



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. A07-777
)
HAWAIIAN MEMORIAL LIFE PLAN,)
LTD., A Hawai'i Corporation) FINDINGS OF FACT, CONCLUSIONS OF
) LAW, DECISION AND ORDER
)
To Amend The Conservation Land Use)
District Boundary Into The Urban Land)
Use District For Approximately 56.459)
Acres Of Land At Kāne`ohe, Ko`olau)
Poko, O`ahu, Hawai`i, Tax Map Key: 4-5-)
33: Por. 1)
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

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, HAWAII.

November 6, 2009

DATE

by

EXECUTIVE OFFICER



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HAWAIIAN MEMORIAL LIFE PLAN, LTD., A Hawai`i Corporation)	FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER
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To Amend The Conservation Land Use District Boundary Into The Urban Land Use District For Approximately 56.459 Acres Of Land At Kāne`ohe, Ko`olau Poko, O`ahu, Hawai`i, Tax Map Key: 4-5-33: Por. 1)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER

Hawaiian Memorial Life Plan, Ltd., a Hawai`i corporation
("Petitioner"), filed a Petition For Land Use District Boundary Amendment
("Petition") on November 28, 2007, and an Amended Petition on October 9, 2008,
pursuant to chapter 205, Hawai`i Revised Statutes ("HRS"), and chapter 15-15,
Hawai`i Administrative Rules ("HAR"), to amend the State land use district
boundary to reclassify approximately 56.459 acres of land at Kāne`ohe , Ko`olau
Poko, O`ahu, Hawai`i, identified as Tax Map Key: 4-5-33: por. 1 ("Petition
Area"), from the State Land Use Conservation District to the State Land Use

Urban District for the expansion of the existing Hawaiian Memorial Park (“HMP”) Cemetery (“Project”).

The Land Use Commission of the State of Hawai`i (“Commission”), having heard and examined the testimony, evidence, and arguments of counsel presented during the hearings and the proposed findings of fact, conclusions of law, and decision and orders and the subsequent responses filed by the parties herein, hereby makes the following findings of fact, conclusions of law, decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On November 28, 2007, Petitioner filed the Petition. On October 9, 2008, Petitioner filed the Amended Petition.
2. Petitioner is a Hawai`i corporation whose address and principal place of business is 1330 Maunakea Street, Honolulu, Hawai`i, 96813.
3. On December 13, 2007, the Commission determined that (1) the Commission is the appropriate accepting authority pursuant to chapter 343, HRS; and (2) the Project may have significant effect on the environment to warrant the preparation of an Environmental Impact Statement (“EIS”).
4. On November 6, 2008, and by written order filed on January 14, 2009, the Commission accepted the Final EIS for the Project. By letter

dated November 19, 2008, the Executive Officer of the Commission deemed the Petition a proper filing as of November 17, 2008.

5. On December 19, 2008, the State Office of Planning (“OP”) filed a Position Statement in support of the Petition with conditions.

6. On December 22, 2008, the City and County of Honolulu Department of Planning and Permitting (“DPP”) filed a Statement Of Position opposing the Petition unless the following condition was included in the Commission’s Decision and Order: (1) no further land use approvals and permits shall be granted unless (a) the Project is consistent with the Ko`olau Poko Sustainable Communities Plan (“SCP”), as adopted; and (b) Petitioner shall file an application for zone change to P-2 General Preservation and obtain approval by the county council.

7. On January 28, 2009, Grant Yoshimori, Mavis Suda, Richard McCreedy, Juliane McCreedy, Lianne Ching, Ernest Harris, Bettye Harris, Jesse Reavis, and Hui O Pikoilooa filed a timely Petition To Intervene.

8. On February 5, 2009, the Commission conducted a site visit to the Petition Area with representatives of the parties in attendance.

9. On February 6, 2009, and by written order filed on February 27, 2009, the Commission granted the Petition To Intervene with respect to Grant Yoshimori, Mavis Suda, Richard McCreedy, Juliane McCreedy,

Lianne Ching, Ernest Harris, Bettye Harris, and Jesse Reavis (collectively “Intervenor”) and denied the Petition To Intervene with respect to Hui O Pikoiloa, subject to the condition that Intervenor shall be represented in all matters before the Commission by Grant Yoshimori.

10. On February 9, 2009, the Executive Officer of the Commission conducted a prehearing conference on the Petition at the Leiopapa A Kamehameha Building, Conference Room 405, in Honolulu, Hawai`i, to identify the issues and the positions of the parties, arrange for the exchange of proposed exhibits, set schedules, exchange names of witnesses, and such other matters to expedite the orderly conduct and disposition of the hearing. All parties in the proceeding were in attendance.

11. On February 19, 2009, OP filed an Amended Position Statement recommending denial of the Petition unless a revised archaeological inventory survey (“AIS”) was approved by the State Department of Land and Natural Resources, State Historic Preservation Division (“DLNR, SHPD”), prior to the close of the hearing, in which case OP would recommend approval of the Petition with conditions consistent with the findings of the approved AIS and its original Position Statement.

12. On February 20, 2009, the Executive Officer of the Commission issued a Prehearing Order.

13. On February 23, 2009, Intervenor filed a Statement Of Position opposing the Petition.

14. On March 5, 2009, the Commission opened the hearing on the Petition at the Leiopapa A Kamehameha Building, Conference Room 204, in Honolulu, Hawai`i, pursuant to a public notice published in the *Honolulu Star-Bulletin*, *West Hawaii Today*, *The Maui News*, *Kauai Publishing Co. dba The Garden Island*, and the *Hawaii Tribune-Herald*. The Commission heard and/or received written public testimony from Paulette A. Tam; Willie Hirokane; Wendell Lum; William C. Vinet, Jr.; Erin Yamashita; and Windward Beltone.

15. On March 6, 2009, the Commission continued the hearing on the Petition at Windward Community College, Paliku Theater, in Kāne`ohe, Hawai`i, and heard and/or received written public testimony from State Representative Ken Ito, State Representative Pono Chong, State Senator Jill Tokuda, Remy Akana, Linda Rose Herman, Grace Manio, William Kostron, Vic Poyo, Tammy Lee Chong, Michael Bass, Naoni Kahele, Edith Kahele, Maria Barrows, Alicia Naniho, Gardenia Martinez, Pat Newalu, Bill Sager, Steve Holmes, Rev. Duane Pang, Hank Liljedahl, Allan G. Schildknecht, Rev. Andy Kikuta, Stephen Boggs, Don Hibbard, Henry Acevedo, Glen Ida, Royce Kovacich, Jerome Andrade, Renise Bayne, Puanani Akaka, Dr. Sol Nalua`i, Alicia Maluafiti, Pauline MacNeil, Mahealani Cypher, Gretchen Gould, Calt Ferreira,

Laura Morgenstein, Pilipo Souza, Robert Snyder, Elizabeth Reilley, and Ursula Retherford.

