

LAND USE COMMISSION

MEETING MINUTES

May 1, 2009 – 9:00 a.m.

Leiopapa A Kamehameha

Conference Room 405, 4th Floor

235 S. Beretania St.

Honolulu, Hawai`i

COMMISSIONERS PRESENT:

Duane Kanuha

Ransom Piltz

Thomas Contrades

Kyle Chock

Lisa Judge

Normand Lezy (entered proceedings at 1:39
p.m.)

Nicholas Teves, Jr.

Rueben Wong

COMMISSIONERS ABSENT:

Vladimir Devens

STAFF PRESENT:

Orlando Davidson, Executive Officer

Diane Erickson, Deputy Attorney General

Bert Saruwatari, Staff Planner

Riley Hakoda, Staff Planner

COURT REPORTER:

Holly Hackett

AUDIO TECHNICIAN:

Hotai Zerba

CALL TO ORDER

Chair Kanuha called the meeting to order at 9:07 a.m. Chair Kanuha announced that the planned executive session pertaining to personnel matters will be deferred until such time that Commissioner Lezy, who will lead that discussion, joined the Commission in the afternoon.

ACTION

A08-780 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (O`AHU)

Chair Kanuha stated that this was an action meeting to consider Maile Shimabukuro's Petition for Intervention in the Department of Environmental Services, City and County of Honolulu's Petition for Land Use District Boundary Amendment. The subject petition was a request to amend approximately 200.622 acres of land currently in the Agricultural District to the Urban District at Waimanalo Gulch, Honouliuli, `Ewa, O`ahu, Hawai`i, Tax Map Key: 9-2-03: 72 and 73.

APPEARANCES

Colleen Hanabusa, Esq., represented Movant

Maile Shimabukuro, Movant

Jesse K. Souki, Esq., represented the Department of Environmental Services, City and County of Honolulu

Dawn Takeuchi-Apuna, Esq., represented the Department of Planning and Permitting, City and County of Honolulu

Matthew Higashida, Department of Planning and Permitting, City and County of Honolulu

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

Abe Mitsuda, State Office of Planning

Scott Derrickson. State Office of Planning

Chair Kanuha announced the receipt of the following documents in this matter:

- 1) Petition for Intervention, Memorandum in Support of Petition, and Verification filed on April 13, 2009.
- 2) Office of Planning's Statement of No Opposition to Intervenor Maile Shimabukuro's Petition for Intervention filed on April 14, 2009.
- 3) Department of Environmental Services, City and County of Honolulu's Memorandum in Opposition to Petitioner Maile Shimabukuro's Petition for Intervention filed on April 22, 2009.

PUBLIC WITNESSES

There were no public witnesses.

MOVANT

In response to the statements in the Department of Environmental Services' Memorandum in Opposition to the Petition for Intervention that parties to this action were not served with the Petition for Intervention, Ms. Hanabusa noted that she provided the Corporation Counsel and the State with copies of a declaration of her secretary and the records of her courier service evidencing that service was done. She also represented that this courier service had done the servicing on not only all of these petitions but all of last year's petitions, so they were very familiar on where they have to go and they also verified mailing of the Petition for Intervention to Mr. Steinberger. She noted that she did not take the additional step of asking the actual courier to be here today as she was not sure which one did it.

With respect to the Petition for Intervention, Ms. Hanabusa pointed out that Ms. Shimabukuro was not requesting intervention as a matter of right, but she was asking for permissive intervention. She noted that there were two criteria by which permissive intervention can be denied, and, in this particular case, because she will represent Ms. Shimabukuro along with herself and the Ko Olina Community Association, she did not believe that Ms. Shimabukuro will be an additional burden to this proceeding. She also argued that Ms. Shimabukuro will bring a different perspective that can add to the creation of this record.

PETITIONER

Mr. Souki argued that the Department of Environmental Services, Petitioner herein, opposed the Petition for Intervention. He then summarized some of the points contained in their Memorandum in Opposition. First, he noted that neither Petitioner nor the Corporation Counsel received the Petition for Intervention either by mail or by hand delivery. He noted that the Commission's rules, section 15-15-45(e), Hawai'i Administrative Rules (HAR), required personal service or certified mail service. Mr. Souki noted that the second point pertained to the matter of permissive intervention. He pointed out that such intervention did not throw the door open to anyone in the community who would like to be a party in this case. He added that the Commission needed to look if there was a nexus between Ms. Shimabukuro's alleged injury or interest in the matter as the Commission's rules required that her interests be distinguishable from that of the general public. He argued that the only factual distinction that she made in her pleading was that she was a taxpayer, a mother, and represented District 45, whose nearest border to the Petition Area was at least seven miles away. Mr. Souki then addressed the Movant's argument that Ms. Shimabukuro will assist them in preparing the materials they would like to present for the record before this Commission. He noted that this could be done without Ms. Shimabukuro being a party in the matter. He also noted that Ms. Shimabukuro has the opportunity to testify before every meeting as a member of the general public. He concluded that Ms. Shimabukuro's interests were the same as that of the general public and of those already admitted as intervenors in this matter.

Both the Department of Planning and Permitting (DPP) and Office of Planning (OP) had no objections to the Petition for Intervention.

Commissioner Wong moved to grant the Petition for Intervention. Commissioner Piltz seconded the motion. Chair Kanuha asked Commissioner Wong whether the intent of his motion was for Ms. Shimabukuro to be represented by Ms. Hanabusa. Commissioner Wong affirmed that was his intention.

