOVANNI: I agree. So I
25 might have confused the issue.

1 What I really want to ask you, are you
2 willing to agree not to dispose of any soils or clean
3 fill at any C and D landfill that is commercially in
4 operation on Oahu?

5 MR. TABATA: Yes. We can -- that sounds
6 like our proposed condition. It could be modified to
7 say PVT or any other --

8 COMMISSIONER GIOVANNI: -- commercial C and
9 D landfill?

10 MR. TABATA: Right, C and D, construction
11 and debris landfill, correct.

12 COMMISSIONER GIOVANNI: I'm agreeable with
13 that. Thank you.

14 MR. TABATA: Thank you.

15 CHAIRPERSON SCHEUER: Commissioner Wong
16 followed by Commissioner Okuda.

17 COMMISSIONER WONG: Thank you, Chair.
18 Thank you, Mr. Tabata.

19 When I reviewed your Conclusions of Law,
20 Findings of Fact, and Decision and Orders,
21 150-something-odd pages, it looks like you're
22 amenable to a lot of things, and I wanted to reaffirm
23 Mr. Giovanni's line of questioning when he first
24 talked about the water basins.

25 So you're amenable to increasing the size

1 of the basins by five times?

2 MR. TABATA: Yes, that's correct.

3 COMMISSIONER WONG: That's one line of
4 question.

5 The other thing, I just wanted to
6 reaffirm -- I know, like any construction projects,
7 sometimes you have non-soil materials, and you
8 cannot -- the soil materials you going to try and
9 look for it and repurpose it, reuse it at other
10 sites. I think Lance said that, one of your expert
11 witnesses, correct?

12 MR. TABATA: That's correct.

13 COMMISSIONER WONG: Just because, I guess,
14 you can always sell that soil for other projects, the
15 contractor can do that.

16 So you're going to try your darndest to
17 repurpose, and PVT would be the last resort, correct?

18 MR. TABATA: I believe what we said in
19 response to Commissioner Giovanni is that we will not
20 send any clean soils to PVT, or any other C and D
21 landfill on this island, we will not. That's a firm
22 commitment.

23 COMMISSIONER WONG: The other line of
24 questioning I have is that we had a witness just
25 today was talking about the Kaneohe Bay issue. I

1 think she was a doctor in marine biology.

2 Can you explain to me if there is any soil
3 runoff or water runoff, how would that water get into
4 the Kaneohe Bay?

5 MR. TABATA: The drainage flow in our area
6 goes down into the neighborhood outlets, and from
7 there it flows to Kawa Stream and then to Kaneohe
8 Bay.

9 COMMISSIONER WONG: But with the drainage
10 basins increase, hopefully nothing will go into
11 Kaneohe Bay, correct?

12 MR. TABATA: Right, the best management
13 practices that we have proposed during construction
14 will minimize runoff, and the basins, correct, will
15 be there to hold the water and to hold the sediment.
16 And after construction, the turfgrass will help to
17 basically clean up the runoff. That was the
18 conclusion of our expert.

19 COMMISSIONER WONG: And I guess when you
20 were doing your closing statements, you said that --
21 I'm going to the damselfly now, and about their
22 little area, their habitat.

23 So you said someone from the park does go
24 and clean up sticks and debris and try to be as a
25 good neighbor as possible and try to keep that area,

1 clean, correct?

2 MR. TABATA: That was our expert. He went
3 down and took a look at the property, and he saw
4 branches placed in or around the seep, and he cleaned
5 it up, the seep.

6 We do not have a regularly scheduled
7 program in place. That's manpower that we have not
8 allocated yet.

9 COMMISSIONER WONG: What I'm getting at is,
10 I guess in our time period of going through this
11 whole process, it appears that Hawaiian Memorial do
12 not need to do anything. Let's say we don't give
13 this change, you can just leave it as-is, if it dries
14 up, it dries up, and the dragonfly goes kaput,
15 correct? I mean there is no obligation --

16 CHAIRPERSON SCHEUER: Damsel fly.

17 COMMISSIONER WONG: Yeah, damselfly, thank
18 you. Is that correct?

19 MR. TABATA: Unfortunately, yes.

20 COMMISSIONER WONG: However, in the D&O,
21 the Hawaiian Memorial Park is going do its darndest,
22 it seems like, to keep the damselfly alive, correct?

23 MR. TABATA: Correct. Those were the
24 recommendations of our expert Steve Montgomery.

25 COMMISSIONER WONG: That's it. Thank you,

1 Mr. Tabata; thank you, Chair.

2 CHAIRPERSON SCHEUER: Commissioner Okuda.

3 COMMISSIONER OKUDA: Thank you very much,
4 Mr. Chair.

5 Mr. Tabata, this is a followup to
6 Commissioner Giovanni's last question regarding PVT
7 or a similar type of construction demolition disposal
8 facility.

9 As far as the Applicant or Petitioner's
10 reputation that it will not dispose of clean fill,
11 what about rock or rocks or boulders or items like
12 that? Is the representation that that type of
13 materials from the excavation will or will not be
14 disposed of either at PVT or a similar type of
15 construction debris landfill?

16 MR. TABATA: What we plan on doing is
17 minimizing as much as possible any use of landfill,
18 anything that's going to cost us money to dispose of.
19 Whether or not it becomes necessary to try and use
20 PVT, that's an option that we want to keep available.

21 We're not talking about the clean fill. We
22 want to make clear again, we're certain, we're making
23 a commitment not to put clean fill, clean fills in
24 PVT or any other C and D landfill, but other
25 construction debris, if PVT is still open, they still

1 have capacity, we would like to have that option like
2 everybody else.

3 COMMISSIONER OKUDA: So in other words,
4 clean fill does not mean (indecipherable) -- or
5 material like that; is that correct?

6 MR. TABATA: That's correct, I don't
7 believe it is.

8 COMMISSIONER OKUDA: The amount that's
9 estimated as far as what is going to be excavated
10 from the Oneawa Hills in some places 100-foot high
11 cut, the estimate was about 457,000 cubic yards of
12 material, correct?

13 MR. TABATA: I believe that's correct, yes.

14 COMMISSIONER OKUDA: What evidence in the
15 record indicates how much of that material will be
16 clean fill?

17 MR. TABATA: My understanding is all of it
18 was clean fill, that was the soils being excavated.

19 COMMISSIONER OKUDA: Well, there is going
20 to be cuts made into the Oneawa Hills, correct?

21 MR. TABATA: That's correct.

22 COMMISSIONER OKUDA: Can you point where in
23 the evidence there is any statement that all of the
24 excavation into the Oneawa Hills, all of the
25 457,000 cubic yards of material is all clean fill?

1 MR. TABATA: I don't think there's any
2 specific information of that, it's just that when the
3 numbers were calculated, that was the soils that were
4 being calculated.

5 I don't we know how much, how much there's
6 going to be in boulders. Boulders probably aren't
7 visible. I don't think we know that yet.

8 COMMISSIONER OKUDA: And, of course, even
9 in the expansion area, your engineer concluded there
10 was risk of boulder falls or rockfall, which means
11 there must be rocks in the area to fall, right?
12 Because if it was all clean fill, we wouldn't have
13 any risk of boulders coming down, correct?

14 MR. TABATA: That would be reasonable.

15 COMMISSIONER OKUDA: Following up on
16 Commissioner Giovanni's question about the withdrawal
17 of PVT of its request for expansion, which you talked
18 about, are you aware the governor signed Senate Bill
19 2386, Senate Draft 2, House Draft 2, which is now the
20 law which requires a half-mile buffer, I believe,
21 around landfills?

22 MR. TABATA: I'm generally familiar. I
23 haven't gone through in detail.

24 COMMISSIONER OKUDA: Whatever your
25 familiarity is, doesn't that bill or the signing of

1 that bill into law more likely than not make it more
2 difficult to establish an additional construction
3 debris landfill or landfill for construction debris?
4 The half-mile buffer around any such facility makes
5 it more difficult than less difficult to establish
6 such a disposal site?

7 MR. TABATA: The way you describe it is
8 essentially an added challenge to building projects,
9 and we don't dispute that in the future it may simply
10 not be available.

11 What we would like to avoid is to accept
12 another condition that would take away our ability to
13 do business like everybody else on this island. If
14 it is gone, if it is not available, then so be it.
15 That's something we will have to deal with. We are
16 just concerned if we're asked to accept more
17 restrictions that hampers us, that, you know, tie our
18 hands even more than every other person on this
19 island doing business, that's a concern.

20 We just want to be able to do business like
21 everybody else.

22 COMMISSIONER OKUDA: Of course. But not
23 everybody else right now is proposing an excavation
24 of that many cubic yards which may have boulders
25 which have to be disposed of, correct?

1 MR. TABATA: That's correct. If it is
2 gone, if it's gone, if there's no more capacity, then
3 we will do what we need to do. That's no doubt. We
4 will keep -- we will crush the boulders, do whatever
5 we need to do.

6 It's just that we don't want to be
7 restricted if it's available, then it's an option.
8 We would like it to be an option. If it closes, if
9 it cannot -- no more capacity, we will do what we
10 need to do to deal with the boulders. We will.

11 COMMISSIONER OKUDA: My final question is
12 this.

13 Should the Land Use Commission be concerned
14 about preserving capacity at the PVT landfill so that
15 the many other ongoing construction projects which
16 employ many, many other workers in the community, so
17 that these projects are not impacted. Is that a
18 concern that we on the Commission should have, that
19 we need look at preserving capacity for other
20 projects?

21 MR. TABATA: I think that there are various
22 projects that may or may not be built on this island.
23 Some may be in the approval process, and there's no
24 way for something like this to be applied to
25 everybody, including others who are seeking approvals

1 from other administrative bodies right now, including
2 yourself.

3 What we're asking is for a fair opportunity
4 to compete basically with everybody else.

5 COMMISSIONER OKUDA: Thank you, very much,
6 Mr. Tabata. Thank you, Mr. Chair. No further
7 questions.

8 CHAIRPERSON SCHEUER: Thank you
9 Commissioner Okuda.

10 Before I recognize Commissioner Giovanni,
11 I'm going to note there is a hand up in the attendee
12 section. I'm going to lower the hand. If somebody
13 was trying to say something, public testimony was
14 closed on this matter. So it's equivalent of, if we
15 were in our physical setting and someone stood up in
16 the audience and said, hey, we want to say something.

17 If you have a procedural question about how
18 things are going, you can put something into the Q
19 and A box, and if it is a procedural question about
20 what's happening, the staff will try to answer it.
21 If it is testimony, that's been closed off.

22 Commissioner Giovanni.

23 COMMISSIONER GIOVANNI: Mr. Tabata, I think
24 we are generally in agreement, and appreciative of
25 your commitment not to dispose of any clean fill in C

1 and D landfills on Oahu.

2 But I think just for clarity reasons, we're
3 kind of loosely using the term "clean fill" and I
4 think the order or condition might benefit from
5 defining what clean fill is.

6 So, by example, I'm going to read to you a
7 common definition of "clean fill" and see if you can
8 react to that and agree to it. And it goes as
9 follows:

10 "Clean fill refers to construction, waste
11 materials that can be reused or recycled in other
12 construction projects.

13 "The term "clean" implies that the material
14 is eco-friendly and free of any toxic substances that
15 may adversely affect the health of humans and animals
16 or contaminate the environment where they're
17 disposed.

18 "Clean fill is generally comprised of
19 topsoils, dirt, brick, gravel, rubble, including
20 small rocks, sand, cement and concrete", end of
21 quote.

22 Does that -- do you agree it would make
23 sense to include a definition such as that as part of
24 the condition referring to disposal of clean fill?

25 MR. TABATA: Sorry, Commissioner, could you

1 repeat the source of that definition?

2 COMMISSIONER GIOVANNI: The source of that
3 definition. I did not say what it was.

4 MR. TABATA: Okay. That definition sounds
5 acceptable.

6 COMMISSIONER GIOVANNI: Thank you. I have
7 nothing further.

8 CHAIRPERSON SCHEUER: Further questions for
9 Mr. Tabata, Commissioners? If not, I have four --
10 oh, Commissioner Aczon.

11 VICE CHAIR ACZON: Just to followup on
12 Commissioner Giovanni's last question about the clean
13 fill.

14 So would you agree that, you know, with
15 this definition of big boulders or whatever boulders
16 at the site can be included in this definition
17 provided that they are crushed to manageable size,
18 and it can be -- as a matter of fact, some
19 developments that I see, those boulders are crushed
20 and sold to other entities. Would you agree with
21 that?

22 MR. TABATA: Yes, we would agree with that.

23 VICE CHAIR ACZON: But that would address
24 the issue about big boulders, correct?

25 MR. TABATA: That's correct. Thank you

1 Commissioner.

2 VICE CHAIR ACZON: Thank you. Thank you,
3 Mr. Chair.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Aczon. Anything further?

6 I have four things I want to ask you about,
7 but I'll start with --

8 First of all, I appreciated your thanking
9 the Commission for continued operations during the
10 pandemic, but I want to make it really clear the
11 credit goes to Mr. Orodener, Mr. Hakoda, and Mr.
12 Derrickson for having done a truly outstanding job.
13 We are so lucky to have the staff that we have.

14 Secondly, I want to echo something said by
15 Commissioner Okuda and Giovanni, I am also undecided
16 on this project. I have still not made a final
17 decision, but I will say that I have concerns that if
18 I am to vote for it, I'm hoping will be addressed,
19 and that's what my four questions have to do with.
20 And I hope these don't come as a surprise, because
21 these are all issues I believe I have raised during
22 our proceedings to this date.

23 One of my concerns that I have with this
24 project going forward, like Representative Matayoshi,
25 is the impact on neighbors. And I'm particularly

1 concerned that during the development process that
2 potential impacts, whether it be traffic, noise,
3 runoff, or other impacts, that there's a robust
4 communications plan so that at least the neighbors
5 who are immediately approximate to the development
6 will be informed ahead of time, will know exactly who
7 to call if they see something, and the person they
8 call has some connection to people who can make
9 decisions, or authority to make decisions on those
10 matters, whether a noise complaint, dust complaint,
11 runoff complaint, or any other concern.

12 I thought I had made that really clear,
13 particularly during the testimony of the noise
14 expert, and I believe that there was the volunteer
15 offering of a condition that there would be such a
16 hotline or something created, but I didn't see that
17 in your proposed conditions.

18 MR. TABATA: We apologize for that. There
19 was a lot to write, and we missed that. We will
20 definitely be agreeable to having a hotline be made
21 available.

22 CHAIRPERSON SCHEUER: I think a hotline is
23 part of it. I would hope that the Petitioner, along
24 with their contractors, so that the early and
25 frequent outreach to the immediate neighbors, so

1 that -- not that any of these neighbors -- if this
2 was behind me, let me tell you -- well, I would have
3 been disqualified from voting, but I would have voted
4 against it.

5 But if I was behind it, at the very least
6 if it was going through, I would want to know what's
7 going on, when things are coming up. So I don't have
8 to constantly guess for that information. That
9 information will be provided to me..

10 I'm looking for in addition to the hotline,
11 just a robust communication with the folks who are
12 nearby.

13 MR. TABATA: We're agreeable to that.

14 CHAIRPERSON SCHEUER: Thank you. That's my
15 first question.

16 My second question, and again, I hope this
17 is not something that is a surprise. I believe
18 firmly, as somebody who works in some points on
19 endangered species and conservations issues, that
20 community outreach is a really important component of
21 the protection of a species, and even though the
22 conditions are related to the damselfly, went from A
23 through M, I believe, I did not see any condition
24 added that talked about outreach on the damselfly's
25 population to both the neighbors as well as users of

1 the Cultural Preserve.