16. On May 1, 2009, the Commission continued the hearing on the Petition at the Leiopapa A Kamehameha Building, Conference Room 405, in Honolulu, Hawai'i. The Commission received written public testimony from Peter Swenson; Jack Gillmar; Laura Morgenstein; Richard H. Richmond; Kerri Kahapea; Audrey Crimmins; Allan G. Schildknecht; Jose E. DaCosta; Felicia Marquez-Wong; Mary Louise O'Brien; Rev. Christopher Keahi; Sandra Albers; Frederick L. Farrell, Jr.; Puanani Akaka; Mike Gabbard; Michael Howard; Mr. and Mrs. William C. Vinet, Jr.; Theresa L. Kau; Audrey Condon; Eileen A. Uyezu; Dennis Kayano; Doris Oshiro; Michael J. Oh; Diane Texidor; Henry and Evonne George, Jr.; Hank George and Family; Hayley and Aloha Cerit; Gina Kanekoa; Keala Pacheco; Joanne Farmer; Lois T. Endo; Cortney Silva; Justin Dery; Melinda Yrojo; Jeannie Park; Beverly Silva; Ruth Hirai; Malia Van Huekelem; Darryl Barilla; Bettye Jo Harris; Sarah Robinson; and the Kāne`ohe Bay Regional Council.

17. On May 1, 2009, OP filed a Second Amended Position Statement recommending partial approval of the Petition, subject to the following six conditions: (1) creation of a 9.6-acre cultural preserve ("Cultural Preserve"); (2) preparation of a second phase AIS and a Preservation Plan to be

approved by the DLNR, SHPD, prior to zoning approval; (3) construction of a drainage and retention system meeting a 50-year storm standard; (4) limitation of the uses in the Petition Area to the cemetery-related uses described in the Final EIS; (5) amendment of the Ko`olau Poko SCP within a time period to be determined during the hearings; and (6) completion of all backbone infrastructure within ten years.

18. On July 15, 2009, the Commission resumed the hearing on the Petition at the Leiopapa A Kamehameha Building, Conference Room 405, in Honolulu, Hawai`i. The Commission received written public testimony from Jeri Miyasato, Susan McBride, Joanne Farmer, Karen Galut, Anna Kaohelauli`i, Puanani Akaka, and Ellen L. Akaka.

19. On July 16, 2009, the Commission continued the hearing on the Petition at the Leiopapa A Kamehameha Building, Conference Room 405, in Honolulu, Hawai`i, and heard public testimony from F. DeWolfe Miller. Following the completion of the parties' respective cases-in-chief, the Commission closed the hearing on the Petition.

DESCRIPTION OF THE PETITION AREA

20. The Petition Area is located at Kāne`ohe, Ko`olau Poko, O`ahu, Hawai`i, and consists of approximately 56.459 acres of land, identified as Tax Map Key: 4-5-33: por. 1.

21. Petitioner is the owner in fee simple of the Petition Area and other lands constituting the HMP Cemetery. Petitioner acquired the Petition Area and the other lands by deed dated January 15, 2003, recorded in the Bureau of Conveyances of the State of Hawai`i as Document No. 2003-007488.

22. The HMP Cemetery is a privately-owned cemetery located in Kāne`ohe, O`ahu, midway between the two largest communities on the Windward side of O`ahu, Kailua, to the east and Kāne`ohe to the west. The HMP Cemetery was originally developed in 1961. A 72-acre portion of the HMP Cemetery is bound by Kamehameha Highway on the southwest and the H-3 freeway on the southeast. An eight-acre portion of the HMP Cemetery is located east of the Hawai`i State Veterans Cemetery ("HSVC"), which bisects the two portions of the HMP Cemetery. The HSVC was created in part from approximately 35 acres of land dedicated by Petitioner to the State of Hawai`i.

23. The Petition Area is an approximately 56.459-acre portion of a 164.4-acre parcel of land located immediately north of the HSVC. An approximately 7.9-acre portion of this parcel adjacent to the Petition Area is in the State Land Use Urban District. This portion of the parcel has been developed for the HMP Cemetery's Ocean View Gardens.

24. The HMP Cemetery is a full-service cemetery with a memorial chapel, mortuary, crematory, administration and sales office, and

maintenance and baseyard all located on the original portion of the HMP Cemetery.

25. Kamehameha Highway provides the primary access to the HMP Cemetery. The main entrance to the HMP Cemetery is at the intersection of Kamehameha Highway and Halekou Road. From the main entrance, the main access road serves both the HMP Cemetery and the adjacent HSVC, HMP Cemetery's Ocean View Garden, and the Petition Area.

26. The climate of the Petition Area is moderate with almost continual trade winds. Temperatures in the Ko`olau Poko area are generally moderate with an average daily range of approximately 62 degrees to 81 degrees Fahrenheit. Average annual rainfall in the Petition Area ranges from approximately 59 to 79 inches. Prevailing winds blow north-northeast and east 86 percent of the time and southerly 10 percent of the time.

27. The parcel comprised by the Petition Area is generally sloping with ground elevations ranging between 100 feet above mean sea level ("AMSL") to approximately 945 feet AMSL.

28. The Petition Area contains lands with slopes ranging from 0 percent to over 30 percent. The areas of least slope (0 to 20 percent) are found in the center of the Petition Area, with slopes rising to 20 to 30 percent

outward to the southeast. The steepest portions (greater than 30 percent) of the Petition Area are located to the south and east.

29. The soils of the Petition Area are classified as the following types: Alaeloa Silty Clay (AeE and ALF) and Kāne`ohe Silty Clay (KgC and KHOF). The major portion of the Petition Area consists of Alaeloa Silty Clay (AeE) and Kāne`ohe Silty Clay (KHOF). A description of each soil type follows:

a. Alaeloa Silty Clay (AeE, 15 to 35 percent slopes, and ALF, 40 to 70 percent slopes) consists of soils whose permeability is moderately rapid, runoff is medium, and whose erosion hazard is slight. This soil consists of deep and very deep, well-drained soils with slow to very rapid runoff depending on slope.

b. Kāne`ohe Silty Clay (KgC, 8 to 15 percent slopes, and KHOF, 30 to 65 percent slopes) consists of well-drained soils on terraces and alluvial fans, whose runoff is medium and whose erosion hazard is moderate where slope is less than 15 percent. Where existing slope is greater than 30 percent, runoff is medium to rapid and the erosion hazard is moderate to severe.

30. The University of Hawai`i Land Study Bureau's *Detailed Land Classification for the Island of O`ahu* classifies the lands of the Petition Area as "E" in productivity rating. Soils rated "E" are primarily within gulches and are

considered as having little or no suitability for soil based agricultural production. The State Department of Agriculture's Agricultural Lands of Importance to the State of Hawai'i ("ALISH") classification system classifies approximately 26 acres of the Petition Area as "Other," with the remainder of the Petition Area unclassified. Lands classified as "Other" under the ALISH classification system means land other than "Prime" or "Unique" that could be important for agricultural use.

31. The U. S. Federal Emergency Management Agency's flood insurance rate maps designate the majority of the Petition Area in Zone D, and designate a small portion in Zone X. Zone D indicates areas of undetermined flood hazard where flooding is possible, and Zone X indicates areas outside the 500-year floodplain.

