

**DOCKET NO. A17-804  
HAWAIIAN MEMORIAL LIFE  
PLAN, LTD.**

**STATUS AND PROGRESS REPORT**

*STAFF REPORT*

Meeting August 24, 2022

Submitted: August 23, 2022

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## 1. AUTHORITY

Pursuant to HAR 15-15-79(a): “Petitioners granted district boundary amendments shall make substantial progress within a reasonable period, as specified by the commission, from the date of approval of the boundary amendment, in developing the property receiving the boundary amendment. The commission may act to amend, nullify, change, or reverse its decision and order if the petitioner fails to perform as represented to the commission within the specified time period.”

Pursuant to HAR 15-15-90(c) “The commission may require the petitioner to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the commission.”

Members of the community have asked about the progress of project development and communication between the Petitioner and the community. In addition, a question has been raised, more specifically, about a representation made by Petitioner’s representative during hearings, regarding financial obligations and guarantees by its parent company for compliance and completion of the Project.

The Status and Progress Report hearing provides the Petitioner an opportunity to update the Commission on progress or problems in complying with the representations and conditions of the decision and order.

## 2. BACKGROUND

On November 13, 2017, Hawaiian Memorial Life Plan, LTD (“Petitioner”), filed a Petition for Land Use District Boundary Amendment (“Petition”) to reclassify approximately 53.449 acres of land, identified as Tax Map Key: (1) 4-5-033:001 (por.) from the State Conservation District into the State Urban District (“Petition Area”) for the planned expansion of the Hawaiian Memorial Park Cemetery (“Project”) at Kāne’ohe, Island of O’ahu, State of Hawai’i.

The Project proposes the development of two components: 1) expansion of the HMP cemetery to include 28.2 acres of new cemetery space; and 2) creation of a 14.5-acre Cultural Preserve immediately northeast of the cemetery expansion area. Remaining portions of the larger 164.4-acre property surrounding the Petition Area would remain undeveloped. A conservation easement with the Hawaiian Islands Land Trust would be placed on 156.5 acres of the larger parcel (less HMP’s 7.9-acre Ocean View Garden section), restricting future development of the property except for execution of the Proposed Action.

The Petition *Hawaiian Memorial Life Plan, Ltd.* (“HMP”) is a subsidiary of parent company Service Corporation International (“SCI”).

### 3. 2021 ANNUAL REPORT filed October 13, 2021

In compliance with Condition 20 of the 2020 Decision and Order, the Petitioner filed its last annual report on October 13, 2021. This report covered the current status of the Project and progress in complying with the conditions imposed.

Conditions 3-5, 11, 12, 15, 16, 22, and 23 are substantively addressed in the 2021 Annual Report and that response is shown in blue after the language of the condition. All other conditions are addressed in a standard response acknowledging the condition and an intent to comply with it in the future without any specifics.

#### CONDITIONS AND REPRESENTATIONS

The approval of the Petition was subject to 23 conditions:

1. Representations Made. Petitioner shall take and complete the actions described, including but not limited to, those described in Findings of Fact Nos. 324-370 as represented to the Commission.
2. Buffer Areas. Petitioner shall establish a buffer between the proposed cemetery expansion, Pohai Nani project, and other adjacent residential properties in substantial compliance with representations made to the commission and contained in the Ko‘olau Poko Sustainable Communities Plan.
3. Conservation Easement and Restrictive Covenant. Petitioner shall record with the State of Hawai‘i Bureau of Conveyances or the State of Hawai‘i Land Court, or both, as appropriate, a conservation easement and related declaration of restrictive covenant on the entirety of the 156.5-acre undeveloped portion of its Pikoiloa Tract property (TMK No. 4-5-033: 001) that limits, in perpetuity, any other future development on the property, except for the 27.5-acre portion of the property that encompasses the proposed Hawaiian Memorial Park expansion site, and the 14.5-acre portion of the property that encompasses the proposed Kawa‘ewa‘e Heiau cultural preserve.