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

Ayes: Commissioners Wong, Piltz, Contrades, Judge, Chock, Teves, and Kanuha.

The motion passed with 7 ayes and 2 absent.

Chair Kanuha declared a recess at 9:20 a.m. The meeting resumed at 9:33 a.m.

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

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

Scott Derrickson, State Office of Planning

Grant Yoshimori, represented Intervenors

Richard McCreedy, Intervenors

Chair Kanuha announced that since the last hearing on this docket, the Commission received 39 correspondences from various individuals and groups. Chair Kanuha also announced the receipt of Exhibit 6 and a Revised List of Exhibits from the DPP filed on April 15, 2009. Chair Kanuha noted that Exhibit 6 was a copy of the Ko`olaupoko Sustainable Communities Plan as requested by Petitioner at the March 5, 2009, hearing.

PUBLIC WITNESSES

There were no public witnesses.

ADMISSION OF EXHIBITS

Mr. Yuen stated that he submitted a Revised Exhibit List and marked for introduction Exhibits 29 through 35. He pointed out that he actually marked 36 exhibits. He noted that proposed Exhibit 36 was a revised archaeological inventory survey and since that survey has not yet been completed, he was not introducing the last draft but would like leave to introduce the final archaeological inventory survey

once it has been completed and approved by the State Historic Preservation Division (SHPD). At this time, he introduced Petitioner's Exhibits 29 through 35 into evidence.

There were no objections by the parties.

Chair Kanuha entered Petitioner's Revised Exhibit List and Exhibits 29 through 35 into the record.

Mr. Souki stated that DPP had two revised exhibit lists. He noted that DPP submitted Exhibit 6 and today distributed to the Commission and the parties an additional revised list of exhibits, written direct testimony as Exhibit 7, and a Revised Witness and Exhibit List. He noted that Exhibit 7 was the written direct testimony of Mike Watkins. Mr. Souki thereafter requested that Exhibits 6 and 7 be moved into evidence.

There were no objections by the parties.

Chair Kanuha entered the DPP's Exhibits 6 and 7 into the record.

Mr. Yee noted that OP's position statement was based upon the lack of an approved archaeological inventory survey. Since then, he pointed out that there has been some movement on this issue and OP's additional exhibits and witnesses will be reflecting that. He added that OP provided a First Amended List of Exhibits that will include a new Exhibit 1a, which constituted the second amended position statement describing OP's position in light of an anticipated approval of a final archaeological inventory survey. He noted that Exhibit 17 was a letter from Mr. Yuen to Mr. Mayer, Exhibit 18 was a letter from SHPD to Mr. Shideler, and Exhibit 19 was a letter from Pua Aiu to Mr. Yuen, all of which pertained to these issues and which indicated the status of those discussions. He added that Exhibit 20 was a map created by OP reflecting the acreage calculations if there was a partial reclassification. He noted that this will link in with OP's revised position in support of a partial reclassification. He further elaborated that OP's Exhibit 21 was the testimony of Nancy McMahon, the archaeologist with the SHPD; Exhibit 22 was the testimony of Pua Aiu, reflecting the cultural aspects of this project and the archaeological inventory survey; Exhibit 23 was the testimony of Katherine Kealoha, the director of the Office of Environmental Quality Control; and Exhibit 24 was the resume of Ms. Kealoha.

Mr. Yee added that OP had a Revised Witness List in light of the information that came out. In addition, he reported that OP withdrew its request for a Department of Health (DOH) witness in light of Petitioner's agreement to use a 50-year storm event standard for developing drainage and dropped Mr. Lemmo from the Office of Conservation and Coastal Lands (OCCL) as a witness as OP concluded that a cemetery

within the Conservation District was an unlikely prospect. OP did add Ms. Kealoha as a witness as her testimony became relevant in light of the recent conversation of putting a tunnel through the cultural preserve. Mr. Yee asked that OP's additional exhibits and First Amended List of Witnesses and First Amended List of Exhibits be accepted into evidence.

Mr. Yuen commented that since some of OP's proposed exhibits were exhibits that he also submitted, he had no objection to OP's exhibits. He reserved the right to cross-examine Ms. Kealoha with regard to her resume. The other parties had no objections.

Chair Kanuha entered OP's First Amended List of Witnesses and exhibits into evidence.

PETITIONER'S WITNESSES

1. Susan Uejo

Ms. Uejo identified the name of her firm, Perazim Consulting, LLC, and her area of specialty, traffic engineering and transportation planning. Mr. Yuen pointed out that he introduced her resume as Petitioner's Exhibit 17. Based on her resume, he requested that Ms. Uejo be qualified as an expert in traffic engineering.

There were no objections by the other parties in the proceeding. Chair Kanuha admitted Ms. Uejo as an expert in traffic engineering.

Ms. Uejo described the traffic patterns of Hawaiian Memorial Park (HMP) and the findings and conclusions of her Traffic Impact Analysis Report.

Mr. Souki had no questions for Ms. Uejo.

