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GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**MAUI / LĀNA'I ISLANDS BURIAL COUNCIL  
MEETING MINUTES**

DATE: March 6, 2019  
TIME: 9:00 AM  
PLACE: County of Maui, Planning Commission  
Conference Room  
Kalana Paku'i Building, 1<sup>st</sup> Floor  
250 S. High Street  
Wailuku, Maui, HI 96793

**I. CALL TO ORDER**

The Burial Council Chair Kapulani Antonio called the meeting to order at 9:00 AM

**II. ATTENDANCE:**

Members: Kapulani Antonio – Chairperson  
Dane Maxwell – Vice Chairperson  
Kaheleonalani Dukelow  
Scott Fisher  
Kalani Ho-Nikaido  
Johanna Kamaunu  
Leiane Paci

SHPD Staff: Kealana Phillips, Burial Sites Specialist  
Ikaika Nakahashi, Cultural Historian

Guests: Noelani Ahia  
Clare Apana  
Josie Yucha – CSH  
Trevor Yucha – CSH  
Auli'i Mitchell  
Rikki Torres-Pestana  
Amy Halas  
Kaniloa Kamaunu  
Pali Kapu Deadmen  
Lisa Rotunno-Hazuka - ASH  
Nico Fuentes - Atlas

Jocelyn Costa  
Kurt Watanabe

### III. APPROVAL OF MINUTES

#### A. December 12, 2018

- Councilmember Leiane Paci made a motion to accept minutes
- Councilmember Scott Fisher second motion
- Councilmember Ho-Nikaido – “aye”
- Councilmember Fisher – “aye”
- Council Vice Chair Maxwell – “aye”
- Council Chair Antonio – “aye”
- Councilmember Dukelow – “aye”
- Councilmember Kamaunu – “aye”
- Councilmember Paci – “aye”
- No “nay”
- Minutes accepted

#### B. January 16, 2019

- Burial Sites Specialist apologized to council that meeting minutes not complete; not ready for council review and acceptance
- MLIBC defer review of Jan minutes until next meeting

### IV. BUSINESS

#### A. Draft Burial Treatment Plan for Unidentified Human Skeletal Remains at 439 Waiane‘e Street, Ko‘oka Ahupua‘a, Lāhainā District, TMK: (2) 4-6-006:017

**Information/Discussion/Recommendation/Determination:** Discussion and determination whether to preserve-in-place or relocate unidentified human skeletal remains at the above location. Council discussion and recommendation to SHPD whether to accept the proposed burial treatment plan.

- Lisa Rotunno-Hazuka address council on agenda item
- Nico Fuentes address council on agenda item.
- Ms. Hazuka stated in front of council today to provide info to council; will come back before council in April for formal determination.
- Area where Ke‘eaumoku recognized as cultural descendant. Met with him last week to go over provisions per Ms. Hazuka. Turn to page 10 of draft BTP. Project area at top of page (four proposed structures). Square in center burial site. To the right (easement). Originally, testing during AIS, testing for easement. Little off with measurements (that’s how found burial). Sewer and electrical (proposed easement). When burial found, sewer re-routed outside of easement (green line on map).
- Preservation in place.
- Easement redesign take sewer out (away from burial). Electrical and cable television (1 and half foot deep). Checked entire corridor to make sure clear.
- Proposed a few different surface treatment in discussions with Mr. Kapu. Ahu (bolder) with signage or rock platform. Mr. Kapu proposed combining both. 3 foot by 3 foot by 2- foot high rock platform with upright boulder in center. 10-foot buffer around (page

- 16). Buffer zone around planted in native ground cover. Define on surface (veg). At this point, 5-foot buffer on side where utility easement. Maybe able to expand to 10 feet. Determine by next meeting.
- Another suggestion by Mr. Kapu, make platform 2 feet high and tapered. Burial found was 3 feet deep below surface. Only findings in area.
  - Councilmember Fisher asked if signage will state it is a burial. Ms. Hazuka referred to page 15 of draft BTP.
  - Expand 5-foot buffer to 10-foot buffer go closer to easement, Council Vice Chair asked if need to go into easement to repair, how to avoid confusion re: entering/doing work within the buffer zone (preservation area). Ms. Hazuka will clarify by next meeting.
  - 10-foot wide easement. Re-design; shift utilities. First five feet in proximity to burials will be devoid of utilities. Easement; need to be careful buffer does not go too close to cause confusion.
  - Councilmember Kamaunu asked about proximity of machinery to remains. How to protect burial site. Ms. Hazuka replied orange fencing around burial site to protect during construction.
  - Council asked what will be the buffer be during construction. Ms. Hazuka replied between 5-10 feet on one side (easement); 10 feet on other side.
  - Utility easement, working in 5 feet of it. Will be about 12 feet away from burial per Ms. Hazuka.
  - Burial is three feet below. Utilities only 1.5 feet. Machines will be there. Opposite of burial. Pre-dug corridor; no finds.
  - Upright boulder, give impression it's a Kū'ula (fishing shrine) asked Councilmember Fisher. Did Ke'eumoku recommend? Ms. Hazuka replied yes. Councilmember Fisher stated it will have marker stating it's a burial; defer to Ke'eumoku.
  - No public testimony