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

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

Petitioner shall formulate the easement and stewardship of the easement with a Land Trust that is accredited and in good standing with the Land Trust Accreditation Commission for the long-term management of the area.

[Petitioner’s Annual Report on Progress \(pg. 4\)](#)

Petitioner has prepared a proposed Grant of Conservation Easement and Declaration of Restrictive Covenants (“Conservation Easement”) and submitted the same to HILT for its consideration, and Petitioner has been informed that the HILT board of directors will be considering the proposed Conservation Easement at its meeting in October of 2021.

4. Landscape Plan and Tree Replacement. Prior to the issuance of a grading permit, the Petitioner shall submit to the DPP, a landscape plan and schedule of planting. In consideration for the potential impact of Climate Change, within the Petition Area, the loss of mature trees, defined as having a trunk diameter of six inches or greater, shall be replaced on a one-for-one basis, at a minimum, with preferably field stock trees that will have approximately similar size canopy coverage within a reasonable period of time. The locations of replacement trees are not limited to the Petition Area.

[Petitioner’s Annual Report on Progress \(pg. 4\)](#)

The landscape plan for the Project is being developed and will be prepared in compliance with this condition. The Petition Area has been surveyed for trees having a trunk diameter of six inches or greater and the replacement of said trees will be on a one-for-one basis in compliance

5. Detention Basin Analysis. The Petitioner shall prepare a detailed “Detention Basin Analysis”, using appropriate computer modeling software, to determine the size of the detention basins to be constructed immediately upstream of each of the existing drainage inlets that will receive runoff from the project. The inflow will be calculated based on at least a 10-year, 24-hour rainfall event and the basins shall be designed so that the outflow from each basin will be limited to the capacity of the existing downstream drainage improvements. The Detention Basin Analysis shall be submitted to DPP for approval. After the Detention Basin Analysis is approved, the detention basins shall be constructed as soon as practical after the start of grading for the project.

[Petitioner’s Annual Report on Progress \(pg. 5\)](#)

The detention basin analysis for the required detention basins and/or other water quantity storage devices and their outflow design to discharge runoff into the existing City and County of Honolulu Drainage System are being developed in compliance with this condition.

6. Stormwater Management and Drainage Improvements. Notwithstanding other conditions related to the preservation of the habitat for the endangered Hawaiian damselfly, to the extent possible, Petitioners shall implement applicable BMPs to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with State Department of Health (“DOH”) guidelines and City ordinances and rules.

Petitioner, shall at the start of construction, install erosion and sediment controls and retention/detention basins prior to the clearing and grubbing of the site.

7. Air Quality Monitoring. Petitioners shall participate in an air quality monitoring program as required by the DOH.

8. Established Gathering and Access Rights Protected. Pursuant to Article XII, Section 7, of the Hawai‘i State Constitution, Petitioner shall preserve any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, gathering, and religious practice, or for access to other areas for such purposes.

9. Previously Unidentified Burials and Archaeological/Historic Sites. In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and State Department of Land and Natural Resources - State Historic Preservation Division (“SHPD”) shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

10. Relocation of Rocks. Petitioner shall consult with the Cultural Preserve manager to determine whether any of the rocks that were part of the historic features should be relocated to the cultural preserve after data recovery.

11. Establishment of Cultural Preserve. Petitioner shall establish the Cultural Preserve in conjunction with an appropriate Native Hawaiian group (Group). The Petitioner shall work with the community and the Ko‘olaupoko Hawaiian Civic Club in order to establish a preservation and management plan for the Cultural Preserve, in perpetuity. Petitioner shall also execute the agreement with the Ko‘olaupoko Hawaiian Civic Club, in the event the Ko‘olaupoko Hawaiian Civic Club does not execute the agreement, then with another local Native Hawaiian Organization, to manage and steward the Cultural Preserve that supports native Hawaiian cultural practices, containing all provisions consistent with the Petitioner's representations before any work involving ground disturbance occurs.

Petitioner shall pay for or otherwise assume financial responsibility for expenses associated with capital improvements within the preserve required to fulfill the conditions set forth by the Commission for all on-going maintenance of the preserve. Petitioner shall cover reasonable expenses incurred by the Group associated with the management of the preserve, including rockfall hazard mitigation and liability.

