

LAND USE COMMISSION
MEETING MINUTES

March 5, 2009

Conference Room 204, Second floor, Leiopapa A Kamehameha
235 S. Beretania St.
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Kyle Chock
Lisa Judge
Duane Kanuha
Normand Lezy
Nicholas Teves Jr.

COMMISSIONERS ABSENT: Vladimir Devens
Ransom Piltz
Rueben Wong

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

CALLED TO ORDER

Chair Kanuha called the meeting to order at 9:39 a.m.

APPROVAL OF MINUTES

Commissioner Judge had a correction to page 10, 1st paragraph, end of the third line should read (addition underscored) - "She could not provide information to clarify whether or not the \$1 million was in addition to the original costs but would have to refer back to her notes."

Commissioner Lezy moved to adopt the February 6, 2009 meeting minutes. Commissioner Teves seconded the motion. The motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The April 3 meeting is tentatively planned to be a one day event in Kona regarding Bridge Aina Le'a. The balance of March meetings will be on Oahu.
- Darlene Benton, acting LUC secretary, was introduced.

ACTION

DR08-37 ALEXANDER & BALDWIN, INC.

Chair Kanuha stated that this was an action meeting on Docket No. DR 08-37 Alexander & Baldwin, Inc. to consider the petition for declaratory order to designate Important Agricultural Lands for approximately 3,773.1 acres at Koloa and Waimea, Kauai, Hawaii.. Chair Kanuha stated that on March 4, 2009, Kauai County contacted LUC staff to advise that they concurred with the staff report and would not be attending this meeting.

APPEARANCES

Ben Matsubara, Esq. and Curtis Tabata, Esq., represented Petitioner
Meredith Ching, Petitioner Representative
Bryan Yee, Esq., represented State Office of Planning
Abby Mayer, State Office of Planning

PUBLIC WITNESSES

1. Ezra Kanoho

Mr. Kanoho testified in support of the Petition. Mr. Kanoho stated that he was a past participant in Important Agricultural Lands (“IAL”) legislation and explained the history of the legislative effort that led to the current day standards and criteria used to determine and declare IAL. He emphasized that many stakeholders had contributed a considerable amount of time and effort to prepare for this initial petition for IAL. He commented that approving this Petition was an important step to protecting viable agriculture in Hawaii.

There were no questions for the witness.

2. Dean Okimoto- Hawaii Farm Bureau Federation

Mr. Okimoto testified in support of the Petition. Mr. Okimoto stated that approving this Petition would result in the first case for IAL designation and that many in the agricultural industry were intently watching how the process worked for the Petitioner. Mr. Okimoto stated that large and small agricultural landholders involved in viable agriculture will be positively impacted by this legislation and commended A&B for setting the template and taking the lead in this matter.

Commission Judge asked Mr. Okimoto to describe what “viable agriculture” meant. Mr. Okimoto replied that it involved helping farmers be successful. The tax credits and expedited permitting process help to keep farmers and the agricultural industry in business.

There were no other questions for the witness.

Chair Kanuha called for the LUC Staff Report. Staff Planner Riley Hakoda provided his report on the Docket. There were no questions for Mr. Hakoda.

Before proceedings began, Commissioner Lezy disclosed that his firm provided legal services to a subsidiary of Alexander & Baldwin, Matson Navigation Company, but believed that it would not affect his decision making in this matter. There was no objection to Commissioner Lezy participating in the hearing.

PETITIONER

Mr. Matsubara stated how Petition area met the standards and criteria for Important Agricultural Lands and used a map to indicate various areas affected by the IAL designation. He had no objections to the proposed Decision and Order and the two conditions that were attached.

OFFICE OF PLANNING

Mr. Mayer stated that OP supported the proposed Petition but expressed concerns that should be considered when designating IAL since this decision would be precedent setting for future cases. He stressed that a careful assessment needed to be done to determine the suitability of lands to be designated IAL. He stated that there were lands in the petition area which were not “high value” agricultural lands such as the gulches but recognized that their inclusion helped form a contiguous block of land, which in consideration to the waiver of credit, did not give cause to objection. Another reason why OP did not object to including “gulch” lands was that they did not constitute a high percentage of the proposed IAL parcel. Mr. Mayer stated that there may be thresholds that needed to be considered in the process of assessing proposed IAL lands.

Mr. Mayer indicated that areas A, B, and C did not seem to warrant inclusion. Area A contained two reservoirs which may not deliver water to IAL lands, Area B which was under cultivation, and Area C which was a coastal area. Since this was the first designation, he felt that it was important to closely evaluate these areas before allowing them to be included.

There were no questions from the Commissioners.

PETITIONER’S REBUTTAL

Mr. Matsubara stated that the Department of Agriculture had reviewed and

considered the gulch areas. The DOA determined that the gulches provided an integral service to the larger agricultural area with irrigation and drainage of the fields. The U.S. Department of Agriculture NRCS recognized the potential benefits of preserving IAL in contiguous, large blocks that would be conducive to integrated management activities for both agricultural production and environmental protection.

Mr. Matsubara stated that the two reservoirs in Area A serve as an agricultural resource and provide a protective overlay on the IAL. The reservoirs have historically provided water for the area and were included to serve as a resource.

Mr. Matsubara added that the Hanapepe River in Area B provides a “recharge” source for the wells that A&B had in the area and that Area C, which included coastal lands, also were part of a gulch area. Mr. Matsubara commented that excluding the coastal area from IAL designation may have raised concerns that home sites were being considered by the Petitioner.

QUESTIONS BY THE COMMISSIONERS FOR THE PARTIES

Commissioner Contrades commented that he was a lifelong Kauai resident and was familiar with the Petition area. His opinion was that the areas should be included in the petition since the gulches and reservoirs contribute to the agricultural operation.

Commission Lezy thanked A&B for taking the lead in the IAL designation process and for demonstrating how the process worked; and that their initiative encouraged others to participate.

Commissioner Kanuha asked how the credit waivers factored into the Petition. Mr. Matsubara explained that they were part of the 85/15 consideration for the IAL acreage. In the future, there may be an opportunity to use incentives like tax credits or an expedited processing system for IAL designation and the credit waivers may be a factor.

There were no further questions.

Commissioner Contrades made a motion to approve the declaratory order. The motion was seconded by Commissioner Judge.

There was no discussion. The Commission was polled as follows:

Ayes: Commissioner Contrades, Chock, Judge, Kanuha, Lezy and Teves.

The motion passed with 6 ayes, and 3 absent.

HEARING

A07-777 HAWAIIAN MEMORIAL LIFE PLAN, LTD. (O`AHU)

Chair Kanuha announced that this was a hearing to consider the reclassification of approximately 56.459 acres of land currently in the Conservation District to the Urban District at Kāne`ohe, Ko`olaupoko, O`ahu, Hawai`i, for cemetery expansion and the preservation of historic sites at TMK: 4-5-33: por. 1

APPEARANCES

William W. L. Yuen, Esq., represented Petitioner

Jay Morford, Petitioner

Scott Ezer, Petitioner

Jesse Souki, Esq., represented City and County of Honolulu Department of Planning and Permitting (entered the proceedings at 1:50 p.m.)