## V. SHPD INADVERTENT DISCOVERIES/CORRESPONDENCE

- A. Letter Dated February 4, 2019 from The County of Maui Department of Public Works Engineering Division re: National Historic Preservation Act, Section 106 Consultation Kahana Nui Bridge Replacement at Lower Honoapiilani Road and Kahana Nui Stream, Alaleloa, Mailepai and Kahana Ahupua'a; Lahaina District, Island of Maui, Federal-Aid Project No. BR-3080(009), Tax Map Key(s): (2) 4-3-005:029 por., 083 por.; 4-3-010:999 por.; 4-3-019:028 por., 049 por.**
- Information/Discussion/Recommendation:** Discussion about the above letter.
- Kurt Watanabe, engineer with DPW address the council.
  - Mr. Watanabe stated he is not here to discuss letter (on agenda), however, wanted to follow up with council re: two projects that came before council in January.
  - Mr. Watanabe wanted to talk about the approval process.
  - 106 determination letter sent to DOT for review. Haleakala traffic signal project at Pukalani street. Recommendation by council was to have monitoring.
  - Mr. Watanabe received comments back yesterday. Two comments: Did Mr. Watanabe asked if any historical properties in area (APE). None within APE (in area). Next comment was because there are no historic properties in APE, will not be doing any monitoring. DOT said no monitoring. DOT trying to make it black and white. Going forward for future projects, if no historic properties within APE, DOT will not hire arch monitors.

- Councilmember Fisher stated purpose of monitoring is to avoid inadvertently uncovering something that is otherwise hidden. Doesn't make sense to say nothing there. If knew something there, would have monitoring. The point is there maybe.....there is burials present in area. Illogical. Logic is flawed stated councilmember Fisher.
- Councilmember Dukelow asked what exactly the purpose of consultation is if DOT will not honor council's suggestion. Put something in writing to council. Predetermined steps.
- Mr. Watanabe stated that the way it was explained to him is that if no historic properties affected (in APE), even if present in area, no monitoring.
- Quoting law. Following letter of the law. If no historic properties identified, historic review end. No mitigation (monitoring). The question is whether it is cultural appropriate ??? explained councilmember Paci.
- Mr. Watanabe explains it is outlined in letter that if there is a find during construction, need to stop work immediately and contact appropriate entities.
- Councilmember Dukelow asked if outlined in the law, why come before council?
- Question to DOT, if predetermine outcome, what's the sense of 106 consultation with council?
- Part of 106, come before council seeking cultural knowledge stated council.
- DOT really need to reconsider explained councilmember Fisher. Ground disturbance activities likelihood of finds, even if % is low. Iwi in vicinity.
- Council stand by its previous recommendation to have monitoring.
- Councilmember Kamaunu asked if project approved. Mr. Watanabe stated no. Mr. Watanabe stated he will keep council updated on status of project, specifically pertaining to hiring of arch monitors.
- Council Chair Antonio wanted council to look at the letter from County DPW, engineering division re: Section 106 Consultation of Kahana Nui Bridge Replacement.
- Council request presentation/more info re: this item.

**B. Inadvertent Discovery of Human Skeletal Remains at Hāmākuapoko Beach, reported to the Maui Office of the State Historic Preservation Division on December 13, 2018, Ahupua‘a of Hāmākuapoko, District of Hāmākuapoko, TMK: (2) 2-5-004:024**

**Information/Discussion/Recommendation:** Discussion about the above find.

- Burial Specialist Kealana Phillips provide notification update to council re: find
- Council Chair open item up for public testimony.
- Jocelyn Costa address council on agenda item. Ms. Costa is the Hāmākuapoko Rep on the Aha Moku. Work with representative for Hāmākuapoko. Familiar with coastline. Common practice to find; call this place bones. Ms. Costa explained that to have iwi picked up on put in bag, on shelf; maybe not best practice. Ms. Costa states iwi has a cycle. Brought forward, towards ocean. Preservation area to consider. Not left on beach. Ko‘a created for safe keeping. Suggestion. Cycle of movement dictated where headed.
- Area down the road has newly installed railings (Ho‘okipa). Deter people from parking on point. Still used heavily, especially when big waves/events. Need to have more education, oversight when people utilize area, when permits are given. People need to be more mindful of area land and sea.
- Council Chair asked what would a Ko‘a look like? In ocean? Yes replied Ms. Costa. Natural; no cement. Something that would allow for natural movement of iwi kupuna. Allow them to freely transition to next journey.
- Designate area nearby where iwi kupuna can be reinterred asked councilmember Fisher.

- Work with landowner. Something that SHPD can open a discussion/dialogue.
- Rikki Torres-Pestana address council.
- Mr. Torres-Pestana stated lived at Ho‘okipa past 7 years. Encountered plenty iwi in area.
- A & B / County / State all say they own sections of Ho‘okipa. Cannot prove.

**C. Inadvertent Discovery of Human Skeletal Remains at Waihe‘e Beach Park Beach, reported to the Maui Office of the State Historic Preservation Division on January 11, 2019, Ahupua‘a of Wailuku, District of Wailuku, TMK: (2) 3-2-013:010 Information/Discussion/Recommendation:** Discussion about the above find.

- Burial Specialist Kealana Phillips provide notification update to council re: find
- Councilmember Fisher / Kamaunu wanted clarity re: where exactly iwi discovered.
- Councilmember Fisher explained the kahawai(s) in area define the boundaries of the ahupua‘a.
- Council request that iwi curated with HILT while reinternment procedures are discussed, figured out.
- Council Chair open item up for public testimony.
- Kaniloa Kamaunu address council.
- Mr. Kamaunu (Aha Moku) asked to be notified when burials are found in the ahupua‘a of Wailuku. Has worked with HILT (Scott Fisher) in the past. Comfortable if iwi remain in ahupua‘a / curated on site per Mr. Kamaunu.

**D. Inadvertent Discovery of Human Skeletal Remains at Maui Community Correction Center, reported to the Maui Office of the State Historic Preservation Division on January 29, 2019, Ahupua‘a of Wailuku, District of Wailuku, TMK: (2) 3-8-046:005 Information/Discussion/Recommendation:** Discussion about the above find.