[Petitioner’s Annual Report on Progress \(pg. 7\)](#)

[Petitioner is preparing an agreement for the consideration of the Ko‘olaupoko Hawaiian Civic Club \(“Civic Club”\) to address the requirements of this condition. Petitioner hopes to present the proposed agreement to the Civic Club immediately after the execution and recordation of the Conservation Easement.](#)

12. Endangered Species. Petitioners shall undertake the following:

a. A subsurface drainage system designed utilizing a herringbone configuration shall be implemented in the cemetery expansion area planned for fill activities above the seep.

The system shall be comprised of three subsurface drainage mainlines with smaller subdrains branching laterally from them. This system will help ensure water flow to the well and seep is maintained.

- b. A well monitoring gauge shall be installed inside the wall of the well, located upslope from the seep to monitor water levels prior to, during and after the project construction.
- c. Before earthmoving activities begin a minimum 50-meter buffer area above the seep where there will be no grading will be established, then a temporary water line shall be extended to the well from the cemetery's irrigation system. This irrigation line will serve as a short-term means of ensuring continued water flow to the seep. If the gauge indicates water levels have declined to levels potentially affecting the seep, water from the irrigation line to the well will be provided to stabilize water levels.
- d. Once earthmoving activities conclude, a permanent water line shall be extended to the well from the expanded cemetery's irrigation system. This irrigation line will serve as a long-term means of ensuring continued water flow to the seep. If the gauge indicates water levels have declined to levels potentially affecting the seep, water from the irrigation line to the well shall be provided to stabilize water levels.
- e. Small sticks upright and away from the edges of the waterlogged areas shall be placed along the seep to serve as molting safe zone for damselflies to avoid predation from crawling predators.
- f. Habitat boundaries currently shown in the Final Environmental Impact Statement (FEIS) shall be reviewed during project final design based upon more accurate data collected from a topographic survey, and consultation with the State Department of Land and Natural Resources, Division of Forestry and Wildlife ("DLNR-DOFAW") and U.S. Fish and Wildlife Service ("USFWS"). Habitat boundary shall be revised as appropriate. Fencing shall be constructed around the damselfly habitat boundary to protect the native damselfly from disturbance from feral pigs. Fencing shall consist of livestock panels appropriate to exclude pigs, with lower barbed strand to resist digging.
- g. Regular inspection of the seep shall occur to ensure the present flow of water is continued.
- h. Inspection of the seep shall be conducted at monthly intervals for one year prior to construction to establish baseline water flow conditions.
- i. Monitoring shall continue during construction, with the seep area inspected on a weekly basis to evaluate water flow in coordination with BMP (erosion control) measures.
- j. Once construction concludes, monitoring shall continue for six months to ensure continued water flow to the seep. Inspections shall occur weekly for the first three months, and every two weeks for the following three months.
- k. After the six-month monitoring period elapses, HMP staff shall conduct monthly

water flow inspections.

l. At any time, if water flow is documented to be outside of the range observed in the pre-construction monitoring phase, the temporary or permanent irrigation lines shall be used to provide supplemental water to the seep. Additional mitigation measures shall be determined through consultation between the contractor, design team, DLNR-DOFAW, USFWS and other specialists.

m. Regular inspections of the seep (at intervals described in 12a-k) shall also include surveys to ensure that non-native fish, specifically poeciliid fish, are not present within this habitat area. If fish are observed, surveyors shall notify experienced biologists to ensure prompt identification, and USFWS and DLNR-DOFAW shall be consulted on what control measures can be implemented.

n. Establish an education and outreach program to raise awareness of the existence of the blackline damselfly and habitat area on the property. The outreach shall include informing visitors to Hawaiian Memorial Park as well as members of the adjacent community. The program shall include information on restricted activities and other best practices to avoid and minimize adverse impacts to the habitat and the species.