Mike Watkins, City and County of Honolulu Department of Planning and Permitting

Bryan C. Yee, Esq., represented the State Office of Planning

Abbey Mayer, State Office of Planning

Scott Derrickson, State Office of Planning

Grant Yoshimoto, represented Intervenors

Juliane McCreedy, Intervenors

Richard McCreedy, Intervenors

Chair Kanuha announced the following actions related to the subject docket:

- 1) On November 28, 2007, the Commission received Petitioner's Petition for District Boundary Amendment.
- 2) On November 6, 2008, the Commission accepted Petitioner's Final Environmental Impact Statement.
- 3) On November 9, 2008, the Commission received Amended Petition for Land Use District Boundary Amendment, Verification, and Exhibits 4, 5, 6, and 7.
- 4) On December 19, 2008, the Commission received Position Statement of the Office of Planning in Support of the Petition with Conditions.
- 5) On December 22, 2008, the Commission received the City & County of Honolulu's Statement of Position in Opposition (Exhibit 1), List of Witnesses (Exhibit 2), List of Exhibits (Exhibit 3), and excerpts of the City's General General Plan and Ko`olaupoko Sustainable Communities Plan (Exhibits 4 and 5).
- 6) On January 15, 2009, the Commission received Grant Yoshimori, Mavis Suda, Richard McCreedy, Juliane McCreedy, Lianne Ching, Ernest Harris, Bettye Harris, Jesse Reavis (collectively "Intervenors") and Hui O Pikoiloa's Petition to Intervene.
- 7) On February 6, 2009, the Commission granted the Petition to Intervene relative to the Intervenors and denied the Petition to Intervene relative to Hui O Pikoiloa, with the condition that Mr. Yoshimori would represent and act on behalf of all the Intervenors.

- 8) On February 9, 2009, the Commission staff held a pre-hearing conference with the parties.
- 9) On February 19, 2009, the Commission received Amended Position Statement of the Office of Planning for Denial of the Petition.
- 10) On February 20, 2009, the Commission received correspondence from George R. Ariyoshi dated February 18, 2009 re: email from Julianne McCreedy, dated February 11, 2009.
- 11) On February 23, 2009, the Commission received Intervenors' Statement of Position, List of Exhibits 1-40, and List of Witnesses.
- 12) On February 23, 2009, the Commission received Petitioner's Witness List, Petitioner's Exhibit List, and Petitioner's Exhibit Nos. 8-27.
- 13) On February 24, 2009, the Commission received the Kāne`ohe Neighborhood Board No. 30's Resolution Opposing the Planned Development of Hawaiian Memorial Park.
- 14) On February 24, 2009, the Commission received State Office of Planning's List of Witnesses and List of Exhibits 1-16.
- 15) On March 2, 2009, the Commission received Petitioner's Rebuttal Witness List.
- 16) On March 2, 2009, the Commission received Intervenors' resumes of named witnesses Moana Lee and Charles Prentiss.
- 17) On March 3, 2009, the Commission received the written testimony opposing A07-777 changing of Conservation Land to Urban from Paulette A. Tam.
- 18) On March 4, 2009, the Commission received additional testimony from Pomai Kalani Uchibori.
- 19) On March 5, 2009, the Commission received additional correspondence from Erin Yamashita, the State Department of Defense, Hawai`i State Veterans Cemetery (Willie Hirokane), and an e-mail from Bob ("Windward Beltone").

Chair Kanuha asked Mr. Yuen whether the Commission staff had informed him of the Commission's policy regarding the reimbursement of hearing expenses. Mr. Yuen responded in the affirmative and had no objections to the policy.

PUBLIC WITNESSES

Paulette A. Tam (submitted written testimony)

Ms. Tam testified in opposition to the proposed reclassification. She raised concerns that the previously proposed residential subdivision may be needed in the future to fund the cemetery expansion.

Willie Hirokane, Operations Manager, Hawai`i State Veterans Cemetery (HSVC)
(submitted written testimony)

Mr. Hirokane raised the following questions and issues about the proposed cemetery expansion:

1. Is the access road to the Petition Area going to be the existing road that goes through the HSVC to the Oceanview Garden? What about visitor disruption in those burial sections?
2. What is going to be the day to day start and end times for the construction? Prime time for the committal services for HSVC is between the hours of 9:00 a.m. to 3:00 p.m.
3. How are the utility lines (sewer, water, electric, phone, etc.) going to be installed? Through HSVC property?
4. Where would irrigation water come from?
5. Completion of project is within 10 years. Does this mean that heavy equipment will be going back and forth through HSVC for 10 years? What about sprinkler damage caused by these pieces of heavy equipment?
6. How much of the construction will be visible from HSVC?
7. Since ingress and egress will be through HSVC, how will security for HSVC be managed?
8. Will the drainage gulch be blocked or altered?
9. Will there be any other access road(s)?
10. Since construction will be during HSVC's prime committal service time, how will the noise and dust be managed?
11. Previously Hawai'i Memorial Park (HMP) was granted an easement to tap into HSVC's sewer line. If this sewer line is still connected, is it going to over burden HSVC's sewer? Who will be responsible to maintain and repair breaks in the sewer line?
12. If there is any damage to the gravesites caused by the utility lines, especially the sewer lines, what will be the course of action to service the family members with possible monetary compensation?

Commissioner Lezy asked Mr. Hirokane whether Petitioner had any discussions with the HSVC about these issues. Mr. Hirokane stated that he has not had any discussions with Petitioner. Commissioner Lezy then asked whether Petitioner has approached the HSVC or whether HSVC has approached Petitioner to discuss these concerns. Mr. Hirokane responded that he has been at HSVC for one year and based on his knowledge, there was preliminary discussion with the Department of Defense (DOD), Engineering Department, and the Director of the Office of Veterans Services.

Mr. Yuen asked Mr. Hirokane whether he reviewed the Environmental Impact Statement (EIS) filed by Petitioner with regard to the proposed cemetery expansion. Mr. Hirokane responded that he did glance over it but did not read it in detail. Mr. Hirokane added that the questions he raised were those to which he could not find answers in the EIS. Mr. Yuen then asked him how much time he spent reviewing the EIS. Mr. Hirokane stated that he spent two days reviewing the document.

The City and County of Honolulu Department of Planning and Permitting (DPP) had no questions for Mr. Hirokane.

Mr. Yee asked Mr. Hirokane whether he would like the HMP to work with the HSVC to mitigate impacts of their construction and operation. Mr. Hirokane responded in the affirmative.

Mr. Yoshimori had no questions for Mr. Hirokane.

Wendell Lum

Mr. Lum testified that he was a current member of the Kāne`ohe Neighborhood Board and its OMPO representative. Mr. Lum questioned why the changes to the Ko`olaupoko Sustainable Communities Plan were being done now. He stated that the Commission was not the proper venue; rather it should be through the City Council to review and make changes through a bill and adopt the Ko`olaupoko Sustainable Communities Plan through ordinance. He added that the City will be choosing a consultant this month so that possibly by the end of the year the changes to the Ko`olaupoko Sustainable Communities Plan can be addressed.

None of the parties had questions for Mr. Lum.