2 Is that a condition you're willing to
3 include?

4 MR. TABATA: Yes, we would.

5 CHAIRPERSON SCHEUER: And I would look for
6 suggested language that gets to the point that folks
7 will know in this neighborhood that there is an
8 endangered species, there's stuff they shouldn't do,
9 folks are coming in, there's something here that's
10 valuable to be taken care of.

11 Third question I had, I appreciated the
12 inclusion of a reference to an accredited land trust
13 being the recipient of the Conservation Easement.
14 But I would like clarification whether you're willing
15 to accept that it would be a land trust accredited by
16 the Land Trust Accreditation Commission, so there's
17 no unsureness about what is meant.

18 MR. TABATA: That's agreeable. Thank you.

19 CHAIRPERSON SCHEUER: And the final
20 question I have has to do -- is really related to
21 some of the very extensive questioning that
22 Commissioner Okuda has provided.

23 The proposed activities in the Cultural
24 Preserve, many of which will be done by volunteers,
25 but there are some costs that will accrue to the

1 operator of the Cultural Preserve, and I didn't see,
2 while it's implied for a land trust and Mr. Morford
3 agreed on the record that appropriate funding would
4 be given for funding of the enforcement of the
5 Conservation Easement, I'm not sure that we have on
6 the record to this point that there is a commitment
7 to appropriate funding to the Cultural Preserve
8 manager of their responsibilities under the
9 management of the Cultural Preserve, whether that be
10 liability insurance, if necessary -- I'm not saying
11 it is -- or other kinds of costs.

12 Is there a willingness to bind the
13 Petitioner to provide appropriate funding so that the
14 Cultural Preserve will be appropriately managed?

15 MR. TABATA: The funding or similar
16 provisions of, that's something that we would
17 negotiate when the time comes. A blanket requirement
18 that we provide appropriate funding, we're not sure
19 how that --

20 CHAIRPERSON SCHEUER: If I may, Mr. Tabata.

21 If you've agreed to the condition that the
22 easement be held by -- Conservation Easement be held
23 by a land trust accreditation commission, accredited
24 land trust, so they have standards that make it
25 really clear, the land trust can't accept an easement

1 without appropriate level of funding to enforce that
2 easement over time.

3 So I think we have sort of baked in, not
4 extravagance, but a sort of standard that we know
5 that we're going to actually, not just have an
6 easement, but the easement is going to be monitored
7 and appropriately done.

8 I'm just looking for some level of
9 equivalence for the Cultural Preserve. And I don't
10 have a suggestion for exactly how to do it.

11 I'm fine with your objecting to language
12 that says appropriate level, but I'm trying to convey
13 the idea that I'm getting at.

14 MR. TABATA: That's something we're
15 agreeable to, it's just how to word it, and how to
16 comply.

17 CHAIRPERSON SCHEUER: I'm hoping -- some
18 wording would be very welcome.

19 MR. TABATA: With respect to the spirit and
20 intent of what you're talking about, yes, that's
21 something we would be agreeable to.

22 CHAIRPERSON SCHEUER: It would be great to
23 see, in addition to the other three things I
24 mentioned, some conditional language that would get
25 at this idea.

1 Those were my four things, Mr. Tabata.
2 Thank you very much.

3 Commissioners, is there anything further?
4 Commissioner Okuda.

5 COMMISSIONER OKUDA: Thank you, Mr. Chair.

6 Mr. Tabata, to follow up on the Chair's
7 question. So what type of funding will Hawaiian
8 Memorial Park agree to fund with respect to the
9 Cultural Preserve? What is Hawaiian Memorial Park
10 willing to pay for?

11 MR. TABATA: I think we need to talk to the
12 civic club to find out what kind of help they need
13 from us.

14 COMMISSIONER OKUDA: So right now Hawaiian
15 Memorial Park really cannot give a commitment on what
16 it intends or is willing to pay for; is that correct?

17 MR. TABATA: I think there's still the
18 challenge of coming up with language that could
19 fulfill what the Chair is thinking about. I'm not
20 ready to give up on that yet. Just as I'm sitting
21 here right now, I can't come up with exact language.
22 But I understand where the Chair is coming from, and
23 I believe we can agree to that.

24 COMMISSIONER OKUDA: I don't think the
25 Chair's question is a surprise, because at a number

1 of the prior hearings I think those were the
2 questions I was asking, and it just generated
3 objections that it's to be negotiated. But the
4 record is what it is.

5 Thank you, Mr. Chair; thank you very much,
6 Mr. Tabata. No further questions.

7 CHAIRPERSON SCHEUER: Thank you,
8 Commissioner Okuda.

9 Commissioner Aczon.

10 VICE CHAIR ACZON: Just want to confirm
11 some of those discussions.

12 Mr. Tabata, you agreed to most of the
13 proposed conditions by Commissioners. Is there a way
14 you can come up with language on those conditions
15 that we can use during our deliberations?

16 MR. TABATA: Yes, that's what we will do,
17 correct.

18 VICE CHAIR ACZON: Thank you.

19 CHAIRPERSON SCHEUER: Anything further at
20 this time, Commissioners? It is 11:45. I'm going to
21 suggest if there is no further questions for Mr.
22 Tabata at this time, this would be a good time to
23 take a lunch break, 45 minutes returning at 12:30.

24 If Mr. Tabata had language to offer at that
25 time, responsive to these discussions, and then we

1 could go onto closing arguments from City, Office of
2 Planning, and Intervenors. Is that acceptable?

3 MR. TABATA: Yes.

4 CHAIRPERSON SCHEUER: Great. It's 11:45.
5 We will reconvene at 12:30. We are in recess.

6 (Noon recess taken.)

7 CHAIRPERSON SCHEUER: We're back on the
8 record.

9 Mr. Yoshimori, you had an issue to bring
10 up.

11 MR. YOSHIMORI: Yes, thank you.

12 To be clear, the Intervenors are still
13 100 percent against the Petition, but as the
14 Petitioner has been granted an opportunity to comment
15 on this newly proposed condition, we would like to
16 ask the LUC to consider some alternative language
17 should the DBA be approved.

18 So I sent this language to the LUC email
19 address, hoping you folks would consider it.

20 CHAIRPERSON SCHEUER: And you'll have a
21 chance in your closing to address this issue as well.

22 MR. YOSHIMORI: Thank you.

23 CHAIRPERSON SCHEUER: I'll count that as
24 the nature of a procedural question.

25 Any other procedural questions before we

1 proceed with Mr. Pang for the City and County?

2 Mr. Pang, you have the floor.

3 CLOSING ARGUMENT

4 CITY AND COUNTY OF HONOLULU

5 MR. PANG: Thank you, Mr. Chair,
6 Commissioners.

7 City and County Department of Planning and
8 Permitting supports the proposal to reclassify about
9 53 acres from the Conservation to the Urban District
10 to allow expansion of a needed public service, the
11 cemetery, the establishment of the Kawa'ewa'e Heiau
12 Cultural Preserve, and to create certain buffer
13 zones.

14 The project is consistent with the City's
15 Ko'olaupoko Sustainable Communities Plan. The
16 community plan is required by State and County
17 Charter and Statutes. It is created for a vision of
18 the community for the development of future plans.

19 It takes into consideration the
20 preservation of open space, preservation of
21 historical and cultural resources, agricultural uses
22 and resources, parks and recreation facilities,
23 residential uses, commercial and industrial uses, and
24 military uses.

25 Again, we believe that the project is

1 consistent with the City's Ko'olaupoko Sustainable
2 Communities Plan.

3 Expansion of the cemetery and the
4 proposed -- the expansion of the cemetery and the
5 14 acres for the proposed preserve are included in
6 the Ko'olaupoko's Community Plan -- Community Growth
7 Boundary.

8 The Department of Planning and Permitting
9 requests that the proposed conditions laid out in the
10 Ko'olaupoko Communities Plan be part of the
11 Commission's decision, as the Ko'olaupoko Community
12 Plan would not be a regulatory matter, and we would
13 not be able to enforce those conditions without the
14 LUC's implementing in their decision.

15 With respect to the other conditions that
16 may be imposed or recommended by other parties, we
17 ask that the Commission be specific as to those
18 conditions, because they may, since the City may be
19 required to regulate those conditions and enforce
20 those conditions, we ask that they be very specific
21 with respect to the condition that is being talked
22 about, about the water basins, since the City is
23 going to be reviewing the plans.

24 Again, we ask that the Commission be very
25 specific and tell us what you want our planners to

1 review and to approve during this process.

2 So, again, to finalize everything, again,
3 we recommend that the Land Use Commission approve
4 this project with the conditions imposed in the
5 Community's Plan. Thank you very much.

6 CHAIRPERSON SCHEUER: Thank you, Mr. Pang.
7 Commissioners? Commissioner Okuda.

8 COMMISSIONER OKUDA: Thank you very much,
9 Mr. Chair; and thank you very much, Mr. Pang.

10 Mr. Pang, are you able to comment on
11 whether or not PVT has withdrawn its request for the
12 expansion of the PVT landfill?

13 I thought I read somewhere that there was a
14 request pending before Planning Commission.

15 MR. PANG: Commissioner Okuda, like you,
16 I've heard about it, and the Planning Commission is
17 one of the City's agencies, and the meeting that was
18 supposed to be, the initial meeting for that request
19 was cancelled because it was withdrawn.

20 I did not myself see the actual document
21 requesting the withdrawal, but my understanding was
22 the Planning Commission meeting was cancelled for
23 that reason.

24 COMMISSIONER OKUDA: Next question is --

25 CHAIRPERSON SCHEUER: One moment. I'm

1 muting the other City and County, unless you were
2 trying to say something.

3 MR. TAKAHASHI: This is Deputy Director
4 Eugene Takahashi with Acting Director Sokugawa.

5 Just to clarify, yes. There was the
6 testimony provided by the agent for the applicant,
7 that they will be withdrawing the application, but as
8 of today, the request has not come yet in to withdraw
9 the application.

10 But they went on record that they indicated
11 they will be submitting their request to withdraw
12 their application.

13 CHAIRPERSON SCHEUER: Thank you for that.

14 I will note that we are in closing argument
15 now.

16 COMMISSIONER OKUDA: Thank you, Mr. Chair.

17 Second and final question, Mr. Pang.

18 If the Land Use Commission were to deny
19 this Petition for a boundary amendment, what are the
20 negatives of the Commission denying the Petition?

21 MR. PANG: Well, I note in the community's
22 plan it talks about open spaces. It talks about the
23 cultural preservations of that area.

24 So the plan did take into consideration the
25 expansion with the open space, the preservation, the

1 Conservation Easement, so all of those things would
2 not occur.

3 I personally can't say that there are
4 negative, that would be up to the Commission and the
5 planners, but it would not -- it would be, we
6 believe, contrary to what the community had expressed
7 in the community's plan.

8 COMMISSIONER OKUDA: Besides those items
9 that you listed, can you think about any other
10 negatives that would arise from the Land Use
11 Commission denying this Petition?

12 MR. PANG: Well, there are talks about --
13 and again, I'm not an engineer -- but there were
14 talks about drainage issues, global warming,
15 additional water coming down from the mountains.

16 I don't know if denying this Petition would
17 in the future allow some remedial measures to take
18 those things into consideration.

19 Negative, yeah, maybe those things might be
20 on a negative basis if this matter is denied.

21 COMMISSIONER OKUDA: Can you point to
22 anything else in the record which indicates negative
23 or bad results arising if the Land Use Commission
24 denies this Petition?

25 MR. PANG: At this time I cannot point to

1 the record that would cause any negative matters, if
2 this matter was denied.

3 COMMISSIONER OKUDA: Thank very much, Mr.
4 Pang. Thank you, Mr. Chair.

5 CHAIRPERSON SCHEUER: Commissioners, are
6 there further questions for the City and County?

7 Commissioner Aczon.

8 VICE CHAIR ACZON: I just kind of
9 wondering, because there is a lot of discussions
10 about the Petitioner's proposed conditions, and in
11 addition during this discussions some Commissioners
12 added more of those conditions.

13 What would happen if all those conditions,
14 after all this is done, came out that it is not in
15 compliance or compliance with City and County rules
16 or planned regulation? Just kind of wondering what
17 would happen.

18 MR. PANG: I think it would depend on the
19 particular condition. We have, as you mentioned, we
20 have rules and ordinances that provide certain
21 guidelines and certain standards that are required
22 for all developers. If the Commission were to impose
23 standards that are above that, you would have to be
24 very specific. The City would not be able to
25 implement them unless you are very specific.

1 If you impose conditions that somehow fall
2 below the standards that the City has implemented in
3 their rules and their ordinances, I think we may have
4 a conflict and we may not be able to permit any of
5 this project moving forward.

6 So depends on what type of conditions you
7 impose on this project.

8 VICE CHAIR ACZON: Unfortunately we
9 wouldn't know if the conditions that we placing is
10 going to be in compliance ahead of time or ahead of
11 this decision, so we're not going to find out until
12 this thing comes through this hearing.

13 CHAIRPERSON SCHEUER: Was there anything
14 further, Commissioner Aczon?

15 VICE CHAIR ACZON: No, that's all. Thank
16 you.

17 CHAIRPERSON SCHEUER: Commissioners, are
18 there further questions for the City and County at
19 this time?

20 Commissioners, I realize I said when we
21 came back from break I was going to provide some
22 opportunity for Mr. Tabata to share language, and I
23 just had Mr. Pang's presentation.

24 Mr. Tabata, are you prepared?

25 MR. TABATA: We do have some language here

1 for the Commission's consideration. Where to start.

2 For the fill question, what we're willing
3 to do is add onto our condition and define that fill
4 materials is further defined as, quote, natural
5 materials consisting of soil, clay, sand, volcanic
6 cinder and ash, and rock or mixture combination of
7 such materials which are not suspected to contain
8 hazardous substances or concentration of chemical
9 contaminants, of concern about State Department of
10 Health, Tier 1, Environmental Action Levels.

11 We got that from Department of Health
12 website. The intent is to mirror Commissioner
13 Giovanni's language. If this is different in any
14 way, we would certainly agree to go with Commissioner
15 Giovanni's language. That's just regarding the --

16 CHAIRPERSON SCHEUER: Clean fill.

17 MR. TABATA: The clean fill issue, correct.

18 CHAIRPERSON SCHEUER: Commissioners, I'm
19 going to let Mr. Tabata go through his proposed
20 language, and then allow for questions.

21 MR. TABATA: For the Cultural Preserve,
22 Petitioner shall establish a Cultural Preserve in
23 conjunction with appropriate native Hawaiian group.

24 Petitioner shall work with the community
25 and the Ko'olaupoko Hawaiian Civic Club in order to

1 establish a preservation and management plan for the
2 Cultural Preserve in perpetuity.

3 Petitioner shall pay for or otherwise
4 assume financial responsibility for expenses
5 associated with capital improvements within the
6 Preserve required to fulfill the conditions set forth
7 by the Commission all ongoing maintenance of the
8 Preserve.

9 Petitioner shall cover reasonable expenses
10 incurred by the group associated with the management
11 of the Preserve.

12 Construction Outreach. Petitioner shall
13 establish an ongoing construction-related community
14 outreach program to inform area residents and
15 businesses to milestones and activities occurring on
16 property.

17 In addition, the Petitioner shall establish
18 a hotline and dedicated email address to receive
19 questions, concerns, or comments from the community
20 and other stakeholders.

21 Damsely Outreach. Petitioner shall
22 establish an education and outreach program to raise
23 awareness of the existence of the Blackline damsely
24 and habitat area on the property.

25 The outreach shall include informing

1 visitors to Hawaiian Memorial Park as well as members
2 of the adjacent community. The program shall include
3 information on restricted activities and other best
4 practices to avoid adverse impacts to the habitat and
5 species.

