

LAND USE COMMISSION
MEETING MINUTES

July 15, 2009

Leiopapa A Kamehameha
Conference Room 405, 4th Floor
235 S. Beretania St.
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Duane Kanuha
Ransom Piltz
Vladimir Devens
Kyle Chock
Reuben Wong

COMMISSIONERS ABSENT: Nicholas Teves, Jr.
Thomas Contrades
Normand Lezy
Lisa Judge

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney
General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner

COURT REPORTER: Holly Hackett

AUDIO TECHNICIANS: Mikel Humerickhouse
Wade Kersey

CALL TO ORDER

Chair Kanuha called the meeting to order at 9:38 a.m.

ADOPTION OF MINUTES

Commissioner Wong moved to adopt the June 25 & 26, 2009 minutes. Commissioner Piltz seconded the motion. The motion was unanimously approved by voice vote 5-0.

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson announced that the Commission's meeting schedule had been circulated and the format had returned to a Thursday/Friday schedule starting in August. Mr. Davidson stated that notice for a public hearing on proposed administrative rules had been published. The public hearing will be conducted on August 17, 2009 at 10:30 a.m. in Conference Room #405 of the Leiopapa A Kamehameha Building. Mr. Davidson will be convening this public hearing.

Commissioner Kanuha requested clarification on the current status of the administrative rules. Mr. Davidson stated that the rules had been approved by the Attorney General and the Governor to go to public hearing and that they would be posted on the web.

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

Chair Kanuha announced that this was a continued 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 and recognized members of the public who had submitted correspondence since the last hearing on this docket. Chair Kanuha affirmed receipt of the May 7, 2009 certificate of service for a complete Exhibit #35 (pages which had been omitted from Petitioner's Exhibit #35 filed on May 1, 2009).

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

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 (By video conference-all parties had previously agreed to this arrangement)

Scott Derrickson, State Office of Planning

Grant Yoshimori, represented Intervenors

Richard McCreedy, Intervenors

Juliane McCreedy, Intervenors

PUBLIC WITNESSES

There were no public witnesses.

PETITIONER

Mr. Yuen asked to recall Scott Ezer to the witness stand for questioning in regards to the submission of additions to Petitioner's Exhibit List- Exhibit #36 Revised Draft Archaeological Inventory Survey, #37 State Conservation Subzone Designations Map, #38 State Department of Health Regulations , and #39 Memorandum of Understanding (MOU) between Hawaiian Memorial Life Plan Ltd. and the Department of Land and Natural Resources, as well as provide an update on discussions with SHPD and the subzone designation map for the Petition Area.

There were no objections to recalling Mr. Ezer or the admission of the new Exhibits.

Mr. Ezer referred to Petitioner's Exhibit #37 to identify subzone areas and described the latest draft Archaeological survey findings using Petitioner's Exhibit #36 that had been submitted to SHPD for acceptance. Mr. Ezer stated that the previous proposed covered roadway or tunnel through the Cultural Preserve was no longer being considered and that a mutually agreed upon minimal roadway through the area that would be low-impact had been agreed to through an MOU between the Dept. of Land and Natural Resources and the Petitioner (Exhibit #39). Mr. Ezer provided the details for various conditions and requirements of the MOU.

The City and State had no questions. Intervenor-Yoshimori asked Mr. Ezer to state what the purpose of the limited sub-zone was by law. Mr. Ezer replied that

he did not have the law in front of him. Mr. Yoshimori cited HAR 13-5-12 and asked when the AIS would be accepted. Mr. Ezer deferred the question to SHPD and stated that the proposed road would bisect the heiau (burial sites) complex.

There were no further questions for Mr. Ezer.

STATE WITNESS

Nancy McMahon

OP-Mr. Yee requested that Nancy McMahon DLNR-SHPD be taken out of order to provide testimony. There were no objections to this request.

Mr. Yee stated that in addition to Ms. McMahon, the State would also be calling Ms. Pua Aiu, DLNR, and Abbey Mayer, OP, to provide testimony and would be withdrawing Kathy Kealoha since the proposed tunnel was not going to be built and her testimony was no longer relevant.

