

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A17-804
	)	
HAWAIIAN MEMORIAL LIFE PLAN,	)	DECISION ON 2022 STATUS REPORT
LTD.	)	HEARING
	)	
To Amend The Conservation Land Use	)	
District Boundary Into The Urban Land Use	)	
District For Approximately 53.449 Acres Of	)	
Land At Kāne'ōhe, Island of O'ahu, State Of	)	
Hawai'i, Tax Map Key: (1)4-5-033: por. 001	)	
_____	)	

**DECISION ON 2022 STATUS REPORT HEARING**

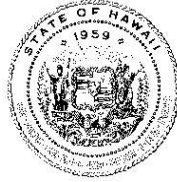
**AND**

**CERTIFICATE OF SERVICE**

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

Oct 4, 2022  
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BY   
\_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

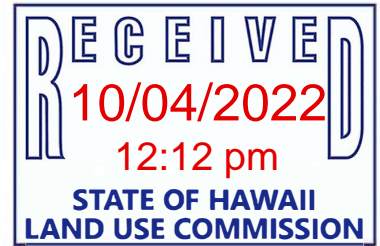
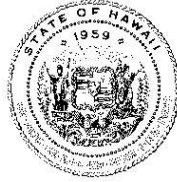
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BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI‘I

In the Matter of the Petition of	)	DOCKET NO. A17-804
	)	
HAWAIIAN MEMORIAL LIFE PLAN, LTD.	)	DECISION AND ORDER REGARDING 2022 STATUS REPORT HEARING
	)	
To Amend The Conservation Land Use District Boundary Into The Urban Land Use District For Approximately 53.449 Acres Of Land At Kāne‘ohe, Island Of O‘ahu, State Of Hawai‘i, Tax Map Key: (1)4-5-033: por. 001	)	
_____	)	

**DECISION AND ORDER REGARDING 2022 STATUS REPORT HEARING**

On October 7, 2020, the State Land Use Commission approved the Petition for Land Use District Boundary Amendment filed by HAWAIIAN MEMORIAL LIFE PLAN, LTD. (“Petitioner”) on November 13, 2017, to reclassify approximately 53.449 acres of land, situated at Kāne‘ohe, Island of O‘ahu, State of Hawai‘i, Tax Map Key No. (1) 4-5-033: portion of 001 (“Property” or “Petition Area”), from the State Land Use Conservation District to the State Urban District. The approval for reclassification was subject to twenty-three (23) conditions; among those was a requirement to provide annual reports in connection with the status of the subject project and progress in complying with conditions.

On August 24, 2022, the Commission held a Hybrid meeting at the Airport Conference Center (in Hawaiian Airlines Terminal Building) while simultaneously using Zoom conference technology for the Petitioner to provide a Status and Progress Report and take action (if necessary) to address any compliance issues.

The Commission, having heard and examined the testimony, exhibits, evidence, and argument of counsel and parties presented during the status report hearing, along with the pleadings filed herein, hereby makes the following Findings of Fact and Decision and Order.

### **PROCEDURAL MATTERS**

1. On October 22, 2020, the Commission received the Petitioner's Uncertified Notice of Imposition of Conditions by the Land Use Commission, which was recorded on October 20, 2020.
2. On December 4<sup>th</sup>, 2020, the Commission received the Petitioners Certified Notice of Imposition of Conditions.
3. On December 7<sup>th</sup>, 2020, the Land Use Commission received a copy of the Declaration of Conditions recorded with the State of Hawai'i Bureau of Conveyances.
4. On December 28<sup>th</sup>, 2020, the Commission received the Petitioners Certified Notice of Declaration of Conditions by the Land Use Commission.
5. On October 13<sup>th</sup>, 2021, the Land Use Commission received the Petitioners 2021 Annual Report.
6. On August 12, 2022, the Commission mailed the meeting notice for the August 24, 2022, Meeting to the Statewide, O'ahu and respective email lists.

7. On August 16<sup>th</sup>, 2022, the Commission received the Petitioners letter to the Land Use Commission regarding the Petitioner's representation.
8. On August 22, 2022, The Land Use Commission received written public testimony from Hawai'i Laborers, Hawai'i Operating Engineers Industry Stabilization Fund, Pacific Resource Partnership, and Hawai'i Regional Council of Carpenters.
9. On August 23, 2022, the Commission received an electronic letter from the Intervenors with Comments for the 2022 Hawaiian Memorial Plan Status Report.
10. On August 23, 2022, the Commission received additional written testimony from the Hawai'i Laborers Union.
11. On August 23, 2022, the Commission received additional comments from the Intervenor regarding the 2022 Hawaiian Memorial Plan Status Report.
12. On August 24, 2022, the Commission held a Hybrid meeting at the Airport Conference Center (in Hawaiian Airlines Terminal Building) while simultaneously using Zoom conference technology where Petitioner provided a Status and Progress Report on its compliance with conditions; and to take any action (if necessary) on issues of compliance.
13. Present at the hearing were: Curtis Tabata, Esq. and Jay Morford representing Petitioner; Franz Krintz, representing the City & County; Bryan Yee, Esq., Aaron Setogawa representing OPSD; and, Grant Yoshimori and Mitch McCreedy representing Intervenor.
14. An initial opportunity for public testimony was provided prior to the Petitioner's presentation; but no in-person or Zoom testimony was received at that time.
15. Petitioner provided a detailed progress report on compliance with conditions, difficulties they had faced, how they had addressed these, and a commitment to work in collaboration with specific community groups and improve communication with the general public.