PROPOSAL FOR RECLASSIFICATION

32. Petitioner proposes to develop the Petition Area as a cemetery to expand the neighboring HMP Cemetery.¹ Approximately 35.6 acres of the 56.459-acre Petition Area are proposed to be devoted to cemetery use ("HMP Cemetery Expansion Area"). The cemetery portion of the Project is proposed to include approximately 29.5 acres for in-ground interment and

¹ Petitioner originally proposed a 20-lot residential subdivision on approximately 6.4 acres of land in the Petition Area that is immediately adjacent to and south of Pohai Nani. After receiving comments during the public review period of the Draft EIS and conducting additional analysis, Petitioner deleted the residential component from the Project.

inurnment, 4.5 acres for internal roadways, 1.3 acres for drainage retention basins, and up to four mausoleums to be constructed on 0.3 acres. Of the remaining 20.9 acres, approximately 11.4 acres are proposed to be regraded and revegetated with Native Hawaiian plants which would remain in open space and approximately 9.5 acres would be set aside for a Cultural Preserve.

33. The Cultural Preserve, which would be excluded from cemetery development, would include Historic Site Nos. 4683, 4684, 6930, 6932, 6933, and 7079. The Cultural Preserve would also include adjacent (outside the Petition Area) Historic Sites Nos. 354 (Kawa`ewa`e Heiau) and 6931 in the State Land Use Conservation District. Historic Site Nos. 6929, 4680, and 4686A, which are outside of the Cultural Preserve, are also planned to be preserved in place and afforded protection.

34. Because the Cultural Preserve would bisect the HMP Cemetery Expansion Area into two sections, an access road through the Cultural Preserve to connect the two sections is also planned as part of the Project.

35. Petitioner represented and committed to completing all backbone infrastructure consisting of the construction of the roadway system within ten years from the date of the Commission's Decision and Order.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

36. Petitioner is a wholly-owned subsidiary of Service Corporation International (“SCI”), North America’s largest provider of funeral and cemetery services. SCI operates approximately 1,500 funeral homes and cemeteries in the U. S. and Canada. SCI’s stock has been publicly traded on the New York Stock Exchange since 1972.

STATE AND CITY AND COUNTY LAND USE PLANS AND PROGRAMS

37. The Petition Area is currently designated in the State Land Use Conservation District, as reflected on the Commission’s official map, O-12 (Kāne`ohe).

38. Approximately 47 acres of the Petition Area are located within the General Subzone and approximately 9 acres are located in the Limited Subzone.²

² Pursuant to section 13-5-14, HAR, the objective of the General Subzone is to designate open space where specific conservation uses may not be defined but where urban use would be premature. It encompasses (1) lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and (2) lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing, including facilities accessory to these uses when the facilities are compatible with the natural physical environment. Under section 13-5-12, HAR, the objective of the Limited Subzone is to limit uses where natural conditions suggest constraints on human activities. It encompasses (1) lands susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the county, state, or federal governments; and (2) lands necessary for the protection of the health, safety, and welfare of the public by reason of the land’s susceptibility to inundation by tsunamis, flooding, volcanic activity or landslides, or which have a general slope of 40 percent or more.

39. The Ko`olau Poko SCP Land Use Map currently designates the Petition Area for Open Space/Preservation use. The Petition Area is in the P-1 Restricted Preservation zoning district.

40. The Ko`olau Poko SCP was adopted in August 2000.

41. The Petition Area is not within the City and County of Honolulu's Special Management Area.

DEVELOPMENT OF THE HMP CEMETERY AND NEED FOR THE PROJECT

42. In 1982, Petitioner's predecessor, Hawaiian Memorial Park Cemetery Association, purchased the land of which the Petition Area is a part from Kāne`ohe Ranch.

43. Petitioner currently has an inventory of approximately 6,000 to 7,000 unsold burial plots for interments.

44. One acre of land can accommodate approximately 1,000 burial plots.

45. Petitioner has not demonstrated a clear need for the amount of burial areas proposed in the Project. The long-term needs of the community for a number and variety of interment choices could be adequately addressed by the existing inventory of burial plots within the HMP Cemetery and other areas at this time without necessitating the reclassification of the Petition Area.

46. Because the area proposed for the Cultural Preserve is intended to include lands that are necessary for the conservation, preservation, and enhancement of several archaeological, historical, and cultural sites, it is appropriate for it to remain designated within the State Land Use Conservation District.

IMPACT ON RESOURCES OF THE AREA

Flora and Fauna

47. A total of 98 plant species were observed in the Petition Area. Of the plants species observed, 84 are alien species, six are Polynesian introductions, six are indigenous species (native to the Hawaiian Islands and elsewhere) and two are endemic species (native to Hawai'i only). The native indigenous species observed in the Petition Area are `uhaloa, hala, ka`e`e (sea bean), pala`ā, `ekaha, and moa. The two endemic species consist of two koa (*Acacia koa*) trees observed near the Kawa`ewa`e Heiau (outside of the Petition Area) and `akia (*Wikstroemia oahuensis var. oahuensis*) documented along the edges of the Ocean View Garden section of HMP and the upper elevations near the ridgeline.

Archaeological, Historical, and Cultural Resources

48. In *Ka Pa`akai O Ka`Aina v. Land Use Commission*, 94 Haw.

31, 7 P. 3d 1068 (2000) the Hawai`i Supreme Court held that Article XII, Section 7, of the Hawai`i State Constitution obligates the Commission to protect the reasonable exercise of Native Hawaiian customary and traditional practices *to the extent feasible* when granting a petition for district boundary amendment. The Court established the following three-prong test:

In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must – *at a minimum* – make specific findings and conclusions as to the following: (1) the identity and scope of “valued cultural, historical, or natural resources” in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.

[94 Hawai`i at 47, 7 P.3d at 1084.]

49. Cultural Surveys Hawaii, LLC (“CSH”), conducted an AIS, a revised draft AIS,³ and a cultural impact study of the Petition Area. At this time, the revised draft AIS for the Project has not been approved by the DLNR, SHPD. In addition, because of concerns about potential burials outside of

³ The revised draft AIS was prepared at the request of the DLNR, SHPD, to address their concerns with the previous document.

the pits, the proposed road through the Cultural Preserve would require at a minimum an addendum to the AIS, which would need to be reviewed and approved by the DLNR, SHPD. The following archaeological sites, both within the Petition Area and outside of the Petition Area on Petitioner's land, were identified:

Overview Of Historic Sites Within/Outside Petition Area				
<u>Site No.</u>	<u>Formal Site Type</u>	<u>Probable Function</u>	<u>Approx. Age</u>	<u>Description</u>
<u>Historic Sites Located Within Petition Area</u>				
4680	Terrace	Agriculture/ water control	Historic	Historic erosion control and water diversion terrace.
4683	Pit Feature	Charcoal kiln	Historic	A rectangular pit and natural terracing.
4684	Complex- enclosure & terracing	Habitation	Pre- contact	Habitation site with several C-shaped structures, a terrace wall, a circular rock feature, and several house terraces.
4686	Stone alignment	Boundary marker	Historic	Feature A is a rock boulder alignment parallel to a large stream cut. Feature B, a series of stone alignments, is badly disturbed.
6930	Stone enclosure	Ceremonial	Pre- contact	A rectangular-shaped stone enclosure with an irregular notch.
6932	Stone storage	Storage	Historic	A storage area dug out beneath a basalt boulder and lined with smaller stones.
6933	Pit feature with stone	Charcoal kiln	Historic	Large circular pit with burned walls. Cut into

	wall			natural rise, it includes a faced, two to three course stone wall on the northeast side.
7079	Grinding Stone	Agriculture	Pre-contact	Basalt stone measuring 60 cm by 45 cm with a 2 cm deep central depression.
<u>Historic Sites Outside Petition Area</u>				
354	Enclosures, platforms	Ceremonial	Pre-contact	Kawa`ewa`e Heiau consists of one large enclosure with a small terrace on the north side that follows the contours of the land.
4681	Complex-enclosures & terracing	Agricultural/habitation	Pre-contact	Habitation site with several C-shaped structures, a terrace wall, and a circular rock feature.
6929	Quarry	Raw material procurement	Pre-contact	Located along an intermittent drainage, has two concentrations of lithic debitage amid basalt cobbles.
6931	Stone alignments	Ceremonial	Pre-contact	Possible ceremonial area on a natural knoll between two intermittent drainages with a series of stone alignments.