Mr. Yee asked Ms. Uejo to confirm whether pursuant to the Department of Transportation's (DOT) request, Petitioner would conduct a traffic warrant study after the Petition was granted. Ms. Uejo responded in the affirmative. Mr. Yee then asked her to confirm whether Petitioner will be paying for the traffic warrant study. Ms. Uejo again responded in the affirmative. Mr. Yee questioned who would be paying for the mitigation if the traffic warrant study indicated that signalization was appropriate. Ms. Uejo remarked that the discussion had not gone that far yet because the DOT needed additional information to even determine whether it would want a traffic signal at that location. Given her response, Mr. Yee questioned whether the appropriate mitigation remedy had not yet been determined because the traffic study had not been done. Ms. Uejo clarified that the traffic study had been done; it was the warrant study that had not been done. Mr. Yee further questioned whether the mitigation would be a matter of

continuing discussion that will be occurring after the traffic warrant study was finished. Ms. Uejo responded in the affirmative. Mr. Yee had no further questions for Ms. Uejo.

Mr. Yoshimori had no questions for Ms. Uejo.

Commissioner Judge asked Ms. Uejo whether HMP's practice of limiting traffic generating activities was a requirement as part of the DOT's acceptance of her study or was it a voluntary action on the part of the cemetery. Ms. Uejo clarified that it was a voluntary practice that the cemetery had already decided to impose on itself so that it was easier for visitors to get to the site. She added that the area was relatively congested during the morning and afternoon commuter periods, so the cemetery decided on their own not to schedule activities that would draw people to the site at that time. Commissioner Judge contemplated whether it would be a problem if the voluntary nature of this practice became a condition of a Decision and Order in this docket.

2. Steven Spengler

Mr. Yuen asked Dr. Spengler to describe his business affiliation and the subject matter that he studied with respect to the proposed cemetery expansion. Dr. Spengler noted that he was a hydrogeologic consultant and his task was to evaluate the impact of the Total Maximum Daily Loads (TDML) from the proposed development. Based on Dr. Spengler's resume (Petitioner's Exhibit 18), Mr. Yuen requested that Dr. Spengler be qualified as an expert in hydrogeology.

The parties had no objections. Chair Kanuha admitted Dr. Spengler as an expert in hydrogeology.

Dr. Spengler explained the meaning of the terms TDMLs, Total Suspended Solid, Total Nitrogen, and Total Phosphorus and their relevance to Kāwā Stream. He then described the relationship between the water quality issues he examined and the cemetery expansion. He next described his conclusions with respect to measures to be implemented to reduce pollutants to Kāwā Stream.

Mr. Souki had no questions for Dr. Spengler.

Mr. Yee asked whether the models that Dr. Spengler ran were based on a 50-year storm event. Dr. Spengler explained that the TMDLs were based on a model year event for that area where they actually used a year of rainfall data collected from 2000-2001. He then noted that he inputted the rainfall data from that model year and evaluated how much runoff would be generated by the rainfall that occurred during that model year from the Petition Area. He determined that there would be no runoff exiting the site. Mr. Yee had no further questions for Dr. Spengler.

Mr. Yoshimori asked Dr. Spengler to confirm whether the Petition Area was a watershed for Kāwā Stream. Dr. Spengler responded in the affirmative. Mr. Yoshimori then asked whether the headstones were factored in the runoff calculations for impervious surfaces. Dr. Spengler stated that he used the impervious calculations that were developed by the engineer. Mr. Yoshimori next asked him whether he studied the impact of the effect of the retention areas on the Kāwā Stream flows, and that it might be possibly preventing water from flushing the TDMLs from the stream. Dr. Spengler responded in the negative. Mr. Yoshimori had no further questions for Dr. Spengler.

The Commission had no questions for Dr. Spengler.

3. Hallett Hammatt

Mr. Yuen asked Dr. Hammatt to state his business affiliation. Dr. Hammatt stated that he was the president and founder of Cultural Surveys Hawai'i. Mr. Yuen noted that he introduced Dr. Hammatt's resume as Petitioner's Exhibit 13. Based on that resume, Mr. Yuen requested that Dr. Hammatt be qualified as an expert in archaeology and Native Hawaiian cultural practices.

None of the other parties had objections. Chair Kanuha admitted Mr. Hammatt as an expert in archaeology and Native Hawaiian cultural practices.

Dr. Hammatt confirmed that he prepared the archaeological inventory survey for the proposed cemetery expansion. Dr. Hammatt then began to describe the pre-contact and post-contact archaeological sites within and in close proximity to the Petition Area. He referred to Petitioner's Exhibits 4 (Figure 26) and 31 in his presentation. He elaborated, in particular, on Site No. 354, the Kāwā`ewa`e Heiau, which was located outside the Petition Area. He then proceeded to address the status of the archaeological inventory survey. Upon direct examination by Mr. Yuen, Dr. Hammatt discussed the relationship between the Kāwā`ewa`e Heiau and the remaining sites and the historic appearance of these areas compared to what they looked like today.

Dr. Hammatt then addressed his recommendations for a preservation plan and the proposed cultural preserve. In particular, he noted that the preservation plan will be prepared with the full inclusion of the community in Kāne`ohe, including Ka`Ailehua and incorporate the cultural practices of the area as well as measures to facilitate visitation and appreciation of the sites within the preserve area. He added that the plan will also detail access, maintenance, and other issues related to archaeological and cultural preserves.

Upon further direct from Mr. Yuen, Dr. Hammatt explained that they thoroughly covered the Petition Area and the survey area outside of the Petition Area and did not see evidence on the surface that would indicate the presence of human burials, or iwi kupuna. He noted that it has been suggested by various people who have taken care of the Kāwā`ewa`e Heiau that there were lua pits associated with the heiau. He admitted that could be as there were a couple of features identified as potential lua pits, but they would be restricted to the area outside the Petition Area immediately surrounding the heiau. He pointed out that it was not a general practice to go looking for iwi kupuna. He added that if the iwi kupuna were there, they would stay in place. He explained that if any iwi were encountered, they would be considered previously identified remains within the context of the inventory survey. He elaborated that if iwi kupuna were found during construction, the State rules classified iwi kupuna as inadvertent discoveries.