- Burial Specialist Kealana Phillips provide notification update to council re: find
- Councilmember Kamaunu, who attended the second of two site visits, shared her mana‘o with the council re: the find.
- Council Chair Antonio open item up for public testimony.
- Kaniloa Kamaunu address council on agenda item.
- Mr. Kamaunu stated he is familiar with area. Burials have been discovered in area in past. Very active area per Mr. Kamaunu.
- Mr. Kamaunu request to be included in discussions (Aha Moku).
- Councilmember Kamaunu request a letter be drafted to DPW/facility/business in certain areas where construction occur to be aware that HSR may be encountered. If no permit needed, or if county does not submit permit application to SHPD to review, working blindly.
- Burial Specialist stated that this is something that he can work on with the help of councilmember Kamaunu.
- Might be good if come from district rep of Burial Council stated Chair Antonio.
- Clare Apana address council on agenda item.
- As a recognized cultural practitioner or just in general, as part of kānaka ‘ōiwi practices/traditions, what is the way to interact with this situation asked Ms. Apana. Found at prison (not developer). Important it’s being taken cared of in best way possible. Can make a way to take care of all iwi in Wailuku? To give them best protection, best care, best treatment. Duty to interact with people who have knowledge, interest in area? Ask council to ask SHPD, H & C branch. Must say somewhere in rules that need to consult with public, especially those that may have knowledge of area.

- Ms. Apana asked, that as a cultural practitioner recognized in area, to be involved, to speak to those that are responsible for caring for the iwi.
- Discussions between council and department ensued re: consultation for inadvertent finds. Burial Specialist Phillips explained that he consults with the district rep of the burial council when an inadvertent discovery is reported to SHPD. Based on time constraints re: when a determination needs to be made per 13-300-40, SHPD does not typically reach out to the general community. It is SHPD hope that the district rep will be the one to reach out and consult with those that they represent in the region.
- Consult via District rep is one way explained councilmember Dukelow, perhaps can use MLIBC meeting as another method to involve those that are wanting to kōkua.
- Mr. Kamaunu stated that one avenue or person to speak with can be Ke'eumoku Kapu. Mr. Kamaunu stated that Mr. Kapu has been receiving and curating iwi (as iwi committee) as Aha Moku.
- Councilmember Dukelow wanted to clarify for council and public, with respect to consultation, department will reach out to any recognized cultural/lineal descendants. They will also reach out to district rep so that the district rep can reach out to those that may be interested but may not already be recognized. Third method of is agendize item and allow for testimony at meeting.
- Process working; do legal process. Ms. Kamaunu stated she believed it was SHPD job all this time to contact community. But feels like it is her responsibility to connect to public. No problem taking on responsibility. Need a list of recognized descendants or those that want to be included and assist with kuleana of mālama iwi kupuna.
- Letter to public works, county is really important stated councilmember Kamaunu. Another important thing, something to consider is to figure out a way for public to reach council directly.
- Noelani Ahia address council.
- Ms. Ahia stated issue come up many times. Council has written resolutions requesting landowner, state consult with community groups (Aha Moku, Malama Kakanilua etc.) Never been any consultation per Ms. Ahia.
- Ask council to find some mechanism to ensure consultation happens. It's getting done. At least notification stated Ms. Ahia.
- Ms. Ahia seek clarity re: when each burial is found, it is the community responsibility to re-apply for descendancy. Yes, answered the department. Ms. Ahia asked if department automatically contacts those that have been previously recognized as a descendant in a particular ahupua'a when a new burial is found? Department replied no. Does SHPD have the obligation to contact previously recognized descendants when new iwi found in area?
- Burials Specialist Phillips replied no. Each recognition (descendancy) pertains to a certain set of iwi kupuna. SHPD does not notify those that have been recognized as descendants to other iwi kupuna, even though in same ahupua'a. Burial Specialist Phillips explained that when an inadvertent burial is found, MPD is contacted. If PD decides not a crime scene, SHPD would then take Jurisdiction and contact district rep on MLIBC and those who may have any info re: families possibly connected lineally or culturally to the remains.
- Ms. Ahia question the fact that if already recognized descendants to iwi in ahupua'a not notified, how would community be given an opportunity to apply for descendancy and be recognized for newly found inadvertent iwi kupuna?
- Burial Specialist Phillips stated he understands Ms. Ahia question and the inability to seek descendancy if not notified. Mr. Phillips goes on to explain that per the rules, there is seldom an opportunity for community members to seek descendancy for inadvertent iwi kupuna because decisions re: disposition needs to be made in a timely manner (48-72

hrs.) unless a request is made by the landowner to extend timeline of decision. There are times when landowner does ask for an extension for determination, particularly in a large, ongoing project where the landowner waits until after project is done to ask for determination. In those cases, the community would have an opportunity to seek recognition by submitting application to SHPD and being placed on the agenda for MLIBC meeting.

- Mr. Phillips explained that community members can apply for descendant recognition after the determination is made. However, Mr. Phillips acknowledged that obviously they would not be involved in the discussions prior to the decision being made.

**E. Inadvertent Discovery of Human Skeletal Remains at Maui Lani Subdivision Phase VI, increment 4, reported to the Maui Office of the State Historic Preservation Division on February 18, 2019 and February 20, 2019, Ahupua'a of Wailuku, District of Wailuku, TMK: (2) 3-5-099:225**  
**Information/Discussion/Recommendation:** Discussion about the above find.

- Nico Fuentes address council on agenda item.

- Mr. Fuentes hand out maps to council.

- First map increment 4, all burials that have been discovered.

- Mr. Fuentes thanked councilmember Johanna Kamaunu for conducting site visit. Mr. Fuentes acknowledged that both councilmember Kamaunu and Dukelow has recently conducted site visit with Mr. Fuentes. Other council members stated that they have conducted site visits in the past. Sand dunes known to shift over time, perhaps another site visit in store stated Mr. Fuentes.