50. Historic Site No. 354, Kawa`ewa`e Heiau, which is outside the Petition Area, is one of the more prominent archaeological sites in Windward, O`ahu. There appears to be a linear relationship between Kawa`ewa`e Heiau, Habitation Site No. 4684 and the stone enclosures that consist of Historic Site Nos. 6930 and 6931. Historic Site Nos. 6930 and 6931 are prominently located on a ridge, have commanding views, and were likely ceremonial sites.

51. Cultural practitioners gather an exotic laua`e fern (*Phymatosorus grossus*) from the Petition Area. This laua`e grows as an understory plant and is culturally desirable for hula practitioners for its similar appearance to a native laua`e species. This laua`e is not a native plant, but it is a culturally acceptable replacement for a native plant.

52. The indigenous pala`ā (*Sphenomeris chinensis*), which occurs on the Petition Area, is also culturally valued as a native hula and lei fern that is gathered by hula halau to adorn the dancers as well as altars to the hula goddess, Laka. Pala`ā was observed infrequently during the botanical resources assessment of the Petition Area. Cultural practitioners are concerned that the availability of pala`ā is declining dramatically.

Groundwater Resources

53. The Petition Area is located in the Ko`olau Aquifer and within the Ko`olau Poko Aquifer System. The sustainable yield for this system has been established at 43 million gallons per day (“gpd”). The Petition Area is located in an area where a primary basalt aquifer is overlain with an upper aquifer of sedimentary caprock. The upper aquifer is an unconfined, basal sedimentary system. This low salinity aquifer is currently used, considered ecologically important and irreplaceable, and has a high vulnerability to contamination. The lower aquifer groundwater is confined basal in dike

compartments. Its use is classified as drinking water, with fresh salinity, and is considered replaceable with moderate vulnerability to contamination. However, the State does not consider the area to be viable for developing drinking water given the cost to establish it.

54. The Petition Area is located within a designated groundwater management area, and therefore any withdrawals must be justified to obtain a use permit from the Commission on Water Resource Management.

55. Petitioner plans to utilize non-drinking water for irrigation, and therefore proposes to drill non-drinking water wells in the Petition Area to provide irrigation water for the proposed action.

56. The Petition Area is within the Kāwā Stream watershed, which is a part of the larger Kāne`ohe Bay watershed that includes all land between the Ko`olau Mountains and the shoreline. A watershed provides for recharge of an area's water resources.

Visual Resources

57. The Petition Area can be seen from the surrounding residential areas. The upper slopes of the surrounding hills can be seen and appear as thick green vegetation and a tree-filled landscape of natural undeveloped ridges, ravines, and valleys. It consists of gently sloping areas to

the west, adjacent to the Pikoiloa Subdivision, and relatively steep areas to the east.

58. Petitioner proposes to clear and grade the Petition Area to transform the area into a cemetery. Petitioner also proposes to construct shallow water drainage retention basins in various locations in the Petition Area. Petitioner's plans for revegetation of the Project would adversely affect the scenic values, natural resources, natural systems and valued cultural and historical resources of the area. The plan to remove natural forest cover and to change the natural terrain would significantly alter scenic views and negatively impact the the Petition Area as an undeveloped wilderness area.

59. The DLNR, SHPD, raised concerns about the potential visual impacts to the existing archaeological sites from automobiles traversing the proposed access road to access the northern portion of the Petition Area and possibly disturbing the integrity of the archaeological sites. It is the preference of the DLNR, SHPD, that the road not be constructed if possible.

ENVIRONMENTAL QUALITY

Noise

60. The DLNR, SHPD, raised concerns about the potential noise impacts to the existing archaeological sites and gathering activities from automobiles traversing the proposed access road to access the northern portion

of the Petition Area. It is the preference of the DLNR, SHPD, that the road not be constructed if possible.

Air Quality

61. Ambient air quality within the Petition Area and the surrounding communities would be adversely affected from fugitive dust during the construction phase of the Project.

Water Quality

62. The Petition Area lies within the Kāwā Stream watershed, which is part of the larger Kāne`ohe Bay watershed. Kāne`ohe Bay has been designated as a Class AA water body, providing the highest priority water quality protection. Kāwā Stream, which empties into the bay, has been categorized as an “impaired water body” by the DOH under the Clean Water Act due to Kāwā Stream’s high levels of nutrients (nitrogen and phosphorus), turbidity, and suspended solids.

63. Development of the Petition Area would result in the removal of the secondary forest and a change to both runoff and chemical loads exiting the Kāwā Stream watershed.

Rockfall Hazard and Slope Stability

64. Shinsato Engineering, Inc., prepared a report on the hazard from rockfall and slope stability for the Project.

65. There is a potential for hazards associated with rockfall on portions of the Petition Area.

66. The most prudent solution to address the potential for rockfall hazards would be to retain the Petition Area within the State Land Use Conservation District, thereby reducing the exposure of future users to any hazards that may exist and to minimize any disturbance of the Petition Area.

67. The slope stability analysis was done based upon the existing topography of the Petition Area. At the time of its preparation, the development plans for the Project were not at a point where sections of the development could be used as a model for analysis to accurately gauge the stability of the slope in connection with the future uses anticipated with the Project.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Transportation and Traffic

68. Perazim Consulting, LLC, prepared a Traffic Impact Analysis Report ("TIAR") for the Project to identify the long-range traffic impacts of development of the Petition Area on the Kāneʻohe regional transportation system at peak hour traffic conditions.

69. Kamehameha Highway is a four-lane limited access arterial highway that provides the primary access between Kāneʻohe and the rest

of O`ahu. There are two existing access points from Kamehameha Highway to the HMP Cemetery. The HMP Cemetery, the HSVC, and the Petition Area would share the same access road and driveway connection at the intersection of Kamehameha Highway and Halekou Road.

70. The unsignalized intersection of Kamehameha Highway, Halekou Road, and the HMP Cemetery primary driveway currently operates at a level of service (“LOS”) D during the AM peak hour. However, west bound left turn and through movements currently operate at LOS F during PM peak hours.

Water Service

71. Petitioner intends to use a maximum of 90,000 gpd of irrigation water during hot and dry periods. Petitioner would utilize non-drinking water for irrigation. Based on the HSVC’s satisfactory use of non-drinking water irrigation wells near the Petition Area, Petitioner anticipates drilling non-drinking water wells in the Petition Area.