Dr. Hammatt continued his presentation by discussing the use of the Petition Area by cultural practitioners. He noted that the collection of laua`e for hula practices was one of the main themes among those interviewed for the cultural impact assessment. He pointed out that laua`e were very plentiful in the proposed preserve area. Upon direct examination by Mr. Yuen on Ka `Ailehua, Dr. Hammatt described it as an organization run by Wali and Donna Camvel who have stepped forward to take responsibility for protecting and maintaining the Kāwā`ewa`e Heiau.

Mr. Yuen then asked Dr. Hammatt to clarify whether Site No. 6929 was within or outside the Petition Area. Dr. Hammatt responded that Site No. 6929 was near

Pohai Nani and located outside of the Petition Area. He added that the site was a small adze quarry located at the edge of a gully. He noted that there was evidence of flaking by pre-contact Hawaiians. According to him, the adze flakes were restricted to the immediate area of the quarry and did not extend into the Petition Area. Mr. Yuen next asked him to describe what form of protection presently existed for these historic sites and what might the fate be of these sites if the Commission were to deny the Petition. Dr. Hammatt responded that at this point, there was no protection for these sites. He noted that the Petition Area was used on a regular basis by paintball enthusiasts and hikers. He explained that now that there were clear trails to these areas to access and record them, it was much more likely that they would be discovered by other people. Dr. Hammatt pointed out that the preservation plan would contain provisions to protect these sites, facilitate regular visitations, monitor the conditions of the sites, and control the practices that take place on or near the sites.

As part of his continuing direct, Mr. Yuen asked Dr. Hammatt to provide his perspective of how the proposed roadway would affect the integrity of a preservation area. Dr. Hammatt pointed out that considering the larger picture, the preservation area consisted of approximately ten acres and a road through it in between the sites that was spaced to be as far as possible from the sites would not be a major impact on the preserve area. In addition, he noted that there was a lot of precedence in the preservation community for the necessity of traversing through linear sites to access them. He also explained that there were ways to mitigate the effects of the road such as vegetation barriers and a tunnel. Upon questioning, he noted that the Camvels have expressed a positive response to the road in that it allowed access for maintenance and visitation to the sites.

Mr. Yuen had no further questions for Dr. Hammatt.

Mr. Souki had no questions for Dr. Hammatt.

Mr. Yee noted that Dr. Hammatt referred to two ceremonial sites during his direct examination. Dr. Hammatt confirmed that these sites were likely heiau. He also confirmed that there was a grinding stone that he considered was an isolated find, which was located on the edge of the preserve area. According to him, the stone was linked to Site No. 4684, a habitation site. While the stone may be associated with polishing adzes, he believed that it was more associated with food preparation. Upon additional questioning, he described the nature of Site No. 6932, a natural "cupboard" that was used to store items. He added that there was a bottle and a couple of flakes found in that area which could be linked to the adz quarry. Upon further questioning, he noted that both the Kāwā`ewa`e Heiau and Site No. 6931, another heiau, were linked to the preserve area, both spatially and visually. He added that was why they were considered as part of a complex.

Mr. Yee then asked Dr. Hammatt whether he did any trenching in the area. Dr. Hammatt disclosed that they did trenching within individual archaeological sites, but they did not do trenching between the sites mostly because there was no surface indication of burials in that area. He added that if they had seen any surface evidence, they certainly would have tested it. He also confirmed that they did not do any trenching along the alignment of the proposed road. He explained that if that road through the preserve area became a reality, that would be subject to another separate study that would include testing. He reiterated that if there were any iwi found, they would be considered as "previously identified." He again explained the difference between the terms "previously identified" and "inadvertent discoveries." Upon further questioning, he described the different handling procedures of iwi under the two scenarios. If the iwi were "previously identified," a burial treatment plan was required.

According to him, that plan would be submitted to the SHPD and to the O`ahu Island Burial Council for their review. He noted that the council's kuleana was to decide on the treatment, either relocation or preservation in place, and to accept any lineal or cultural descendants who may wish to participate in the process. On the other hand, "inadvertent discoveries" involved a much shorter process in which the SHPD has a short time period in which to make a decision on whether to preserve in place or relocate the remains. In this case, he continued, the Burial Council was not officially involved. Upon continued questioning by Mr. Yee, he confirmed that the process for a "previously identified" site was much more thorough, and that was why it was important in an archaeological inventory survey to accurately and thoroughly identify all of the archaeological sites, especially any iwi that were found. Dr. Hammatt also confirmed that if, during trenching along the alignment of the proposed road or tunnel as part of the archaeological study, any sites were encountered, they would be treated as "previously identified." When asked by Mr. Yee to explain the difference between an archaeological inventory survey and an archaeological study, he responded that he referenced an archaeological study in his previous comments because that would also include a preservation plan. He added that the SHPD has already asked for an archaeological inventory survey, which was a kind of a study, for that road or a tunnel as the case may be.