Ms. McMahon (had submitted written testimony) stated her occupational background and described the details of how her department and petitioner's consultant, Cultural Surveys Hawaii, had handled the study of the cultural and historical aspects of the area and how the local heiau figured into the landscape. Ms. McMahon described why the Petition Area was considered a unique archaeological preserve and stated the methodology involved with the archaeological efforts and their results.

Mr. Yuen asked Ms. McMahon what the status of the Archaeological Inventory Survey was and if the updated proposed project addressed all the concerns that SHPD had. Ms. McMahon described the current status of the survey and stated how the Petitioner had been working with SHPD to resolve concerns regarding the project.

The City had no questions.

Intervenor- Mr. Yoshimori asked if another AIS was going to be required for the proposed road. Ms. McMahon replied that SHPD had requested that testing be done where the proposed road was sited as an addendum to the inventory survey due to concerns that burials may be located outside of previously discovered areas and the AIS had not been started yet since the

proposed road was only in the conceptual stage of planning. Ms. McMahon stated that the Preservation Plan had not been completed and confirmed activities and responsibilities defined in the Plan.

Commissioner Kanuha asked how the public was able to access the complex. Ms. McMahon stated her perception of how the public accessed the area and testified that there was no designated right-of-way in the vicinity.

There were no further questions for Ms. McMahon.

CITY WITNESS

Michael Watkins

Mr. Souki called Michael L. Watkins to the witness stand and stated that the City had submitted Exhibits #1-7 and asked that the Exhibits be received into evidence. There were no objections to accepting the exhibits.

Mr. Watkins described his occupational background as a planner for the City and his familiarity with the Project. Mr. Watkins identified City's Exhibits #4-7 and summarized his submitted written testimony. Mr. Watkins stated that the DPP opposed the Petition since it did not conform to the Koolaupoko Sustainable Communities Plan and that all parties to the proceeding agreed that the Petition did not conform to the County's Koolaupoko Sustainable Communities Plan (SCP). Mr. Watkins testified that the Petition was inconsistent with two specific plan elements and did not meet the overall intent of a number of other policies on environmental protection.

The Commission went into recess at 10:18 a.m. to accommodate a request by OP to allow adjustments to video-conferencing equipment, and reconvened at 10:26 a.m.

Mr. Watkins resumed his testimony and restated that the Petition was inconsistent with two specific plan elements. Mr. Watkins described how the Petition violated SCP policy by not protecting existing watershed areas and by not observing three relevant SCP land use policies to allow the area to remain undeveloped open space. Mr. Watkins then described other SCP policies which addressed cemetery location and the urban community boundary, and preservation. Mr. Watkins stated that the Petitioner had recently submitted an application to amend the SCP and that the DPP was reviewing it as part of the

Koolaupoko SCP 5 year review. Mr. Watkins stated that the proposed changes to the Project were quite extensive and referred to OP's Exhibit #4 to describe the existing site conditions and how the proposed changes would impact the Petition Area. Mr. Watkins stated that if the Petition is granted, the City had the following recommendations as conditions of approval, 1) that the Koolaupoko SCP must be amended to recognize the Project before any development permits can be sought, and 2) that minor revisions be made to the boundary lines of the proposed boundary change to avoid remnants of conservation land.

Mr. Yuen asked Mr. Watkins if he was familiar with other Sustainable Communities Plans on Oahu. Mr. Watkins replied that he had done some comparisons. Mr. Yuen referred to Petitioner's Exhibit A, figure 4 and asked if DPP recognized the continuing need for cemetery facilities on the island. Mr. Watkins replied that the DPP examined the broader issues of land use and did not specifically study the needs of any specific type of activity except for golf courses. Mr. Watkins testified the Koolaupoko SCP was the only one that had a text policy for cemeteries as a land use and there were others that were mapped - Mililani Park Cemetery and East Honolulu SCP areas.