Wastewater

72. SSFM International, Inc., prepared a preliminary engineering report that addressed the wastewater requirements of the Project.

73. There are currently no sewer lines within the Petition Area. There are wastewater lines within the existing HMP Cemetery adjacent to

the Petition Area, and an 8-inch municipal transmission line in Līpalu Street.

The Kailua Wastewater Treatment Plant handles the wastewater from the area surrounding the Petition Area.

Drainage

74. SSFM International, Inc., prepared a preliminary engineering report that addressed the drainage requirements of the Project.

75. The majority of storm water runoff currently generated during rain events discharges from the Petition Area as runoff rather than infiltrating into the soil. Present storm water runoff from the Petition Area sheetflows into various valleys and channels along the existing topography. Channelized runoff is captured at collection points in the surrounding residential neighborhoods before discharging into Kāwā Stream or various storm pipe networks terminating in Kāne`ohe Bay.

76. The existing undeveloped conditions within the Petition Area produce storm water runoff of approximately 478 cubic feet per second ("cfs"). This is expected to increase to approximately 500 cfs with the addition of approximately 4.8 acres of impervious surfaces from the Project.

77. DPP rules relating to storm water drainage standards require a developer to capture onsite increases in storm water runoff from a 10-year, 1-hour storm event due to development on the property. Petitioner

proposes to construct shallow water drainage retention basins scattered throughout the Petition Area to retain increases in runoff.

CONFORMANCE TO URBAN DISTRICT STANDARDS

78. The reclassification of the Petition Area does not conform to the following standards applicable to establishing the boundaries of the State Land Use Urban District set forth in section 15-15-18, HAR:

(3) *It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects;*

A significant portion of the Petition Area is characterized by soils with slopes that are 20 percent or greater and that are susceptible to runoff and erosion. Although some of these lands would be revegetated and not used for burials, those lands that would be used would need to undergo significant grading to ensure that the land is stable, further increasing the possibility of runoff and erosion.

(4) *Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans;*

(5) *It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on state and county general plans;*

(6) *It may include lands which do not conform to the standards in paragraphs (1) and (5):*

(A) When surrounded by or adjacent to existing urban development; and

(B) Only when those lands represent a minor portion of this district;

The reclassification of the Petition Area to the State Land Use Urban District does not conform to the Ko`olau Poko SCP, which envisions the Petition Area as undeveloped open space. The Ko`olau Poko SCP places the Petition Area within the preservation boundary and specifically states that the urban community boundary should not include the undeveloped parcels on the slopes of Oneawa Hills, which includes the Petition Area.

(8) It may include lands with a general slope of twenty percent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

A significant portion of the Petition Area is characterized by soils with slopes that are 20 percent or greater and that are susceptible to runoff and erosion. Much of these soils are located above residences along Ōhāhā and Līpalu Streets in the Pikoiloa Subdivision. If these lands are used as part of the Project, they would require significant grading, further increasing the possibility of runoff and erosion. Based on the existing inventory of burial plots within the HMP Cemetery, there is no immediate need for the Project at this time. As undeveloped land, the Petition Area currently provides important ecological functions in the area by providing a greenbelt to the existing urban area, limiting

soil erosion and runoff, trapping carbon, providing a nesting area for birds, and providing a counterpart to the neighboring urban heat island.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

79. The reclassification of the Petition Area does not conform to the following applicable goals, objectives, policies, and guidelines of the Hawai'i State Plan.

HRS §226-11 Objectives and policies for the physical environment land - based, shoreline, and marine resources.

Policy: 11(b)(3) *Take into account the physical attributes of areas when planning and designing activities and facilities.*

A significant portion of the Petition Area is characterized by soils with slopes that are 20 percent or greater and that are susceptible to runoff and erosion. Much of these soils are located above residences along Ōhāhā and Līpalu Streets in the Pikoiloa Subdivision. Although some of these lands would be revegetated and not used for burials, those lands that would be used would need to undergo significant grading to ensure that the land is stable, further increasing the possibility of runoff and erosion.

HRS §226-12 Objective and policies for the physical environment - scenic, natural beauty, and historic resources.

Policies: 12(b)(1) *Promote the preservation and restoration of significant natural and historic resources.*

12(b)(3) *Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features.*

12(b)(4) *Protect those special areas, structures, and elements that are an integral and functional part of Hawai`i's ethnic and cultural heritage.*

The revised draft AIS documented 12 historic properties within or adjacent to the Petition Area. These sites of cultural and archaeological significance may qualify for both the National and State Register of Historic Places. The complex of sites represents a unique example of a cultural landscape associated with the Kawa`ewa`e Heiau. Moreover, cultural practitioners regularly gather laua`e and pala`ā from the Petition Area. At this time, the revised draft AIS for the Project has not been approved by the DLNR, SHPD. In addition, because of concerns about potential burials outside of the pits, the proposed road through the Cultural Preserve would require at a minimum an addendum to the AIS, which would need to be reviewed and approved by the DLNR, SHPD.

At this time, there is no demonstrated need to warrant the reclassification of the Petition Area in part or in its entirety given the existing inventory of burial plots within the HMP Cemetery. The development of the Petition Area as proposed by Petitioner will adversely affect the preservation of

significant natural, cultural and historic resources and the visual and aesthetic value and enjoyment provided by the area in its current condition and state.

The development of the Petition Area will transform the site from its current thick natural forest canopy to a cemetery with burial plots. With its intact canopy, the Petition Area currently provides a greenbelt to the existing urban area, trapping carbon and providing a counterpart to the neighboring urban heat island.

HRS §226-13 Objectives and policies for the physical environment - land, air, and water quality.

Policy: 13(b)(5) *Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.*

A significant portion of the Petition Area is characterized by soils with slopes that are 20 percent or greater and that are susceptible to runoff and erosion. Much of these soils are located above residences along Ōhāhā and Līpalu Streets in the Pikoiloa Subdivision. If these lands are used as part of the Project, they would require significant grading, further increasing the possibility of runoff and erosion. The Petition Area also contains four areas with the potential for hazard due to rockfall. These areas are located along the east and northeast edges of the Petition Area. The most prudent solution to address the potential for rockfall hazards would be to retain the Petition Area within the

State Land Use Conservation District, thereby reducing the exposure of future users to any hazards that may exist.

HRS §226-104 Population growth and land resources priority guidelines.

- Priority Guidelines:**
- 104(b)(10) *Identify critical environmental areas in Hawai`i to include but not be limited to the following: watershed and recharge areas; wildlife habitats (on land and in the ocean); areas with endangered species of plants and wildlife; natural streams and water bodies; scenic and recreational shoreline resources; open space and natural areas; historic and cultural sites; areas particularly sensitive to reduction in water and air quality; and scenic resources.*
 - 104(b)(13) *Protect and enhance Hawai`i's shoreline, open spaces, and scenic resources.*

The Petition Area is within the Kāwā Stream watershed, which is a part of the larger Kāne`ohe Bay watershed that includes all land between the Ko`olau Mountains and the shoreline. The Petition Area is also a part of the Ko`olau Greenbelt, the extensive open space that stretches from the mountains to the urban and rural activity areas. The Ko`olau Poko SCP identifies this greenbelt for preservation as a scenic resource conservation area. Twelve historic properties have been documented within or adjacent to the Petition Area. These sites of cultural and archaeological significance may qualify for both the National and State Register of Historic Places. The complex of sites represents a unique example of a cultural landscape associated with the Kawa`ewa`e Heiau. In

addition, cultural practitioners regularly gather laua`e and pala`ā from the Petition Area.