6 I believe those are the proposed conditions
7 that were requested by the Commissioners.

8 We're not sure if you wanted the language
9 regarding the Conservation Easement. I thought that
10 was self --

11 CHAIRPERSON SCHEUER: Self-explanatory as
12 long as the phrase Land Trust Accreditation
13 Commission --

14 MR. TABATA: I believe that addresses the
15 additional language that was requested.

16 CHAIRPERSON SCHEUER: Commissioners?
17 Commissioner Okuda followed by Commissioner
18 Giovanni.

19 COMMISSIONER OKUDA: Thank you, Mr. Chair.
20 Thank you very much, Mr. Tabata, for working on this
21 during the break.

22 With respect to your definition regarding
23 fill, under your definition of proposed definition,
24 will boulders be allowed to be disposed of at PVT?

25 MR. TABATA: No. Doesn't look like it.

1 It's not defined. It's not included in the
2 definition, no.

3 COMMISSIONER OKUDA: So under your
4 understanding, no boulder will go to PVT or similar
5 types of construction disposal landfill; is that
6 correct?

7 MR. TABATA: Yes, that's correct.

8 COMMISSIONER OKUDA: Shifting to your
9 section regarding the Cultural Preserve, I think you
10 said that the Cultural Preserve provision would be
11 directed in favor, I quote, of an appropriate native
12 Hawaiian group, and I think you used a disjunctive,
13 or the Ko'olaupoko Hawaiian Civic Club.

14 I might be misstating what you said, so let
15 me just ask this question. I would be really scared,
16 and I'm not being facetious, if the appropriate group
17 is the Gary Okuda Civic Club.

18 So is there any objection from you or your
19 client if the designation is made very clear that, at
20 least as a stated condition, the Cultural Preserve
21 will be managed by the Ko'olaupoko Hawaiian Civic
22 Club?

23 We understand, or I understand your
24 position that the details are to be worked out, but
25 just so that there's no question about who the

1 designees entitled to be, that it's not simply an
2 appropriate native Hawaiian group, but the group
3 itself is specified.

4 Because at least for me, and I haven't made
5 up my mind in this case again, but if I were to vote
6 in favor of this Petition, in part it would be
7 because the identified group is a group that has
8 community credibility.

9 MR. TABATA: I believe we're in agreement.
10 Our second sentence of that proposed condition reads:

11 The Petitioner shall work with the
12 community and the Ko'olaupoko Hawaiian Civic Club in
13 order to establish a preservation and management plan
14 for the Cultural Preserve in perpetuity.

15 So, yes, there is a requirement that we
16 work with the Ko'olaupoko Hawaiian Civic Club.

17 COMMISSIONER OKUDA: Thank you very much.
18 I'm sorry, and I apologize to you if I didn't pay
19 more closer attention to what you stated.

20 Thank you, Mr. Chair. No further
21 questions.

22 CHAIRPERSON SCHEUER: Thank you, Mr. Okuda.
23 Commissioner Giovanni.

24 COMMISSIONER GIOVANNI: Thank you, Chair;
25 thank you, Mr. Tabata.

1 I'm in general agreement with the language
2 that you've used to define "clean fill", so thank you
3 for that.

4 However, I do agree with Commissioner Okuda
5 that we just need a bit of additional clarification
6 about large rocks and boulders. And, again, I
7 appreciate your spirit to exclude those from clean
8 fill, but I do think we need to specify a maximum
9 size that would be allowable, something like
10 12 inches or less would be allowed, 12 inches or more
11 require crushing, something to that effect.

12 Is that agreeable to you?

13 MR. TABATA: I'm trying to figure out how
14 big we're talking about. I mean, just so that we can
15 comply. Anybody have a definition of boulder?

16 COMMISSIONER WONG: Chair?

17 CHAIRPERSON SCHEUER: Commissioner Wong.

18 COMMISSIONER WONG: You know, I think I
19 understand Commissioner Giovanni's questioning, but
20 you know, we're getting little too nitpicky. I mean,
21 in terms of what if it is 12 feet 1 inch? I mean, we
22 have to rely on just general indication, especially
23 for construction, to me.

24 COMMISSIONER GIOVANNI: I agree. I'm happy
25 to say boulders of approximately 12 inches, or

1 something to that effect.

2 CHAIRPERSON SCHEUER: I can't resist the
3 pun to say that this conversation is getting very
4 granular.

5 COMMISSIONER GIOVANNI: It is, but we don't
6 want to declassify clean fill by virtue of putting a
7 36-inch boulder in it, therefore you can put it
8 anywhere you want.

9 CHAIRPERSON SCHEUER: I hesitated to
10 mention the pun, because I didn't want to discount
11 the significance of the concerns you're trying to
12 raise.

13 Mr. Tabata, do you have anything?

14 MR. TABATA: I've been asked by my engineer
15 to reread this definition, if that's allowable,
16 Chair.

17 CHAIRPERSON SCHEUER: Please.

18 MR. TABATA: The definition, quote:

19 "Natural materials consisting of soil,
20 clay, sand, volcanic cinder and ash, and rock, or a
21 mixture or combination of such materials which are
22 not suspected to contain hazardous substances or
23 concentrations of chemical contaminants of concern
24 about State Department of Health, Tier 1,
25 Environmental Action Levels.

1 So the question for us, is 12 inches
2 acceptable? 12 inches is acceptable.

3 CHAIRPERSON SCHEUER: Okay. Anything
4 further, Commissioners?

5 COMMISSIONER GIOVANNI: Nothing further,
6 thank you.

7 CHAIRPERSON SCHEUER: Thank you,
8 Commissioner Giovanni.

9 Mr. Tabata, can you read the sentence
10 regarding the hotline again, hotline and email?

11 MR. TABATA: One second, if I can find -- I
12 have to find them.

13 This is regarding the construction
14 outreach. Second sentence:

15 "In addition, the Petitioner shall
16 establish a hotline and dedicate email address to
17 receive questions, concerns or comments from the
18 community and other stakeholders."

19 CHAIRPERSON SCHEUER: So I'm not trying to
20 drill down too far, but I'm interested in it, not
21 just receiving, but receiving and responding.

22 I mean, the kind of condition I'm looking
23 for, the spirit of the condition I'm looking for is
24 that particularly with the immediate neighbors, you
25 know, they say like, hey, you know what, I'm getting

1 all this dust coming in right now to my house; or my
2 wall is shaking as you guys are pounding rock. Like
3 there's somebody who can just receive that and say,
4 okay, here's what's going on.

5 Is there a way to address it? I'm not
6 obligating you guys to respond to everything single,
7 but I think you understand --

8 MR. TABATA: The first sentence is the
9 establishment of an ongoing construction-related
10 community outreach program. And that program is to
11 inform the residents and businesses of activities and
12 milestones.

13 So part of that program is to receive it,
14 to provide information but, of course, to receive it
15 too. We are certain that we will be informed of
16 concerns. And from there we will work with the
17 community program.

18 CHAIRPERSON SCHEUER: Thank you.

19 Deputy AG Chow.

20 MS. CHOW: I would like to make a
21 suggestion on the condition regarding the endangered
22 species and the outreach.

23 So the outreach I think right now is
24 phrased as to avoid impact. It should probably be
25 better to be phrased as avoid and minimize impact to

1 the endangered species. Those are key words under
2 the endangered species law both for Hawaiian and on
3 the Federal level. To avoid and minimization.

4 CHAIRPERSON SCHEUER: Thank you, Ms. Chow.

5 Commissioners, is there anything further
6 for Mr. Tabata at this time? If not, there will be a
7 chance to question all of the parties prior to
8 deliberations.

9 Thank you very much, Mr. Tabata.

10 MR. TABATA: Thank you.

11 CHAIRPERSON SCHEUER: Ms. Apuna.

12 CLOSING ARGUMENT

13 OFFICE OF PLANNING

14 MS. APUNA: Thank you, Chair.

15 So based on OP's review and analysis of the
16 record, OP finds that the Petition:

17 Conforms with applicable district
18 standards, planning standards, plans and other
19 criteria necessary for the Commission's consideration
20 of a district boundary amendment; and

21 Provides sufficient minimization and
22 mitigation measures to address foreseeable impacts to
23 state concerns, including plans and efforts to
24 minimize impacts to the endangered Blackline Hawaiian
25 damselfly.

1 OP has proposed conditions of approval of
2 the DBA to further address these impacts, including
3 stormwater management and drainage improvements, air
4 quality monitoring, gathering and access rights and
5 archaeological or historical protections, and
6 protections for the Blackline Hawaiian damselfly and
7 the Hawaiian Hoary bat.

8 OP also included proposed conditions of
9 approval with regard to development timetable,
10 compliance with representations, and an
11 infrastructure deadline of ten years.

12 In sum, OP recommends approval of the
13 Petition subject to OP's conditions.

14 Thank you.

15 CHAIRPERSON SCHEUER: I believe that was
16 under two minutes, Ms. Apuna.

17 Commissioners, starting with Commissioner
18 Okuda.

19 COMMISSIONER OKUDA: Thank you very much,
20 Mr. Chair.

21 Ms. Apuna, the same question that I posed
22 to Mr. Pang. If the Commission were to deny this
23 Petition, what are the negatives do you see of such a
24 denial?

25 MS. APUNA: I think I would agree with

1 Deputy Corporation Counsel Pang about those certain
2 things he mentioned, and also include protection of
3 the Hawaiian Damselyfly. Although it sounds like
4 Petitioner would probably put forth greater efforts
5 than before it was discovered, they are not obligated
6 to protect that species.

7 COMMISSIONER OKUDA: And can you list what
8 would be the positives of denying the Petition?

9 MS. APUNA: No, I don't think I can
10 necessarily provide any positives of denying the
11 Petition.

12 COMMISSIONER OKUDA: Would you believe that
13 avoiding the amount of excavation of material, which
14 are about 400, I think, 75,000 cubic yards, avoiding
15 such excavation is not a positive?

16 MS. APUNA: I can't say whether that's a
17 positive or not.

18 COMMISSIONER OKUDA: Does the Office of
19 Planning believe that this development creates some
20 risk, some risk of flooding or water damage to the
21 downslope neighbors?

22 MS. APUNA: I think generally OP believes
23 there could be some risk, but that with these
24 proposed conditions they're able to minimize or
25 mitigate those potential issues.

1 COMMISSIONER OKUDA: Does the Office of
2 Planning believe that the expansion of the cemetery
3 creates some risk of injury where serious bodily
4 injury or death from rockfalls?

5 MS. APUNA: I don't think so, no.

6 COMMISSIONER OKUDA: Do you believe that
7 Mr. Lim gave some testimony which could be
8 interpreted to indicate that there is some
9 foreseeable risk of injury or death from rockfall?

10 MS. APUNA: Do I believe that Mr. Lim
11 provided that testimony?

12 COMMISSIONER OKUDA: Yes, that he provided
13 some testimony which could be used as a basis to form
14 a finding of fact that the expansion of the cemetery,
15 even taking into account mitigation measures, still
16 provides or exposes the public to some element of
17 foreseeable risk of bodily injury or even death?

18 MS. APUNA: Sure, if that was his
19 testimony, yes.

20 COMMISSIONER OKUDA: Is it true or not
21 true, because Mr. Lim might have given some testimony
22 on this, but he's not a lawyer, but is it true or not
23 true that one purpose of keeping land in the
24 Conservation District is to minimize people or
25 citizens coming into a possible foreseeable zone of

1 danger?

2 MS. APUNA: Yes.

3 COMMISSIONER OKUDA: I'm sorry?

4 MS. APUNA: You're asking if that was part
5 of his testimony?

6 COMMISSIONER OKUDA: No, I'm asking you
7 whether one of the reasons of keeping property within
8 a Conservation District is to minimize the risk of
9 citizens coming into a possible zone of danger of
10 injury or serious bodily injury or possibly even
11 death?

12 MS. APUNA: It's been awhile since I've
13 looked at Conservation statutes and rules, and I
14 don't remember there being some type of law or rules
15 regarding having a Conservation District and how to
16 protect from those occurrences.

17 COMMISSIONER OKUDA: Can you point to
18 anything in the statute or case authority which
19 indicates it's inappropriate for the Land Use
20 Commission to keep this parcel of property within the
21 Conservation District?

22 MS. APUNA: No.

23 COMMISSIONER OKUDA: Thank you, Mr. Chair,
24 I have no further questions. Thank you very much,
25 Ms. Apuna.

1 CHAIRPERSON SCHEUER: Thank you,
2 Commissioner. Commissioners, are there further
3 questions for the Office of Planning?

4 Commissioner Aczon.

5 VICE CHAIR ACZON: Just to followup on
6 Commissioner Okuda's questioning about the
7 Conservation District.

8 Do you know of any law, or is there a law
9 that prohibits the public to enter Conservation
10 District?

11 MS. APUNA: I'm not sure. I'm not familiar
12 enough with the Conservation District rules and laws.

13 VICE CHAIR ACZON: So if it is to prevent
14 people from getting to, like what Commissioner Okuda
15 is implying, that the proposed of the Conservation
16 District is to prevent the people from entering the
17 Conservation District and avoid bodily injury or
18 death or whatever?

19 I'm just trying to find out if it is true
20 or not, if there's a law prohibiting the public.

21 Do you know if you see a public entering
22 Conservation District whether legal or not?

23 MS. APUNA: I'm not aware of any law that
24 generally prohibits people from entering the
25 Conservation District.

1 There might be in certain areas or certain
2 things that are protected under the rules, but I'm
3 not aware of what those rules or laws are.

4 VICE CHAIR ACZON: Fair enough. Thank you,
5 Ms. Apuna. Thank you, Mr. Chair.

6 CHAIRPERSON SCHEUER: Is there anything
7 further, Commissioners?

8 Ms. Apuna, do you have any objections to
9 any of the revised or proposed additional conditions
10 that have been discussed today?

11 MS. APUNA: No, we have no objection.

12 CHAIRPERSON SCHEUER: Thank you. Anything
13 further, Commissioners?

14 If not, Mr. Yoshimori, it's your time.

15 Mr. Yoshimori? Is he frozen. Let's see,
16 Mr. Yoshimori.

17 I think he's logged out and might be trying
18 to log back in, so let's just wait a moment.

19 COMMISSIONER WONG: Chair.

20 CHAIRPERSON SCHEUER: Commissioner Wong.

21 COMMISSIONER WONG: As we're waiting, did
22 you ask the City if they objected to any of the
23 changes that the Petitioner stated?

24 CHAIRPERSON SCHEUER: I did not ask the
25 City. I sort of felt that Commissioner Aczon's

1 questions regarding City's enforcement of conditions
2 that differed from City ordinances --
3 (indecipherable).

4 I would be more than happy to ask Mr. Pang
5 if he objects to any of the conditions that have been
6 discussed today by the Commission.

7 You are not muted, but I cannot hear you,
8 Mr. Pang.

9 MR. PANG: The City generally does not
10 object to the conditions that you discussed. Like I
11 said, you have to be -- the drainage conditions, they
12 have to be specific so our engineers know what to
13 implement when they're reviewing the plans. So
14 that's the only caution that we have.

15 And there are some reporting and monitoring
16 requirements that may not be so clear as to who they
17 report to, and what monitoring the information, who
18 they submit it to, whether it's Office of Planning,
19 whether it's the LUC, or whether it's DPP.

20 So we're just cautioning you to be little
21 bit be more specific on some of the conditions that
22 you proposed. But we don't object in general.

23 CHAIRPERSON SCHEUER: Mr. Pang, we can
24 expect that if the Commission acts favorably and
25 adopts said conditions, specific wording would be --

1 some specific guidance might be provided by the City?

2 MR. PANG: Yes. If so, yes; if asked, we
3 could do that.

4 CHAIRPERSON SCHEUER: Ms. Chow.

5 MS. CHOW: Because I note that Mr.
6 Yoshimori and the Intervenors are not currently
7 present at the meeting, you may have to ask Mr. Pang
8 to repeat that when he comes back.

9 CHAIRPERSON SCHEUER: I will. Actually I
10 was intending when Mr. Yoshimori is able to rejoin
11 us, to ask at what point they were unable to hear
12 what was going on.