Mr. Watkins described the process for the 2005 Koolaupoko SCP review and the conditions which had delayed its start. Mr. Yuen asked if the amendment that the Petitioner submitted had been affected by the delayed start of the SCP review and Mr. Watkins responded by stating the City's rules for processing amendments to development plans and SCPs.

Mr. Yuen asked if the Petition Area was located in a groundwater recharge area. Mr. Watkins replied that the Final EIS clearly stated that the Petition Area was in a watershed area and not necessarily in a groundwater recharge area. Mr. Yuen asked if Mr. Watkins could locate the reference in Petitioner's Exhibit #4. Mr. Watkins found and read the reference and described his perception of its meaning.

Mr. Watkins described his experience with local problems associated with hillside developments and steep slopes and stated that his comments were made only about the general character of the project. Mr. Yuen referred to Petitioner's Exhibit #28 and asked Mr. Watkins to identify the urban community boundary relative to the location of the cemetery. Mr. Watkins described the urban community boundary decision-making criteria and stated how the Sustainable Communities Plan was considered during the approval process.

Mr. Yee stated that he would be using the terms "amendment" and "revision" during his questioning and defined the terms for Mr. Watkins. Mr. Watson described the Koolaupoko Sustainable Communities Plan revision process from page 3, #16 of his written direct testimony and confirmed that a consultant had been hired to do the work and that the proposed amendment submitted by Petitioner had been combined with the scheduled review for consideration. Mr. Watkins estimated that the Koolaupoko SCP revision would take between 13 to 18 months for DPP to complete its written recommendation to the Planning Commission and the City Council, and that it could take longer than 2 and a half years till final approval.

Mr. Yee stated that he wanted to divide the DPP concerns into substantive and procedural areas- the first substantive area was the watershed issue and the other was in regards to the urban community boundary.

Mr. Watkins stated that his concerns were over the two areas which were felt to be contrary to the Sustainable Communities Plan- the watershed issue and how the SCP treated the area and its policies. Mr. Watkins testified that the urban community boundary question was just one factor and was not cause for the Petition to be contrary to the SCP by itself-it was the overall result of all factors.

Mr. Watkins described the Koolau Greenbelt area, and clarified the use of the terms "open space" and "grading" in the Petition Area. Mr. Watkins stated that he was familiar with the Office of Planning's position statement and that even if the Petition was approved in part, the DPP would still have concerns about conformity with the Koolaupoko SCP. Mr. Watkins stated how the community was solicited to participate in the 5 year review process and how the DPP considered community viewpoints and other factors relative to determining the urban community boundary.

Intervenor-Mr. Yoshimori asked if the City's position was that the LUC should deny the District Boundary Amendment based on 2008 changes to HRS 205-17(5). Mr. Watkins replied that DPP's written materials did not reflect 2008 law changes and that it was a departmental decision to switch from opposing conditionally to opposing totally. Mr. Watkins described the conditions under which the Project could continue if the LUC approved the Project in whole or in part and stated his reasoning for his comments in regards to hillside construction. Mr. Watkins stated that there was no reason why an application for amendment to the Koolaupoko SCP could not have been submitted earlier.

Mr. Souki asked if any application for an SCP amendment had been submitted on this Project before. Mr. Watkins replied that this was the first application for the Project and confirmed that he believed his time estimate for approval of two years to two and a half years to be a realistic upper limit. Mr. Watkins stated that, in general, it was his department's policy to remain consistent with the existing community and general plans for the area.

Chair Kanuha asked Mr. Watkins to describe where the Koolaupoko SCP fit into the City's planning structure. Mr. Watkins described the DPP's organizational structure and what occurred at each phase as it related to the SCP.

The Commission went into recess at 11:37 a.m. and reconvened at 1:18 p.m.

Chair Kanuha resumed his questioning of Mr. Watkins. Mr. Watkins stated how the City handled Sustainable Communities Plans within the General Plan. Mr. Watkins stated the reasons for the City's position to oppose the Petition and described how urban community boundaries were determined. Chair Kanuha asked how the land would be designated if it were just a straight use of land. Mr. Watkins responded that it would potentially be an urban or preservation use if it were solely as a request to amend Koolaupoko SCP and not before the Land Use Commission. Mr. Watkins stated that the scale of the Project was large enough that it would need to be mapped on the Land Use and Open Space maps and this was one of the reasons why it did not comply with the SCP.