80. The reclassification of the Petition Area does not conform to the policies and objectives of the State Historic Preservation and Conservation Lands Functional Plans as prepared by the DLNR in accordance with chapter 226-4, HRS, as follows:

State Historic Preservation Functional Plan

I. Issue Area: Preservation of historic sites.

Objective A: Identification of historic properties.

Objective B: Protection of historic properties.

Objective C: Management and treatment of historic properties.

The State Historic Preservation Functional Plan encourages the preservation of Hawai`i's past. The plan discusses the proper management and treatment of historic properties.

The revised draft AIS documented 12 historic properties within or adjacent to the Petition Area. These sites of cultural and archaeological significance may qualify for both the National and State Register of Historic Places. The complex of sites represents a unique example of a cultural landscape associated with the Kawa`ewa`e Heiau. Moreover, cultural practitioners regularly gather laua`e and pala`ā from the Petition Area. At this time, the

revised draft AIS for the Project has not been approved by the DLNR, SHPD. In addition, because of concerns about potential burials outside of the pits, the proposed road through the Cultural Preserve would require at a minimum an addendum to the AIS, which would need to be reviewed and approved by the DLNR, SHPD.

At this time, there is no demonstrated need to warrant the reclassification of the Petition Area in part or in its entirety given the existing inventory of burial plots within the HMP Cemetery and the adverse effect reclassification would have on the Petition Area.

State Conservation Lands Functional Plan

The State Conservation Lands Functional Plan provides guidance for protection and preservation of Hawai`i's conservation lands. The four priority guidelines for the Conservation Lands Functional Plan are:

1. *Direct future urban development away from critical environmental areas or impose mitigating measures so that negative impacts on the environment would be minimized.*

A significant portion of the Petition Area is characterized by soils with slopes that are 20 percent or greater and that are susceptible to runoff and erosion. Much of these soils are located above residences along Ōhāhā and Līpalu Streets in the Pikoiloa Subdivision. Although some of these lands would be revegetated and not used for burials, those lands that would be used would

need to undergo significant grading to ensure that the land is stable, further increasing the possibility of runoff and erosion.

2. *Identify critical environmental areas in Hawai`i to include but not be limited to the following: watershed and recharge areas; wildlife habitats on land and in the ocean; area with endangered species of plants and wildlife; natural streams and water bodies; scenic and recreational shoreline resources; open space and natural areas; historic and cultural sites; areas particularly sensitive to reduction in water and air quality; and scenic resources.*

The Petition Area is within the Kāwā Stream watershed, which is a part of the larger Kāne`ohe Bay watershed that includes all land between the Ko`olau Mountains and the shoreline. The Petition Area is also a part of the Ko`olau Greenbelt, the extensive open space that stretches from the mountains to the urban and rural activity areas, and as undeveloped land, provides an important ecological function, including limiting soil erosion and runoff, trapping carbon, providing a nesting area for birds, and providing a counterpart to the neighboring urban heat island. The revised draft AIS documented 12 historic properties within or adjacent to the Petition Area. These sites of cultural and archaeological significance may qualify for both the National and State Register of Historic Places. The complex of sites represents a unique example of a cultural landscape associated with the Kawa`ewa`e Heiau. Moreover, cultural practitioners regularly gather laua`e and pala`ā from the Petition Area. At this time, the revised draft AIS for the Project has not been approved by the DLNR, SHPD. In addition, because of concerns about potential burials outside of the

pits, the proposed road through the Cultural Preserve would require at a minimum an addendum to the AIS, which would need to be reviewed and approved by the DLNR, SHPD.

3. *Utilize Hawai`i's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.*

Petitioner has not demonstrated a clear need for the amount of burial areas proposed in the Project. The long-term needs of the community for a number and variety of interment choices could be adequately addressed by the existing inventory of burial plots within the HMP Cemetery at this time without necessitating the reclassification of the Petition Area.

4. *Protect and enhance Hawai`i's shoreline, open spaces, and scenic resources.*

Petitioner's plans include revegetation of the areas that would be cleared and graded as well as the retention basins. The Project would nevertheless affect the scenic values of the area. The plan to remove natural forest cover and to change the natural terrain would significantly and negatively impact the scenic views provided by the Petition Area as an undeveloped natural wilderness area that constitutes a part of the Ko`olau Greenbelt, which is identified for preservation as a scenic resource conservation area by the Ko`olau Poko SCP.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT PROGRAM
OBJECTIVES AND POLICIES

81. The reclassification of the Petition Area does not conform to the following objectives and policies of the Coastal Zone Management Program as described in section 205A-2, HRS, Part I. The Petition Area lies within the State's Coastal Zone Management Area, which includes all lands of the State.

(2) *Historic Resources*

(A) *Protect, preserve, and where desirable, restore those natural and man-made historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.*

The revised draft AIS documented 12 historic properties within or adjacent to the Petition Area. These sites of cultural and archaeological significance may qualify for both the National and State Register of Historic Places. The complex of sites represents a unique example of a cultural landscape associated with the Kawa`ewa`e Heiau. Moreover, cultural practitioners regularly gather laua`e and pala`ā from the Petition Area. At this time, the revised draft AIS for the Project has not been approved by the DLNR, SHPD. In addition, because of concerns about potential burials outside of the pits, the proposed road through the Cultural Preserve would require at a minimum an addendum to the AIS, which would need to be reviewed and approved by the DLNR, SHPD.

At this time, there is no demonstrated need to warrant the reclassification of the Petition Area in part or in its entirety given the existing inventory of burial plots within the HMP Cemetery.

(3) *Scenic and Open Space Resources*

(A) *Protect, preserve and where desirable, restore or improve the quality of coastal scenic and open space resources.*

Petitioner's plans include revegetation of the areas that would be cleared and graded as well as the retention basins. The Project would nevertheless affect the scenic values of the area. The plan to remove forest cover and to change the natural terrain would significantly alter scenic views provided by the Petition Area as an undeveloped wilderness area that constitutes a part of the Ko'olau Greenbelt, which is identified for preservation as a scenic resource conservation area by the Ko'olau Poko SCP.

(6) *Coastal Hazards*

(A) *Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.*

A significant portion of the Petition Area is characterized by soils with slopes that are 20 percent or greater and that are susceptible to runoff and erosion. Much of these soils are located above residences along Ōhāhā and Līpalu Streets in the Pikoilua Subdivision. If these lands are used as part of the Project, they would require significant grading, further increasing the possibility

of runoff and erosion. The Petition Area also contains four areas with the potential for hazard due to rockfall. These areas are located along the east and northeast edges of the Petition Area. The most prudent solution to address the potential for rockfall hazards would be to retain the Petition Area within the State Land Use Conservation District, thereby reducing the exposure of future users to any hazards that may exist.