Mr. Yee continued his cross-examination of Dr. Hammatt about the proposed road. Dr. Hammatt confirmed his earlier opinion that if done correctly a roadway cutting through the cultural preserve would not have a major impact. Upon additional questioning as to whether the SHPD may disagree with his conclusion, he noted that while there were many times that SHPD, landowners, and archaeologists disagreed, those disagreements invariably were worked out. He noted that in the best of all worlds, they would preserve the entire area, but if reasonably mitigated he believed that the road through the preserve area would not be detrimental. He then responded to questions regarding the position of the cultural practitioners, in particular Ka`Ailehua, to the proposed road. Upon additional questioning, he noted that when they did the outreach process for the cultural impact assessment in which they contacted approximately 30 people, the planning for the project was in the early stages and there was no preserve area designated, and therefore there was no proposed road to speak of. He added that the idea for the preserve area itself was generated by the comments of the cultural practitioners and interested kupuna expressing their concern about the need for the sites behind the Kāwā`ewa`e Heiau to be considered as a complex. Mr. Yee then asked whether it would be fair to say that there would be cultural practitioners that would have an objection to the road. Dr. Hammatt responded in the affirmative. Finally, Dr. Hammatt pointed out that while it was important to consider the potential presence of burials and preserve the area around the Kāwā`ewa`e Heiau, as a general

practice, they did not intentionally look for burials. He explained that if you found a burial, you were actually disturbing the burial. He added that if you believed there was evidence that indicated a burial was present, you would preserve the area and leave it alone. He noted that this opinion has been expressed many times by the SHPD, the O`ahu Island Burial Council, and other island councils.

Chair Kanuha declared a recess at 10:33 a.m. The hearing resumed at 10:50 a.m.

Mr. Yoshimori began his cross-examination of Dr. Hammatt. Mr. Yoshimori asked him if the cultural impact assessment identified the Petition Area as a wahi pana, storied places. Dr. Hammatt could not recall if it did. Mr. Yoshimori refreshed his memory by citing to section 7.7 of the assessment. Mr. Yoshimori asked whether the assessment identified Kāwā`ewa`e Heiau as part of a complex of cultural sites and should be protected. Dr. Hammatt responded in the affirmative. Mr. Yoshimori then asked about Site No. 4681. Upon questioning, Dr. Hammatt described the purpose of the site as being used for short-term habitation and agriculture. He also noted that stone guardians, or large rocks, were found in that area which some respondents suggested had religious significance. Mr. Yoshimori questioned whether Kāwā`ewa`e Heiau could be seen from the Petition Area if there were no trees. Dr. Hammatt responded in the affirmative. He also confirmed that the heiau was not included in the cultural preserve. Upon further questioning, he stated that the buffer zones around the cultural and historic sites outside of the proposed cultural preserve have not yet been defined. He also noted that the site of the ancient holua slide referenced in the archaeological inventory survey was not found. He added that it was extensively searched for, but physical remains on the ground were not found.

Mr. Yoshimori continued his cross-examination of Dr. Hammatt by asking him whether the revised archaeological inventory survey included information on the potential archaeological impact of the proposed tunnel. Dr. Hammatt responded in the negative. He clarified that the matter would be the subject of another study that was discussed previously. Mr. Yoshimori queried Dr. Hammatt as to whether the cultural impact assessment studied the impact of the proposed cemetery expansion on freshwater resources. Dr. Hammatt noted that the issue did not come up among the respondents. He added, however, that there were comments about the potential for flooding. Mr. Yoshimori then asked Dr. Hammatt whether there will be a cultural impact assessment for the proposed tunnel and the impacts on the surrounding areas. Dr. Hammatt responded that it would depend on what aspect the permitting process took. Mr. Yoshimori next asked when the revised archaeological inventory survey would be completed. Dr. Hammatt pointed out that they were hoping to get the final revised version into SHPD within the next week or so. He also noted that the timeframe for the archaeological preservation and monitoring plan would depend on

how the project proceeded. Upon additional questioning about the preservation plan, Dr. Hammatt clarified that the main cultural practice identified in the preserve area was the collection of laua`e, and there was every hope that this practice as well as the maintenance, visitation, and cultural activities at Kāwā`ewa`e Heiau could continue. In response to further questioning, Dr. Hammatt reiterated that the roadway access was discussed with Ka `Ailehua.

Mr. Yoshimori had no further questions for Dr. Hammatt.

Commissioner Teves asked Dr. Hammatt whether there was any law that required Petitioner to protect these archaeological and cultural sites once they were discovered. Dr. Hammatt responded that he would think a landowner would take efforts to control the access to his property, but in this case it was rather difficult as it was an open area and access was readily available. Although he noted that the same would hold true if the Petition Area was reclassified, the difference would be the preparation of a preservation plan and the role of the landowner or cultural groups to take responsibility to maintain the preserve. Commissioner Teves pointed out that was basically his question. Given that the cultural sites were now formally known, he questioned whether the landowner was obligated to protect those sites and not be dependent on any outside agency. Dr. Hammatt responded affirmatively as that was a responsibility of ownership.

Commissioner Piltz commented that there appeared to be a linear relationship among the Kāwā`ewa`e Heiau and Site Nos. 6930 and 6931. He asked whether those sites could be seen from the ocean and be used for fishing shrines. Dr. Hammatt noted that since the vegetation was so thick, it was impossible to tell at this time. He thought the ocean, particularly the northern part of Kāne`ohe Bay, could be seen from the uppermost site, Site No. 6931. Commissioner Piltz remarked that the Native Hawaiians used at least two sites to line up and triangulate with another location for fishing.

The Commission had no further questions for Dr. Hammatt.

