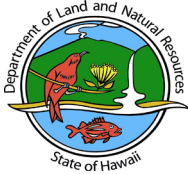


DAVID Y. IGE
GOVERNOR OF HAWAII



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BOARD OF LAND AND NATURAL RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**HISTORIC PRESERVATION DIVISION
DEPARTMENT OF LAND AND NATURAL RESOURCES**

601 Kamokila Boulevard, Suite 555
Kapolei, HI 96806

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

DATE: October 17, 2018
TIME: 9:00 AM
PLACE: County of Maui, Planning Commission
Conference Room
Kalana Paku'i Building, 1st 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
Leiane Paci
Johanna Kamaunu

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

Guests: Victoria Kaluna-Palafox – On Agenda 'o Napela
Fran Maddela – Maliko
Auli'i Mitchell – Support Recognition
Josie Yucha – Cultural Surveys Hawai'i
Trevor Yucha – Cultural Surveys Hawai'i
Ryan Laskin – Cultural Surveys Hawai'i
Jeffrey Mertens – Punohu Ohana
Bodhi Be
Arlene Keala Piihana – Punohu Ohana
Foster Ampong
Tama Kaleleiki – Support Recognition

Reynaldo Fuentes – Atlas Arch
Amy Halas
Kaniloa Kamaunu – Aha Moku ‘o Wailuku, Malama Kakanilua
Noelani Ahia
Trinette Furtado

III. APPROVAL OF MINUTES

A. June 20, 2018

- Councilmember Kahele Dukelow made a motion to accept minutes
- Councilmember Scott Fisher second
- All aye; no nay
- Minutes accepted

B. July 11, 2018 (Site Visit)

- Councilmember Kahele Dukelow made a motion to accept minutes
- Councilmember Scott Fisher second
- All aye; no nay
- Minutes accepted

IV. BUSINESS

A. Draft Burial Treatment Plan for Site 50-50-03-8498, Kelawea Ahupua‘a, Lāhainā District, Island of Maui, TMK: (2) 4-5-026:055 pors.

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.

- Nico Fuentes, PI for Atlas Archaeology present agenda item to council.
- Background – House lot on Kalena Street, right off Lahainaluna Rd. Two historic burials, one of which recognized lineal descendant (Dana Opupele). Great grandfather interred 1923. Deed to confirm family cemetery at the time. Per meeting in June according to Mr. Fuentes, burial council recommendation, two historic burials, split. One burial associated with lineal descendant and the other unconfirmed (dated 1880-1890). Would have been about 30/40 years before lineal descendant family occupied land per Mr. Fuentes. Proposed two different plans. BTP and the other is reintering individual at Maui Memorial Cemetery.
- Mr. Fuentes is present at meeting seeking approval of current BTP to preserve unknown burial in place. Array of artifacts buried/recovered with unknown burial. In preservation plan, given two buffers horizontal (10 ft.) and vertical buffer (between 4 and 5 ft.). Only utility running adjacent to preservation area, water line. Other utilities re-routed to other portions of property. Per previous 2 discussions, Mr. Fuentes stated he has been in contact with Ke‘eaumoku Kapu re: protocols. No additional info re: unidentified grave per Mr. Fuentes.