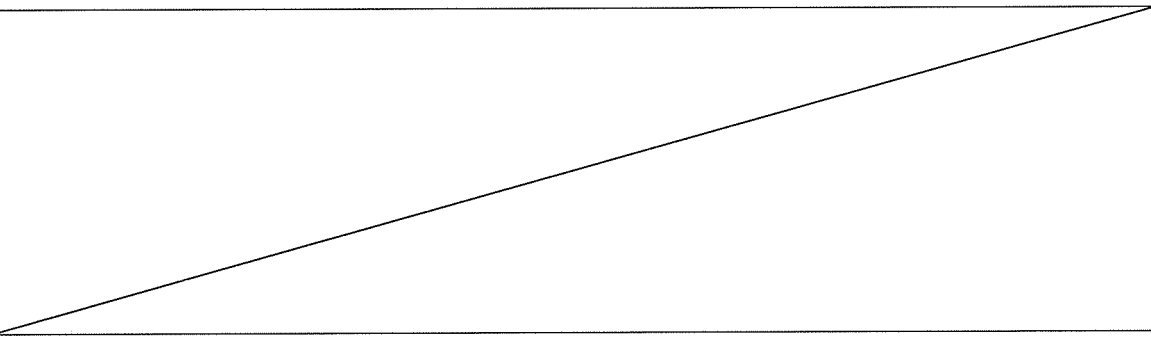
CONFORMANCE WITH CITY AND COUNTY OF HONOLULU GENERAL PLAN AND KO`OLAU POKO SCP

82. The long-range policies of the General Plan are very broad and are spelled out in greater detail at the development plan level. Development of the Petition Area is currently not consistent with the present Ko`olau Poko SCP. The reclassification of the Petition Area for the expansion of the HMP Cemetery is not consistent with two specific plan elements, and it does not meet the overall intent of a number of other policies on environmental protection. The Petition is in direct conflict with the SCP policy protecting watershed areas because the SCP provides that land should not be removed from existing watershed areas within the State Land Use Conservation District. The SCP also prohibits removing such lands from the preservation designation on the SCP maps.

CONFORMANCE WITH THE KĀNE`OHE BAY MASTER PLAN

83. The Hawai'i State Legislature created the Kāne`ohe Bay Master Plan Task Force in 1990 to prepare a master plan for Kāne`ohe Bay (Act 208, SLH 1990). Formalized in 1992, the Kāne`ohe Bay Master Plan is intended to protect and preserve Kāne`ohe Bay for recreational and commercial use and enjoyment by the general public, as well as evaluate how these uses affect the overall ecology of the bay. The Kāne`ohe Bay Master Plan recognizes the link between land-based activities and influences on the bay.

84. The entity responsible for implementing the Kāne`ohe Bay Master Plan is the Kāne`ohe Bay Regional Council ("KBRC"). The KBRC passed a resolution entitled *Resolution Regarding Proposed Land Use District Conversions From Conservation To Urban In The Kāne`ohe Bay Watershed* at its meeting on April 1, 2009. In the resolution, the KBRC stated that it does not support the conversion of conservation lands to urban zones for the purposes of urban development in the Kāne`ohe Bay watershed inasmuch as such land use activities have the potential of influencing the water quality of Kāne`ohe Bay with possible consequences on the utilization of the bay's resources.



RULING ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission rules under chapter 15-15, HAR, and upon consideration of the Commission decision-making criteria under section 205-17, HRS, this Commission finds that the credible evidence does not establish by a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 56.459 acres of land at Kāne`ohe, Ko`olau Poko, O`ahu, Hawai`i, identified as Tax Map Key No. 4-5-33: por. 1, from the State Land Use Conservation District to the State Land Use Urban District for expansion of the existing HMP Cemetery, conforms to the standards for establishing the Urban District boundaries, is reasonable, is not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16 and 205-17, HRS. Rather, the

Commission finds that the credible evidence establishes by a clear preponderance of the evidence that reclassification of the Petition Area does not conform to the standards for establishing the Urban District boundaries, would be violative of section 205-2, HRS, and is inconsistent with the policies and criteria established pursuant to sections 205-16 and 205-17, HRS.

2. Article XII, section 7, of the Hawai`i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua`a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

3. The Petition Area includes lands necessary for the conservation, preservation, and enhancement of several significant archaeological, historical, and cultural sites, and therefore it meets the standards for determining the boundaries of the State Land Use Conservation District in accordance with section 205-2(e), HRS, and section 15-15-20(4), HAR.

4. There is no approved AIS for the Project at this time. Approval of Petitioner's revised draft AIS by the DLNR, SHPD, remains outstanding. In addition, the proposed road through the Cultural Preserve

would require at a minimum an addendum to the AIS, which would need to be reviewed and approved by the DLNR, SHPD.

5. Article XI, section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

6. The Petition Area includes lands necessary for protecting watersheds, water resources, and water supplies, and therefore it meets the standards for determining the boundaries of the State Land Use Conservation District in accordance with section 205-2(e), HRS, and section 15-15-20, HAR.

7. The Petition Area lies within the Kāwā Stream watershed, which is a part of the larger Kāne`ohe Bay watershed. The Petition Area is also located within a designated groundwater management area.

8. The Petition Area includes lands susceptible to soil erosion and rockfall, and therefore it meets the standards for determining the boundaries of the State Land Use Conservation District in accordance with section 205-2(e), HRS, and section 15-15-20(2), HAR.

9. A significant portion of the Petition Area is characterized by soils with slopes that are 20 percent or greater and that are susceptible to runoff and erosion. The Petition Area also contains four areas with the potential for hazard due to rockfall.

10. The Petition Area includes lands necessary for the conservation, preservation, and enhancement of scenic resources and ecological significance, and therefore it meets the standards for determining the boundaries of the State Land Use Conservation District in accordance with section 205-2(e), HRS, and section 15-15-20(4), HAR.

11. The Petition Area includes lands necessary for conserving natural ecosystems of indigenous and endemic flora and fauna, and therefore it meets the standards for determining the boundaries of the State Land Use Conservation District in accordance with section 205-2(e), HRS, and section 15-15-20(5), HAR.

12. The reclassification of the Petition Area for the Project will significantly alter the existing scenic views by removing the existing forest cover and changing the natural terrain by replacing it primarily with a cemetery containing burial plots, thus adversely impacting the Petition Area as an undeveloped wilderness area.

13. The Petition Area is a part of the Ko`olau Greenbelt, which is identified for preservation as a scenic resource conservation area by the Ko`olau Poko SCP.

14. The reclassification of the Petition Area from the State Land Use Conservation District to the State Land Use Urban District is inconsistent with and does not conform to the Ko`olau Poko SCP.