- Councilmember Dukelow asked Mr. Fuentes that before he begins presentation, can state how much burials identified in area? Burials and TS numbers?

- Mr. Fuentes replied that up to TS 185 / burials been confirmed 120. Since it's beginning. With additional sites 185 (scatters, etc.)

- Describing in macro / Micro event, distribution of burials

- Macro, take position on one side of dune. Dune, crest, majority of burials on crest. Look closely, smaller lines. As to why that is, haven't been determined yet. Hypothesize. Something to know, two things happening in area.

- Councilmember Kamaunu asked about TS 177/ TS 180. TS 177 pit stated Mr. Fuentes. It's near beginning/entrance, before you get to large preservation area. The finds around TS 177 were determined to be partial primaries. Partial primaries have a disturbance and thru investigation, it was determined that original location of burial in close vicinity. Mr. Fuentes explained important designations clear; primary, partial primary, scatters.

- TS 176 was discovered in September 2018, pit in proposed road way. Find was discovered using construction method deemed ineffective, no longer doing. Fast forward Feb 2019, back in same area doing pre-excavation for storm drain. Pre-excavation involves digging, but not laying utilities under the guise that if something found, cannot utilize that area. As opposed to dig and lay utilities down and then if something is found, would have to go back in and remove.

- Council member Dukelow asked if radar was used in that area? Mr. Fuentes replied yes. Mr. Fuentes explained that they are still in the middle of their GPR endeavor. Mr. Fuentes stated that they suspected that they would get false positives. The other one is the potential for false negatives. False negatives are when nothing is found during GPR, but when excavate, find. Recent finds in corridor that was GPR. Due to their nature, might not have been detected.

- Mr. Fuentes stated haven't investigated all anomalies flagged in corridors from GPR. Will take time. Labor intensive process; meticulous, especially when investigating manually.
- TS 184 suspiciously close to corridor. TS 184 looks like it lies just outside of corridor. May not have gotten a proper plan view during GPR. Will need to look into it.
- Mr. Fuentes describe discovery of TS 184. During exploratory grading for the proposed storm drain within Rd A (Olina Street), fragmented human skeletal remains were observed. Per accepted AMP, all excavations within a 100ft of a cluster of known burials are under controlled excavation. HSR were observed on Feb 15, 2019. The HSR were observed approximately 1-2ft below surface and designated TS184. All excavations in the immediate area were halted, the location of the HSR was recorded by archaeological personnel and caution tape was extended around TS184. No articulation, previously disturbed is the designation. However, Mr. Fuentes stated he is reserving his right to reconsider designation if needed/warranted.
- Mr. Fuentes explained discovery of TS 185. During exploratory grading for the proposed storm drain within Rd A (Olina Street), a possible burial pit was designated TS185 was identified in Road A approximately 3-4 ft below surface. All excavations were halted, the pit was recorded by archaeological personnel and caution tape was installed around the pit.
- At this point, not asking / or authorized to investigate TS185. Just consider it a primary. Majority of these pit, they are holding graves within.
- Close proximity to TS 176, TS 5 originally found during AIS. TS 150 pit. Concentration of burials.
- Mr. Fuentes referenced former SHPD Lead Archaeologist Dr. Barker Fariss analysis of data (elevation data for the most part). Basically, study suggests that graves predominately found in sand dune, between two areas. It's in crest of sand dune. As the dunes goes to its toes, burials no longer predictable per Mr. Fuentes interpretation of analysis.
- During pre-ex / exploratory, came across finds. Authorization to test TS is limited to immediate area. Immediate area is determined by the designated boundaries of grave and associated soils that's holding remains. When burial discovered, resume work outside of buffer until they find another. Keep doing that until no where else to work. Construction is currently demobilized. No place else to work.
- Mr. Fuentes mentioned that Lots 9-12 have been grubbed and graded. Will be investigated by Mr. Fuentes and another archaeologist for the proposed footings and utility installation. Process before installation (exploratory).
- Council Vice Chair Maxwell asked if using GPR. Not sure replied Mr. Fuentes. Difficult to get developer on board with something that hasn't proven too successful up to this point. However, Mr. Fuentes mention that he can finish up the current GPR study and see what results and possibly use that to persuade it's use for Lots 9-12.
- Exploratory digging. Is that working asked councilmember Dukelow. Mr. Fuentes replied in that it's working in the sense that they are find things.... yes. Find things before you find things.
- Council member Dukelow asks that now that they have this concentration, what will they do? Been here before. In a number of places exclaimed council member Dukelow.
- Mr. Fuentes stated that up to this point, concentration of burials in area has prevented installation of pipes (i.e. Road A, no installation of pipes, Road B, no installation of pipes, cul de sac, currently being discussed).
- As far as re-design, Mr. Fuentes stated he is not privy to that information. Haven't heard or been told plans. At this point, waiting on additional info per Mr. Fuentes. Mr. Fuentes stated he cannot tell developer where to go, just where things are at.