- Councilmember Dukelow requested deferral of voting on this until more established plan for actual reinternment (protocols). Really important to know who will be handling iwi, touching iwi, putting them back.
- Mr. Fuentes stated preservation procedures located towards end of plan. As Kahele indicated, more in depth assessment of protocols.
- Councilmember Fisher explained point of clarification. Two burials. One, council has relinquished any control over one burial to recognized lineal descendant. Second burial will be completely left untouched. Councilmember Fisher clarify that councilmember Dukelow is asking for specific protocols for the unknown burial being preserved in place. Yes. Any proposed protocols for burial left in place.
- Mr. Fuentes referenced page 19 of draft burial treatment plan, section titled preservation plan. Section highlights short terms measures, long term preservation measures, buffer zone, signage, recordation and access per Mr. Fuentes.
- Iwi still in ground asked Councilmember Fisher. Yes replied Mr. Fuentes. Only the burial goods were removed for analysis to get dates.
- Councilmember Kamaunu wanted clarification about the burial being preserved in place below a driveway? Yes exclaimed Mr. Fuentes.
- Is burial protruding at all? Feature of landscape; wouldn't necessarily know burial area exist asked Councilmember Fisher.
- Typically, in situation like this where grave itself at surface. Fill area in on both sides, bring up elevation. Councilmember Dukelow clarified parcel is a flag lot. Area where burial located only access to lot from road. Requested driveway moved; no place to relocated because of lot.
- Draft BTP, Page 23 plan view map, councilmember Ho-Nikaido asked if driveway going completely over burial? How wide is driveway? Turning radius? Can it be protected.
- Mr. Fuentes stated that burial in driveway; driveway bends to the right. Burial shouldn't be driven over. Will there be a marker that delineates burial, asked Councilmember Ho-Nikaido.
- Possibility that someone could drive over burial/park if no surface feature to delineate burial. Mr. Fuentes asked if should mitigate. Yes.
- Based on map, it was stated that there should be enough room (turning radius) to not drive over burial. Would need to subconsciously do it, if no surface marker stated Council Vice Chair Maxwell.
- Councilmember Dukelow/Fisher stated that their interpretation of 10 ft. buffer is that the burial would be located 10 ft. from the driveway. Mr. Fuentes clarified that the 10 ft. buffer is subsurface from nearest utilities.
- If proposal is to have some sort of demarcation above surface at the elevation of driveway, what would that look like asked Mr. Fuentes. Council replied fence, landscaping, wall. Some kind of buffer above ground that is not part of driveway. Main idea is to keep cars off of burial. Want to prevent cars from driving over/ parking on burial stated council.
- Council Vice Chair Maxwell referenced the Sandhill preserve areas where they have on top of property a small ahu, concrete style that demarcates burial. Mr. Fuentes replied that an ahu would be a good idea because it would demarcate exactly where grave was signify that someone is there. Mr. Fuentes feels that this route (ahu) would be better than landscaping.
- Whatever will prevent cars from driving over and/or parking on.

- Councilmember Kamaunu asked about Perpetuity. What happens after family sell property? It's deeded on property; disclosed by realtor in sale. Councilmember Kamaunu asked about burial agreement? The preservation plan runs with the land (title of property), not the owner stated Councilmember Ho-Nikaido.

- Councilmember Kamaunu asked SHPD to clarify the difference between preservation plan or archaeological data recovery plan and a burial agreement.

- SHPD Burial Specialist Phillips referenced HAR 13-300-40 Inadvertent discovery of human remains, section (i) (3) states that with respect to burial agreements, *In order to provide perpetual protection for human skeletal remains inadvertently discovered, departmental determinations to preserve in place shall be recorded in the bureau of conveyances. In addition, any affected landowner may enter into an in situ burial agreement with the State.* With respect preservation plans, ADR plans, Burial specialist pointed to Section (n). *In the event the landowner or it's authorized representative knowingly fails to comply with any of the provisions of the preservation plan or archaeological data recovery plan, and directly or indirectly causes the taking appropriation, excavation, injury, destruction, or alteration of any burial or reburial site, the action may be considered a violation of applicable provisions of chapter 6E, HRS, and this chapter and subject to statutory and administrative penalties.*

- In other words, stated Burials Specialist Phillips, a burial agreement is a contract entered into by two parties (with time line), while a preservation plan or archaeological data recovery plan is forever AND if violated, gives department ability to penalties landowner if noncompliant.