13 MR. PANG: Mr. Chair, I notice there are
14 some of the other Commissioners, looks like they're
15 frozen to my computer too.

16 CHAIRPERSON SCHEUER: If you are frozen,
17 raise your hand. I think it's just your computer. I
18 can see you have seven live bodies.

19 You know what, Mr. Yoshimori, you're
20 connecting to audio. You're now on mute. Welcome
21 back. That's very frustrating. I'm very sorry.

22 At what point were you unable to hear what
23 happened?

24 MR. YOSHIMORI: I think it was Ms. Apuna's
25 questioning. So I think she had just answered about

1 any objections to the revised conditions, and then I
2 got cut off.

3 CHAIRPERSON SCHEUER: Ms. Apuna answered in
4 the negative, no objections to the Office of Planning
5 to the proposed conditions.

6 Was there a further question for you, Ms.
7 Apuna, at that point?

8 MS. APUNA: I don't think so.

9 CHAIRPERSON SCHEUER: Then returning to
10 you, Mr. Yoshimori, but then in the meantime
11 Commissioner Wong asked me to reask my question to
12 Mr. Pang whether the City and County had any
13 objection. I'll let Mr. Pang restate his response.

14 MR. PANG: Thank you.

15 As I stated earlier, in general the City
16 doesn't object to the proposed conditions imposed by
17 the Office of Planning but, again, we caution the
18 Commission with respect to things that the engineers
19 and the planners must review for the grading permit
20 and other permits that will come before the
21 Commission, so we ask a little bit more specificity
22 if possible and a little bit more guidelines for the
23 planners and engineers. Thank you.

24 CHAIRPERSON SCHEUER: And I suggested in
25 the followup question that -- or rather implied

1 rather than made it implicit -- that when we
2 eventually adopt the form of the order, if this
3 Petition is successful, and said conditions are made,
4 that in the course of the preparation of the form of
5 the order such non-substantive but clarifying
6 provisions could be added.

7 MR. PANG: City was agreeable to that.

8 CHAIRPERSON SCHEUER: So I think that's it.

9 Mr. Yoshimori, are you good?

10 MR. YOSHIMORI: Thank you very much for
11 catching me up to speed.

12 CHAIRPERSON SCHEUER: It's having been
13 subject to that while trying to sit and having to
14 chair this meeting. It is frustrating. You have my
15 sympathy, and you have the floor.

16 CLOSING ARGUMENT

17 HUI O PIKILOA

18 MR. YOSHIMORI: Before I begin, I wanted to
19 thank the Commission, LUC staff, Office of Planning,
20 DPP and the Petitioner for allowing us to participate
21 in these hearings. We all know that you're here
22 because of us, so thank you.

23 We would like to summarize our many
24 concerns with the Petition.

25 Point 1: There is large community

1 opposition. The LUC has received many written and
2 oral testimonies against the development, and our
3 online Petition to the LUC has over 2,900 signatures
4 in opposition in the proposed project.

5 Point No. 2: Petitioner has not shown a
6 need for the expansion.

7 At the Statewide level. The Petitioner's
8 statewide marketing study had a severe error
9 overstating the number of protected burials by 27,000
10 in scenario 2, and there were 41,000 in scenario one.

11 In addition, the study only assumed one
12 person per burial spot, which does not take into
13 account the current burial practices of allowing more
14 than one person per burial plot.

15 With these adjustments, we have shown that
16 there is a projected surplus of cemetery plots on
17 Oahu to 2040 without the Petitioner's expansion.

18 At the Park level, Hawaiian Memorial
19 currently has 37 percent of their graves unused, 37
20 percent. Yet the Petitioner is asking to expand on
21 Conservation land so that they can continue their
22 current unsustainable business practices.

23 If HMP adjusted their business model, and
24 allowed additional people per burial plot, Petitioner
25 could continue providing burial services to Oahu, and

1 continue generating revenue, and sustaining jobs far
2 into the future.

3 Given the lack of the need for extra burial
4 plots, and given that the Petitioner has been
5 unwilling to provide how much revenue from the
6 expansion would remain in Hawaii, the proposed
7 development is contrary to the State of Hawaii
8 Constitution Article XI, Section 1.

9 Point No. 3: This land is a critical
10 habitat for the endangered Blackline Hawaiian
11 damselfly.

12 Although the Office of Planning has
13 proposed mitigation plans to protect the Blackline
14 damselfly, the U.S. Fish and Wildlife Service has not
15 reviewed these plans, and in fact, has strong
16 opposition to the project.

17 Fish and Wildlife Service stated their
18 concerns that the project could be detrimental to the
19 potential long-term survival of the population.

20 The Petitioner's damselfly expert testified
21 that the damselfly, quote, "probably will use
22 something on the order of a couple of acres,"
23 unquote.

24 But the Petitioner plans to grade most of
25 the existing area and leave only a 164-foot buffer

1 around that habitat.

2 Thus, the proposed development is contrary
3 to the district standard HAR 15-15-20, Section 5, and
4 the project does not conform to the Hawaii State
5 plan, HRS 226, Policy 11-b-6 and does not conform to
6 Priority Guideline 104-b.10.

7 If the DBA is not granted, the endangered
8 habitat will be protected from potential habitat
9 destruction from the project. In addition, the
10 Petitioner testified that if the DBA is not granted
11 they are willing to coordinate with the DLNR and the
12 U.S. Fish and Wildlife Service on appropriate
13 cost-effective measures to ensure the protection of
14 the damselfly.

15 Point No. 4: There will be destruction of
16 nine existing historic sites on the property.

17 Thus, the land retains the characteristics
18 of the Conservation District as HAR 15-15-20 Section
19 4, and also the project does not conform to the
20 Hawaii State Plan, HRS 226, Policy 12-b-1 and 12-b-4.

21 Point No. 5: Native groups already have
22 the right to access the historic and cultural sites,
23 and the Urban designation is not required to maintain
24 these sites.

25 The Petitioner is obligated to allow access

1 to the area to the Ko'olaupoko Hawaiian Civic Club
2 under the Hawaii State Supreme Court case Public
3 Access Shoreline Hawaii versus Hawaii County Planning
4 Commission.

5 HAR 13-5-22 currently allows activities to
6 maintain historic sites in the Conservation District,
7 including removal of invasive species, minor repair,
8 maintenance to existing structures, and planting
9 native and endemic plants. They're all currently
10 allowed.

11 In addition, the Petitioner stated that
12 should the boundary amendment be denied, they would
13 allow the civic club to be at the heiau to do
14 whatever they wanted to do, and would permit access
15 to the cemetery to community members who wanted
16 access to the heiau.

17 So if the Petition is denied, Hawaiian
18 Memorial will still let cultural practitioners
19 utilize the area.

20 Point No. 6: The Petitioner is requesting
21 a violation of the State Supreme Court case Ka
22 Pa'akai O Ka 'Aina v. Land Use Commission.

23 In that case, the court said that the LUC
24 must make specific findings and conclusions to:

25 1) The identify and scope of cultural and

1 history resources;

2 2) The extent to which these resources,
3 including traditional and customary native Hawaiian
4 rights will be affected or impaired, and;

5 3) Any feasible action the Commission may
6 take to protect such native Hawaiian rights.

7 The Petitioner has done an outstanding job
8 in;

9 No. 1: Identifying the scope of cultural
10 and historic resources.

11 However, for No. 2, they have not defined
12 the affect or impairment of the proposed action.
13 There are many unanswered questions on how the
14 cultural and historic resources will be used.

15 A few of them are:

16 1) Determining who is a practitioner, and
17 who will have access to the Cultural Preserve has not
18 yet been determined.

19 While with just recently had a new
20 condition identifying who the manager of the Cultural
21 Preserve is, the funding and liability has not yet
22 been determined.

23 The holder of the Conservation Easement has
24 not yet been determined.

25 Who will be buried in the heiau complex and

1 the process for application has not been determined.

2 Those are just a few of the questions that
3 are not yet brought forward.

4 The Petitioner stated that a preservation
5 and management plan will be developed later. As in
6 Ka Pa'akai, Hawaiian Memorial is requesting that the
7 LUC adopt a future unseen management and preservation
8 plan, which does not allow the Commission to
9 independently assess the impacts of the proposed
10 reclassification on customary and traditional
11 practices as ruled in Ka Pa'akai.

12 Point No. 7: There is acknowledged
13 rockfall hazard and potential harm to people.

14 In Geolab's rockfall simulation for the
15 Cultural Preserve, approximately 86 percent of the
16 simulated rockfalls could pass to the Preserve's
17 upsloped area. The only proposed mitigation for this
18 area was a rockfall hazard warning sign.

19 The Petitioner's expert witness was not
20 willing to guarantee that people aren't going to get
21 hurt.

22 Some of the property is currently in the
23 Conservation District limited subzone, which was
24 meant to encompass lands necessary for the protection
25 of the health, safety and the welfare of the public

1 by reason of the land's susceptibility to landslides,
2 and also if they have slopes greater than 40 percent.

3 Thus, the land retains the property of the
4 Conservation District as stated in HAR 15-15-20,
5 Section 2, and specifically for the limited subzone.

6 Point 8: There are still flooding concerns
7 with the proposed development to the nearby
8 residents.

9 And we thank the Commission for getting the
10 Petitioner to agree to increasing the
11 retention/detention basins to 63,500 cubic feet. At
12 the same time, our understanding is that according to
13 the Hawaii Administrative Rules, the evidentiary
14 portion of this hearing has been closed, and we would
15 consider this new evidence.

16 This condition will impact the design of
17 the proposed cemetery, and the impacts have not gone
18 through the complete DBA review process. For
19 example, there has been no design put forward to the
20 Commission to assess the larger retention ponds'
21 impact to cultural and historic resources, nor has
22 the other agencies been able to comment on these,
23 such concerns as raised by Mr. Pang.

24 We ask that the Commission consider the
25 lack of public review on this change, and consider

1 denial on this and on our other points.

2 In the event the Commission does approve
3 the DBA, we have submitted some alternate language
4 for consideration for the newly proposed condition on
5 the retention basins.

6 Point No. 9: The project has adverse
7 impacts to the existing views.

8 This site will undergo extensive grading
9 activities, cutting and filling of a mountain. The
10 project includes grading of 33.6 acres and a majority
11 of the western hillside will be excavated to achieve
12 height reductions between 40 and 100 feet.

13 Many of us have seen the current forested
14 area in our visit to the area, and these changes will
15 be extreme and will have extreme adverse scenic
16 impacts.

17 Thus, the land retains the property of the
18 Conservation District as HAR 15-15-20, Section 4 for
19 the preservation of scenic sites, and it does not
20 conform to the Hawaii State Plan HRS 226 Priority
21 Guidelines 104-b.13

22 Point No. 10: The area is part of the Kawa
23 Stream watershed.

24 The Petition Area is part of the watershed,
25 and, in addition, portions of the Lipalu Channel are

1 likely Federal Jurisdictional Waters, as a tributary
2 to the Kawa Stream, which discharges into Kaneohe
3 Bay.

4 Again, the land retains the property of the
5 Conservation District as HAR 15-15-20 to protect the
6 watersheds. It also does not conform to the Hawaii
7 State Plan HRS 226 priority guideline 104-b-10.

8 Point No. 11: The project is contrary to
9 the Ko'olaupoko Sustainable Communities Plan.

10 The DPP and Petitioner says KSCP only sets
11 forth regional land use policies and guidelines.

12 However, the KSCP language is not general.
13 It specifically identifies Hawaiian Memorial and
14 Pohai Nani saying there must be a 2000-foot buffer
15 between the two. Councilmember Kymberly Pine further
16 clarified by submitting a letter to the LUC saying it
17 was the Council's intent to set the buffer at 2000
18 feet from the Pohai Nani property line.

19 As the DPP's Dina Wong pointed out, the
20 current expansion is only 1,350 not 2000.

21 So the LUC's decision criteria states the
22 Commission shall specifically consider the community
23 and development plans. And this project clearly
24 violates the explicit language regarding Hawaiian
25 Memorial and the KSCP.

1 Point No. 12: This land is needed to
2 protect the environment.

3 We are seeing the devastating effects of
4 global warming. Just this year we see the
5 unprecedented fires on the West Coast, and we have so
6 many Atlantic hurricanes they ran out of names.

7 Our meteorological expert testified there
8 is evidence of global warming, and we need trees to
9 limit the deforestation.

10 The DPP has also said their concerns
11 regarding the loss of forest as a result of the
12 cemetery expansion, which is contrary to the City's
13 efforts to encourage the planting and preservation of
14 trees.

15 This project is contrary to the Hawaii
16 State Plan, HRS 226, 11-b-1 to exercise an overall
17 conservation ethic.

18 So for these reasons, as it was ten years
19 ago in the prior Land Use decision on Hawaiian
20 Memorial, it's clear that the proposed district
21 boundary amendment is contrary to many of the
22 decision-making criteria for changing the
23 conservation district designation.

24 And based on these factors, we humbly beg
25 the Land Use Commission to deny the request.

1 Thank you.

2 CHAIRPERSON SCHEUER: Thank you, Mr.
3 Yoshimori.

4 Can I clarify before I provide for
5 questions. You said you provided some alternate
6 language.

7 MR. YOSHIMORI: Yes, I sent that to the LUC
8 email address and cc'd Mr. Hakoda.

9 CHAIRPERSON SCHEUER: Can you share those
10 right now as well?

11 MR. YOSHIMORI: Sure.

12 CHIEF CLERK: Mr. Chair, this is Riley. I
13 can forward the email to the Commissioners, if that
14 would help.

15 CHAIRPERSON SCHEUER: Please do that as
16 well, but I will still ask Mr. Yoshimori to review.

17 And to the parties, Mr. Hakoda.

18 MR. YOSHIMORI: So the language that we
19 have proposed is: The Petitioner shall prepare a
20 detailed detention basin analysis using appropriate
21 computer modeling software to determine the size of
22 the detention basins to be constructed immediately
23 upstream of each of the existing drainage inlets that
24 will receive runoff from the project.

25 The inflow will be calculated based on at

1 least a 10-year 24-hour rainfall event, and the
2 basins shall be designed so that the outflow from
3 each basin will be limited to the capacity of the
4 existing downstream drainage improvement.

5 The detention basin analysis shall be
6 submitted to the DPP and the Intervenors for
7 approval. After the detention basin analysis is
8 approved, the detention basins shall be constructed
9 as soon as practical after the start of grading for
10 the project.

11 CHIEF CLERK: Chair Scheuer?

12 CHAIRPERSON SCHEUER: Yes.

13 CHIEF CLERK: I'm having difficulty
14 transmitting Mr. Yoshimori's email. Is it possible
15 that he might be able to transmit it from his end?

16 CHAIRPERSON SCHEUER: I'm not sure he has
17 all the contact information for the Commissioners.

18 CHIEF CLERK: I think if he resends it,
19 perhaps either Mr. Orodener or myself might be able
20 to forward it to the Commissioners.

21 CHAIRPERSON SCHEUER: And the parties.

22 MR. YOSHIMORI: I submitted it to Mr.
23 Hakoda and Mr. Orodener. Is that okay?

24 CHAIRPERSON SCHEUER: Yes. We are coming
25 up on 55 minutes. Anybody want to start with

1 questioning of Mr. Yoshimori?

2 Commissioner Aczon.

3 VICE CHAIR ACZON: Just a clarification.

4 Is your proposed language, is it in addition, or in
5 replacement of Petitioner's proposed condition?

6 MR. YOSHIMORI: It's to replace the
7 Petitioner's proposed condition.

8 VICE CHAIR ACZON: Thank you.

9 MR. YOSHIMORI: Although for clarification,
10 we're citing that we're hoping the Land Use
11 Commission will deny the district boundary amendment.