On redirect, Mr. Yuen asked Dr. Hammatt to turn his attention to Petitioner's Exhibit 4, Figure 26. He asked him to explain whether the orange circles around the different sites included the buffer zones and to describe how large the buffer zones were around Site Nos. 354, 4684, 6930, and 6931. Dr. Hammatt pointed out that the orange areas included the site and the buffer zone in the case of all the sites within the preserve area. In the case of the Kāwā`ewa`e Heiau, he noted that there was a 100-foot buffer. Utilizing the scale on Figure 26, he explained that there would be ± 150 feet between the proposed road and the buffer zone and ± 250 feet between the road and the site.

Mr. Yuen had no further questions for Dr. Hammatt on redirect.

4. Scott Ezer

Mr. Yuen asked Mr. Ezer to describe his business affiliation and his role with respect to the proposed cemetery expansion. Mr. Ezer stated that he was a principal in the firm, Helber Hastert & Fee, Planners, and was directly responsible for the preparation of the EIS for the Petition. Mr. Yuen noted that he introduced Mr. Ezer's resume as Petitioner's Exhibit 19. Based on his resume, Mr. Yuen requested that Mr. Ezer be qualified as an expert in land use planning.

None of the other parties had objections. Chair Kanuha admitted Mr. Ezer as an expert in land use planning.

In his presentation, Mr. Ezer referred to a Powerpoint presentation, the hard copy of which was marked as Petitioner's Exhibit 32. Mr. Ezer described how the proposed cemetery expansion will retain the present character of the area. He provided a land use summary of the expansion relative to the Petition Area and the entire tax map key parcel, referring to Petitioner's Exhibit 4, Figure 3. Mr. Ezer then addressed the visual impacts of the expansion, referencing Figures 22b, 23a, 23b, 23c, 23d, 23e, and 23f of Petitioner's Exhibit 4.

Mr. Ezer next explained the concept of the retention plan. He then utilized the cross-section graphics in his presentation to describe the landscape buffers relative to the existing residential areas and the cemetery property itself.

Mr. Ezer continued his presentation by describing the drainage considerations and planned improvements. He also discussed the nature of Kāwā Stream (referring to Exhibit 4, Figure 27) and the impacts of the expansion on the stream.

Mr. Ezer next discussed the impacts of the cemetery expansion on utility services and Petitioner's efforts to address the historic preservation issues associated with the Petition Area, including recent discussions with the SHPD to construct a covered roadway access and to prepare a preservation plan. He provided additional detail on the dimensions of the covered roadway access by utilizing the drawings contained in his Powerpoint slides. In response to the issue of whether the covered roadway access constituted a tunnel, Mr. Ezer pointed out that what Petitioner was proposing to do at the request of others was to find a less impactful way of traversing the cultural preserve. He explained that one of the suggestions that came up was to take the roadway below the ground, resurface the area above the steel arch with material that was excavated and then resod and revegetate it. He added that it was one way of getting from Point A to Point B.

Mr. Ezer then briefly discussed the development cost of the cemetery expansion.

Mr. Ezer pointed out that in the original proposal with the residential development, there was a more elaborate roadway system through the cultural preserve. According to Mr. Ezer, those impacts were considered during the review of the DEIS and the FEIS. Upon questioning by Mr. Yuen, Mr. Ezer asserted that the covered roadway was a further effort on the part of Petitioner to mitigate the impacts on the cultural preserve.

Mr. Ezer continued his presentation by discussing the work of the subconsultants and their findings and conclusions. He also discussed the proposed cemetery expansion within the context of government services, including police and fire protection and emergency services.

Mr. Ezer followed with a discussion of how the work of the subconsultants impacted the planning and design considerations for the cemetery expansion, particularly in regard to slope stability, rockfall hazards, and proposed mitigation measures.

Mr. Ezer next summarized the demographic data relevant to the proposed cemetery expansion. The data included resident aging population projections, resident deaths in Hawai'i, deaths by method of disposition in Hawai'i, and other demographic considerations that support the need for cemetery growth on O`ahu.

Commissioner Chock exited the proceeding at 11:53 a.m. and returned at 11:55 a.m.

Mr. Ezer then discussed the proposed cemetery expansion within the context of the Honolulu General Plan and the Ko`olaupoko Sustainable Communities Plan. He pointed out that the sustainable communities plans for O`ahu were not consistent in the manner in which they treated cemeteries and golf courses. He referred to several examples of golf courses and cemeteries with differing land use designations.

Mr. Ezer next described how the proposed cemetery expansion could comply with the Ko`olaupoko Communities Sustainable Plan. He noted that they could and, in fact, have submitted an application to the DPP a couple of days ago to effect a sustainable communities plan amendment to accommodate the cemetery. He explained that they have asked that the land use map change the designation of the Petition Area from Open Space/Preservation to Major Parks, Golf Courses, Cemeteries, and Nature Preserves. He added that there was no requirement that cemeteries have to be inside or outside the Urban Community Boundary. He also stated that the definition of Open Space/Preservation Areas could be amended to include both golf courses and

cemeteries not located within the Urban Community Boundary. Upon questioning by Mr. Yuen, he explained that they started working on the project in the fall of 2006. He noted that they began discussions with State and City agencies regarding the entitlement requirements for this property. They knew that an amendment to the Ko`olaupoko Sustainable Communities Plan would be required to accommodate the project. He pointed out that they went to the DPP in 2006 to meet about the possibility of applying for an amendment. He related that they were told at that time that an update to the Ko`olaupoko Sustainable Communities Plan was in the near term, and that if they were patient the matter could be considered during that process. He explained that over the course of the next 2 1/2 to 3 years, they have had several meetings with the DPP asking about the appropriateness of submitting the amendment. Each time they had been told that the update was in the near term. As of today, he noted that the DPP may have started with the update, but he was not sure. He pointed out that it became critical that they showed good faith and follow through.