- Mr. Fuentes stated that he will approach engineering aspect of project. Just so clear, propose ahu structure directly above grade and/or delineated fence line as well as info already within draft burial treatment plan. Clear demarcation/delineation of driveway vs. burial location to avoid confusion down road. No turning radius, extra parking spot/lot. Cinch corner on width of pavement recommended Councilmember Ho-Nikaido. Surface demarcation, fence, ahu or vegetation asked Mr. Fuentes. Yes. Council Vice Chair Maxwell encouraged consultation with whoever doing protocol / construct ahu so everything aligns together. Question arose about splitting voting, splitting BTP, amend plan, etc.

- Burial Specialist Phillips interject. Mr. Phillips stated that if council would please look at approved meeting minutes from June 20, 2018. Business Item A, Draft BTP for Sites -8497 and -8498, council made/approved two motions. Mr. Phillips read aloud. MLIBC makes a motion to support request by Recognized Lineal Descendant Mr. Dana Opupele to relocate burial -8497 (Mr. Joseph Opupele Sr.) to Maui Memorial Park. MLIBC recommends the revision of the Burial Treatment Plan for Site -8497 and Site -8498 to reflect the council's recommendation to Preserve In Place Site -8498. Council requests BTP to be bifurcated to reflect decision. Council accepts BTP for Site -8497 and request BTP for Site -8498 be re-agendize at the next MLIBC meeting.

- Recommended plan of action moving forward per Councilmember Fisher to revise BTP to reflect one burial component. Come up with some method to ensure no parking/driving over burial. Mr. Fuentes asked should he come back with three options to present to council at next meeting? Councilmember Ho-Nikaido replied that best offer one suggestion, so long as it meets the criteria recommended by council. Councilmember Fisher urged Mr. Fuentes to work with landowner re: aesthetics of surface demarcation.

- Councilmember Paci asked if council could make a recommendation now and decide between (ahu, fence, vegetation) that way no need to re-agendize? Council decision is to re-agendize; discuss at next meeting because 2 issues: specify protocols and whose doing it and surface demarcation to ensure no cars drive/park on burial.
- Council Vice Chair Maxwell asked who would be doing protocol. Mr. Fuentes replied Mr. Ke'eumoku Kapu.
- Councilmember Dukelow would recommended conversation with community re: proper ways that the moe pu (burial goods) be placed.
- Type of burial is quite unique explained Mr. Fuentes. Subsurface, approximately 3 feet. Inside of coffin with wall goes around it. Integrated with a number of European artifacts. Remains positioned in a way inconsistent with Hawaiian burials.
- Consult with descendants from area on what it should look like, specifically Mr. Opupele recommended Councilmember Fisher.
- Council defer decision on item and asked that it be re-agendize for next MLIBC meeting.

B. Cultural Descendancy Recognition of Foster Among to Unidentified Human Skeletal Remains, SIHP #5050-03-8512 at the Lahaina Wastewater Reclamation Facility Project, Honokōwai Ahupua'a, Moku of Lāhainā, Island of Maui, TMK: (2) 4-4-002:029

Discussion/Determination: Discussion and determination whether to recognize the above individual as a cultural descendant to unidentified human skeletal remains at the above location.

- SHPD Burial Site Specialist Kealana Phillips read aloud SHPD letter of recommendation to the council.
- Council Chair Antonio remind public to limit testimony to 3 minutes and to please testify on topic.
- Auli'i Mitchell address council on agenda item.
- Mr. Mitchell states that he serves as Oahu IBC, Vice Chair. Mahalo to council for serving. Also work for Cultural Surveys Hawai (CSH). Liaison for Waiola Church, Lahaina. First like to recognize Waiola Church and say thank you to them, Na Kia'i Committee for opening their doors in their cemetery for these Shaw burials from Lahaina Wastewater Treatment Facility. It's time. Received a letter from Mr. Among through CSH. His request is to not have them buried at church because they are pre-contact burials. Mr. Mitchell states that the church fully supports Mr. Among request to take care of iwi from Lahaina Waste Treatment Facility.
- Applicant Foster Among address council on agenda item.
- Mr. Among explained that if council has questions re: genealogy, applicant ask that meeting go into executive session.
- Tama Kaleleiki address council on agenda item.
- Mr. Kaleleiki stated his 'ohana descends from the Shaw. 'Ohana owned half of what is now known as Waine'e cemetery. 1878, 'ohana given all portions to church. All family have either been buried in area or in Kā'anapali. Do have pre-contact from Christian burials. Mix of French Catholics and protestant.
- Mr. Kaleleiki explained he is in support. Mr. Kaleleiki mentioned that one thing does not do is argue over kūpuna. If someone's going to come and mālama; all for it. Concern Mr. Kaleleiki has is the burial location. Where chosen, pre-contact, and families. Always open. For that reason, church has