Mr. Souki asked if the Project was within the urban community boundary. Mr. Watkins replied that it was currently excluded and this was stated in his written testimony.

STATE WITNESSES

Pua Aiu

Mr. Yee called Ms. Pua Aiu. Ms. Aiu testified that she was the Administrator for the SHPD and described the cultural and historical importance of the Petition Area and nearby areas. Ms. Aiu described the concerns that existed with the proposed road and its potential impact on the Petition Area and cited the considerations that were involved in constructing an agreement with the Petitioner. She stated that the agreement had been signed by the Director of the DLNR and that the SHPD had no objection to the Petition at the current time,

subject to the conditions of the MOA. Ms. Aiu testified that one of the reasons for seeking a compromise position was the amount of disturbance that had occurred during the time span between the two visits SHPD had made to visit the site and her perception that preservation measures needed to be stepped up to prevent further deterioration and disturbance. Ms. Aiu described the various archaeological structures on the site and the purposes they were believed to have served.

The City had no questions. Intervenor-Mr. Yoshimori asked if cultural access had been addressed in the MOA and if it would be defined later on in the preservation plan. Ms. Aiu replied in the affirmative and stated that the Petitioner would be spearheading this effort. Ms. Aiu stated that SHPD had not addressed water runoff concerns as they related to historic preservation and she was not qualified to speak on this subject. Mr. Yoshimori asked if SHPD was supportive of the Petition. Ms. Aiu replied that that SHPD was not opposed.

There were no further questions for Ms. Aiu.

Abbey Mayer (by video conference)

Mr. Mayer stated the chronology of the current position of the Office of Planning. Mr. Mayer stated that OP recommended partial approval with conditions. Mr. Mayer referred to OP Exhibit #20, a map of the area, to identify how OP had identified three distinct areas within the preserve- 1) the cultural preserve, 2) area A and 3) area B.

Mr. Mayer described the statistics regarding the need for and availability of cemetery space and described the reasoning and methodology that OP used in arriving at its position supporting partial approval of the Petition. Mr. Mayer testified that OP had attempted to find a balance between community concerns and the need for burial space.

Mr. Mayer stated that the Petition conditions, other than the successful amendment of the SCP would all need to be met and if not, OP would recommend denial. The conditions for the partial approval of the Petition were: 1) the creation of the 9.6 acre cultural preserve, 2) conducting a second phase archaeological inventory survey and preservation plan approved by SHPD, as specified by the new MOU, prior to any zoning changes or county entitlements, 3) requiring construction of a drainage and retention system meeting the 50 year storm standard, 4) limiting the uses of the Petition Area? to the uses described in

the EIS, 5) mandating the successful approval of the SCP amendment within 5 years, and 6) all the backbone infrastructure completed within 10 years. Mr. Mayer stated that due to the County's position recommending denial and all the inconsistencies with the SCP that the Commission might consider having a Condition for an automatic Order to Show Cause in the event that the SCP amendment did not occur.

Mr. Mayer testified that partial approval of the Petition would be a good balance. Mr. Yee stated that OP's final position was in favor of approving area B and denying area A subject to the conditions discussed during Mr. Mayer's testimony. Mr. Mayer stated that OP did not feel that the district boundaries of the cultural preserve needed to be amended, or that area A needed to be re-districted at this time.

Mr. Yuen asked if there were physical differences between areas A and B on Exhibit #20 that would cause the recommendation for partial approval of the Petition Area. Mr. Mayer replied that the biggest physical factor was that the cultural preserve area lay between the areas and to gain access to area A, the cultural preserve had to be crossed. Mr. Mayer referred to OP Exhibit #4 and stated that his perception was that it appeared area A had a larger number of steep slopes.