According to Mr. Ezer, the DPP recognized a deficiency in their own system by changing the rules of practice five years ago to allow individual landowners or developers to come in and ask for individual amendments to the sustainable communities plans. He added that in reality, the five-year update process to the sustainable communities plans was more like a ten-year update process. As a result, they felt it important to file their amendment at this time. Upon further questioning by Mr. Yuen, Mr. Ezer pointed out that the appropriate zoning district for the proposed cemetery expansion would be P-2 Preservation District. He reiterated that there was no consistent pattern of treatment for cemeteries within any of the sustainable communities plans.

Mr. Ezer noted that most of the plans in place use a planning horizon of 2020. He noted that HMP will exhaust its inventory and reach its capacity well before 2020. He added that the 2020 planning horizon did not address O`ahu's continuing need for cemetery space. He also testified that there were no provisions in the other sustainable communities plan that addressed cemeteries on O`ahu. Upon additional questioning, he noted that there were no other existing major cemeteries on O`ahu other than Mililani Mortuary with plans for future expansion. He pointed out that there has been a plan for a cemetery in Hawai`i Kai for over 10 or 15 years, but it has yet to start construction. Given the lengthy planning and entitlement process that went into any development, he was not aware of any plans for new cemeteries on O`ahu. He added that HMP accommodated approximately 25 percent of the in-ground burials within the State. He then turned his attention to a discussion of the approvals that were needed to develop a cemetery.

Chair Kanuha declared a recess at 12:09 p.m. The meeting resumed at 1:13 p.m.

Mr. Yuen noted that OP in its written testimony (OP Exhibit 1a) implied that the reclassification of 29.4 acres as a partial reclassification would be sufficient to give Petitioner as much in the way of cemetery land as Petitioner's previous alternatives. He asked Mr. Ezer to comment on that using Figure 4 of Petitioner's Exhibit 4. Mr. Ezer noted that although there was an increase in the acreage constituting the total burial areas between the former project proposal and the current proposal, Petitioner's desire to give the cultural preserve a meaningful place in the project meant that they lost 9.5 acres in gross available land, so their gains were quite modest even with giving up the residential component.

Mr. Ezer then went into greater detail regarding the development costs for the proposed cemetery expansion. He noted that the major costs were associated with grading of the Petition Area and putting in the roadway network. He noted that all of the cemetery's accessory needs were already present at the existing cemetery.

Mr. Ezer continued his presentation with a discussion of how the proposed cemetery expansion complied with the goals, objectives, and policies of the Hawai'i State Plan and the Coastal Zone Management program, and how the expansion did not comply with the Conservation District standards. Mr. Ezer also described the changes to the Conservation District during and subsequent to the time of Petitioner's purchase of the Petition Area. He then addressed how the cemetery expansion will comply with the Urban District standards.

Mr. Yuen concluded his direct examination of Mr. Ezer.

Mr. Souki asked Mr. Ezer whether he was involved with the conversations with the DPP regarding its refusal to process an amendment to the Ko'olaupoko Sustainable Communities Plan. Mr. Ezer responded in the affirmative. He also confirmed that they submitted an application for such an amendment to the DPP two days ago. Mr. Souki then asked him if he had submitted an application between 2006 and a few days ago. Mr. Ezer responded in the negative. Upon questioning, he confirmed his opinion that the Petition was consistent with the criteria of chapter 205, HRS, for district boundary amendments. Upon further questioning, he confirmed that he had read section 205-4(h), HRS, pertaining to the approval of an amendment to the land use district boundary. Mr. Souki next asked him if he was familiar with section 205-17(5), HRS, which required the Commission to consider the county general plan and all community, development, or community development plans adopted pursuant to the county general plan, as they related to the land that was the subject of the reclassification petition in its decision-making. Mr. Ezer responded in the affirmative. He

acknowledged that the DPP's position on the proposed cemetery expansion was that it was not consistent with the Ko'olaupoko Sustainable Communities Plan, and that was why Petitioner submitted the application for an amendment.

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

Mr. Yee began his cross-examination of Mr. Ezer. Questions were asked about the remaining inventory at HMP, how long such capacity will last based on the current rate of disposition, and the impact of the proposed expansion on the existing inventory. The visual impacts of the expansion were also discussed with Mr. Ezer as were the issue of slope stability. Mr. Yee also raised questions on the discretionary approvals and the timeframe for receipt of such approvals from the DPP. Mr. Yee then followed up on Mr. Ezer's testimony on the covered roadway, requesting clarification on the design, dimensions, the actual structure that was proposed, and potential effects from its construction, including vibrational, drainage, and grading and filling impacts. Mr. Yee further raised questions on the proposed alignment of the covered roadway and the location of the emergency road relative to the covered roadway.

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

Commissioner Judge moved to go into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities regarding personnel matters. Commissioner Piltz seconded the motion.

The Commission exited the meeting at 2:04 p.m. and entered executive session immediately thereafter.

The meeting reconvened at 2:55 p.m.