taken burials that were disinterred from Honokōwai and areas and reburied at church greave yard (60's/70's) per Mr. Kaleleiki.

- Council Chair Antonio close public testimony.

- **The MLIBC recognizes Mr. Foster Among to Unidentified Human Skeletal Remains, SIHP #5050-03-8512 at the Lahaina Wastewater Reclamation Facility Project, Honokōwai Ahupua'a, Moku of Lāhainā, Island of Maui, TMK: (2) 4-4-002:029**

- **Councilmember Scott Fisher makes motion.**

- **Councilmember Kahele Dukelow seconds motion.**

- **All aye; No nay**

- **Motion Carried.**

C. Cultural Descendancy Recognition of Victoria Kaluna-Palafox to Unidentified Human Skeletal Remains, at Maui Lani Phase VI and Maui Lani Phase IX, Wailuku Ahupua'a, Moku of Wailuku, Island of Maui, TMK(s): (2) 3-5-099:138-142, and (2) 3-8-007:153

Discussion/Determination: Discussion and determination whether to recognize the above individual as a cultural descendant to unidentified human skeletal remains at the above location.

- SHPD Burial Site Specialist Kealana Phillips read aloud SHPD letter of recommendation to the council.

- Applicant Victoria Kaluna-Palafox address the council.

- Ms. Palafox explained that her connection to Jonathan Napela is very broad. Ms. Palafox states that her connection as a descendant to the iwi kupuna at Maui Lani VI, IX is actually through the Wahine of the Kane. They are the native, true kupuna. Heard and read stories of Jonathan Napela. Still stand on being connection to that. His wife (Alika Kanui) is Ms. Palafox grandmother. Herman Kukahaoa Kamoku is grandfather. Mary Parker (mother of Herman) is the daughter of Jonathan Napela. Ms. Palafox doesn't understand what else she needs to provide to be recognized as a cultural descendant. Ms. Palafox continues to take care of these kuleana lands (spiritually). Waikapu had a church up above. Kupuna buried up there. Practices that were done with parents/grandparents, landscape used to be different. All sugar cane fields. Charcoal pit in vicinity. Things change. No idea where iwi from church been relocated. Asked what happen/where went. No one can answer where they are.

- Ms. Palafox stated that she is a Napela. Napela only had one daughter, Kahaleohai. She married Keko'owai. Keko'owai comes from a chiefly line on Molokai. How Daniel Napela ended up on Molokai, Ms. Palafox stated she has no idea. Daniel Napela married Ms. Palafox Tutu Wahine from Wailau, back side. Jonathan Napela was also on Molokai. Question arose is Daniel Napela Jonathan Napela brother? Could be. Or could be a son from another mother.

- Ms. Palafox encouraged council to please ask if need more information.

- Council Vice Chair asked explained to Ms. Palafox that council would really like, encourage applicant to connection the dots. Council Vice Chair Maxwell asked if applicant would be comfortable to explain genealogy in open meeting or executive session.

- Ms. Palafox requested executive session.

- Motion to go into executive session put forth

- Motion seconded.

- All in favor to go into executive session

- All aye; No Nay
- Council go into Executive Session at 9:53AM.
- Council vote to end Executive Session at 10:15AM
- Council decision is to defer pending more information provided by applicant. Applicant in agreement with decision.