16. The City & County made a presentation providing comments on the filings and presentation by the Petitioner. Commissioners then asked questions to clarify the County's position.
17. OPSD made no presentation. Commissioners asked questions to clarify the position of State agencies.
18. Intervener representative, Grant Yoshimori, made a presentation identifying issues and questions raised by Petitioner's filings and annual reports. Commissioners asked questions and commented on Intervener's presentation.
19. The Commission provided a second opportunity for public testimony prior to decision-making. At that time the Commission heard public testimony from the following: Laura Hokunani Edmunds Ka'akua representing Hawai'i Land Trust, Aaron Mahi representing Ko'olau Foundation, and Mahealani Cypher representing Ko'olaupoko Hawaiian Civic Club. [Tr. 8/24/2022; pgs. 77-97]

#### FINDINGS BY THE COMMISSION

20. Commissioners questioning of the parties and public testifiers found that:
  - a. Service Corporation International ("SCI"), the parent company of Petitioner, provided a letter of financial commitment of \$25,000,000 dollars for the development of Hawaiian Memorial Park. [Petitioner's 8/16/2022 letter to Commission; Petitioner Exhibit 57; Tr. 8/24/202, pgs 19-22, 36]. This amount is in addition to funds (approximately \$5,000,000) already expended. [Tr. 8/24/2022, pg. 22-23]

- b. The development timetable for the permitting and development has been delayed, by approximately nine months, due to having to obtain unanticipated grading permits to conduct test borings for geotechnical studies necessary prior to final grading plans and permits. [Tr. 8/24/2022; pgs. 26-28]
- c. A conservation easement was recorded on 7/5/2022, between Petitioner and Hawai'i Land Trust, as required, prior to receiving a final grading permit. [Tr. 8/24/2022; pgs.27-28, 31]
- d. Petitioner established a website and telephone number providing information relating to their construction schedule, damselfly habitat, and cultural facts and updates. A mailer was sent out to inform the public on its availability in March 2022. Petitioner was urged to use the neighborhood boards as a venue for getting the word out to the broader community. [Tr. 8/24/202; pgs. 28-29; 59].
- e. Petitioner signed a management agreement for a cultural preserve with the Ko'olau Foundation. Future access to the cultural preserve will be through the Hawaiian Memorial expansion area. Currently, access remains available by a hike into the cultural preserve. [Tr. 8/24/202; pgs. 31-32]. Petitioner clarified and agreed they "...shall cover reasonable expenses incurred by the group associated with the management of the preserve, including rockfall hazard mitigation and liability." Further, Petitioner agreed that this includes retention of legal counsel by the Ko'olau Foundation for any assistance they require in managing the cultural preserve. [Decision and Order, Condition 11; Tr. 8/24/2022, pgs. 39-48].

- f. Mitigation and monitoring of the blackline damselfly habitat is ongoing. This includes: installation of a water monitoring gauge; rainfall and water quality monitoring; counting and logging of damselfly and predator species; and installation of a temporary waterline in case additional water is required to keep the water seep flowing. Fencing of the habitat has not yet been done. [Tr. 8/24/202; pgs. 32-35, 37]
- g. Petitioner agreed to consider the request to consult with the other parties prior to submittal of its final grading plans for County review and approval. [Tr. 8/24/202; pgs. 67-77]
- h. Petitioner agreed to provide a more comprehensive annual report to address concerns identified during the hearing. [Tr. 8/24/2022; pgs. 56-58, 98]

## **RULINGS ON PROPOSED FINDINGS OF FACT**

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.



## **CONCLUSIONS OF LAW**

1. Pursuant to HRS Chapter 205 and the Commission Rules under HAR Chapter 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.”

## **DECISION AND ORDER**

Based on good cause shown, a motion was made and seconded that no further action by the Commission was necessary at that time. Following discussion by the Commission a vote was taken on this motion. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.