- Council member Dukelow wanted clarity on the process. What is Mr. Fuentes role?
- Identify patterns. Developers take what the facts are on the ground. Cannot go on top, below. They can try and go around graves.
- How do we warn/advise them, make it clear, that trying to go between the burials will not yield good results for the project asked Councilmember Dukelow.
- Mr. Fuentes stated that the only thing he can do is offer facts and the knowledge of what's in the ground. Jurisdiction lies in those areas (burial) demarcated with the orange fencing explained Mr. Fuentes.
- What is the legal buffer around these newly discovered burials asked councilmember Dukelow. Case by case stated Mr. Fuentes. Who determines that? Archaeologist in consultation with SHPD.
- Who makes the decisions? If Mr. Fuentes offering facts. Who examines those facts and comes up with a plan asked Council Vice Chair Maxwell.
- Plans come from Engineers explained Mr. Fuentes.
- Council member Dukelow asked Mr. Fuentes about the GPR process.
- TS 184, not covered by GPR? Mr. Fuentes said it was covered. It's on the edge. Whether or not half covered. Don't know. Suspect that 184 near where the manhole was dropped into the big hole. Fence posts, orange fencing.
- No easy way to find graves before digging them up/coming upon them during construction per Mr. Fuentes.
- Councilmember Dukelow stated that the reason she is on MLIBC is to try to find ways to prevent burials from being disturbed. It might be preliminary, or first-time using method. Would hope that practice (GPR) will continue to be used. Another method of trying to locate (protect) burials before it's too late (disturbed) per Councilmember Dukelow.
- 15 acres (increment 4), 120 burials. Building in burial site. Regular test trenches don't make since, at this point. Why would not take as much precaution up front. Even if not 100% sure of technology. Avoid hitting burials; uncovering it. Added layer of protection for burials.
- Councilmember Dukelow stated that she had assumed that Mr. Fuentes was involved in the re-design process. If archaeologist provide input, especially if continue work, chances of encountering more HSR is great, how to ensure that information, analysis reaches the engineers (those in charge of re-design)?
- Continue testing Lots 9-12 stated council members. Don't know if this preservation area will connect to the previously discovered preserve located in golf course.
- How was this preservation designated asked councilmember Dukelow. Area was slated for development / lots (homes). Because of all the finds, landowner incrementally gave up lots hence the strange oblong "S" shape. In order to expand the preserve, that would be a decision made by landowner? Yes replied Mr. Fuentes. Can archaeologist recommend expansion of previous? Yes replied Mr. Fuentes. Has it been done in current project. Yes.
- Developer determine preservation site. Different levels of preservation; short term, long term, permanent explained Mr. Fuentes. How did they arrive at that stop to design preservation area asked councilmember Kamaunu? Mr. Fuentes replied that the spot is directly correlated in relation to grave.
- Preservation is not permanent yet. Hasn't been approved. Work not done. Chances of finding more graves great. Could expand preserve. Preliminary, based on burials that were identified up to this point. TS 1 identified a decade and a half ago. Ongoing preservation. For example, TS 185 will be preserved in placed. Don't know what that will look like at this point. It will be determined by what will happen, literally down the road per Mr. Fuentes.

- Likely hood of finding more burials almost 100%.
- If Mr. Fuentes expert in identifying patterns of burials, why are we continuing to allow this to happen? Barker's analysis, Nico analysis. When is enough, enough???? Way past per burial council.
- Need to change who council having conversation with. If landowners are the ones making the decisions, need to request their attendance at next meeting per councilmember Ho-Nikaido.
- Councilmember Ho-Nikaido request that on maps going forward, include the previous Neller preserve (in golf course). Show/justify why need to test Lots 9-12. Possible connection of burials that expand from current preserve all the way to the Neller preserve.
- Lot 139, landowner given up per Mr. Fuentes. Part of preserve
- Testing on Lots 9-12 will be done by archaeologist, not general contractor. Sensitivity there that will be inherent stated Mr. Fuentes to answer Council Vice Chair Maxwell question re: type of testing.
- **Councilmember Leiane Paci excused from meeting at 10:43AM**

**- MLIBC recommends the cessation of all earth moving work at Maui Lani Phase 6, increment 4, pending further archaeological investigation and exploration and determination of an adequate burial preserve area.**

- **Councilmember Kahele Dukelow make motion**
- **Councilmember Scott Fisher second motion.**
- **Councilmember Ho-Nikaido – “aye”**
- **Councilmember Fisher – “aye”**
- **Council Vice Chair Maxwell – “aye”**
- **Council Chair Antonio – “aye”**
- **Councilmember Dukelow – “aye”**
- **Councilmember Kamaunu – “aye”**
- **Councilmember Paci – excused from meeting**
- **No “nay”**
- **Motion carries**

- Council Vice Chair Maxwell asked the council if they remembered making a motion to recognize this phase as a burial site. All of increment 4? Where would want to start / stop?

- Maybe make a recommendation directly to landowner stated councilmember Fisher.
- Councilmember Dukelow reiterated past approved motions pertaining to Mau Lani:
- May 16, 2018 – Motion to Maui Lani Landowner to conduct consultations with lineal, cultural descendants, Malama Kakanilua, Aha Moku to discuss expansion of buffers and other related issues in order to provide appropriate protection to the integrity of the iwi kupuna.

- December 21, 2017 – MLIBC recommends no further earth moving work or decisions should be made regarding redesign of Maui Lani Phase 6 project, until the following issues are adequately addressed:

- Apparent lack of comprehensive & sufficient testing during the original Archaeological Inventory Survey.
- Role and credentials of Primary Investigator.
- Recognition of this area as a site with a burial concentration.
- Re-open and re-examine the Burial Treatment Plan to include consultation with cultural and lineal descendants, as well as cultural practitioners and generational community members.