William C. Vinet (submitted written testimony)

Mr. Vinet testified that on February 28, 2009, a meeting was held by residents of Pohai Nani in which a straw poll was conducted to gauge how many of the residents present would choose ground burial and how many would decide to be cremated. He related that all but one of the 20 residents present voted for cremation. Mr. Vinet also spoke to the relaxation of the cremation prohibition by the Catholic Church, which will possibly increase the percentage of cremations relative to ground burials in the future.

Mr. Yuen questioned Mr. Vinet whether, outside of the group of 20 people, he talked to anyone else about their preferences regarding in ground burial vs. cremation. Mr. Vinet responded in the negative. Mr. Vinet added that he believed the rate for cremation has actually increased.

The DPP and OP had no questions for Mr. Vinet.

Mr. Yoshimori asked Mr. Vinet to clarify his testimony with regard to his position on the proposed reclassification of the Petition Area. Mr. Vinet clarified that he supported the Conservation District designation of the Petition Area.

Mr. Yoshimori had no further questions for Mr. Vinet.

Chair Kanuha announced that the Commission will continue the hearing tomorrow at the Windward Community College, Paliku Theatre, at 9:30 a.m. and will accept public testimony at that time. Chair Kanuha also acknowledged receipt of correspondence from Jane Yazaki on March 4, 2009.

Following public witness testimony, the parties moved to have their respective exhibits entered into the record.

Mr. Yuen requested to have Petitioner's Exhibits 1 through 27 moved into evidence. There were no objections by the other parties. Chair Kanuha admitted Petitioner's Exhibits 1 through 27 into the record.

Mr. Watkins requested to have the DPP's Exhibits 1 through 5 admitted into the record. Petitioner expressed concern that if the DPP was going to submit the Ko`olaupoko Sustainable Communities Plan, it should submit the full plan. Mr. Yuen noted that the excerpts that the DPP had submitted made it difficult to read the context of the particular sections. Mr. Yuen stated that he would have no objection to the submission of the full Ko`olaupoko Sustainable Communities Plan as an exhibit. Mr. Watkins stated that he was willing to submit the full plan as an exhibit. Chair Kanuha noted that the full plan will be admitted as an exhibit. OP and Intervenors had no objections to the DPP's exhibits. Chair Kanuha admitted the DPP's Exhibits 1 through 5, including the full Ko`olaupoko Sustainable Communities Plan, into the record.

Mr. Yee requested that OP's Exhibits 1 through 14 and 16 be admitted into the record. Mr. Yee noted that Exhibit 15 was a resume that OP had not yet been able to obtain. There were no objections by the other parties. Chair Kanuha admitted OP's Exhibits 1 through 14 and 16 into the record.

Mr. Yoshimori requested that Intervenors' Exhibits 1 through 40 and the additional resumes of Moana Lee and Charles Prentiss be admitted into the record. Mr. Yuen objected to the admission of Intervenors' Exhibit 1 based on the lack of foundation to support the authenticity of the petition. Mr. Yuen had no objections to Intervenors' Exhibits 2 through 8. Mr. Yuen questioned that if Intervenors' Exhibit 9, a letter from Governor George Ariyoshi, was the same letter that was already sent to the Commission and was part of the record, and if Mr. Yoshimori wanted to use the letter as part of his case, he would object until the Intervenors called Mr. Ariyoshi and he was subject to cross-examination on his letter. Mr. Yuen further objected to Intervenors' Exhibits 10 through 38. He noted that his objections fell into two categories. He stated that if the Intervenors wanted to use fact sheets, articles, or pamphlets as part of their case, he would like the opportunity to cross-examine the authors. He added that there has been no showing from the Intervenors' Exhibit List that the Intervenors intend to call the authors of these various articles, books, pamphlets, or web pages. With respect to the photographs, which were Intervenors' Exhibits 31 through 38, Mr. Yuen noted that he wanted some showing of authenticity and an opportunity to cross-examine the people who took the photographs. With respect to Intervenors' Exhibit 39, which was the Resolution of the Kāne`ohe Neighborhood Board, he believed that the Commission has received a copy of a resolution from the board. He added that he had no idea whether the resolution submitted by the Intervenors was, in fact, the resolution passed by the board. He pointed out that if the Intervenors wanted to submit the resolution as part of their case, he would like some showing as to authenticity. Mr. Yuen had no objection to Intervenors' Exhibit 40 and the resumes.

The DPP had no objections to the Intervenors' exhibits.

Mr. Yee stated that OP had no objections. Mr. Yee noted that while the concerns expressed by Petitioner may be legitimate issues of argument to the Commission as to the weight to be given to the individual exhibits, they would not seem to be a sufficient basis by which OP would ask that they be inadmissible. Given the different rules of evidence that apply in administrative hearings, he stated that OP would not object to their admission at this time.

Mr. Yoshimori attested to the fact that with respect to Intervenors' Exhibit 1, he personally collected many of the signatures in the petition so he can state that they were authentic. He wanted to have the petition admitted into evidence to show there was community opposition to the cemetery expansion. With respect to the letter from Governor Ariyoshi (Intervenors' Exhibit 9), Mr. Yoshimori stated that he has no objection to having it removed from Intervenors' exhibit list as it has already been submitted to the Commission. With respect to Intervenors' Exhibits 10 through 38, Mr. Yoshimori asserted that these exhibits demonstrate the concerns of the neighborhood and why they were very concerned about the proposed cemetery expansion. With respect to Intervenors' Exhibit 39, Mr. Yoshimori had no objections to having it removed from Intervenors' exhibit list. With respect to Intervenors' Exhibit 31 through 38, Mr. Yoshimori stated that these photographs were taken by Moana Lee who will be testifying for Intervenors' and can address any of Petitioner's concerns.

Commissioner Judge moved to go into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's power, duties, privileges, immunities, and liabilities. Commissioner Teves seconded the motion. The Commission exited the meeting at 11:28 a.m. and entered executive session immediately thereafter.

The meeting reconvened at 11:44 a.m.

Chair Kanuha ruled that Intervenors' Exhibits 1 through 8, 10 through 38, 40, and the resumes of Moana Lee, designated as Exhibit 41, and Charles Prentiss, designated as Exhibit 42, will be admitted into the record.

Commissioner Contrades entered the proceedings at 11:46 a.m.

PETITIONER'S WITNESSES

1. Jay Morford

Mr. Morford described his position at Hawaiian Memorial Life Plan and his responsibilities with respect to HMP. He also provided a background of his work experience in the funeral and burial services industry. Mr. Yuen noted that he introduced Mr. Morford's resume as Petitioner's Exhibit 9. Based on his resume and his testimony, Mr. Yuen asked that Mr. Morford be qualified as an expert in the funeral and cemetery industry. There were no objections by the other parties in the proceeding.

Chair Kanuha admitted Mr. Morford as an expert witness in the funeral and cemetery industry.