12 CHAIRPERSON SCHEUER: That is clear from
13 your presentation.

14 MR. YOSHIMORI: Thank you.

15 CHAIRPERSON SCHEUER: Commissioner Chang.

16 COMMISSIONER CHANG: Mine is more a comment
17 than a question.

18 Mr. Yoshimori, I really want to thank you
19 for your diligence, and obviously your patience and
20 persistence. I've appreciated the value that you've
21 brought to the hearing. So I do want to thank you
22 for your work. Thank you.

23 MR. YOSHIMORI: Thank you.

24 CHAIRPERSON SCHEUER: Commissioners,
25 questions at this time for Mr. Yoshimori? Otherwise

1 I'm going to recommend that, since we're trying to
2 get some information out to him and all the parties
3 as well as get ready for a break, we would take a
4 break now.

5 Commissioner Giovanni.

6 COMMISSIONER GIOVANNI: Thank you, Chair,
7 and thank you, Grant. I call you Grant, I've known
8 you for a long time.

9 You've done a great job and a very
10 professional one representing your interest, and I
11 greatly appreciate how you've performed and conducted
12 yourself on behalf of your constituents; couldn't be
13 more impressive. So thank you for that.

14 I was trying to follow your reading of your
15 proposed language for a condition about the drainage
16 retention ponds in the event that we do approve the
17 Petition, and I didn't quite catch whether or not you
18 were identifying a specific methodology for the
19 analysis, even though your expert testimony put forth
20 on your behalf did identify the City and County Plate
21 6 methodology.

22 Could you address that confusion in my
23 mind?

24 MR. YOSHIMORI: I did get this language
25 from our engineer who I don't have access to at this

1 moment. I believe he was referring to Plate 6 in
2 order to calculate that 10-year, 24-hour rainfall
3 event, but I'm not 100 percent certain, but I'll
4 clarify that offline and get you that information.

5 COMMISSIONER GIOVANNI: Also could you
6 clarify, because I do think there might be a conflict
7 between your expert witness testimony that was
8 recommending the 100-year, 24-hour storm, as opposed
9 to a 10-year, 24-hour storm. So if you could clarify
10 those two points, that would be appreciated.

11 MR. YOSHIMORI: Will do. Thank you.

12 CHAIRPERSON SCHEUER: It's 1:29. Let's
13 take a recess until 1:40, then we will go into
14 questioning of the Intervenor. Recess until 1:40.

15 (Recess taken.)

16 CHAIRPERSON SCHEUER: Let's go back on the
17 record. It's 1:41 and Commissioner Okuda, you have
18 the floor to question the Intervenor.

19 COMMISSIONER OKUDA: Thank you, Mr. Chair.

20 Mr. Yoshimori, let me echo what
21 Commissioner Chang had mentioned about your
22 participation, and I thought I was a person who pays
23 attention to the case law, but you raised a point
24 which frankly I overlooked.

25 And what I would like to do, I'm not going

1 to ask you a question on this, because you raise the
2 point, but I'm going to ask if the Chair allows that
3 later on when we go back, and if we have a
4 possibility of asking the other parties to comment.
5 I would ask the Chair to ask the other parties to
6 comment on your statement about noncompliance with
7 the Ka Pa'akai case.

8 And specifically, this is the section, with
9 the Chair's indulgence, if I can read part of a
10 paragraph, or actually read this paragraph found at 7
11 Pacific 3d at page 1087. I'm sorry I don't have the
12 Hawaii Report section, but later on with the Chair's
13 permission, I would like the other parties to comment
14 on whether or not we have a Ka Pa'akai problem here,
15 or whether we don't have a problem.

16 And I'm actually more interested in if any
17 of the parties say we do not have a problem, why we
18 do not have a problem.

19 If I may quote what the Hawaii Supreme
20 Court said about improper delegation of Ka Pa'akai
21 duties.

22 And I quote: "KD argues, however, that
23 Hawaiian rights are adequately protected because the
24 LUC's Condition No. 18 requires KD to, quote,
25 "preserve and protect any gathering and access rights

1 of native Hawaiians who have customarily and
2 traditionally exercised subsistence, cultural and
3 religious practices on the subject property", close
4 quote.

5 KD further maintains that it is conceptual
6 RMP will adequately protect any such rights. This
7 wholesale delegation of responsibility for the
8 preservation and protection of native Hawaiian rights
9 to KD, a private entity, however, was improper and --
10 one moment, please -- and misses the point.

11 These issues must be addressed before --
12 and the word "before" is italicized for emphasis by
13 the Hawaii Supreme Court -- these issues must be
14 addressed *before* the land is reclassified.

15 So later on, with the Chair's permission, I
16 would ask the Chair, or allow the other parties to
17 comment on whether or not we have a Ka Pa'akai issue;
18 and if there is no Ka Pa'akai issue, why is there no
19 issue? Especially since the specifics of the terms
20 and conditions of the Cultural Preserve management
21 have not been specified.

22 Thank you very much, Mr. Chair. And I've,
23 again, learned that -- as I've learned from listening
24 to Commissioner Giovanni, we should pay attention to
25 what engineers have to say.

1 CHAIRPERSON SCHEUER: So the parties,
2 consider yourself fairly warned, you will receive
3 this questioning from Commissioner Okuda after the
4 general questioning of Mr. Yoshimori, because my
5 intent is to allow the Commissioners to ask any final
6 questions before we move into final deliberations --
7 formal deliberations, excuse me.

8 Commissioners, are there other questions of
9 Mr. Yoshimori? Commissioner Giovanni.

10 COMMISSIONER GIOVANNI: I was just
11 wondering if Mr. Yoshimori had enough time to get
12 answers to the two questions I asked previously.

13 MR. YOSHIMORI: Is it okay for me to
14 answer?

15 CHAIRPERSON SCHEUER: Yes.

16 MR. YOSHIMORI: So I did speak to Mr.
17 Higham, and he said that the recommendation that he's
18 put forward he felt was the most fair and achievable
19 method for a developer to follow.

20 So he based it on the rational method, and
21 he based it on that 10-year, 24-hour flood
22 calculation.

23 But he did say what was more important is
24 it's matching of the outflow of the basins to match
25 the current capacity of the City and County's

1 receiving areas.

2 So that's a key element that he wanted to
3 push forward is that we have to retain the water so
4 that it only flows off at the level that the City and
5 County can handle.

6 COMMISSIONER GIOVANNI: Generally speaking,
7 given rain events will produce a certain volume of
8 water, and if you allow that volume of water, if it's
9 a great amount, to runoff all at once, it will
10 overwhelm the existing infrastructure and flood.

11 So the idea is if you build a retention
12 basin large enough, you will survive the storm, and
13 then the water can be released at a rate that it is
14 compatible with the downstream infrastructure to
15 avoid flooding.

16 That's the general idea behind all these
17 methods. And the key is the size of the storm and
18 then the method that is used. So in Mr. Higham's
19 testimony he strongly suggested that the rational
20 method was not adequate.

21 Are you now saying that he's saying that it
22 is adequate provided you use the right size storm?

23 MR. YOSHIMORI: I think he's saying that in
24 conjunction with the rational method, by matching the
25 outflow and the City and County's ability to receive

1 it, that it will match, it will address the concerns.
2 He did say that this should result in retention
3 volume that's greater than or equal to the -- I
4 forget what the exact amount was -- I think 62,000
5 cubic feet.

6 COMMISSIONER GIOVANNI: Five times the
7 original estimate.

8 MR. YOSHIMORI: Yes.

9 COMMISSIONER GIOVANNI: So five or more
10 greater than the original estimate, rather than just
11 agreeing to a bigger five times the 60,000. Thank
12 you for that clarification. And I will yield back,
13 Mr. Chair.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Giovanni. Commissioners, are there
16 further questions for Mr. Yoshimori? Anything,
17 Commissioners?

18 If not, Commissioners, you may ask any
19 final questions you have of any of the parties before
20 we go into formal deliberation.

21 Let's start with Commissioner Okuda's
22 questions regarding Ka Pa'akai O Ka 'Aina.

23 COMMISSIONER OKUDA: Thank you, Mr. Chair.

24 Perhaps each of the parties, starting with
25 the Petitioner, can answer the question whether or

1 not -- because the terms and conditions of the
2 Cultural Preserve have still not been determined --
3 whether or not we have a violation of the Hawaii
4 Supreme Court's, not only admonition, but rule as
5 stated in the Ka Pa'akai case.

6 CHAIRPERSON SCHEUER: Mr. Tabata.

7 MR. TABATA: Yes, thank you.

8 The Ka Pa'akai case set forth a three-point
9 test. We are in compliance. The three-point test is
10 first we have to identify the cultural resources;
11 two, we have to see if there are impacts to the
12 cultural resources as a result of a project; and if
13 there are impacts, then what reasonable mitigation
14 can be done to address those impacts.

15 So we had our expert Dr. Trisha Kealani
16 Watson do a cultural impact assessment according to
17 Ka Pa'akai, and what her determination was, first of
18 all, there are cultural resources, and she identified
19 them. One of them being the heiau.

20 And number two, the second point of the
21 test, what impacts? Her conclusion was that there
22 will be no impacts because we will not touch, effect,
23 do anything to the cultural resources. That was her
24 conclusion.

25 So in answer to number two part of the

1 test, the answer is no, there will be no impacts. So
2 in other words, you don't get to number three where
3 you have to talk about mitigation to address those
4 impacts.

5 So what that means is, when it comes to the
6 preservation plan and the management of the cultural
7 resources and the Cultural Preserve, what that is is
8 stewardship which goes above and beyond what Ka
9 Pa'akai requires.

10 So just to reiterate, we don't get past
11 number two in the test. There no impacts as a result
12 of the project. That's what the Cultural Preserve is
13 for, to preserve the cultural resources.

14 So that's why we are in compliance with Ka
15 Pa'akai, and that's why this Commission accepted our
16 EIS when we did a Ka Pa'akai test, way back when,
17 over a year ago. And that's why we are in
18 compliance.

19 COMMISSIONER OKUDA: Mr. Tabata, if I may
20 ask, does the acceptance of the Environmental Impact
21 Statement mean that the Land Use Commission is
22 prohibited from engaging in the analysis required by
23 the Ka Pa'akai case?

24 MR. TABATA: No, and I'm glad you asked
25 that question, because it was raised by the

1 Intervenor that there was no requirements that we
2 comply with Ka Pa'akai when we did our EIS, and that
3 I disagree with.

4 The Ka Pa'akai test needed to be done back
5 then when we were trying to evaluate what impacts are
6 going to happen because of our project. At that time
7 we were required to do a cultural impact assessment
8 to determine whether or not our project would impact
9 cultural resources.

10 The only way I know how we're going to
11 protect cultural resources, is if we identify them,
12 we figure out are there going to be any impacts to
13 those resources, and if there are any impacts, what
14 mitigation can we do to protect those resources.

15 So that's why I think Ka Pa'akai applies at
16 the EIS stage. There is no case law on point, I'll
17 admit that, but as representing Petitioners, I would
18 require that if you're going to do an EIS before the
19 Commission, you do a Ka Pa'akai analysis.

20 COMMISSIONER OKUDA: So your position is
21 there is no evidence of any cultural impacts. Am I
22 understanding correctly, so you don't get to the
23 third prong of Ka Pa'akai?

24 MR. TABATA: Correct, that was the
25 conclusion of Dr. Watson.

1 COMMISSIONER OKUDA: Are there any, or is
2 there any evidence, no matter how slight that
3 evidence may be, that in fact this proposed expansion
4 in fact does have at least some cultural impacts?

5 MR. TABATA: No, no. We're going to
6 protect the heiau. We're going to preserve it. The
7 archaeological sites that are for data recovery, we
8 passed that through. We've gotten the approval of
9 SHPD, so that's all in conformance with the law.

10 The harvesting of the ferns, we are making
11 sure that there is an ample amount of ferns still
12 growing in the Cultural Preserve and other
13 undeveloped areas so that cultural practitioners can
14 continue to harvest and care for those plants.

15 So that's the basis for Dr. Watson's
16 conclusion. There will be no impacts, as a result of
17 the project, to cultural resources, and yes, that's
18 why we do not get to number three, and that's why the
19 nonexistence of a preservation plan is not a
20 violation of Ka Pa'akai. That's stewardship above
21 and beyond what Ka Pa'akai talks about in this
22 three-part test.

23 COMMISSIONER OKUDA: Do you believe that
24 reasonable minds could differ, based on the record
25 about whether or not this project creates at least

1 some cultural impacts?

2 MR. TABATA: Based on the record we have,
3 no. We have only one cultural expert in this case,
4 only one. No other experts with the credentials of
5 Dr. Watson testified in this case. All the parties
6 were given an opportunity to produce such a witness,
7 but none did. So as far as our record goes, we only
8 have that one expert's testimony.

9 So, no, I do not believe we can have
10 differing opinions.

11 CHAIRPERSON SCHEUER: Mr. Okuda, I want to
12 not lose sight of -- you wanted to make sure to ask
13 all three.

14 COMMISSIONER OKUDA: I have one last
15 question for Mr. Tabata.

16 Is the Land Use Commission prohibited from
17 looking at all evidence that has been adduced in this
18 record, in addition to whatever Dr. Watson may have
19 testified about, to determine whether or not there
20 have been or will be cultural impacts?

21 MR. TABATA: The ultimate conclusions in
22 the cultural impact assessment required expertise to
23 come to that opinion of testimony. The record is
24 devoid of any other expert testimony, in my opinion.
25 I don't see where that information can come from.

1 COMMISSIONER OKUDA: Thank you, Mr. Chair.
2 Thank you very much, Mr. Tabata.

3 CHAIRPERSON SCHEUER: Do you want to pose
4 the same question, Commissioner Okuda, to the City
5 and to Office of Planning?

6 COMMISSIONER OKUDA: Yes, please.

7 Mr. Pang, if you can answer the same
8 question I asked Mr. Tabata. Do we have a legal
9 delegation issue as set forth in the Ka Pa'akai case?

10 MR. PANG: First of all, I'm going to defer
11 to Mr. Tabata with respect to his expert, but I just
12 want to identify certain things that were presented
13 while I was monitoring this Commission hearing.

14 Mr. Tabata presented his cultural expert,
15 Ms. Watson. And in addition, the Intervenor
16 presented numerous neighbors and people who visited
17 the area and identified particular cultural practices
18 and cultural resources, and Mr. Tabata and his
19 clients indicated that whether the permit is approved
20 by the LUC or not, there will be no interference, and
21 there will be no detriment to whatever is currently
22 being done, and what is going to be done in the
23 future. So I think with respect to that, I don't
24 think you're delegating anything.

25 The fact that there is no specific

1 agreement as to what type of insurance policies are
2 going to be adopted, what would be the amount of
3 compensation, I don't think that that's what the Ka
4 Pa'akai court was looking for. You already have on
5 the record the cultural practices.

6 I recall Commissioner Chang asking all of
7 the neighbors if they do cultural practices in that
8 area, and those who said yes, there was no
9 interference by the Petitioner. So with respect to
10 Ka Pa'akai, not knowing that much about that case, I
11 would say I don't think -- I think that the
12 Commission has delved deeply into cultural practices
13 in this particular Petition.

14 Thank you.

15 COMMISSIONER OKUDA: Thank you, very much,
16 Mr. Pang.

17 With the permission of the Chair, I would
18 like to pose the same question to Ms. Apuna.

19 Ms. Apuna, can you please tell me whether
20 or not you believe there's a Ka Pa'akai issue?

21 MS. APUNA: I think OP would also defer to
22 Mr. Tabata's cultural witness. Our expert on this,
23 we wouldn't agree based on that that there is a Ka
24 Pa'akai issue.

25 COMMISSIONER OKUDA: Can I ask you that

1 even though life has no guarantees, do you believe
2 that if we proceed on this record, there still is
3 some risk of reversal on appeal before the Hawaii
4 Supreme Court?