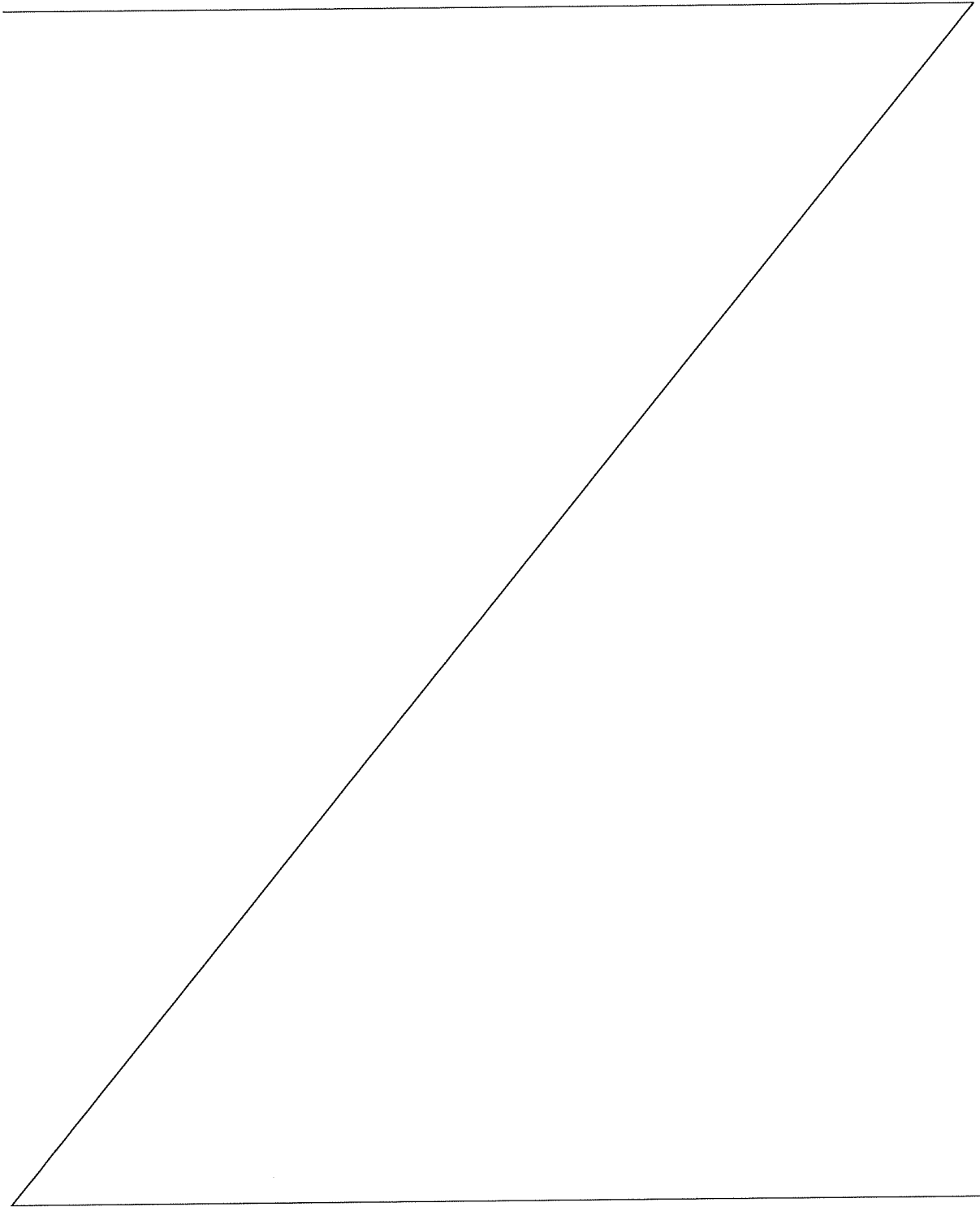
15. As undeveloped land, the Petition Area provides an important ecological function, including limiting soil erosion and runoff, trapping carbon, providing a nesting area for birds, and providing a counterpart to the neighboring urban heat island.

DECISION AND ORDER

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area is not supported by a clear preponderance of the evidence, will significantly adversely affect and impair the preservation and maintenance of natural systems and habitats and the valued cultural, historical, and natural resources of the area, and would be inconsistent with the Ko`olau Poko SCP.

IT IS HEREBY ORDERED that the Petition is DENIED, and that the Petition Area, being the subject of Docket No. A07-777 filed by Hawaiian Memorial Life Plan, Ltd., consisting of approximately 56.459 acres of land at

Kāne`ohe, Ko`olau Poko, O`ahu, Hawai`i, and identified as TMK: 4-5-33: por. 1,
shall remain within the State Land Use Conservation District.



ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 5th day of November, 2009. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Wailuku, Hawai'i, this 5th, day of November, 2009, per motion on October 22, 2009.

LAND USE COMMISSION

STATE OF HAWAI'I

APPROVED AS TO FORM

Heane Tucker
Deputy Attorney General

By

Ransom Piltz
RANSOM PILTZ
Chairperson and Commissioner

By

Vladimir Paul Devens
VLADIMIR PAUL DEVENS
Vice- Chairperson and Commissioner

By

Reuben S.F. Wong
REUBEN S.F. WONG
Vice- Chairperson and Commissioner

By

Kyle Chock
KYLE CHOCK
Commissioner

By Thomas Contrades
THOMAS CONTRADES
Commissioner

By (absent)
LISA JUDGE
Commissioner

By _____
DUANE KANUHA
Commissioner

By (absent)
NORMAND LEZY
Commissioner

Filed and effective on:


_____ By _____
NICHOLAS W. TEVES JR.
Commissioner

Certified by:

Orlando Davidson
ORLANDO DAVIDSON
Executive Officer

By _____
THOMAS CONTRADES
Commissioner

By (absent) _____
LISA JUDGE
Commissioner

By  _____
DUANE KANUHA
Commissioner

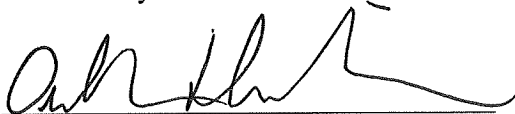
By (absent) _____
NORMAND LEZY
Commissioner

Filed and effective on:

November 6, 2009

By _____
NICHOLAS W. TEVES JR.
Commissioner

Certified by:



ORLANDO DAVIDSON
Executive Officer

By _____
THOMAS CONTRADES
Commissioner


By (absent) _____
LISA JUDGE
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By _____
DUANE KANUHA
Commissioner

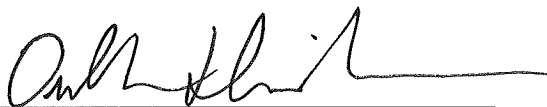
By (absent) _____
NORMAND LEZY
Commissioner

Filed and effective on:

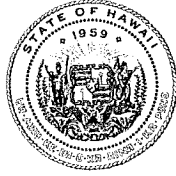
November 6, 2009

By  _____
NICHOLAS W. TEVES JR.
Commissioner

Certified by:



ORLANDO DAVIDSON
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A07-777
)	
HAWAIIAN MEMORIAL LIFE PLAN, LTD., A Hawai'i Corporation)	CERTIFICATE OF SERVICE
)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, DECISION AND ORDER
To Amend The Conservation Land Use District Boundary Into The Urban Land Use District For Approximately 56.459 Acres Of Land At Kāne`ohe, Ko`olau Poko, O`ahu, Hawai`i, Tax Map Key: 4-5- 33: Por. 1)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER 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 November 6, 2009

Honolulu, Hawai'i, .



ORLANDO DAVIDSON
Executive Officer