[Petitioner's Annual Report on Progress \(pg. 10\)](#)

[Petitioner has installed a well monitoring gauge and monitoring has commenced. Petitioner will comply with the other terms of this condition as the Project progresses.](#)

13. Hawaiian Hoary Bat. To avoid potential impacts to the Hawaiian hoary bat, the clearing of dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area shall not occur between June 1 to September 15 when bats may be carrying young and potentially could be at risk by such clearing activities.

14. Disposal of Waste Material. Petitioner shall not dispose as waste material any clean fill at the PVT Land Company, Ltd. or any other construction and demolition landfill commercially in operation on the island of O'ahu as a result of grading work in the Petition Area.

Clean Fill is defined as "natural materials consisting of soil, clay, sand, volcanic cinder and ash, rock, and boulders measuring twelve inches or less in diameter; or a mixture or combination of such materials, which are not suspected to contain hazardous substances or concentrations of chemical contaminants of concern above the DOH's Tier I Environmental Action Levels."

15. Community Outreach. Petitioner shall establish an ongoing construction-related community outreach program to inform area residents and businesses of construction milestones and activities occurring on the property. In addition, the Petitioner shall establish a hotline and a dedicated email address to for immediate and prompt responses to questions, concerns or comments from the community and other stakeholders.

[Petitioner's Annual Report on Progress \(pg. 11\)](#)

[A community outreach program for construction activity is being developed and this](#)



program will have a dedicated website for the community to access. A hotline and email address for the community to contact the Petitioner with any questions or comments would be established as part of this program. However, this program would be initiated with the community closer to when construction work actually starts.

16. Development Timetable. Petitioner shall provide the Commission with a development timetable prior to obtaining grading permits from the City.

Petitioner's Annual Report on Progress (pg. 11)

Petitioner anticipates that construction plans will be completed by the first quarter of 2022 and permitting will be completed by the end of 2022. Development of the Project should be completed by the end of 2024

17. Infrastructure Deadline. Petitioners shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of the Decision and Order approving the Petition.

18. Compliance with Representations. Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the Findings of Fact, Conclusions of Law, and Decision and Order. Absent substantial commencement of use of the land in accordance with such representations, the Commission shall issue and serve upon the party bound by the condition and order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification.

19. Notice of Change in Ownership. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

20. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the Department of Planning and Permitting in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

21. Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

22. Notice of Imposition of Conditions. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances or the State of Hawai'i Land Court, or both, as appropriate, a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property; and (b) shall file a copy of such recorded statement with the Commission.

[Petitioner's Annual Report on Progress \(pg. 13\)](#)

Petitioner has satisfied this condition by recording the Notice of Imposition of Conditions, identified as Document No. A-75980682, with the Bureau of Conveyances on October 20, 2020.

23. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances or the State of Hawai'i Land Court, or both, as appropriate, pursuant to section 15-15-92 Hawai'i Administrative Rules.

[Petitioner's Annual Report on Progress \(pg. 13\)](#)

Petitioner has satisfied this condition by recording the Declaration of Conditions, identified as Document No. A-76460491, with the Bureau of Conveyances on December 7, 2020.

#### 4. **Representations Made**

The parent corporation of Hawaiian Memorial Life Plan, Ltd. is Service Corporation International ("SCI"). Under questioning by Commissioner Okuda, Petitioner's representative Mr. Jay Morford, provided the following:

“COMMISSIONER OKUDA: So SCI will personally guaranty the obligations of Hawaiian Memorial Park; is that correct?

THE WITNESS: Yes, they have committed to the funding of this project, yes.

COMMISSIONER OKUDA: That's also agreeing to assume – well, actually, that includes agreeing to personally guarantee the performance of all the obligations?

THE WITNESS: Yes.”

[Transcript 8/12/2020, pg. 113, line 25 to pg. 114, line 9]

A question has been raised with regards to the need for a signed and executed agreement from SCI, acknowledging the obligation and personal guarantee, including financial, for complying with all representations and conditions of the LUC's Decision and Order.

Hawai'i law requires a personal guarantee to be in writing and signed by the party making the guarantee (pursuant to HRS Section 656-1).