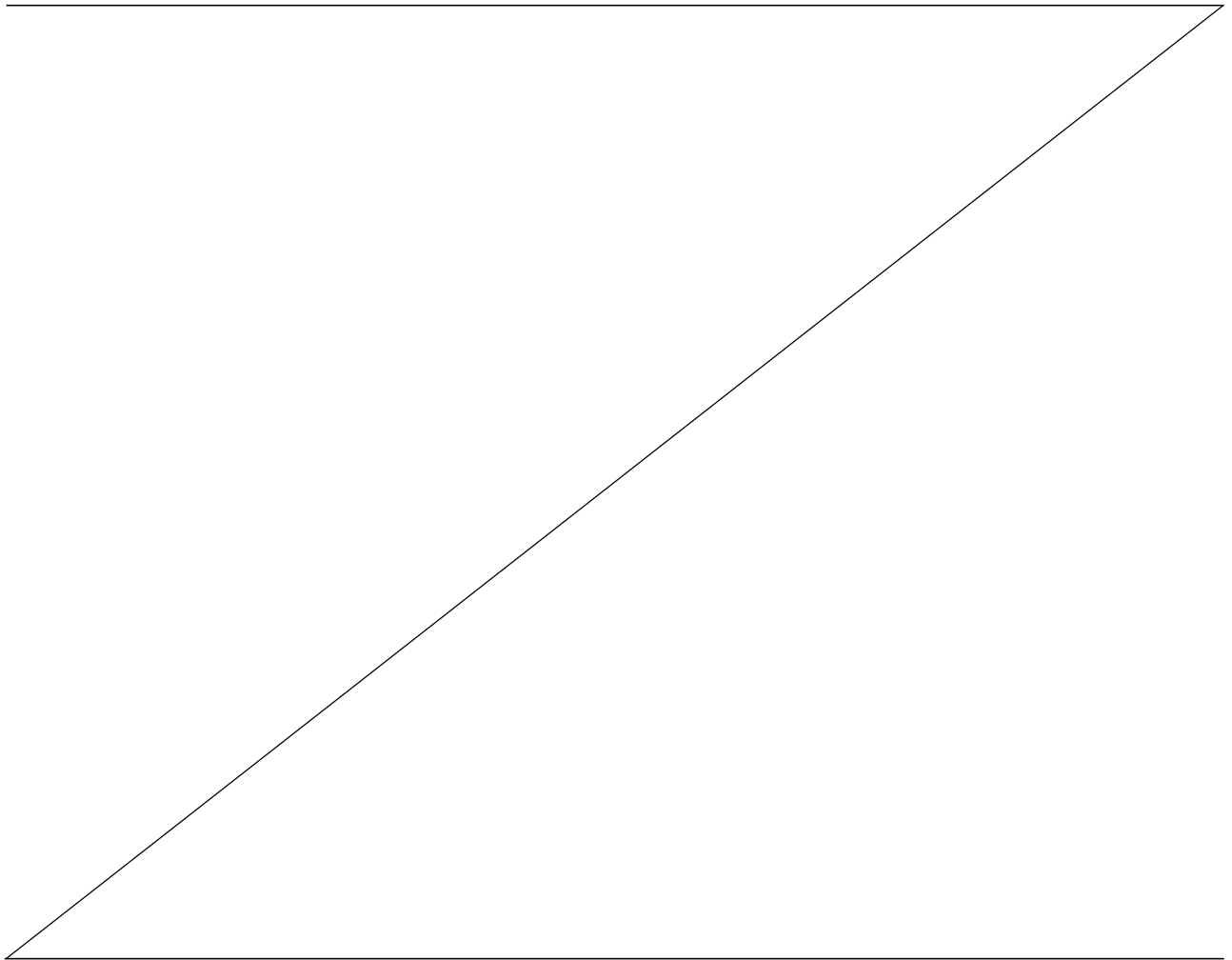
The motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion, this Commission ORDERS that no further action by the Commission is necessary at this time, the Petitioner is making adequate progress on the representations and conditions contained in the Decision and Order dated October 13, 2020.

The Commission FURTHER ORDERS that:

1. Petitioner’s next annual report provide an updated development timetable and estimated cost for subsequent improvements; in order that the Commission can determine whether Petitioner’s financial commitment to the Project needs to be adjusted.
2. Petitioner share information on the design of the geotechnical boring and detention basins with the other parties leading up to the final grading plan submittal to the County. The

intent is to identify early on if there are any oversights or errors based on representations and conditions contained in the Decision and Order.

3. The County Department of Planning and Permitting (“DPP”) consult with the Intervener and their experts during their comprehensive review of the compliance of the grading plans to the conditions of the Decision and Order, which are different and more stringent than the County’s base requirements.



ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER on Oct 4, 2022. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, on Oct 4, 2022, per motion on August 24, 2022.

APPROVED AS TO FORM

LAND USE COMMISSION  
STATE OF HAWAI'I

· ne A nis  
Deputy Attorney General

By AG  
DAN GIOVANNI  
Chairperson and Commissioner

FILED AND EFFECTIVE ON:

Oct 4, 2022

Certified by:   
DANIEL E. ORODENKER  
Executive Officer  
State Land Use Commission



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	)	
	)	CERTIFICATE OF SERVICE
	)	
	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER ON THE 2022 STATUS REPORT HEARING was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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Dated Oct 4, 2022

Honolulu, Hawai'i.



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DANIEL E. ORODENKER  
Executive Officer