Mr. Yuen asked if the recommendation for approving in part and denying in part was an attempt at "splitting the baby". Mr. Mayer described the considerations that went into the OP's recommendation. Mr. Yuen asked what factors provided confidence that the 5 year review would be completed in time. Mr. Mayer stated that if the review was not completed, the Petitioner would have difficulty going through the county entitlement process and would find it difficult to meet the 10 year infrastructure condition that been stipulated to. Mr. Mayer testified that he was also relying on the City's comment that the contract to perform the SCP review was underway.

Mr. Mayer described how he arrived at his estimates for inventory over time using information provided by Jay Morford and Scott Ezer. Mr. Yuen asked if OP was amenable to an incremental reclassification of area B now, and area A later. Mr. Mayer replied that option had not been discussed and that proposals would need to be evaluated to determine if this was suitable. Mr. Mayer testified that he calculated that with the additional inventory added with area B, it would accommodate needs for the next 35 years which reduced the urgency for the Petitioner to seek redesignation of the entire Petition Area.

Mr. Yuen noted that the current approval process was taking a long time and suggested that if the estimated need had been mis-calculated, there was a possibility that inventory would be exhausted before the necessary approval for additional space was obtained. Mr. Mayer indicated that he was aware of the difficulties, but stated that granting approval for the entire area was not in line with the concerns which had been raised.

The City had no questions for Mr. Mayer. Intervenor-Mr. Yoshimori asked if Mr. Mayer had factored Paradise Memorial Park in his estimates. Mr. Mayer replied that he had not and that he also had not explored expansion of Mililani Mortuary. Mr. Mayer stated that he was not aware of any urbanized land being designated for cemetery use and that there might be agricultural lands available if the owners were inclined to attempt to re-district them or if other factors occurred.

Mr. Mayer testified that if the Land Use Commission denied the Petition for a District Boundary Amendment, the Petitioner could re-file later after a waiting period. Mr. Yoshimori asked if a lot of the risk and concerns for a future Order to Show Cause hearing could be reduced if the Land Use Commission denied the Petition and the Petitioner succeeded in getting a favorable amendment to the Koolaupoko SCP before re-filing. Mr. Mayer replied that it was possible but there were conditions and variables which made it an uncertainty beyond the Petitioner's control.

There were no further questions or redirect for Mr. Mayer. The Commission went into recess at 2:32 p.m. and reconvened at 2:56 p.m.

Mr. Yee withdrew OP Exhibits #23 and #24 since they were no longer relevant to the hearing.

INTERVENOR WITNESSES

Mr. Yoshimori submitted Intervenor's Exhibit #43-an Email from Paradise Memorial Park to Juliane McCreedy stating that it had 69 acres being developed and was awaiting DCCA approval. There were no objections to the submittal of Exhibit #43.

Dr. Charles Prentiss

Mr. Yoshimori noted that he had submitted Dr. Prentiss' resume as Intervenor's Exhibit #42 and requested that Dr. Prentiss be qualified as an expert in city planning. There were no objections by the other parties in the proceeding.

Dr. Prentiss stated that Chapter 205 of the state statutes directed that the Land Use Commission take into account City and County plans and zoning, and described the provisions of the Koolaupoko SCP which he felt pertained to the statute. Dr. Prentiss asserted that the Petition Area was not identified for urban usage on the State or County Plan and that the Koolaupoko SCP was unique in the respect that it had been developed by the Community Koolaupoko Development Plan Coalition which was made up of residents from Kaneohe, Kailua, and Waimanalo who had extraordinary qualifications in planning. Dr. Prentiss described the qualifications of the group members who participated in the planning process and described how the plan was accepted by the City Council.

Mr. Yuen asked if Dr. Prentiss' work was primarily with the City planning department. Dr. Prentiss stated his work experience and that he was familiar with various community plans. Dr. Prentiss stated that he did not believe that any community plans made provisions specifically for burial space or set aside land for cemetery purposes and described various methods for accommodating cemeteries. Dr. Prentiss stated that satisfying the demand for burial sites did not necessarily have to be provided for by the Petition Area. Dr. Prentiss stated that he was uncertain if various alternate uses of land for different purposes could realize higher potential returns other than a cemetery for the landowner.