Mr. Morford provided a background of Service Corporation International (SCI), the owner of Hawaiian Life Plan, Ltd., the Petitioner herein. Mr. Morford also described the existing operations, facilities, and features at HMP. He then discussed the burial procedures for the below ground interments as well as Petitioner's involvement with the community, including the Shattered Dreams program with the Police and Fire Departments, the bereavement network of Hawai'i, the public servant program, the Visitors Aloha Society of Hawai'i, and the Deputies. He further described how the surrounding community used the HMP for walking, jogging, picnicking, heiau maintenance, and laua`e gathering. Mr. Morford then discussed the proposed cemetery expansion plans that will include a total burial area of 29.5 acres, internal roadway and mausoleums of 8 acres, drainage and retention areas of 13 acres, a cultural preserve and historic sites of 9.5 acres, and lands to be revegetated of 1.14 acres that will give Petitioner approximately 30,000 interments and inurnments and four mausoleum structures in the cemetery.

Using Figure 4a (revised site plan) in Petitioner's Exhibit 4, Mr. Morford oriented the Commission to the proposed cemetery expansion, including the drainage and retention areas and the revegetated areas, and the cultural preserve. Mr. Morford explained that Petitioner, with SCI, has committed to never build houses on the Petition Area, and that they were planning to use it for cemetery use only. He noted that in addition to approving zoning ordinance HRS section 441-4 requires the City Council to approve the location and boundaries of cemetery expansion areas. He added that Section 441-2 requires HMP to file a certificate with the Bureau of Conveyances dedicating City Council approved expansion area exclusively for cemetery purposes and following the dedication of land must be used for cemetery purposes unless an order releasing the dedication was obtained from circuit court. He asserted that they were not planning to go to court.

Mr. Morford next described Petitioner's proposal for grading and installing drainage areas. Due to community concerns about flooding issues, he explained that Petitioner has committed to going to a 50-year one-hour storm event. He then discussed Petitioner's proposal for the cultural preserve. He noted that they have been in dialogue with the Hawaiian practitioners, and the implementation of the cultural preserve plan will be under their discretion. Although the dialogue has not gone real far with them at this point, Petitioner was encouraged to work along side of them so that they can design a preservation plan that will work for them to ensure that those sites were protected.

Mr. Morford continued with his testimony by discussing the need for the expansion of HMP. During his testimony, Mr. Morford utilized charts from Exhibit 4, Appendix A. He discussed the historical trends in resident aging in Hawai'i and the projections in aging of the population through 2030. He also described the death rates in Hawai'i from 1980 to 2035 and the trends for inurnment and interment since 1980

to 2005. He noted that HMP was currently doing 25 percent of all interments in the State.

Mr. Morford then discussed the other factors that justify the expansion of HMP. Based on the flat interment rate in the State, he noted that it will amortized their inventory over time. He added that at HMP, they have the current infrastructure, the staff, the chapel services, the administration building, the maintenance area, and the ground facilities to sustain the expansion. He also noted that they were limited expansion areas in the existing cemeteries on O`ahu today and any cemetery expansion would need to obtain land use approvals.

Upon questioning by Mr. Yuen, Mr. Morford noted that the Valley of the Temples cemetery has been in receivership for quite some time and he did not know what the future held for them. Mr. Morford added that he recently spoke to the owner of Mililani Mortuary, which was established in 1965, and she stated that they did not have enough lands to sustain the needs of the community. He related that in their discussion, she told him that they have 10 acres that they were planning to develop. Mr. Morford testified that he did not know of any other major cemeteries on O`ahu that have significant room for expansion. He noted that the cemeteries in the Nuuanu or Diamond Head areas did not have a lot of room for expansion. He pointed out that he did know of a proposed memorial park in Hawai`i Kai called Paradise Memorial Park that was in the process of starting in 2000, but as of today it was not yet a cemetery. Upon further direct by Mr. Yuen, Mr. Morford noted that he did not know if this cemetery has obtained the necessary land use approvals or permits to start construction as that information was not public knowledge.

Mr. Yuen directed Mr. Morford to Petitioner's development timetable. Mr. Morford pointed out that they would start construction on an as-needed basis but would comply with the 10-year requirement for the infrastructure to be put in. Mr. Morford was then asked to describe HMP's efforts to recycle. Mr. Morford replied that they have actively tried to do their part with recycling in the community. He explained that they use Unitek Solvent Services for their tires, solvents, and oils, while their scrap metal went to Ace Iron Recycling, their concrete granite remnants to Ameron, their bronze to Hans Metals, and any green waste to Honolulu Disposal Service. He added that their grass clippings were composted and left behind. Upon questioning by Mr. Yuen, Mr. Morford stated that they were not proposing to increase their green waste recycling efforts at this time.

Mr. Morford was then asked to describe the relationship between HMP and the HSVC. He stated that it was a good relationship. Upon questioning by Mr. Yuen regarding the mutual access relationship shared by HMP and HSVC, Mr. Morford explained that although he was not personally involved with this, he knew that at that time Punchbowl Cemetery had sold out and the State recognized that they needed more interments for the veterans. He pointed out that Punchbowl was a no choice cemetery, which meant that only cremation was the acceptable method of disposition at the cemetery. He noted that was one of the things HMP was trying to stay away from so that it could continue to provide people with choices. When Punchbowl Cemetery made

the determination that they needed more land, he related that the land behind HMP made sense for the State. He added that the State did not have the minimum land requirements to put the State cemetery there so HMP donated the land to allow the State to build. In that process, he explained that an easement was granted to HMP through HSVC to access HMP's Oceanview Gardens. Mr. Morford clarified that the easement was reciprocal in that the entrance to the HSVC was through the existing HMP. Upon further questioning by Mr. Yuen, Mr. Morford stated that access to the proposed expansion area will be as it was today through the same access road. He added that he has not gotten into the details of construction times. Mr. Morford further noted that the Oceanview Gardens construction occurred around 2000 after the HSVC was already constructed. When asked if he was able to work out any operational issues at that time with the DOD to allow construction of the Oceanview Gardens expansion, Mr. Morford clarified that he was not personally involved with that project, but he did know that the people who were involved had a good relationship with the HSVC and they had no problems with the construction of the gardens at that time. He did not foresee any problem in working out a mutually acceptable construction schedule or other arrangements with the HSVC with respect to construction of the proposed cemetery expansion.

Mr. Yuen had no further questions for Mr. Morford.

The DPP had no questions for Mr. Morford.

Mr. Yee asked Mr. Morford to describe the relationship between Petitioner and SCI. Mr. Morford replied that Petitioner was owned by SCI. Mr. Yee then asked him to clarify whose assets would be used to internally finance the proposed expansion. Mr. Morford noted that it will be the assets of SCI. In referencing the deletion of the residential subdivision in the FEIS, Mr. Yee asked whether Petitioner would accept a condition limiting the use of the Petition Area to those uses described in the FEIS. Mr. Morford responded in the affirmative. Mr. Yee further questioned him as to whether Petitioner would agree to a condition requiring the creation of stormwater retention basins designed for a 50-year, 1-hour storm event consistent with his earlier testimony. Mr. Morford responded in the affirmative.

Mr. Yee referenced Mr. Morford's earlier testimony in which he alluded to working with the Ko`olaupoko kupuna to come up with a method by which the cultural complex would be taken care of. He questioned how the agreement was to be codified with them. Mr. Morford explained that it was Petitioner's intent to let them create it on terms that were agreeable to them. He added that Petitioner wanted it to be the kupuna's preservation plan. He reiterated that Petitioner has not gone far with that dialogue, and therefore deferred matters related to the issue to Petitioner's planning consultant who has had dialogue with them. Mr. Morford also deferred to Petitioner's planning consultant on the description of the manner in which the agreement will be written down, the impact of the State Historic Preservation Division's involvement in the process, and on what responsibilities would exist if the Ko`olaupoko kupuna were unable to fulfill their obligations under whatever agreement was reached.