D. Discussions about HRS §6E-3 (3) Development of a Statewide Survey and Inventory to Identify and Document Historic Properties, Aviation Artifacts, and Burial Sites, including all those Owned by the State and the Counties and HAR §13-300-28 (b) The Department Shall Develop a Statewide Inventory Which Identifies and Documents Burial and Reburial Sites in Accordance with Section HAR §13-300-31

Information/Discussion/Recommendation: Discussion about the above topic.

- Councilmember Leiane Paci explained that she requested item to be on agenda. It was discussed in the April 2017 meeting. At that time, Tanya Lee-Greig testified she had worked on the state inventory when she was interning. Burial Specialist Kealana Phillips said he would look into where the info is now and perhaps updating report explained Councilmember Paci.
- Councilmember Paci explained she wanted an update on the inventory list from the department and wondered if that information is accessible to the burial council?
- Burial Sites Specialist Phillips explained that the department does develop a statewide inventory. It's in the form of the State Inventory of historic Places (SIHP) files; not in (complete/updated) list to his knowledge. Burial Specialist Phillips stated that to his understanding, SIHP data/info is maintained by SHPD GIS Specialist, Mike Wahl. Mr. Phillips states that Mr. Wahl has a digital list. Not sure if only internal or accessible to public/council. Need to check per Mr. Phillips. Mr. Phillips explained that SHPD currently has a file cabinet full of SIHP (sites) info hardcopy in office, as well SIHP for burials in separate burial cabinet. However, Mr. Phillips is unsure if hard copies currently in office is included in the list that Mr. Wahl maintains or if it's just the newly assigned numbers that Mr. Wahl currently keeps track of.
- Mr. Phillips explained that when he registers a burial (given SIHP number), that number is assigned by GIS Specialist. Per Mr. Phillips, that number is put into a database. Where database, who has access, Mr. Phillips states he is unsure. Mr. Phillips explains process to receive SIHP includes Mr. Phillips filling out appropriate forms, sending info to Mr. Wahl and Mr. Wahl assigning number. Mr. Phillips explains that he creates a file for the registered burial which gets filed away in cabinet in office. Mr. Phillips noted that he seldom registers burials; most SIHP request come from archaeologist.
- Question arose about creating a map using SIHP info. Mr. Phillips explained that the last time he spoke to Mr. Hinano Rodrigues (about month ago), Mr. Phillips was told that GIS Specialist Mike Wahl is pulling info from BTP's and SIHP and creating map. Unsure on status of map. Need to follow up.
- SHPD Cultural historian Ikaika Nakahashi explained that the official way to request documents is by filling out the request to access a government record form which can be found at the office of information practices (OIP). Can be found online.
- Council request an update from department on database.

- Council member Johanna Kamaunu asked if inadvertent, previously i.d., reports that come across burial council would be included in database. Mr. Phillips replied that if an SIHP number was requested (which typical is), it would be included in database.
- Council Vice Chair Maxwell stated that database available to public, what would stop someone from gaining access to all SIHP and be able to know all locations of historic properties including burials.
- Councilmember Paci stated that council has ability to deem items sensitive/confidential and that info would be redacted from any report released to public.

E. E-mail Communication from MLIBC member Kahele Dukelow, dated August 15, 2018 re: Ideas and Questions for Maui Lani, Phase 6, Ahupua‘a of Wailuku, District of Wailuku, TMK: (2) 3-5-099:225
Information/Discussion/Recommendation: Discussion about the above e-mail