- No further decisions should be made regarding iwi kupuna until a comprehensive inventory of burials is compiled for Maui Lani Phase 6 & adjacent lots.
- Don't believe any of this addressed stated council. Third request made to landowner to do something more comprehensive.
- What consequences if fail (landowner) to appear? Subpoena Power? Contested Case Hearing?
- At this point, all can do (legally) is make a request stated councilmember Fisher.
- Mr. Fuentes able to relay info to them. Yes. Mr. Fuentes ask for a bit of clarity.
- Councilmember Dukelow stated that she would like someone from company to attend that has decision making power. Project Manager and Vice President????
- **Chair Antonio call meeting to recess at 11:06AM**
- **Chair Antonio resume meeting at 11:16AM**
- **MLIBC request the attendance of the landowner of Phase 6, increment 4 of the Maui Lani Development to appear at the next burial council meeting to answer questions related to this project.**
- **Councilmember Scott Fisher make motion**
- **Councilmember Kahele Dukelow second motion**
- **Councilmember Ho-Nikaido – “aye”**
- **Councilmember Fisher – “aye”**
- **Council Vice Chair Maxwell – “aye”**
- **Council Chair Antonio – “aye”**
- **Councilmember Dukelow – “aye”**
- **Councilmember Kamaunu – “aye”**
- **Councilmember Paci – excused from meeting**
- **No “nay”**
- **Motion carries**
- Councilmember Dukelow wanted clarity on GPR process. Hire another firm (CSH) to do GPR. Data gather, report drafted. Firm doing the GPR interpret data. Mr. Fuentes replied yes. Request presentation by CSH on process of GPR so that can figure out how better apply technology in area, stated councilmember Dukelow. Mr. Fuentes replied yes. Requested time to complete investigating anomalies prior to presentation by CSH.
- If CSH doing the interpretation, should go in front council to discuss. Ideal to identify burials prior to construction, possible desecration (digging up) stated councilmember Dukelow. Figure out way to best use technology for that purpose.
- **Council Chair Antonio open item up for public Testimony**
- Noelani Ahia address council.
- Ms. Ahia stated won't say much in light of pending litigation. Ms. Ahia explained that as a kanaka maoli, recognized descendant, and health care professional, understand protection and care of iwi kupuna directly related to the health and wellbeing of our people. Human right to protect iwi kupuna, collective mana, Wahi Pana in sand Dunes, Wahi Kapu explained Ms. Ahia. Erased both in life and death. Deeply distressed, sacred burial ground where vehicles drive by/over. Painful, iwi kupuna curated by foreign archaeologists. Kuleana to stand up and say, “enough is enough.” Community left out of process for far too long. When developers assert they have more rights and more interests than kanaka maoli people, all rise up, so all may heal, less there be nothing left for who we are as a people stated Ms. Ahia.
- Kaniloa Kamaunu address council.
- Conversation been happening for 14 years. When is it enough asked Mr. Kamaunu. Sad because they hire people from away. No idea what they're talking about; customs. Hold certificate saying they are something. In reality, they're really no body. They don't

belong here; no ties to this place. Another issue is that they keep circumventing laws explained Mr. Kamaunu i.e. 106 consultation with NOH's. 6E / 106 Consultation.

- Criminals; desecrating our people. No kind words for them; no kind feelings for them stated Mr. Kamaunu. Hawaiians suffering, always suffering. Everyone making money. Keep taking us down, doing whatever they want. No regards to what Hawaiians sacrificed as people. Resort to violence???
- Jocelyn Costa address council.
- Ms. Costa used a diorama to aid in her presentation to the council. Ms. Costa stated she has recently talked to some archaeologist that came into her region (Ko'olau). Ms. Costa explained that the archaeologist told her that they admitted to not knowing everything. They consult with other archaeologists. Why are the people that are from the area not consulted with; included in the process asked Ms. Costa.
- Ms. Costa explained that the whole area was sand (four-way intersection) near Pomaika'i School.
- Ms. Costa explained what she had witnessed re: past monitoring in area, using diorama.
- Ms. Costa stated the definition of insanity – doing same thing over and over again and expecting a different result.
- Definition of 90% error.... inadvertent.
- Scatter, partial scatter, whatever the scientific definition.... iwi is iwi is iwi stated Ms. Costa. The iwi has to be understood. Was not just a piece of bone. Treated in a way, fashion, wrapped, put in resting place. Because of the mana for the generations to come. Not just disturbing iwi; disturbing cultural mana.
- Pali Kapu Deadmen address council.
- Mr. Deadmen explained the history of the Burial council and his involvement in process. Started right after Honokahua; grassroots effort by the community.
- Mr. Deadmen explained that all parties, entities signed off on the Ritz project. Community went on site, went to Governors house to address concerns about project. Stop project, pay off ownership. Probably was archaeologist. Archaeologist not Hawaiian profession. Doing designation, treatment of iwi. Make up Burial Treatment Plan (BTP). Plan was made when kupuna was buried. That's the plan and only plan explained Mr. Deadmen. Plan wasn't to be dug in hundred years. Colonialized, no treaties, plantation mentality, Hawaiians been oppressed not to stand up for ourselves. Glad burial council created; voice for the kupuna. Archaeologist was the problem because they called the shots. Not sensitive to who we are, just a professions, a western one. Cultural Vultures explained Mr. Deadmen.
- Why no law in place, that when iwi is found, cannot touch, move; need to stop further construction. Mr. Deadmen explained that burial council should fine tune language in the laws. Mr. Deadmen mention NAGPRA; why follow state laws. Why not comply to Feds; Federal higher. State always been crook, culprit. Piecemeal Hawaiian concerns on every island; never really addressing them. Nothing concrete.
- Laws in place to make it illegal to rape, steal. Need to enact law to better protect iwi. Be tough. Change language in laws, bi-laws. Original burial laws made by lawyers, with no cultural knowledge explained Mr. Deadmen.
- Clare Apana address council.
- Ms. Apana shared with council the mitigation of recent lawsuit.
- Phase 6 needed water line going to phase 9. Community members involved in monitoring. Ms. Apana explained one of the more difficult things she's done. Sand mining only stopped by zoning law. Ms. Apana stated that council never brought back the issue of sand mining to the council. Request sand mining be re-agendize. Burial council make burial buffer zones explained Ms. Apana. Clearly spelled out by AMP. See orange fences; not following buffer zones. If followed, not have that much burials all

together. How come make AMP that not get followed? Mitigation; hopefully ask those questions. Please protect iwi.