Mr. Yee continued his cross-examination of Mr. Morford by asking him whether he had any objections to a 10-year infrastructure deadline from the date of the decision and order. Mr. Morford responded in the negative. Mr. Yee then referred to the concerns expressed by the HSVC and asked whether Petitioner had any plans to meet with them to minimize the impact of either the operations and/or construction activities. Mr. Morford replied that he will meet with them next week to discuss that. Mr. Yee next asked whether the results of any conversations with the HSVC would be able to be communicated to the Commission subsequent to his testimony. Mr. Morford replied that he would be agreeable to that.

Mr. Yee had no further questions for Mr. Morford.

Mr. Yoshimori asked Mr. Morford to confirm whether there were big no trespassing signs at the end of Lipalu Street that lead to the area where laua`e were collected. Mr. Morford affirmed the existence of these signs. Upon further cross-examination by Mr. Yoshimori, Mr. Morford clarified that the mausoleums will be 3,300 square feet with plans for one restroom. Mr. Morford also confirmed that SCI was a publicly traded company whose shares can be purchased on the stock market.

The Commission went into recess at 12:19 p.m. The Commission reconvened at 1:50 p.m.

Chair Kanuha asked Mr. Morford to clarify when SCI took over the HMP. Mr. Morford replied that it was in 1992. Chair Kanuha then asked him whether he was aware of the expansion plans at that time. Mr. Morford pointed out that he did not start with the company until 1995. Mr. Yuen interjected that his next witness, John Farias, will be prepared to answer these kinds of questions. Chair Kanuha next asked him whether or not he knew cemetery uses were permitted in the Conservation District. Mr. Morford stated that he did not know.

Commissioner Judge asked Mr. Morford to identify the source of the figures in Petitioner's Exhibit 4 referred to in his testimony. Mr. Morford replied that it was the State database. Commissioner Judge then asked him to clarify his testimony in which he pointed out that there has been an increase in the cremation rates while the burial rates have remained flat during the 2000 to 2005 timeframe. Mr. Morford responded that he was going by the actual number rather than the percentage because the percentages were skewed based on the total death rate. Commissioner Judge next asked him to clarify whether the 5,964 people who opted for cremation in 2005, for example, consisted of people who were inurned or cremated. Mr. Morford clarified that the number referred to cremation. He added that was their choice on how they were going to be handled at the mortuary, but not necessarily the way they were going to be memorialized because families could still choose in-ground inurnment even though cremation was the method of disposition. Commissioner Judge then asked whether one of the options for the 5,964 people was also to have their ashes scattered in the ocean. Mr. Morford stated that was correct. Moving onto his testimony regarding other growth factors that impact the need for cemetery services, Commissioner Judge asked whether HMP would run out of space in the foreseeable future given his testimony that noted

annual interment demand would amortize remaining inventory opportunities within the cemetery. Mr. Morford affirmed that HMP will, in fact, run out of space. Commissioner Judge then asked him how he defined the phrase “foreseeable future.” He noted that based on the amount of interments that HMP does today, they will probably be out of inventory in 10 years. Commissioner Judge next asked him how much land was needed based on the trends in the method of disposition. Mr. Morford explained that the current rate of interment has been staying flat based upon the rate of 700 a year in-ground interments, so the land absorption rate has been consistent even though the cremation rate has increased.

Commissioner Lezy asked Mr. Morford to describe the average cost per interment. Mr. Morford provided a range of \$2,000 to \$20,000, with an average cost of \$6,000. Assuming the boundary amendment petition was approved, Commissioner Lezy asked him to confirm whether HMP was projecting to have 30,000 interment lots available. Mr. Morford further explained that they would be developing at the time of need for the land so they would not have 30,000 interment lots immediately. Upon additional questioning, he noted that it was possible for this number to change depending on cremation and burial rates. Commissioner Lezy next asked whether there were any internal discussions with Petitioner about pursuing an option other than a district boundary amendment when the decision was made to take the residential component off of the plan. Mr. Morford replied that he did not have any knowledge of that.

Mr. Yuen clarified for the record that when Mr. Morford was referring to the revised site plan in his testimony, he was referring to Figure 4a in Petitioner’s Exhibit 4. Mr. Yuen then asked Mr. Morford to confirm his earlier statement that there were 10 years of capacity remaining at HMP, which he did. Mr. Yuen asked him to explain why Petitioner was starting now to expand the cemetery given this amount of remaining capacity. Mr. Morford explained that culturally in the State, the concept of family was extremely important and families want to be together. He further explained that a big reason for having inventory available was to have sites so that family members have the opportunity to be buried next to their loved ones. He added that they did not want to run out of inventory and have the families be in a position where there was no choice.

Mr. Yuen had no further questions for Mr. Morford.

2. John Farias

Mr. Farias stated that he was the president of Hawaiian Memorial Life Plan, Ltd., the Petitioner herein. He pointed out that he has been associated with HMP for 29 years. He then proceeded to describe his role in the development and growth of HMP. He noted that the Hawaiian Memorial Park Cemetery Association (HMCA) purchased the Petition Area and surrounding lands consisting of 203 acres from Kāne`ohe Ranch in 1982 and described the initial planning efforts for the expansion of HMP. He next related his role in assisting the DOD in development of the HSVC. Upon questioning by Mr. Yuen, Mr. Farias explained the nature of the easements that allowed access to the HSVC through HMP and access to HMP’s properties through HSVC.

Mr. Yuen had no further questions for Mr. Farias.

The DPP had no questions for Mr. Farias.

Mr. Yee asked Mr. Farias to clarify whether there was any discussion as to whether the Commission rather than the Board of Land and Natural Resources was the better venue when the decision was made to forego the residential subdivision on the Petition Area. Mr. Yuen interjected that the question would be better answered by Petitioner's planning consultant. Mr. Yee had no further questions for Mr. Farias.

Mr. Yoshimori had no questions for Mr. Farias.

Chair Kanuha asked Mr. Farias whether a residential subdivision was part of HMCA's vision for the Petition Area. Mr. Farias responded in the negative. He elaborated that it was not part of the long-range plan.

On redirect, Mr. Yuen asked Mr. Farias to clarify what prompted him to sell HMP to SCI. Mr. Farias noted that HMP needed capital. He noted that a group out of Vancouver had wanted to acquire the company but not the Petition Area and surrounding lands which put him in a very uncomfortable position. His concern was that the 203 acres would probably be sold to a third party who would have likely attempted to urbanize it and develop housing. He pointed out that about 20 years ago, there was a developer who wanted to put housing there, which HMCA opposed because there was housing right next to the area and it would create a negative impact even beyond that. He related that the community talked to their councilmember of that area and Mayor Anderson. The developer then withdrew his plans at that time. He recounted that in his meeting with the chairman of the board of SCI, SCI acquired HMP and the Petition Area on the promise that SCI would expand HMP and make it a first class cemetery operation.