- Councilmember Dukelow stated that can roll this item into discussions of the inadvertent finds at Maui Lani. Per Councilmember Dukelow, after reviewing items, ones that are still pertinent, questioning AIS, when re-open, whose kuleana is that, what kind of testing was done before redesigning project, total burials in various phases in Maui Lani. And some questions specific to phase 6.
- Councilmember Dukelow believes probably can address all those things when discussing Inadvertent Find Item A. on agenda (Maui Lani phase 6, increment 4).
- Who gets to designate, when re-open AIS and what parameters surrounding that. Because it's designated as inadvertent, when can we possibly change from inadvertent to previously known? Asked Councilmember Dukelow Amended process? asked councilmember Kamaunu.
- According to answer to the question, who has kuleana, when can it be done. It is the archaeology branch that can determine that an AIS be re-open stated Councilmember Dukelow.
- Burial Council can recommend to archaeology branch to re-open AIS? Don't know yet. Proposed question to Mr. Rodrigues stated Council Chair Antonio. Mr. Rodrigues replied that he will send question to archaeology branch chief Dr. Susan Lebo.
- According to Council Chair Antonio, question that she asked H & C branch chief Mr. Rodrigues was about burial council recommend archaeology branch to re-open AIS in order for iwi to be considered collectively while construction on going. Council Chair Antonio also asked, because brought up in last meeting, monitoring under 6E for identification purposes, takes iwi out of inadvertent and puts it in domain of previously identified. Flaw in monitoring report, that those reports aren't legally due until construction is done. Wanted to know how law, or SHPD policy can be change. Those are the three questions that council Chair Antonio put forward.
- Councilmember Kamaunu asked while waiting for the responses from the department, what happens to project in mean time. Answers can come months down the road, project could be done by then.
- Not too sure where to go from here with all this info per Council Chair Antonio. Wondering if further things that should be discussed. GPR? Even all

of that can be discussed in context when talk about Maui Lani per Councilmember Dukelow.

- Councilmember Kamaunu asked at the time they discover iwi, till the time they finish grading, what is supposed to be done for curating iwi? It is councilmember Kamaunu understanding that iwi supposed to remain in place. If not, what mechanism used to remove so that they can continue grading.

- Burial Specialist Phillips explained the process that SHPD follows, when iwi is discovered. Mr. Phillips stated that if one burial is found, SHPD has 48 hours to make a determination if it is requested (72 for multiple). Often times, SHPD will give a preliminary determination based on what is initially reported to SHPD. For example, if the discovery appears to be a primary burial / in situ burial, SHPD will be more inclined to issue a preliminary determination of preserve in place. No further testing needed, iwi stays there, buffer erected, work can continue elsewhere. Or another example, per Mr. Phillips that if a scatter is found (no obvious primary or in situ), the preliminary determination would be to collect iwi to test to ascertain if it is indeed a scatter or associated with primary. The reason why SHPD gives the ok to collect is to ensure iwi is protected. If scatter were allowed to be left where they are, would not be able to appropriately ensure safety of iwi.

- Question arose from council re: notification of community. Burial Specialist Phillips replied that MPD, coroner (Chief of police), District rep on MLIBC and OHA are all notified. The reason that Mr. Phillips does not contact the community directly is because of time constraints when a determination needs to be made. Mr. Phillips explains that by contacting the district rep, he hopes that the rep will be able to reach out to the appropriate members in the district to share discovery/get info.

- Discussion ensued by council re: burial clusters, concentration. More weight given to preserve in place. In archaeology rules. Similar to primary burial / in situ where more weight is given to preserve in place per Mr. Phillips.

- Council asked about definition of cluster/concentration. No definition; judgement of SHPD? General acceptance is to preserve in place, regardless of single or multiple stated councilmember Paci.

- Who makes designation of concentration, clustering, complex? Arch features different than burial features; treated differently. Arch does one, culture takes care of the other. No standard as to what's considered concentration. Could have hundreds of burials spread out in different parcels per Councilmember Kamaunu.

- Please see attached Q & A

- Council Chair Antonio call Meeting recess at 10:40AM

- Council Chair Antonio resume meeting at 10:51AM

V. SHPD/INADVERTENT DISCOVERIES/CORRESPONDENCE

A. Letter dated September 10, 2018 from the County of Maui Department of Environmental Management re: Initiation of Consultation under Section 106 of the National Historic Preservation Act, 36, CFR Part 800, Sheraton Wastewater Pump Station Modifications, Honokōwai Ahupua‘a, Kā‘anapali District, Maui Island.