5 MS. APUNA: I think there is always a risk,
6 a level of risk. I don't think it's particularly
7 high.

8 COMMISSIONER OKUDA: Thank you very much.
9 Thank you, Mr. Chair. No further
10 questions.

11 CHAIRPERSON SCHEUER: Commissioner Chang --
12 sorry recess at home, so there's some background
13 noise from the home schooling.

14 COMMISSIONER CHANG: Thank you very much,
15 Chair.

16 Mr. Tabata, just to do some follow-up
17 questions from Commissioner Okuda.

18 Are you saying that the determination of Ka
19 Pa'akai is a matter of an expert opinion and it's not
20 based upon facts provided by cultural practitioners
21 or people who are exercising those rights?

22 MR. TABATA: It's based on facts, and
23 that's what Dr. Watson used to come to her
24 conclusion. She didn't just say there is no impacts,
25 she explained it much more eloquently than I can.

1 She went through and identified the
2 cultural practices that are ongoing, that exist
3 there. And she explained why there is no impacts to
4 those resources. And that's the primary driving
5 force behind -- or not the driving force, I should
6 say, it's the result of the Cultural Preserve, is
7 that we're going to save these resources. Well, the
8 civic club will by managing the preserve and all of
9 the cultural resources there.

10 COMMISSIONER CHANG: And I guess, Mr.
11 Tabata, I believe that Ka Pa'akai has been satisfied,
12 but I disagree with your legal analysis. I
13 ultimately believe that a determination of Ka Pa'akai
14 complies is really an obligation of the Land Use
15 Commission.

16 We have the affirmative obligation to
17 preserve and protect the cultural and natural
18 resources.

19 It is the responsibility of the Applicant
20 to provide us relevant information to, one, identify
21 what those resources are.

22 And I think Mr. Pang was right. I went
23 through detailed questioning. There were numerous,
24 in my view, testimony both by people, the public and
25 the community in the public portion of the testimony,

1 that there were those who collected ferns, those
2 accessed, those who went up to the area to do -- they
3 were working with the heiau. That the resources in
4 my view is much more than just the heiau.

5 So in my mind, there was a sufficient
6 identification of what those resources are. So I
7 think the first test of the Ka Pa'akai was satisfied,
8 at least to my satisfaction.

9 The second test, you're right, is there any
10 impacts to this project? I believe that there are
11 some, that there will be a replacement of some of
12 that area where the ferns are growing. There may be
13 an access where cultural practitioners have
14 traditional accessed through the residential area.

15 So I think that there are, some of those
16 sites maybe that were identified during the AIS will
17 be set for data recovery, they're not going to be
18 preserved.

19 So I think that there are some impacts.
20 However, with respect to the third prong of the test,
21 are there reasonable measures? And I agree with you,
22 in my view, the Cultural Preserve, that is a
23 reasonable measure, also the Conservation Easement.
24 It is a restoration of those. I think that there are
25 benefits.

1 So I have been satisfied, based upon the
2 information that was presented that, as a Land Use
3 Commissioner, I have felt comfortable that the
4 information that is provided, that we are -- at least
5 I am able to go through that Ka Pa'akai analysis for
6 me to make that determination as a Land Use
7 Commissioner, because ultimately that is our
8 obligation, our constitutional obligation.

9 So while I may -- while I have a contrary
10 opinion to Mr. Yoshimori, I don't think the Ka
11 Pa'akai has been -- has not been complied with.

12 I disagree a little bit with some of your
13 arguments, but we get to the same point. But I take
14 great pains in asking those kinds of questions from
15 these witnesses, because I do believe that the
16 factual determination, and then ultimately we make
17 that decision.

18 That was my only point, Mr. Chair.

19 And, Mr. Tabata, you don't have to agree or
20 disagree with me, but that's my point. Thank you.

21 CHAIRPERSON SCHEUER: Thank you very much,
22 Commissioner Chang.

23 I had some responses on this, but they are
24 more a matter of deliberation than they are of
25 questioning for counsel for the parties.

1 Commissioner Wong.

2 COMMISSIONER WONG: Thank you, Chair.

3 First off, well, the main thing is we
4 received the language from Mr. Yoshimori from Mr.
5 Derrickson.

6 I just wanted to get just what Mr. Tabata
7 thinks about the language.

8 CHAIRPERSON SCHEUER: Mr. Tabata.

9 MR. TABATA: Thank you. We did get to
10 review the Intervenor's detention basin language, and
11 it's acceptable. We would like to take out the part
12 about "Intervenor's approval", we don't see that as a
13 part of the normal process.

14 So the words "and the Intervenor's" in the
15 sentence to the last sentence, we would ask that that
16 be deleted.

17 So that sentence would read: "The
18 detention basin analysis shall be submitted to DPP
19 for approval", period.

20 COMMISSIONER WONG: Is that it, Mr. Tabata?

21 MR. TABATA: Yes, otherwise their language
22 is acceptable, agreeable.

23 COMMISSIONER WONG: Chair, can I ask OP and
24 City if they're okay with the language?

25 CHAIRPERSON SCHEUER: I would like to also

1 hear from Mr. Giovanni, who raised these points on
2 this language.

3 COMMISSIONER WONG: Commissioner Giovanni,
4 you mind if I --

5 COMMISSIONER GIOVANNI: That would be fine,
6 Commissioner Wong.

7 COMMISSIONER WONG: Mr. Pang, what do you
8 think about the language with the change that Mr.
9 Tabata stated?

10 MR. PANG: That's the one that was sent by
11 Mr. Derrickson earlier. We didn't have an issue with
12 that. We are presenting it to our engineers, but at
13 this time we don't have a problem with it.

14 COMMISSIONER WONG: Thank you. OP?

15 MS. APUNA: We will defer to Petitioner and
16 their modified language for that.

17 COMMISSIONER WONG: Thank you, Chair.
18 Thank you to all the members that spoke to that.

19 I'm deferring to --

20 CHAIRPERSON SCHEUER: Commissioner
21 Giovanni.

22 Just before, just in case this helps with
23 our discussion as we finish up this phase.

24 Generally the practice of this Commission
25 is we make it really clear in our motion, if a motion

1 is taken to approve, to express the intent, and then
2 we leave it to our expert staff to draft language
3 consistent with the intent of our motion, and then we
4 don't, until later, actually approve the form of the
5 motion where, for some reason the staff has not
6 gotten it, we then clarify that at that final hearing
7 that we have taken action consistent with the intent
8 of the motion.

9 Commissioner Giovanni.

10 COMMISSIONER GIOVANNI: Thank you, Chair,
11 for that added clarification. I was hoping you would
12 say something like that.

13 I also heard that this is consistent with
14 the language that I was looking for.

15 I had also indicated a preference to strike
16 the phrase, and with the approval of the Intervenor.
17 I don't think that's part of the regular process.

18 And let me just ask for clarification. Do
19 we need to define the acronym DPP? I know what it
20 is. Is that well-known in the vernacular of this
21 case?

22 CHAIRPERSON SCHEUER: It will be defined in
23 the course of the Decision and Order, Findings of
24 Fact, Decision and Order.

25 COMMISSIONER GIOVANNI: So, yeah, I'm okay

1 with it.

2 CHAIRPERSON SCHEUER: Commissioners,
3 questions for any of the parties?

4 Mr. Yoshimori, for me, without questioning
5 for one second that I am very clear on the position
6 of the Intervenors, but you heard the language that I
7 asked for regarding construction management
8 coordination with the community.

9 Did you have any clarification or reaction
10 or objection to that language?

11 MR. YOSHIMORI: No, I do not.

12 CHAIRPERSON SCHEUER: Thank you.

13 CHAIRPERSON SCHEUER: Commissioners, is
14 there anything further? Questions for the parties?

15 If not, then the Commission will now
16 conduct formal deliberation concerning whether or not
17 to grant or deny the Petition.

18 I will note for the parties and for the
19 public that during the Commission deliberations, I
20 will not entertain any additional input from the
21 parties or the public unless those individuals are
22 specifically requested to do so by me.

23 If called upon, I would ask that any
24 comments would be limited to the question at hand.

25 The Commission held hearings on the merits

1 of this Petition November 21st, 2019, January 22nd,
2 May 6th, June 8th and 9th, and 24th, and August 12th
3 of 2020, and held closing arguments which we will
4 conclude with today.

5 Commissioners, let me confirm that each if
6 you have reviewed the record and read the transcript.
7 After I call your name, will you please signify with
8 either "aye" or "nay" that you're prepared to
9 deliberate on this matter.

10 Commissioner Aczon?

11 VICE CHAIR ACZON: Yes, I am.

12 CHAIRPERSON SCHEUER: Commissioner Cabral?

13 VICE CHAIR CABRAL: Yes, I am.

14 CHAIRPERSON SCHEUER: Commissioner Chang.

15 COMMISSIONER CHANG: Aye.

16 CHAIRPERSON SCHEUER: Commissioner
17 Giovanni?

18 COMMISSIONER GIOVANNI: Aye.

19 CHAIRPERSON SCHEUER: Commissioner Okuda?

20 VICE CHAIR ACZON: Yes.

21 CHAIRPERSON SCHEUER: Commissioner Wong?

22 COMMISSIONER WONG: Aye.

23 CHAIRPERSON SCHEUER: And I as Chair am
24 also prepared to deliberate on this matter.

25 Commissioners, I will entertain a motion

1 that the LUC accepts or does not accept the Hawaiian
2 Memorial Life Plan's Petition for the District
3 Boundary Amendment. The Motion should state the
4 reasons for acceptance or non-acceptance of the
5 Petition, as well as the conditions that will apply,
6 and you can refer to, for instance, the conditions
7 proposed in today's discussion and accepted, or the
8 conditions proposed by OP or other such entities.

9 I will entertain a motion. Commissioner
10 Okuda, are you raising your hand?

11 COMMISSIONER OKUDA: Yes, Mr. Chair.

12 With the Chair's permission and concurrence
13 of the other Commissioners, if it is at all possible,
14 is it possible to just we first talk about what might
15 be a reason why we should grant this Petition without
16 committing ourselves to granting it, and then discuss
17 the reasons why we should deny the Petition.

18 CHAIRPERSON SCHEUER: Hold on one second.
19 Mr. Pang, I'm going to mute you, sorry.

20 COMMISSIONER OKUDA: And without committing
21 ourselves, because at this point I'm still not sure.
22 We could then discuss the reasons why it would
23 support a decision to deny the Petition. And do that
24 first before making a formal motion. But I'll leave
25 it up to the Chair.

1 CHAIRPERSON SCHEUER: Having just read all
2 the dates in which we've reviewed the record on this
3 matter, I do understand the conflicted nature, but my
4 preference would be for discussion to happen in the
5 context of a motion.

6 COMMISSIONER OKUDA: Thank you, Mr. Chair.
7 I withdraw my request.

8 CHAIRPERSON SCHEUER: Commissioners, is
9 there a motion to accept or a motion to deny? Or if
10 perhaps, as Commissioner Okuda is suggesting, we just
11 need to discuss it more before a motion is ripe.

12 If nobody is jumping forward to make a
13 motion. Commissioner Okuda, do you wish to suggest
14 the reasons why a motion in favor would be warranted
15 as you suggested?

16 COMMISSIONER OKUDA: I apologize, Chair, if
17 I don't have the laundry list here. But one of the
18 reasons to grant the Petition is the fact that
19 there's a proposal to do something, which I don't
20 believe we see very much, which is a funded Cultural
21 Preserve with an entity that has respect in the
22 community.

23 It basically gives something which a
24 landowner is not required to do. A landowner is not
25 required to preserve cultural resources. A landowner

1 I believe is entitled, under the law, to engage in
2 benign neglect, and as long as there is no
3 affirmative action destroying things or degrading
4 resources or cultural monuments, frankly, there's no
5 real sanctions.

6 So one thing in favor of this Petition is
7 it gives a benefit which normally you cannot get.

8 The other benefit I see is, even though
9 there might be conflicting evidence here, that there
10 could be mandated drainage improvements which
11 possibly should have been done when the subdivision
12 was earlier built, but haven't been done. So the
13 development may require the construction of things to
14 protect the downslope residents.

15 And so I see the main factor in favor of
16 granting the Petition is the Cultural Preserve and
17 the representation that the holder or the manager of
18 the Cultural Preserve is going to be the Ko'olaupoko
19 Hawaiian Civic Club, a well-recognized entity, and
20 there is a representation that funding will be
21 provided.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Okuda.

24 Commissioner Cabral, you have raised your
25 hand.

1 VICE CHAIR CABRAL: Yes, thank you.

2 Another favorable outcome of the Petition,
3 approval of the Petition would be the damselfly.
4 While there is, again, conflicting information as to
5 whether that's going to be adequate or not adequate,
6 I would say that the reason it's becoming extinct is
7 the fact that no one has done very much in the past
8 to protect it. So, therefore, the efforts of the
9 Petitioner in establishing some type of protected
10 area I think is going to do it better than just
11 completely ignoring it.

12 And as they said, you do nothing, there is
13 no law against doing nothing of preserving something
14 that's on your property.

15 So I think that the Petitioner will make
16 those efforts, and, therefore, preserve that
17 damselfly that is an endangered species. So that's
18 one more to the positive list. Thank you.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Cabral.

21 You know, I'll have to use this opportunity
22 to state my, by and large, agreement with
23 Commissioner Chang's analysis of the Ka Pa'akai
24 issue.

25 Mostly, I agree or disagree with folks. I

1 rarely take umbrage to arguments before us. I do
2 take umbrage to the suggestion that we were violating
3 Ka Pa'akai, and I do take umbrage to Mr. Tabata's
4 suggestion you need to be an expert in order to meet
5 the standards needed for Ka Pa'akai analysis.

6 I think cultural practitioners, by
7 presenting facts, are a legitimate separate part of
8 that standard.

9 When I think about Ka Pa'akai, I can never
10 stop but think about Malia Akutagawa's great summary
11 of it, which is, you know, there's the Supreme
12 Court's formal language. But Malia siad, the
13 question is simple: What you get? What going
14 happen? What you going do?

15 And the parties did a good job in
16 describing what was there; what you get. They did a
17 good job in describing the very minimal impacts on
18 what was going to happen, and the very specific and
19 planned-out tasks for any impacts that will occur as
20 well as the additional enhancing measures by the
21 creation of the Cultural Preserve.

22 So echoing Commissioner Okuda's statements,
23 I believe that the cultural natural resources for the
24 vast majority of property would be enhanced.

25 I would also note for me the permanent

1 nature of a Conservation Easement is that no
2 government body can undo it later on. So the
3 long-standing concerns with this community having
4 future housing development or other development, this
5 will be the final footprint of what can occur,
6 because there will be a third party which will in
7 essence own the development rights and will stop
8 anything from happening.

9 Commissioner Chang.

10 COMMISSIONER CHANG: Thank you, Mr. Chair.
11 Obviously we're all struggling with this. This is
12 probably the first time I see that we don't have a
13 motion but we've got kind of discussion of the pros
14 and cons.

15 In my view, I see this matter being
16 different from what was previously before the Land
17 Use Commission. However, I greatly appreciate, Mr.
18 Yoshimori, you really have added great value. You've
19 pushed the envelope very far on this, and the
20 Hawaiian Memorial Park is willing to give a lot more
21 than perhaps they would have.

22 But in my view, what is different this time
23 is the Ko'olaupoko Sustainable Communities Plan. I
24 recognize that there are some people within the
25 neighborhood that strongly oppose, passionately

1 oppose this because it is literally in your backyard.

2 And I think at the time that it was
3 originally heard ten years ago, the Ko'olaupoko
4 Sustainable Communities Plan supported what the
5 neighbors felt.