Commissioner Lezy asked Mr. Farias to clarify his testimony that at some point the parcel that was now the HSVC was looked at for development as a residential property. Mr. Farias stated that it was about 20 years ago. Commissioner Lezy then asked him to clarify the basis for his objection to the development. Mr. Farias noted that the development was neither proper nor appropriate; it involved land that was landlocked. He related that the developer wanted to use the cemetery for ingress/egress to the subdivision and he noted that the developer could not do that.

3. Lawrence Shinsato

Mr. Shinsato described his business affiliation and role with the HMP cemetery expansion. He explained that his company was retained by Petitioner to do a geotechnical study of the area as it related to slope stability and rock fall hazards. Mr. Yuen noted that he marked and introduced into evidence as Petitioner's Exhibit 11 Mr. Shinsato's resume. Based on his resume, Mr. Yuen requested that Mr. Shinsato be qualified as an expert in civil engineering with a concentration in geotechnical

engineering. There were no objections by the other parties in the proceeding. Chair Kanuha admitted Mr. Shinsato as an expert witness in the area specified.

Mr. Shinsato described his conclusions with respect to slope stability issues that might impact the Petition Area. He noted that the studies revealed no apparent potential hazards to the proposed expansion sites that may be associated with slope stability. He also noted that there were no mitigation measures that were necessary to protect the Petition Area from slope stability issues. He stated that if the cemetery expansion was developed, it should be done in accordance with standard engineering practices. Mr. Yuen asked him about the potential of hazard due to rockfall. Mr. Shinsato replied that during the study, it was recognized that there were certain areas on the uphill side of the Petition Area where large boulders were identified. In the report, he noted that these were flagged out as areas of potential rockfall hazards. Mr. Shinsato pointed out that some of the mitigative measures for these potential hazards include netting the boulders, chaining down the boulders, removing the boulders, creating a buffer zone between the hazard area and the development area, and fencing. Mr. Shinsato then proceeded to describe the soil types of the Petition Area. He noted that they were generally two types of soil: Alaeloa silty clay, which was found on the uphill portion of the Petition Area, and soils in the Kāne`ohe series, which were found on the large slopes and which were developed through alluvial and colluvial wash from the uphills that was deposited on the lower slopes. On the uphill slopes, he noted that the soil was a residual type developed through the weathering of the parent bedrock. Upon direct questioning by Mr. Yuen, Mr. Shinsato affirmed that these soils were appropriate for the development of a cemetery.

Mr. Yuen had no further questions for Mr. Shinsato.

Mr. Souki asked Mr. Shinsato whether he looked at the groundwater recharge potential for the area. Mr. Shinsato replied that was not within the scope of his work.

Mr. Souki had no further questions for Mr. Shinsato.

Mr. Yee asked Mr. Shinsato to define slope stability. Mr. Shinsato replied that slope stability was the mass movement of the earth. Mr. Yee then questioned whether he based his examination of slope stability hazards on his understanding of what the grading will be like after the construction was done or on the existing conditions. Mr. Shinsato responded that it was done based on existing topography. Mr. Yee next asked him whether he looked at slope stability after the land was graded. Mr. Shinsato noted that the development plan was not that far advanced so it was not part of the analysis. Mr. Yee asked whether he knew there was a representation or commitment to actually implement these measures to mitigate rockfall hazards. Mr. Shinsato replied that he was not sure. Upon further questioning by Mr. Yee, Mr. Shinsato stated that he thought the mitigation measures should be implemented. Mr. Shinsato was then asked whether the absence of these mitigation measures would affect the safety within the Petition Area. He responded that there was a certain limit or boundary for which there will be rockfalls and where mitigation measures should be implemented in this zone. Mr. Yee

questioned whether this zone of impact included part of the Petition Area. Mr. Shinsato stated that he was not sure how far down it went.

Mr. Yee had no further questions for Mr. Shinsato.

Mr. Yoshimori had no questions for Mr. Shinsato.

Commissioner Lezy asked Mr. Shinsato whether he took into account the issue of devegetation or deforestation of the area during the development process. Mr. Shinsato replied that those conditions were more related to erosion control.

Chair Kanuha asked Mr. Shinsato to confirm his testimony as to whether stabilization measures will be necessary for any work done on the Petition Area. Mr. Shinsato clarified that if the cemetery expansion was designed and constructed in accordance with standard engineering practices, it should be okay. He added that the soils here were basically elastic silts, so development of the Petition Area could be done using the standards of grading that were in effect.

4. Phillip L. Bruner

Mr. Yuen noted that he marked as Petitioner's Exhibit 13 Mr. Bruner's resume. Mr. Yuen requested that Mr. Bruner be qualified as an expert in biology. There were no objections by the other parties in the proceeding. Chair Kanuha admitted Mr. Bruner as an expert witness in the field of biology.

Mr. Bruner proceeded to describe the results of his avifaunal and feral mammal field survey for the Petition Area. He noted that there were no native land birds, water birds, or sea birds as the Petition Area was second growth forested habitat and was not conducive for these native birds. He noted that the migratory Kōlea, or Pacific Golden Plover, was observed in the existing HMP cemetery. He added that the expansion will provide additional lawn habitat which was the preferred habitat for the Kōlea. No native mammals were observed. Pigs were seen and pig tracks were abundant in the area. Mr. Bruner noted that he used electronic means to search for the presence of the Hawaiian hoary bat during dusk and at dawn when they would be actively foraging. However, he related that no bats were seen as there were very few of the bats known to occur on O`ahu.

Upon further questioning by Mr. Yuen, Mr. Bruner clarified that the Pueo, or Hawaiian Owl, was an endemic subspecies in Hawai`i and was listed by the State as an endangered species on O`ahu but not elsewhere in Hawai`i. He noted that the Pueo foraged in a wide array of habitats and nested on the ground in high grass, and therefore would not nest in the Petition Area. Finally, he pointed out that the introduced barn owl was often mistaken for the Pueo.

Mr. Yuen had no further questions for Mr. Bruner.

Mr. Souki had no questions for Mr. Bruner.

Mr. Yee asked Mr. Bruner how many days and nights he spent conducting his survey. Mr. Bruner replied that it was two days and one night. He noted that with respect to the Hawaiian hoary bat, in areas where they were known to be quite common, the recommendation was that any tree removal should not occur during June through August when the bats roost in the trees. Mr. Yee questioned Mr. Bruner's conclusion that no mitigation measures need to be implemented because no bat was observed during that one night and since there were very few of them, it was unlikely that they would be observed. He asked whether that would be a correct observation regarding any endangered species for which there were very few of them. Mr. Bruner replied that unless one knew where there were resident populations, it would be difficult to determine their numbers and the frequency of use of a particular area because their distribution was spotty and not uniform throughout any habitat. Upon additional questioning by Mr. Yee on this issue, Mr. Bruner again referred to the recommendation regarding tree removal in situations where there were known to be bats occurring throughout the year in reasonable numbers.