As part of his cross-examination of Mr. Ezer, Mr. Yoshimori posed questions on the other types of permissible uses within the Urban District and whether there was a way to build a cemetery in the Conservation District, including the use of the special subzone. Mr. Yoshimori continued his cross-examination, focusing on questions related to the visual impacts of the proposed cemetery expansion and the factors used in the calculations to determine stormwater runoff. Mr. Ezer was also asked to describe the grass creek type of road that was planned for the emergency road, the nature of the invertebrate study, including how many people were involved and the total man-hours in the field to conduct the study, and the slopes within the Petition Area. Questions were also raised on the subzones within the Petition Area, the proposed mitigation measures to address rockfall hazards, and the flood zone of the Petition Area. Mr. Yoshimori then asked about the recommended archaeological inventory survey for the

covered roadway, including the timeframe for its preparation. Continuing with his cross-examination, Mr. Yoshimori pointed to the comments of Kelvin Sunada of the DOH requesting that any potential impacts to traditional and customary Native Hawaiian beliefs, values, and practices pertaining to freshwater resources and the receiving waters in Kāne`ohe Bay from the expansion be assessed and mitigated. Mr. Ezer noted that they fully addressed DOH's letter. He stated that he was comfortable in Petitioner's approach knowing that the pollutant levels in Kāwā Stream will be reduced and that neither the water quality in Kāwā Stream nor the receiving waters of Kāne`ohe Bay will be adversely impacted. He added that the expansion will not impede any activities that will occur in or near Kāwā Stream or in or near Kāne`ohe Bay.

Mr. Yoshimori then asked whether the cultural impact assessment covered the cultural uses of freshwater and Kāne`ohe Bay. Mr. Ezer responded that the assessment was designed to reach out to practitioners and kupuna within the ahupua`a and the region. He explained that what it did or did not uncover was not necessarily specific to individual kinds of uses. He noted that through the assessment, the practice of gathering laua`e by hula practitioners was uncovered, so that made a very strong statement that the process worked. He added that they did not discover any groups who were concerned with water resource-related cultural practices.

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

On redirect, Mr. Yuen asked Mr. Ezer to clarify their discussions with the DPP relative to the application to amend the Ko`olaupoko Sustainable Communities Plan and Petitioner's subsequent decision to file said application. Mr. Ezer also addressed the subject of the remaining inventory at HMP and the way in which it was organized by categories of affinities.

Commissioner Judge asked Mr. Ezer about the number of subzones within the Conservation District and the number of subzones in the Petition Area itself. Mr. Ezer also clarified the order of the subzones in terms of their restrictiveness to land uses. Upon questioning, he pointed out that cemeteries were not allowed in any of the subzones. He also confirmed that Petitioner had discussions with the Department of Land and Natural Resources (DLNR) regarding a special subzone designation for the proposed cemetery expansion. He further clarified that the way the City zoning code was organized, cemeteries were a principal listed use allowed as of right in the P-2 General Preservation District. He noted that this district was established in 1986 when the land use ordinance was written for urban open spaces such as golf courses, parks, and cemeteries. On the other hand, he explained that the P-1 Restricted Preservation District was synonymous with the State Conservation District. Because of this, he noted that the City has no jurisdiction in the P-1 District; this district was under the

jurisdiction of the DLNR. He confirmed that because Petitioner needed to seek the P-2 zoning for the proposed cemetery expansion, it required Petitioner to be in the State Urban District.

Commissioner Judge then asked whether Mr. Ezer knew the acreage of the Petition Area that was in the General and Limited Subzones. He did not know offhand. He pointed out that there was a lot less in the Limited Subzone than there was in the General Subzone. She next asked him to confirm whether only 4.9 acres within the Limited Subzone were proposed for cemetery uses. He stated that was correct. Referring to Appendix B, the Report Assessment of Hazard from Rockfall and Slope Stability prepared by Lawrence Shinsato, the geotechnical engineering consultant, she noted that the vast majority of the lands within the Limited Subzone of the Petition Area was identified as a zone of rockfall hazard. She also referenced OP's Exhibit 12, a letter from Sam Lemmo, OCCL, to Abbey Mayer discussing the Limited Subzone and the potential for hazards associated with rockfalls. She noted that Mr. Lemmo had stated that one of the solutions was to not reclassify the lands within the Limited Subzone. She questioned whether there have been any discussions to design the cemetery expansion to stay out of the Limited Subzone. Mr. Ezer responded in the negative. He referred to Mr. Shinsato's report in which Mr. Shinsato indicated that the hazards that were present could be mitigated. She then asked whether the lands within the Limited Subzone were critical to the design of the proposed expansion. Mr. Ezer responded that these lands were important to the expansion. He explained that one of the first things that was done when identifying areas suitable for development was to examine the contours of the property and their compatibility to cemetery development. He noted that the slopes of the existing HMP were virtually identical to the topography of the Petition Area. He added that the plan that was defined by Petitioner's engineers and landscape architect took into consideration all of those elements and tried to ensure that the footprint of the expansion was done with the utmost of care. He pointed to areas within the Petition Area that would be graded but will not be used for burial areas so as to achieve the purpose of stabilizing slopes and have them linked together. Finally, he noted that the subzone boundaries were drawn up by the DLNR without the benefit of physically inspecting the land, so it was difficult to determine what information was used to establish the basis for their location.

The Commission had no further questions for Mr. Ezer.

The hearing adjourned at 3:34 p.m.

(For more details on this matter, see LUC transcript of May 1, 2009.)