- **Council Chair Antonio close public testimony**

- **Councilmember Kahele Dukelow excused from meeting at 11:43AM**

- Council Vice Chair stated that he recommends council request to that the landowner put/place the rest of Maui Lani Phase 6 in preservation.

- At the end of the day, all want to protect, mālama iwi. This might be best way to adequately do it.

- Councilmember Ho-Nikaido wanted clarification. Rest of increment 4? If can't put sewer line, can't have subdivision stated council.

- Councilmember Kamaunu explained that she would feel most comfortable designating a much larger area for preservation site. Start with whole increment.

- Question arose whether there are existing homes built in increment 4. Three houses, Lots 146, 147, 148 stated Mr. Fuentes. Utilities for those three homes tied into increment 3.

- Councilmember Fisher asked if it would be a good idea for the Wailuku district rep on MLIBC and Descendants from area work on appropriate boundary designations for the proposed motion? Council may not know best line to draw; Limited info. Best if decided by those that are more familiar with area.

- **MLIBC recommends the designation of the remainder of Maui Lani Phase 6, increment 4, to be designated as a burial preserve area with the designated area to be determined by the Wailuku representative and cultural descendants of the Wailuku ahupua'a.**

- **Councilmember Scott Fisher make motion**

- **Council Vice Chair Maxwell second motion**

- **Councilmember Ho-Nikaido – “aye”**

- **Councilmember Fisher – “aye”**

- **Council Vice Chair Maxwell – “aye”**

- **Council Chair Antonio – “aye”**

- **Councilmember Kamaunu – “aye”**

- **Councilmember Paci – excused from meeting**

- **Councilmember Dukelow – excused from meeting**

- **No “nay”**

- **Motion carries**

**F. Letter Dated February 14, 2019 from Damon, Key, Leong, Kupchak, Hastert, A Law Corporation re: Maui Lani Partner's Petition for a Contested Case Hearing and Appeal from Burial Council Decision Recognizing Jennifer Noelani Ahia as Cultural Descendent.**

**Information/Discussion/Recommendation:** Discussion about the above letter.

- Council Chair Antonio explained situation re: letter. Moved up meeting (March 6) specific to discuss letter. Informed by AG to not discuss letter because AG will be representing Council in the case. Option of discussion in Executive Session

- Burial Specialist Phillips explained situation a bit further. Mr. Phillips stated that AG requested items not be included on agenda. Request by AG to omit letter transmitted to Mr. Phillips too late. In order to abide by Sunshine Law. Agenda needed to be final and submitted within 6 days. Standard practice by the department is when letters are received by the department addressed to the council, it is put on the upcoming MLIBC agenda as means of submitting to council.

- Council Vice Chair Maxwell asked if both law firms that are representing both Maui Lani Partner's and HBT, have the reasonings why council chose to recognize descendant despite the deferral request by SHPD.
- Mr. Phillips replied yes. He's completed the minutes from the meeting in question (Jan 2019) and has submitted to appropriate parties.
- When will be contested case hearing asked councilmember Kamaunu. Unsure replied department. Won't be before next meeting stated Mr. Phillips.
- No change to status (recognition of descendency) while this process runs its course stated councilmember Ho-Nikaido
- **Councilmember Kalani Ho-Nikaido make a motion to go into executive session**
- **Council Vice Chair Dane Maxwell Second motion**
- **Councilmember Scott Fisher – “aye”**
- **Councilmember Ho-Nikaido – “aye”**
- **Council Vice Chair Maxwell – “aye”**
- **Council Chair Antonio – “aye”**
- **Councilmember Kamaunu – “aye”**
- **Councilmember Paci – excused from meeting**
- **Councilmember Dukelow – excused from meeting**
- **No “nay”**
- **Motion carries**
- **Executive Session: 12:07 PM**
- Public excused from meeting
- **Councilmember Kalani Ho-Nikaido make a motion to go close executive session**
- **Council Vice Chair Dane Maxwell Second motion**
- **Councilmember Scott Fisher – “aye”**
- **Councilmember Ho-Nikaido – “aye”**
- **Council Vice Chair Maxwell – “aye”**
- **Council Chair Antonio – “aye”**
- **Councilmember Kamaunu – “aye”**
- **Councilmember Paci – excused from meeting**
- **Councilmember Dukelow – excused from meeting**
- **No “nay”**
- **Motion carries**
- **Executive Session Ends: 12:15 PM**
- **Councilmember Kalani Ho-Nikaido make a motion to defer items F, G until council have opportunity to confer with AG.**
- **Council Vice Chair Maxwell second motion**
- **Councilmember Ho-Nikaido – “aye”**
- **Councilmember Fisher – “aye”**
- **Council Vice Chair Maxwell – “aye”**
- **Council Chair Antonio – “aye”**
- **Councilmember Kamaunu – “aye”**
- **Councilmember Paci – excused from meeting**
- **Councilmember Dukelow – excused from meeting**
- **No “nay”**
- **Motion carries**
- **Council Chair Antonio open item up for public testimony**
- Kaniloa Kamaunu address council.
- Recommendation made. SHPD had its opportunity to dispute; relinquished that. Council made the decision based on info that they had. Motion passed, descendant

recognition. Don't see the legality in the challenge explained Mr. Kamaunu. Process followed.