Mr. Yee referenced the FEIS where it was stated that data on mammals were obtained by visual observation only. He asked him to clarify that statement with respect to the electronic means cited earlier. Mr. Bruner replied that the statement referred to mammals other than bats. He reiterated that he used an electronic device to enhance the chances of finding bats. Upon additional cross-examination by Mr. Yee, Mr. Bruner explained that bats roost in trees and during June through August when they were "pupping," the young were left back at the roost. Mr. Bruner also explained that the Pueo, which do not nest in trees, may sit in a tree. Mr. Bruner stated that there were no mitigation measures that should be applied in this case other than the recommendation for the Hawaiian hoary bat regarding the prohibition of tree removal during June through August when the situation warranted it. Mr. Bruner added that there was another recommendation that would be applicable if barbed wire fences were proposed. He noted that such fences may be potentially problematic as the bats can impale themselves on it. Upon further questioning by Mr. Yee, Mr. Bruner reiterated that the Hawaiian hoary bat could use the Petition Area to forage, and that during the observation period, they were not seen; given their low numbers, that was not surprising. He added that it was something very difficult to predict given their very low numbers and the absence of survey data using radar telemetry to show where bats actually occur on O`ahu and at what density. Mr. Yee commented that the decision then had to be made with limited information. Mr. Bruner agreed.

Mr. Yee had no further questions for Mr. Bruner.

Mr. Yoshimori asked Mr. Bruner how many people were involved in his survey. Mr. Bruner replied that it was just himself. Mr. Yoshimori then asked him how many rats were observed during the survey. Mr. Bruner responded that no rats or mice were seen, but there was evidence of them in the form of fruits that had been gnawed on and tracks around wet holes.

Commissioner Judge asked Mr. Bruner to explain the distinction between roosting and nesting with respect to the Hawaiian hoary bat. Mr. Bruner explained that based on the data collected from the Big Island, the bats will return to the same tree to roost in and remain in that tree until the evening at which time they forage then go back to the same tree. He pointed out that this will happen night after night. He further explained that on the Hilo side of the island, as the winter months approach, the bats will move upslope, while during the summer months when they were pupping, they roost at the lower elevations. On O`ahu, he noted that there was no evidence of altitudinal shifts probably because there were not enough elevational differences on O`ahu. On the Kona side of the Big Island, he added that the data showed they were not experiencing this altitudinal shift to the extent that was seen on the Hilo side. He attributed that to the climate differences there. In summary, Mr. Bruner clarified that roost was a place to spend a day or to leave the young. Mr. Bruner further noted that the bats could roost in any tree. On the Big Island, he related that the macadamia nut orchards were favored by the bats.

The Commission went into recess at 2:47 p.m. and reconvened at 3:01 p.m.

5. Edwin M. Sakai

Mr. Yuen asked Mr. Saiki about his business affiliation and his role with the proposed cemetery expansion. Mr. Saiki replied that he was the project manager for SSFM, which prepared the preliminary engineering report for the FEIS in regard to the proposed cemetery expansion. Mr. Yuen noted that he marked as Petitioner's Exhibit 12 Mr. Saiki's resume. Mr. Yuen requested that Mr. Saiki be qualified as an expert in civil engineering. There were no objections by the other parties in the proceeding. Chair Kanuha admitted Mr. Saiki as an expert witness in the field of engineering.

Mr. Saiki described the water source for the cemetery expansion. He noted that HMP expects to drill exploratory wells onsite as a result of comments from the Board of Water Supply who wanted Petitioner to look for non-potable water sources before allowing Petitioner to tie into their system. In addition, he noted that the HSVC obtained irrigation water from onsite non-potable wells. It was expected that non-potable water may be utilized for the planned comfort station.

Mr. Saiki next described the drainage plan for the expansion. He pointed out that the City and County drainage standards relating to storm drainage require increase in storm water runoff from a 10-year, one-hour storm event due to new development not affect downstream property. According to Mr. Saiki, the most cost effective method was to retain the runoff onsite through retention areas. As a result, the conceptual plan shows nine retention areas scattered throughout the Petition Area to collect increased runoff. Using Figure 28 in Petitioner's Exhibit 4, which was Petitioner's revised conceptual site plan, Mr. Saiki illustrated where the retention areas were proposed. He pointed out that the retention areas would be designed to pick up the 50-year increase, which was beyond what the City and County's normal drainage standards requirements were. In so doing, he related that they had to increase the depth of the retention areas from 18 inches to 2 to 2 ½ feet. Referring to Figures 29a and 29b in Petitioner's Exhibit

4, Mr. Saiki described Cross-Sections “A,” “B,” and “C” of the retention areas in terms of the existing grades and the finished grades. Upon questioning by Mr. Yuen, Mr. Saiki described the visual impact of the retention areas. He explained that from onsite, the observer would see a shallow depression between 2 to 2 ½ feet deep. He added that the retention areas themselves would range from 100 to 200 feet in length and from 40 to 50 feet wide. He noted that the areas would be landscaped. The permeability rates would need to be examined to determine the actual material that will be placed in the areas. According to him, it could be gravel if more percolation was needed or it could just be grassing.

Mr. Yuen had no further questions for Mr. Saiki.

The DPP had no questions for Mr. Saiki.

Mr. Yee asked Mr. Saiki if there were any unusual drainage challenges for the cemetery expansion. Mr. Saiki responded in the negative. Mr. Yee commented that there were houses below HMP and questioned whether that posed any additional concerns regarding drainage. Mr. Saiki noted only from the standpoint of ensuring that runoff was not increased to that area. Mr. Yee asked whether the standard for a 50-year, 1-hour storm event reflected an actual 50-year storm. Mr. Saiki replied that was the standard that they designed for. He clarified that the 50-year term was a recurring interval based upon time and rainfall intensity. Mr. Yee next asked what would happen to water if the storm lasted for two hours. Mr. Saiki responded that whatever overflowed would go downstream. In response, Mr. Yee then pointed out that in a 50-year, 2-hour storm event, there would be excess runoff than what currently existed on the Petition Area. Mr. Saiki noted that while true, the system downstream was not designed for a 50-year storm event. Based on Mr. Saiki’s response, Mr. Yee again questioned whether there were any special concerns because of the potential impact of excess water to the existing houses below the Petition Area. Mr. Saiki asked Mr. Yee to rephrase his question, which he did. Mr. Yee asked whether Petitioner would be diverting the excess water to an area where there were no houses. Mr. Saiki responded in the negative. Upon further questioning, Mr. Saiki pointed out that if there was a 50-year storm event now, there were no facilities onsite to capture that. Continuing his cross-examination of Mr. Saiki, Mr. Yee then asked him whether the intention of the retention basins would be to handle just the excess water or all water from a 50-year storm event. Mr. Saiki clarified that the basins were intended to handle the increase from a 50-year, 1-hour storm event. Mr. Yee then remarked that if the 50-year storm event lasted for two hours there would be water in excess of conditions as they exist today. Mr. Saiki agreed. Mr. Yee reiterated his previous question as to whether there were any particular concerns if the water was not diverted to an unpopulated area given the existence of houses below HMP. Mr. Saiki replied not specifically because there were no real undeveloped areas, only homes and roads. Mr. Saiki added that under normal drainage laws, to divert water from where it was currently going to a different location violated one of the drainage principles. Mr. Yee next asked whether the steep slopes behind some of the homes caused any particular concerns in the event excess water flowed off of HMP. Mr. Saiki noted that there was an area between the Petition Area and the property below that was not included in the Petition Area and was

undeveloped, so he was not concerned about the steep slopes. Upon additional questioning, Mr. Saiki affirmed that there were commitments to build to a 50-year, 1-hour storm event standard and to use non-potable water for irrigation and for the planned comfort station.