6 But that process subsequently engaged the
7 larger community. And that larger community, they
8 went through a process to have public meetings; they
9 had long discussions. And as a result of that, the
10 Hawaiian Memorial Park's expanded area and the
11 Cultural Preserve is now part of the Ko'olaupoko
12 Sustainable Communities Plan.

13 And to me that is a very significant
14 consideration, that it does reflect, you know, as we
15 have earlier testified, I think Mahealani talked
16 about good planning, and I think that plan provided
17 the good planning.

18 I think also the many issues that have been
19 raised throughout the hearing, in my view today,
20 there were -- I'm comfortable with the adequate
21 measures, the additional conditions that were added.
22 Appreciate the Chair asking for those conditions
23 about community engagement, and so too often all we
24 get is complaints. So I appreciate the fact that
25 Hawaiian Memorial Park, through Mr. Tabata's

1 representation, is willing to do more. And I think
2 they recognize how important this is, especially to
3 those neighbors who have -- Mr. Yoshimori, I think
4 has dedicated more than a decade to this.

5 I don't want to diminish how, you know,
6 what your efforts have done, but to me, again, I am
7 very comfortable with the Cultural Preserve. I think
8 that was a heiau that was -- it was covered in -- I
9 can't remember the name of the gentleman who found
10 it, and then started clearing it up. And now it's
11 become -- I mean it's a showcase, and it's got such
12 cultural mana, you go there and you can feel it.

13 So I feel that the Cultural Preserve, the
14 fact that now Hawaiian Memorial Park is willing to
15 pay for a lot of the management that those fees or
16 expenses that would otherwise have been borne by the
17 Ko'olaupoko Hawaiian Civic Club through Commissioner
18 Okuda's, you know, I think his line of questioning
19 and the fact that the Hawaiian Memorial Park is
20 willing to actually put funds towards that
21 management, even if it is done by another
22 organization.

23 But all of these measures, concessions,
24 again, the fact that the Ko'olaupoko Sustainable
25 Communities Plan, this extension is now consistent

1 with that.

2 I find that there are more benefits to this
3 plan. The market will bear whether there's a need,
4 but -- and I understand that that's a concern. But I
5 guess for me, I am -- I see those as the reasons why
6 in my mind this is not the same boundary amendment
7 that came ten years ago. And so that's what I have
8 to say. Thank you.

9 CHAIRPERSON SCHEUER: Commissioners.

10 Commissioner Wong, you raised your hand and
11 so did Commissioner Aczon.

12 COMMISSIONER WONG: Defer to Commissioner
13 Aczon first.

14 CHAIRPERSON SCHEUER: Commissioner Aczon.

15 VICE CHAIR ACZON: Mr. Chair, I'm kind of
16 agree with you that, you know, a motion is in order
17 before all the discussion, unfortunately, it kind of
18 taken me awhile to kind of formulate some motion, and
19 still I'm not really full in my -- not on the motion,
20 but I will try, if it is okay with you, Mr. Chair.

21 CHAIRPERSON SCHEUER: Please proceed.

22 VICE CHAIR ACZON: Mr. Chair, I want to
23 move to approve to amend the Conservation Land Use
24 District Boundary into the Urban Land Use District
25 for approximately 53.449 acres of land at Kaneohe,

1 Island of Oahu, State of Hawaii, TMK (1)4-5-033
2 portion of Lot 1, with the conditions prepared by the
3 Petitioners. In addition to that, the additional
4 conditions that was requested and was accepted by the
5 Petitioner, that was accepted by the several
6 Commissioners. I don't have all those.

7 CHAIRPERSON SCHEUER: I have a list of
8 those. Can I refer to them for you, Commissioner
9 Aczon?

10 VICE CHAIR ACZON: Yes.

11 CHAIRPERSON SCHEUER: A condition regarding
12 the drainage control and basin with language
13 agreed -- proposed by the Intervenor with amendments
14 from the -- with a small amendment agreed to by the
15 Petitioner.

16 A definition of "clean fill" as well as the
17 inclusion of all construction and demolition
18 landfills, in addition to specific reference of PVT
19 as they will not be a location for the disposition of
20 clean fill.

21 A condition regarding construction
22 management and communication with the community.

23 A condition regarding endangered species
24 outreach.

25 A specification that an accredited land

1 trust is one accredited by the Land Trust
2 Accreditation Commission; and language regarding the
3 funding of the Cultural Preserve.

4 VICE CHAIR ACZON: That's correct, Mr.
5 Chair. That is in addition to D&O condition proposed
6 by the Petitioners under the proposed D&O.

7 CHAIRPERSON SCHEUER: As well as the City
8 and Office of Planning?

9 VICE CHAIR ACZON: That's correct.

10 I believe that's 20 conditions that they
11 have on that D&O.

12 CHAIRPERSON SCHEUER: So, folks, we have a
13 motion before us. Is there a second?

14 VICE CHAIR CABRAL: I'll second that. I
15 thank Commissioner Edmund for stepping forward and
16 Chair Scheuer for keeping track of all those good
17 details. Thank you very much.

18 CHAIRPERSON SCHEUER: Commissioners, as we
19 now -- I will give Commissioner Aczon and
20 Commissioner Cabral a chance to speak to them, but
21 let me procedurally remind you where we are at.

22 We are on a district boundary amendment.
23 We need six votes in favor of a district boundary
24 amendment for the motion to either move forward, or a
25 motion to deny to move forward.

1 If we should somehow fail to get six votes
2 to either approve or deny and we stalemate, my
3 understanding of state law is that automatic approval
4 would take place in this matter.

5 With that, Commissioner Aczon, do you wish
6 to speak to your motion?

7 COMMISSIONER GIOVANNI: Point of
8 clarification first. If it moves to automatic
9 approval, would it be with the conditions applied or
10 just the original?

11 CHAIRPERSON SCHEUER: It would be with
12 standard conditions.

13 COMMISSIONER GIOVANNI: Thank you.

14 CHAIRPERSON SCHEUER: Mr. Orodener, you're
15 nodding, but I want to make sure to get this on the
16 record.

17 EXECUTIVE OFFICER: Yes, that is correct.
18 If the Petition moves to automatic approval, then the
19 only conditions would be our standard conditions.

20 CHAIRPERSON SCHEUER: Thank you for the
21 question, Commissioner Giovanni.

22 Commissioner Aczon, would you care to speak
23 towards the motion?

24 VICE CHAIR ACZON: Yes, thank you, Mr.
25 Chair.

1 It's been a long hearing and there's a lot
2 of information that we had to take in.

3 First of all, I want to thank Mr.
4 Yoshimori, the Intervenor. You gave us a lot of
5 information also to take in.

6 And also I want to thank the Petitioner for
7 all the hours that they put in on this one.

8 As you know, this is the second bite at the
9 apple, as you all say, for the Petitioner. The first
10 Petition was denied, as you know, and they came out
11 with a second Petition after discussion with
12 community, community concerns, as evident to strong
13 testimony by Ms. Mahealani Cypher and also the
14 efforts of Dr. Trisha Watson.

15 I believe the Petitioners, you know,
16 provided us some credible experts to answer our
17 questions. And I believe that, you know, if not all,
18 they kind of pretty much addressed a lot of community
19 concerns, for example, the traffic, the noise, the
20 dust.

21 And after the proper mitigations and the
22 testimonies that I heard, that damselfly will be
23 better protected than it is currently unprotected.

24 The rockfall mitigations are acceptable to
25 me. And to address the drainage improvements, and

1 the retention basins, it's part of the conditions,
2 the current conditions now.

3 And one thing is the creation of Cultural
4 Preserve which will be managed by the community
5 itself, and Petitioner's agreed to help support that
6 effort.

7 So with that, you know, I strongly ask my
8 fellow Commissioners to join me in approving this
9 project.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Aczon.

12 Before I give it to Commissioner Cabral, I
13 want to note there is an attendee who has their hand
14 up.

15 We are now in the portion of deliberation
16 of just the Commissioners. So if you have some
17 technical issue, you can place it into the Q and A
18 box, but we are not taking any testimony on this
19 matter, or responding to any questions from the
20 public, just as if this was a physical meeting and
21 suddenly someone in the audience wanted to stand up,
22 at this point they would not be recognized by the
23 Chair.

24 Commissioner Cabral, do you wish to speak
25 to your second, followed by Commissioner Okuda.

1 VICE CHAIR CABRAL: Yes.

2 Thank you, Commissioner Edmund for stepping
3 forward, and also clarification from Chair Scheuer
4 and Director Orodenker about the importance of this
5 vote because to not make a vote with all of our
6 conditions, what I think would not be, in my opinion,
7 what I would want or what I think would be the better
8 thing for our community.

9 So I think that the large number of
10 conditions that are being added on to this motion and
11 that the willingness of the Petitioner to accommodate
12 those, or be required to accommodate those, is in
13 fact going to make this project better than
14 originally requested.

15 And also I think will hopefully be better
16 for the community in the damselfly, the cultural
17 center, and also hopefully this extra effort that has
18 been agreed upon today with the drainage basins, and
19 that will hopefully make that even safer for the
20 community below, than if nothing were to happen and
21 we just left it as God would take care of it with
22 flooding from up above.

23 So I'm very hopeful that this entire
24 package will be an improvement for the entire
25 community.

1 CHAIRPERSON SCHEUER: Commissioner Okuda.

2 COMMISSIONER OKUDA: Thank you very much,
3 Mr. Chair.

4 I first have a question either directed to
5 you, Mr. Orodener, or maybe our Deputy Attorney
6 General, Ms. Chow.

7 The statute requires six votes in favor of
8 boundary amendment. Are we required by statute to
9 have six votes to defeat the motion, or defeat or
10 reject the Petition, or is it five votes, which is
11 majority -- is a majority of quorum, I mean?

12 CHAIRPERSON SCHEUER: Mr. Orodener
13 followed by Ms. Chow.

14 EXECUTIVE OFFICER: I want to defer to --
15 (indecipherable) on this, but my understanding is
16 that five votes would be enough to deny, or for
17 approval you need simple majority, but denial, the
18 statute doesn't refer to number of votes that are
19 necessary.

20 MS. CHOW: The statute is silent as to how
21 many votes are required to deny it. Mainly because a
22 denial basically maintains status quo, then I think
23 the interpretation that a simple majority would be
24 sufficient to maintain status quo was probably
25 consistent with the statute.

1 CHAIRPERSON SCHEUER: Thank you, Dan, Linda
2 and Gary for that question and for my misstatement
3 earlier.

4 Mr. Aczon, Commissioner Aczon.

5 VICE CHAIR ACZON: That means just a
6 majority of the present Commissioners to deny?

7 CHAIRPERSON SCHEUER: Of the quorum or of
8 the total number of sitting Commissioners, Ms. Chow?

9 MS. CHOW: I believe it would be majority
10 of the quorum. No. Mr. Orodener is disagreeing
11 with me.

12 CHAIRPERSON SCHEUER: You're muted, Dan.

13 EXECUTIVE OFFICER: I'm going to unshake my
14 head. I'm not sure.

15 COMMISSIONER OKUDA: Mr. Chair, thank you.

16 I don't think we need an answer this very
17 minute. If it becomes an issue, then I'm sure, Mr.
18 Chair, you will take the appropriate action,
19 including recess to determine what the meaning of the
20 result is.

21 CHAIRPERSON SCHEUER: And right now we have
22 before us a motion in the affirmative.

23 COMMISSIONER OKUDA: I would like to speak
24 to that motion.

25 I hate to put it that I disagree with the

1 motion, because I'm still kind of struggling with
2 some of these things, but let me tell you why my
3 inclination is to vote against the motion, with all
4 due respect to my fellow Commissioners, Mr. Aczon,
5 especially, who I have a lot of respect based on his
6 years in the industry.

7 I know they tell us don't use cliches, like
8 if it ain't broken, don't try to fix it, so I'll
9 avoid cliches and just try to look at what's in the
10 record.

11 And I think what this case right now, in my
12 view, comes down to what is reasonably certain and
13 what is maybe not certain or not clear in the record.

14 I think the record is pretty reasonably
15 certain that so far, number one, no one has been
16 injured by falling rocks.

17 There have been no massive flooding of the
18 downslope neighborhood.

19 There are no massive excavation going on
20 right now of the mountain side Oneawa Hills, and
21 there's no runoff going into Kaneohe Bay from
22 excavation of the Oneawa Hills.

23 There's presently no risk which was stated
24 in the Final EIS about what the risks were during
25 construction, which I believe at the Final EIS page

1 ES-5, even though there was discussion that these
2 risks could be mitigated by best management
3 practices, the EIS specifically stated, and I quote:

4 "Significant short-term impacts", close
5 quote, can be expected from the expansion and the
6 construction.

7 You know, I don't like this not perfect --
8 and we have to weigh cost benefits -- but at this
9 point in time there's a real concern on my part about
10 whether or not the benefits, which I do recognize
11 will take place from granting the Petition, the
12 benefit is primarily the Conservation Easement and
13 the Cultural Preserve, whether that's really
14 outweighed by the pretty certain effects or impacts
15 of what's going to take place with the proposed
16 boundary change.

17 There's no question in the record that
18 there will be significant excavations into the Oneawa
19 Hills. Some cuts, according to the record, could be
20 as high as 100 feet. I believe the reports indicate
21 that there might be 457,000 cubic yards of materials
22 excavated.

23 There's going to be significant fill with a
24 leftover of possibly 47,000 cubic yards of materials
25 to be disposed of somewhere.

1 Now, a positive view or outcome of these
2 hearings have been the representation that the
3 amounts which were supposed to go to the PVT
4 Landfill, according to the Final EIS, will not be
5 going to either PVT or a construction disposal site.

6 But having that much fill to dispose of or
7 that much excavation to dispose of, I still have a
8 concern about impacts on construction landfill,
9 because even though there have been an argument that
10 this boundary amendment will help preserve or create
11 jobs, the reality is if we as a Commission do
12 anything which might negatively impact a construction
13 debris landfill, especially with the signature into
14 law about the half-mile buffer around landfills, this
15 project very well creates some risk that we could
16 fill up existing construction landfills to the
17 detriment of many, many other construction jobs which
18 frankly we cannot afford to lose.

19 And the question is, who gets what at the
20 end of the day here? The record indicates that the
21 estimate of income coming off of the sale of the
22 expanded cemetery lots quite possibly could be in the
23 neighborhood of a half-a-billion dollars.

24 Now, Hawaii's Constitution makes clear that
25 we're not prohibited, or the State is not prohibited

1 from developing land, even Conservation land, but the
2 Constitution of Hawaii makes very clear that it has
3 to be done with the eye of self-sufficiency.

4 And the Applicant has also made clear that
5 it will not agree to a condition requiring a certain
6 sum of money be kept in the community.

7 So very well the tradeoff here is we agree
8 to have these massive excavations of the Oneawa
9 Hills, and the people who make the money off of these
10 massive excavations have no duty or obligation to
11 keep the money in the community.

12 And this is not just a simple excavation.
13 What's concerning is Lim's testimony that even with
14 rockfall mitigation efforts, there is a zone of
15 danger here.

16 In other words, yes, it's true, right now
17 people are not prohibited from going into the
18 Conservation area and, in fact, under Hawaii State
19 law, there's a requirement to allow practitioners to
20 go into undeveloped area.

21 But what will take place here with an Urban
22 boundary designation is we are essentially going to
23 be inviting the public to enter into what even the
24 Applicant's engineer has testified to as a potential
25 zone of danger which potentially can lead to serious

1 bodily injury, or things really turn out badly into
2 possibly being deceased.

3 And so when we look at these tradeoffs
4 again, it's really a difficult thing about tradeoffs.

5 Now, I do agree to some extent with
6 Commissioner Chang that the record of this case
7 really indicates that we have really tried to comply
8 with Ka Pa'akai, but there is a little bit of me that
9 has some doubt about whether or not we have a
10 complete record, mainly because there is a delegation
11 of important functions to the manager of the Cultural
12 Preserve which is not spelled out.