- Mr. Kamaunu stated that this is an example of the discrepancies between when a developer goes before council vs. a community member.
- Why is this challenge being entertained by the AG asked Mr. Kamaunu.
- Jocelyn Costa address council.
- Ms. Costa referenced her previous testimony re: interactions with archaeologists. Story revolves around a pohaku that the archaeologist was not able to accurately describe its importance.
- Clare Apana address council.
- Ms. Apana stated that she is bothered by this challenge by the firms representing the ownership of ML VI and ML IX.
- Ms. Apana stated she supports council in their decision making completely.
- Councilmember Ho-Nikaido propose structural change for the meeting in terms of public testimony. Consider public testimony at the beginning of meetings, for all items.
- Does it move things along; more efficient asked Chair Antonio. A lot of people come to meetings. It's long. Facilitate meetings more efficiently in timely fashion per councilmember Dukelow.
- County council, three items to testify, call you back for rest explained councilmember Kamaunu.
- Discuss this procedural change at next meeting recommended councilmember Fisher. Allow for input from members not currently at meeting.
- Gives opportunity for community members to speak upfront, especially for those unable to stay the entire meeting.
- Good suggestion exclaimed Chair Antonio. Been doing it this way because this is the way it's always been done.

**G. Letter Dated February 14, 2019 from Bays, Lung, Rose, Holma, Attorneys at Law re: Written Petition for a Contested Case Hearing of Cultural Descendant Recognition of Jennifer Noelani Ahia to Unidentified Human Skeletal Remains at Maui Lani Subdivision, Phase VI, Increment 4, and Maui Lani IX, Ahupua'a of Wailuku, Moku of Wailuku, Island of Maui, TMK [2] 3-8-099:999 pors, and TMK [2] 3-8-007:153.**

**Information/Discussion/Recommendation:** Discussion about the above letter.

- Council Chair Antonio explained situation re: letter. Moved up meeting (March 6) specific to discuss letter. Informed by AG to not discuss letter because AG will be representing Council in the case. Option of discussion in Executive Session
- Burial Specialist Phillips explained situation a bit further. Mr. Phillips stated that AG requested items not be included on agenda. Request by AG to omit letter transmitted to Mr. Phillips too late. In order to abide by Sunshine Law. Agenda needed to be final and submitted within 6 days. Standard practice by the department is when letters are received by the department addressed to the council, it is put on the upcoming MLIBC agenda as means of submitting to council.
- Council Vice Chair Maxwell asked if both law firms that are representing both Maui Lani Partner's and HBT, have the reasonings why council chose to recognize descendant despite the deferral request by SHPD.
- Mr. Phillips replied yes. He's completed the minutes from the meeting in question (Jan 2019) and has submitted to appropriate parties.
- When will be contested case hearing asked councilmember Kamaunu. Unsure replied department. Won't be before next meeting stated Mr. Phillips.

- No change to status (recognition of descendancy) while this process runs its course stated councilmember Ho-Nikaido
- **Councilmember Kalani Ho-Nikaido make a motion to go into executive session**
- **Council Vice Chair Dane Maxwell Second motion**
- **Councilmember Scott Fisher – “aye”**
- **Councilmember Ho-Nikaido – “aye”**
- **Council Vice Chair Maxwell – “aye”**
- **Council Chair Antonio – “aye”**
- **Councilmember Kamaunu – “aye”**
- **Councilmember Paci – excused from meeting**
- **Councilmember Dukelow – excused from meeting**
- **No “nay”**
- **Motion carries**
- **Executive Session: 12:07 PM**
- Public excused from meeting
- **Councilmember Kalani Ho-Nikaido make a motion to go close executive session**
- **Council Vice Chair Dane Maxwell Second motion**
- **Councilmember Scott Fisher – “aye”**
- **Councilmember Ho-Nikaido – “aye”**
- **Council Vice Chair Maxwell – “aye”**
- **Council Chair Antonio – “aye”**
- **Councilmember Kamaunu – “aye”**
- **Councilmember Paci – excused from meeting**
- **Councilmember Dukelow – excused from meeting**
- **No “nay”**
- **Motion carries**
- **Executive Session Ends: 12:15 PM**
- **Councilmember Kalani Ho-Nikaido make a motion to defer items F, G until council have opportunity to confer with AG.**
- **Council Vice Chair Maxwell second motion**
- **Councilmember Ho-Nikaido – “aye”**
- **Councilmember Fisher – “aye”**
- **Council Vice Chair Maxwell – “aye”**
- **Council Chair Antonio – “aye”**
- **Councilmember Kamaunu – “aye”**
- **Councilmember Paci – excused from meeting**
- **Councilmember Dukelow – excused from meeting**
- **No “nay”**
- **Motion carries**
- **Council Chair Antonio open item up for public testimony**
- Kaniloa Kamaunu address council.
- Recommendation made. SHPD had its opportunity to dispute; relinquished that. Council made the decision based on info that they had. Motion passed, descendant recognition. Don't see the legality in the challenge explained Mr. Kamaunu. Process followed.
- Mr. Kamaunu stated that this is an example of the discrepancies between when a developer goes before council vs. a community member.
- Why is this challenge being entertained by the AG asked Mr. Kamaunu.
- Jocelyn Costa address council.



- Ms. Costa referenced her previous testimony re: interactions with archaeologists. Story revolves around a pohaku that the archaeologist was not able to accurately describe its importance.
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- County council, three items to testify, call you back for rest explained councilmember Kamaunu.
- Discuss this procedural change at next meeting recommended councilmember Fisher. Allow for input from members not currently at meeting.
- Gives opportunity for community members to speak upfront, especially for those unable to stay the entire meeting.
- Good suggestion exclaimed Chair Antonio. Been doing it this way because this is the way it's always been done.

**H. Training for Maui/Lāna‘i Islands Burial Council on membership, roles, and responsibilities.**

**Information/Discussion:** Discussion on the above item.

**(BRING BLACK TRAINING BINDER)**

- **Item Deferred**

Meeting adjourned at 12:25PM