Mr. Yee had no further questions for Mr. Saiki.

Mr. Yoshimori asked Mr. Saiki if he studied the impact on the Kawa Stream flows caused by the drilling of the wells. Mr. Saiki pointed out that Kawa Stream was located much further downstream. Mr. Saiki responded in the negative. He noted that would require a hydrogeotechnical engineer to determine those types of factors, which would normally come during the design phase. Mr. Yoshimori then asked how many gallons of water were anticipated to be held by the retention areas. Mr. Saiki noted that they were looking at it from the standpoint of cubic feet. He pointed out that for a 50-year, 1-hour storm event, they computed it at 512 cubic feet per second.

Mr. Yoshimori had no further questions for Mr. Saiki.

Commissioner Lezy asked Mr. Saiki whether his study took into account either deforestation or removal of vegetation from the Petition Area. Mr. Saiki stated that it did. Commissioner Lezy then asked what amount of vegetation removal from the Petition Area was used in the consideration of those issues. Mr. Saiki noted that of the 56.5-acre Petition Area, 35 acres will actually be developed. Within that acreage, he responded that he did not have the numbers at this point. He added that when they get into the final design, they will actually compute all of that. Commissioner Lezy next asked him what he gave consideration to in the study as far as those issues were concerned. Mr. Saiki replied that they looked at the areas that will be graded and the areas that will remain.

Commissioner Judge raised questions regarding Figures 29a and 29b. She asked whether Mr. Saiki knew the average slope of the Petition Area as represented in the cross-sections. Mr. Saiki responded that for Cross-Section "A," it appeared to be a 3 to 1 ratio, 3 horizontal to 1 vertical, or approximately 33 percent. For Cross-Section "B," the average slope appeared the same as Cross-Section "A." For Cross-Section "C," he believed that the finished slopes would actually be less than the existing slopes, so he guessed that the average slope would be 20 percent. Commissioner Judge then asked him to identify the percentage of the existing slope. Mr. Saiki replied that the greatest slopes they found were 2 to 1, or 50 percent.

On redirect, Mr. Yuen questioned Mr. Saiki as to whether the terrain of the Petition Area was variable. Mr. Saiki responded in the affirmative. Mr. Yuen then asked whether it was possible to conclude generally with respect to the Petition Area that there was a typical slope. Mr. Saiki replied that it actually depended on where one cut the cross-sections. He noted that the existing maximum slopes approached 2 to 1, but that there were areas that were flatter. Upon further questioning, Mr. Saiki clarified that for Cross-Section "A," it was actually less than a one-third slope.

Continuing with his redirect, Mr. Yuen asked Mr. Saiki to clarify what a 50-year, 1-hour storm event represented. Mr. Saiki replied that the calculation was based on rainfall intensity and factored in runoff coefficient, the area, and the time of concentration. He added that the variable between a 10-year vs. a 50-year storm event was rainfall intensity. According to him, the rainfall intensity for a 10-year storm event was 2 ½ inches per hour, while for a 50-year storm event, it was 3.7 inches of constant rainfall per hour. Mr. Yuen asked him where in Hawai`i would there be an area that experienced rainfall of 3 inches per hour. Mr. Saiki responded not in his lifetime. Upon further questioning, Mr. Saiki noted that a 50-year storm event was a once in a lifetime storm.

Mr. Yuen had no further questions for Mr. Saiki.

6. Maya LeGrande

Mr. Yuen noted that he introduced as Petitioner's Exhibit 16 Ms. LeGrande's resume. Based on her resume, Mr. Yuen requested that Ms. LeGrande be qualified as an expert on botany. There were no objections by the other parties in the proceeding. Chair Kanuha admitted Ms. LeGrande as an expert witness in botany.

Mr. Yuen asked Ms. LeGrande to describe the scope of her work relative to the proposed cemetery expansion. She noted that the survey found a highly disturbed schefflera/java plum forest. The native vegetation was disturbed due to alteration by human disturbance, alien plant species introduction, and feral animal disturbance. There were several native indigenous plant species observed, including hala, `uhaloa, ka`e`e, pala`ā, `ekaha, and moa, and two endemic species, `akia and koa. No native plant species classified by the U.S. Fish and Wildlife Service as endangered or threatened, or as a candidate for listing as an endangered or threatened species was observed.

She then described the laua`e fern in the Petition Area. She noted that the fern dominated a lot of the understory in the thick canopy area primarily in the lower sloped areas. She recounted that when the survey was conducted, they went outside of the boundaries of the Petition Area as a buffer to ensure that there were no other native plants that may possibly be disturbed by the cemetery expansion. She pointed out that this fern was not a native plant but was used by hula practitioners as a replacement to the actual rare and native laua`e fern. Upon additional questioning, Ms. LeGrande noted that the plant tended to grow in Kāne`ohe and elsewhere on the entire island. She pointed out that they went back and mapped some of the monotypic stands, especially in the proposed cultural corridor. Referring to Figure 4a in Petitioner's Exhibit 4, Ms. LeGrande indicated the locations of the monotypic stands of laua`e fern within the Petition Area.

Mr. Yuen had no further questions for Ms. LeGrande.

The DPP had no questions for Ms. LeGrande.

Mr. Yee asked Ms. LeGrande whether she mapped all of the monotypic stands of laua`e. She stated that they focused on the areas within the proposed corridor. She pointed out that had she done that, it would have taken days because there was a whole lot there. Mr. Yee questioned if there was a particular timeframe in which the survey was conducted. Ms. LeGrande replied that the survey was conducted in September and October 2006 and it tended to be after the area experienced a little rain. She noted that they did return for half a day for the laua`e mapping. At that time, they rewalked some of their transects to see if they missed anything. She related that they added a couple of species that they missed previously. Mr. Yee then asked whether she accounted for seasonal changes in plants. She noted that in conducting surveys, they attempt to find the ephemeral plants that only come up after wet season rains, so they do a wet season survey after there were two months of rain and then a dry season survey usually any time during the summer. Upon further questioning, she pointed out that in Hawaiian plants, they do not flower that often and when they do the flowers were pretty small, so they recognize most of the plants by leaf morphology. She added that they were also trained to identify the species of plant by observing a dry, dead plant. In this case, she noted that they had plenty of wet and dry season survey time so she felt comfortable with not missing any ephemeral plant species. Mr. Yee then asked her how many ephemeral plant species were endangered or threatened. She replied that there were not many, and the ones that were endangered or threatened were usually located in coastal areas, so they would not occur in the Petition Area.

Mr. Yoshimori asked Ms. LeGrande about the additional plant species that were overlooked on the previous survey of the Petition Area. She responded that they were overlooked for different reasons.

Mr. Yoshimori had no further questions for Ms. LeGrande.

The hearing adjourned at 3:41 p.m.

(For more details on this matter, see LUC transcript of March 5, 2009.)