Mr. Yuen asked where communities should be looking to situate their cemeteries when community plans did not provide for them. Dr. Prentiss replied that alternative site analyses could be conducted by different entities to determine where to best locate cemeteries.

Mr. Yuen stated that the Petitioner had already done that analysis and was proposing to amend the district boundaries and the community plan to permit a cemetery in this area and asked what the basis for opposing this locale was. Dr. Prentiss stated that the appropriateness of the site for development would affect the scenic values as alluded to in the Sustainable Communities Plan and preserving the existing views and character of the area was important to residents and visitors. Dr. Prentiss testified that he had seen portions of the EIS and plans for the Project but had not reviewed the entire EIS or the seen the Hawaii Memorial Park plan for tree removal and replacement.

Mr. Souki asked if Dr. Prentiss would approve of the project if the application for an amendment to the community plan was granted. Dr. Prentiss replied that based on his review of the plan, he would be surprised if an amendment of that nature would be approved.

Mr. Yee asked if Dr. Prentiss had an opinion whether or not the Petition Area should be included in the revised Koolaupoko SCP to allow for its use as a cemetery. Dr. Prentiss responded that given the provisions of the Koolaupoko SCP and the statements from the planning department that all development could be accommodated within the existing boundaries, it would not be appropriate to change the boundary from what it is at the current time. Dr. Prentiss stated that the requested amendment should be consistent with the plan and that the statements in the SCP about maintaining the view planes and rural character of the area made it unlikely that the amendment would be viewed favorably.

Chair Kanuha asked if the Petition was more inconsistent with the SCP or with the urban community boundaries and what the weight of the inconsistency was. Dr. Prentiss stated his understanding of how boundaries in the development plan and the General Plan were determined and described the purpose of the maps used in the SCP

There were no further questions for Dr. Prentiss.

Mary Yannell

Ms. Yannell stated that she was President of the Kaneohe Outdoor Circle and described the mission, activities and services that the Outdoor Circle provided within the community. Mr. Yoshimori requested the Ms. Yannell be admitted as an expert witness on the Outdoor Circle and community values.

Mr. Yuen objected to the witness' characterization as an expert since Ms. Yannell was representing an organization. The City had no objections. The State deferred to the Commission. After a brief discussion, Chair Kanuha ruled that Ms. Yannell's testimony appeared to be clearly based on her experience with the Outdoor Circle and that it was not necessary to qualify her as an expert.

Ms. Yannell stated that the Petition Area was considered a scenic resource to Kaneohe and related her perception of how the area was a resource and how

the impact of the Project on Kaneohe Bay should also be considered. Ms. Yannell stated she was familiar with the background of the flora and fauna of the area and had been to the area but had not visited the historic sites. Ms. Yannell stated she preferred to leave the Petition Area in its present condition and stated her perception of what the landowner's role should be.

Mr. Souki asked for clarification on which plan Ms. Yannell was referring to in her testimony. Ms. Yannell replied that she was referring to both the Kaneohe Bay Master Plan and the SCP and stated that the Kaneohe Outdoor Circle position was that there was no significant justification that warranted changing the long-standing designation depicted in the plan.

Mr. Yee referred to an EIS aerial view representation of the Petition Area and asked if a similar analysis had been done from ground level. Ms. Yannell described her impression of what was occurring at ground level and stated that she opposed re-zoning of the area and described how the site view planes had been interpreted. Ms. Yannell stated that there would be a significant impact to ground level views by construction of a cemetery and that she, through Na Leo Pohai, the public policy affiliate of the Outdoor Circle-Kaneohe Branch, was working on a written resolution which would be submitted to the Commission.

There were no further questions for Ms. Yannell

Patricia Gardiner

Ms. Gardiner stated her background and credentials as a Real Estate Agent and Mr. Yoshimori requested that Ms. Gardiner be qualified as an expert in real estate.