13 And the Applicant has the burden of coming
14 forward with sufficient evidence and sufficient
15 documentation. I can't, in my mind, understand why
16 these details, since these questions were being
17 raised at numerous earlier hearings, why these
18 details could not have been brought out so we would
19 not have this potential Ka Pa'akai issue.

20 But the final thing about the tradeoff is
21 this. I'm not sure if the Applicant has met the
22 standard or the burden of proof to demonstrate a real
23 need for these additional cemetery plots. The
24 evidence, as far as I can see, are really conflicting
25 whether or not these cemetery plots are needed or

1 not.

2 And if we go forward with this boundary
3 amendment, we're basically going to justify major
4 alterations of the landscape, major significant risks
5 of runoff and other types of adverse impacts into
6 Kaneohe Bay will create a risk that if these proposed
7 drainage plans don't work out, there could be
8 significant flooding of the downslope neighborhood,
9 and in the end, we may also be creating a significant
10 risk to people who come into this Urban area thinking
11 it's safe, not realizing that there is documented
12 rockfall hazard.

13 So Cultural Preserve, Conservation
14 Easement, that's really, really enticing. You know,
15 I compliment Mr. Tabata and Mr. Matsubara for really
16 trying to address these issues, you know, and it
17 shows they do a good job when it really has me
18 conflicted.

19 But at this point in time, given the
20 matters that I've raised, especially the provision in
21 the Constitution which talks or admonishes us to look
22 toward self-sufficiency, I cannot see a justification
23 for a project with these types of downside risks
24 which will basically reward the world's largest
25 funerary mortuary cemetery company with possibly half

1 a billion dollars for the exchange that we get, even
2 though the Cultural Preserve is a very positive
3 thing.

4 Thank you very much, Chair. Thank you to
5 my fellow Commissioners for bearing with me.

6 CHAIRPERSON SCHEUER: Commissioners, we are
7 in deliberation. The motion before us is to grant
8 with conditions. Commissioner Wong.

9 COMMISSIONER WONG: Thank you, Chair.

10 I'll be voting in favor of the motion. I
11 first thank the Intervenor, Mr. Yoshimori, he brought
12 some very good points. And some of the points were
13 to me about Ka Pa'akai, the drainage basins, and even
14 about the dragonfly was -- damselfly, sorry -- got me
15 questioning -- but what happens is when we had the
16 hearing, one of the issue was if we don't do
17 anything, Hawaiian Memorial Park will not need to do
18 anything about the damselfly. And the damselfly just
19 could die off just because excess heat, no water.

20 So they are going to do something, so
21 that's one reason why I'm supporting the motion.

22 The second thing is they agreed to increase
23 the drainage basin to a size that is needed, that is
24 past the needs of the statement of the law.

25 So to me, that to me that is very

1 important, and hopefully it will protect Mr.
2 Yoshimori, and all the neighborhood people in the
3 area. So that's another reason.

4 The last reason is, they're getting a
5 Ko'olaupoko -- someone to take care of the land, and
6 giving them the rights to continue to go into the
7 land. So that's the last reason.

8 So that's why I'm supporting the motion.
9 Thank you, Chair.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Wong.

12 Commissioners? Commissioner Giovanni.

13 COMMISSIONER GIOVANNI: Thank you, Chair,
14 and thank you to my fellow Commissioners, and all the
15 participants in this incredible docket. It's been a
16 real experience for me, the newest Commissioner.

17 If I turn back the clock even a week, I had
18 a half a dozen issues with this proposed project. If
19 any one of these in my mind were not adequately
20 addressed, I would not have been in favor of this
21 project, I would have voted against it.

22 I note that I said the word "adequately" or
23 "sufficiently" as opposed to absolutely or on a
24 guaranteed basis, because for many of these things
25 there are no absolutes. And so we're called upon to

1 make judgments in the best way we can.

2 One of the six items -- one item that's not
3 one of these six items is whether this project is
4 financially feasible or justified. That's a business
5 decision by the project owner, in my mind, who has --
6 who would be investing tens of millions of dollars, a
7 lot of that would stay in Hawaii and it would serve
8 the needs and desires of Hawaii people.

9 I don't see that this is a project that's
10 really designed for burials of people from outside of
11 Hawaii, although there might be a few, but it's
12 really something that's serving the people of Hawaii
13 and Oahu in particular, the families, we heard from a
14 lot of them.

15 So I want to go back to these six items
16 that were so troubling for me.

17 The first is do -- is the project going to
18 adequately address climate change, and that came in
19 two forms. One, with the deforestation; and
20 secondly, with the increased and more aggressive
21 storm events that are expected to occur in the near
22 future.

23 And I accept the game plan and the
24 commitment of the Petitioner to plant tree for tree
25 replacement on Oahu to mitigate the effect of

1 deforestation on climate effect, but the size of this
2 property, I don't think in the grand scheme of things
3 is going to be a great adverse affect in the first
4 place, but nonetheless it is an adverse affect and I
5 think no matter the size, it's incumbent upon all of
6 to us do what we can, our part.

7 So I think the tree for tree replacement,
8 although not perfect, because the new trees will take
9 a little bit of time to grow, is the right kind of
10 mitigation for that part of the climate change
11 effect.

12 The second had to do with the more
13 aggressive storms, and going with the 24-hour worst
14 case storm in the ten-year period, as opposed to a
15 one-hour storm is really important. You're talking
16 about 15-inch water storm, of which we have had two
17 on Kauai in the last year. So they will occur and
18 they will create havoc, so you need to design for
19 that level of storm, and I think the willingness to
20 do that is a positive.

21 We might have a bigger storm, but
22 nonetheless, I think, again, sufficient, adequate and
23 responsive by the Petitioner.

24 Second issue I had, had to do with
25 endangered species and the damselfly. And I tried to

1 follow all the testimony and all the evidence and all
2 the Q and A, and simply said I come away with the
3 perspective, the judgment that the damselfly is going
4 to have a better chance, not an absolute chance, but
5 a better chance by virtue of the project than it
6 would if the project does not go forward, because
7 there is going to be attention paid to it. So I
8 think we check the box on that one.

9 The third one had to do with the cultural
10 issues, and the archeological issues, and for this I
11 defer largely to my fellow Commissioners and expert
12 testimony that's on the record, and it sounds to me
13 that the Petitioner is taking an adequate and
14 sufficient response, and one that's sincere, and they
15 want to do right.

16 I'm open to listen to any of my fellow
17 Commissioners to say that it's not adequate or not
18 sufficient, but in my judgment, listening to the
19 what's on the record, it is.

20 The fourth one has to do with the disposal
21 of clean fill, and we have talked about that a lot,
22 including today. And the Petitioner has moved
23 considerably from where they were two weeks ago,
24 three weeks ago and they moved in the right
25 direction.

1 So I do think that there will be a market,
2 there will be opportunity to dispose of it. It's a
3 lot of clean fill. We have defined what it is. They
4 will find a market for it in other construction
5 projects. Just think of the H-3, think of the rail
6 system.

7 There will be big projects that move earth
8 and require fill, that rather than take the simple
9 route to dispose of it, we are forcing them through
10 this condition to proactively find a home for that
11 clean fill that is, again, in a positive way, because
12 construction projects that need clean fill, they
13 welcome it. So hopefully that occurs. So I think we
14 have sufficiently there.

15 Then the last one -- not the last one, but
16 the fifth one, and it's the one that I actually lost
17 sleep over, to think of the people living in the
18 homes right below, and whether or not they're at risk
19 of a flooding episode by virtue of the construction
20 activity occurring in combination with an aggressive
21 storm.

22 So I do think it was very important that
23 the Petitioner move to agree to language proposed by
24 the Intervenor, and I respect the fact that the
25 Intervenor is putting forth that language on the

1 condition that this project is approved, a project he
2 opposed sincerely, but nonetheless, I feel the
3 language is appropriate and is adequate to minimize
4 the risk. Again, no absolutes here.

5 And then the last condition that I cared
6 about was continued community engagement. I hate to
7 see -- I mean, this is a project that is going to
8 effect the community in many ways, whether it be
9 day-to-day construction activities, whether it be
10 ongoing negotiations with the Cultural Preserve, et
11 cetera.

12 So requiring that condition was important
13 to me. So I looked down my list. That does not
14 include financial feasibility, and I kind of check
15 the box one by one that they're all sufficiently and
16 adequately addressed on balance.

17 And so for all those reasons, I will be
18 voting in favor of the motion.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Giovanni.

21 Commissioner Chang.

22 COMMISSIONER CHANG: Thank you, Mr. Chair.

23 I too am going to be voting in favor of the
24 motion. This is -- and Commissioner Okuda, I greatly
25 appreciate always what you bring -- well, most of the

1 time, most of the time.

2 CHAIRPERSON SCHEUER: Let us call recess.
3 No. (Laughter).

4 COMMISSIONER CHANG: I do appreciate you,
5 and what you bring.

6 For me, the role as a Land Use
7 Commissioner, it is to exercise independent judgment,
8 but it is to look at the will of the community. And
9 we have heard -- I mean, Mr. Yoshimori, and the
10 neighbors we heard them clear. They have been
11 consistent. They have been passionate.

12 But for me what is really striking is the
13 Ko'olaupoko Sustainable Communities Plan. That is a
14 planning process that involves a greater community
15 engagement process. It is one that looks -- it is a
16 rational reasonable planning document. And I believe
17 that as a Land Use Commissioner, we do have to pay
18 attention to that.

19 I may not have gone through a methodical
20 checklist as Commissioner Giovanni, but listening to
21 the testimony, listening to in particular today,
22 there were -- the Commissioners pushed Mr. Tabata and
23 the Petitioner to take on some conditions that they
24 may not have originally been willing to do, and to me
25 that demonstrates, I believe, a sincere desire to be

1 a good steward to this land.

2 And these Ko'olaupoko Hawaiian Civic Club,
3 I never take them lightly. And, Gary Okuda, you've
4 said that before. You know, Mahealani and that
5 group, they would not come onto a project that they
6 did not believe in their hearts was right for this
7 community. So I give great deference to them.

8 But, again, for me it is the will of the
9 community. I believe the Cultural Preserve, I
10 believe that the Ka Pa'akai analysis has been
11 adequately addressed in all of the documents. And I
12 appreciate always the Commissioners asking those hard
13 questions.

14 But in mind, the Cultural Preserve and the
15 mitigation measures, the long-term commitment to
16 involve the Ko'olaupoko Hawaiian Civic Club, that I
17 think is an enhancement. That's stewardship. That
18 is a positive.

19 For all of these different reasons, I will
20 be voting in favor of the motion.

21 Thank you, Mr. Chair.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Chang.

24 Anything further, Commissioners?

25 Commissioner Aczon.

1 VICE CHAIR ACZON: I just want to add to
2 Commissioner Chang's comments that, you know, I
3 consider Commissioner Okuda as the conscious of this
4 Commission.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Aczon.

7 Where to begin. I've a friend who is a
8 meditation teacher on Hawaii Island, and his
9 teacher's teacher was a revered and elderly monk who
10 was asked: "Now, after having practiced meditation
11 your entire life, how do you meditate?"

12 And he said: "It's really simple. It's
13 like on the in-breath I say to myself, 'everyone I
14 know will die', and on the out-breath I say, 'and so
15 will I'".

16 I think one of the fuzzy things about this
17 docket is the subject matter, something that we
18 generally push away from. We love to think of
19 ourselves as -- we love to not think of our
20 mortality.

21 And on a personal level, on the one hand,
22 it's not a burial practice that I intend to see for
23 myself to be buried in the ground. I intend to be
24 cremated, that's what my wishes are. But I did,
25 prior to my serving on the Land Use Commission, have

1 the opportunity to serve for three years with the
2 Oahu Island Burial Council, which really deepened my
3 knowledge and respect for the significance of burial
4 practices to people.

5 And one thing that hasn't been highlighted
6 in this discussion has been, you know -- I will use
7 the term, and nothing more than what was just racism,
8 traditional practices were outlawed until very
9 recently, traditional burial practices. Things that
10 were allowed for thousands of years suddenly became
11 illegal in the State of Hawaii. And only through
12 great effort, including from the Ko'olaupoko Hawaiian
13 Civic Club, was there a legality to once again have
14 native Hawaiians do traditional burial practices.

15 But absent a place to do it, the legality
16 of the practice is kind of meaningless.

17 So one of the things that I find very
18 meaningful about this project is not just the
19 compilation of traditional -- so called traditional
20 cemetery plots at an expansion, but also the
21 provision of an area for traditional burials.

22 I'm conflicted, but really for many of the
23 reasons about balancing, I'm going to vote in favor
24 of this motion, and it's not out of -- it's with
25 regret for the really incredible job that the

1 Intervenor did, and not just the technical ability
2 that you brought to it, but the respectful nature,
3 more respectful than colleagues with JDs, who
4 sometimes appear in front of us.

5 And so my vote is not a comment on the
6 manner in which the Intervenor have pursued this,
7 but it is a comment on what the law lays out for us
8 to do as criteria, and what we believe is justified
9 and for the betterment of the State and us all.

10 So I know I'm rambling a bit. It's a hard
11 decision for me, but I do feel on balance that this
12 area, in particular Kaneohe Bay, and actually in
13 terms of flooding the neighborhood, will be better
14 off if this project is granted than if it is not, and
15 certainly better off than if it is automatically
16 approved without any conditions.

17 If there is nothing further, Commissioners,
18 I'm going to ask Mr. Orodener to poll the
19 Commission.

20 EXECUTIVE OFFICER: Thank you, Mr. Chair.
21 The motion is to approve the Petition with conditions
22 contained in Petitioner's proposed Decision and Order
23 and conditions as stated by the Chair and discussed
24 by the Commissioners, including but not limited to
25 drainage control, definition of clean fill, use of

1 PVT Landfill, management of the Ko'olaupoko -- I mean
2 management of the Cultural Preserve and others.

3 Commissioner Aczon?

4 VICE CHAIR ACZON: Yes.

5 EXECUTIVE OFFICER: Commissioner Cabral?

6 VICE CHAIR CABRAL: Yes.

7 EXECUTIVE OFFICER: Commissioner Chang?

8 COMMISSIONER CHANG: Aye.

9 EXECUTIVE OFFICER: Commissioner Okuda?

10 COMMISSIONER OKUDA: No.

11 EXECUTIVE OFFICER: Commissioner Giovanni?

12 COMMISSIONER GIOVANNI: Aye.

13 EXECUTIVE OFFICER: Commissioner Wong?

14 COMMISSIONER WONG: Aye.

15 EXECUTIVE OFFICER: Chair Scheuer?

16 CHAIRPERSON SCHEUER: Aye.

17 EXECUTIVE OFFICER: Commissioner Ohigashi
18 is absent.

19 Thank you, Mr. Chair, motion passes with
20 six affirmative votes.

21 CHAIRPERSON SCHEUER: Thank you very much,
22 Mr. Orodenker. I am instructing the staff to prepare
23 Decision and Order consistent with the Commission's
24 decision today.

25 There being no further business for today,

1 I would like to thank all of the participants and the
2 Commissioners for their stamina, especially again,
3 the Intervenor.

4 We are in recess until 9:00 A.M. tomorrow
5 where we will take up action item SP97-390, Motion
6 for Reconsideration.

7 Thank you to everyone. Be well and safe.
8 It's 3:07 P.M. We're in recess until 9:00 A.M.
9 tomorrow morning.

10 (The proceedings were recessed at 3:07
11 p.m.)

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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on September 23, 2020, at 9:00 a.m.,
6 the proceedings contained herein was taken down by me
7 in machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

12 I further certify that I am not of counsel for
13 any of the parties hereto, nor in any way interested
14 in the outcome of the cause named in this caption.

15 Dated this 23rd day of September, 2020, in
16 Honolulu, Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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