Mr. Yuen requested clarification on what aspect of real estate Ms. Gardiner would be testifying on and stated that residential real estate sales might be more appropriate. The City deferred to the Commission. Mr. Yee requested to *voir dire* the witness and after completing his questioning, stated that the State would have no objection to Ms. Gardiner being qualified as an expert on Oahu residential market values. Chair Kanuha ruled that Ms. Gardiner would be accepted as an expert on Oahu residential market values.

Ms. Gardiner explained how the Petition Area's proximity to the conservation area enhanced its value and provided examples of residential sales of similar properties with and without close proximity to conservation areas.

Ms. Gardiner expressed her perception of how residential properties might be negatively impacted by reclassifying the Petition Area.

Mr. Yuen asked if a specific study had been conducted on the properties adjoining the Petition Area. Ms. Gardiner stated that there had been no recent sales activity in the area and described how she arrived at her conclusions based on her past experience. Ms. Gardiner testified that she had not made a valuation analysis on the properties abutting the Petition Area.

Mr. Yuen asked what the basis was for the statement regarding the negative perception of living close to a cemetery. Ms. Gardiner replied that it was based on feedback from people she had worked with and other realtors in the community.

There were no further questions for Ms. Gardiner.

Lianne Ching

Ms. Ching stated that she used the Petition Area for cultural practice and gathered materials for hula performances from it. Ms. Ching testified that she did not think that the proposed cultural preserve would allow her to continue her cultural practice since the tranquility and “feeling” of the area would be destroyed. Ms. Ching described her perception of why the cultural preserve should not be allowed and stated that she was interviewed for the initial cultural impact assessment but did not have an opportunity to comment on the new sites discovered after the cultural assessment was done, or on any of the new cemetery plans or cultural preserve and access road.

Ms. Ching expressed her reasons why she disapproved of the proposed road in the Petition Area and stated her understanding of what the significance was for the findings on site #4681 depicted on OP Exhibit #20. Ms. Ching described other cultural and gathering practices conducted in the Petition Area.

Ms. Ching stated she had been accessing the Petition Area off and on for over 10 years and indicated on OP Exhibit #20 where she collected her ferns and described her gathering practices on Oahu.

The City had no questions. Mr. Yee asked for clarification on Ms. Ching’s background and she stated her experience in the practice of hula.

Chair Kanuha asked if she felt that the boundaries of the cultural preserve took gathering practices into consideration. Ms. Ching replied that she did not feel that the boundaries were adequate in size and stated her concerns about what might occur if the Petition were granted.

There were no further questions for Ms. Ching.

Juliane McCreedy

Ms. McCreedy described the contents of Intervenor's Exhibit #43-an email from Paradise Memorial Park, and stated her concerns over the Division of Aquatic Resources depictions of streams in the Petition Area. She testified that there were 2 branches of Kawa stream which were overlooked in a letter of findings regarding perennial streams located in the area where she lived. Ms. McCreedy stated that she had contacted the Division of Aquatic Resources to have them retract their statement and that an investigation of the matter was underway.

Ms. McCreedy explained how the information was gathered for Intervenor's Exhibit #14 -"Special Kind of Landfill" and related concerns over formaldehyde in groundwater that had been conveyed to her by neighborhood members. She referred to Section 4.1.3 of the Final EIS and described why she felt that that it did not accurately represent the researcher and his report. Ms. McCreedy stated that she had researched the reference material and discovered that the researcher's name was Dr. Dent and had been in email correspondence with him. Ms. McCreedy testified that she had discovered other inconsistencies with the report.

Ms. McCreedy expressed concerns over the water table and referred to Petitioner's Exhibit #10 and stated the credentials of Dr. Dent. Mr. Yuen objected to the manner in which the witness was testifying about what Dr. Dent commented on. There was discussion over whether Ms. McCreedy could testify on Dr. Dent's behalf and Mr. Yoshimori requested a recess.

Chair Kanuha noted Mr. Yoshimori's request and adjourned the meeting for the day at 4:23 p.m.

(For more details on this matter, see LUC transcript of July 15, 2009)