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

- Dan Shupack from the County of Maui, DEM, Wastewater Division address council on item.
- Brief description of project. Renovating existing pump station. Built originally 1961. Renovated over the years a couple of times. Doesn't meet modern codes. Everything under ground, including high voltage electrical. Renovating within the bounds of the existing pump station structure. Removing equipment, mainly electrical controls to above ground cabinets. Replacing pumps, piping within station. Very minor amount of excavation that needs to be done for project per Mr. Shupack.
- Existing vault 20 ft. x 19 ft. Most work will be done within vault. Need to replace 6 ft. length of pipe that leads from vault to existing discharge manhole. Located above existing sewer pipe (replacing). Excavation in back fill (previously dug trench).
- Contractor has hired SCS for archaeological monitoring. Activities monitors will watch is the aforementioned pipe replacement and the removal and temporary relocation (Kihei gardens, landscaping, nursery) of about four, shallow rooted sea grape trees, which will be replanted at completion of project per Mr. Shupack.
- Install a couple of concrete pads for the above ground electrical equipment which will be installed on existing grade, minimal amount of scraping/grubbing.
- Councilmember Dukelow wanted clarity on area of potential impact. Tank?
- Mr. Shupack stated that it is a concrete vault measuring 20 feet by 19 feet (20 feet deep). Consists entirely of existing pump station. Everything done within existing box. Only digging to be done (about 6 inches) per Mr. Shupack
- Mr. Shupack clarified work to install the new discharge pipe above old pipe. Old pipe will be abandoned. Have monitoring.
- Councilmember Fisher asked when originally built, any iwi kupuna discovered?
- Mr. Shupack replied he does not know.
- Council stated that whole area is sensitive/iwi everywhere in area. Council suggested County have a tentative plan if they do encounter, have a list of people to call/consult with. Chances encounter something is great, per Councilmember Dukelow. Have a plan for when/if happens. Monitoring as well as some type of protocol plans.
- Councilmember Kamaunu asked about staging equipment. Mr. Shupack explained that there is a fenced off area where equipment will be. Not a lot of heavy machinery required for this project per Mr. Shupack.
- SCS monitoring plan? Will be a monitoring report stated Mr. Shupack. Will be onsite monitoring excavation.
- Councilmember Ho-Nikaido stated that according to letter, system is said to be undersized, small pump. Why not increasing size, since going to this length of work? Not have to do it again / sensitive area.
- Mr. Shupack stated that research suggests system does not need to be increased at this point in time. Modifications being done, mainly to comply with modern day codes.
- Once modified, should handle area (mostly built out). Compacity not expected to grow that much in future.
- Foster Ampong address council.
- Mr. Ampong seek clarity because project federally funded, triggered Section 106? Yes. Mr. Ampong stated for the record, family Keka'a. Area in question, Keka'a. Area is where mother and aunty born. Grandparents buried at Pu'u Keka'a and dug up and removed in 1962. Mr. Ampong request to be included in

the notification process. Mr. Ampong wants it to be known that just because an area has been previously disturbed, does not mean that iwi will not be found (Kā'anapali, Lāhainā bypass).

- Mr. Ampong stated he would like to see a monitoring plan be drafted/approved before project commencement (report after the fact).

- Councilmember Dukelow asked in light of the fact that it is known that area has burials, if something found, how council make sure find is designated previously identified and not inadvertent. Encourage County to do more historical research?

- If not part of AIS, automatically considered inadvertent (after project starts), stated Councilmember Fisher.

- Burial Specialist Phillips remarked that the other way would be for someone to come forward and identify location of a burial prior to work commencing.

- Mr. Ampong stated his 'ohana inhabited area from late 1800's to early 1900's and much further back. Mr. Ampong mentioned that what his mother told him about area is that there is a lot of Hawaiians buried there. From Hanakao'ō to Honokowai. Appropriate mechanisms in place for if unforeseen circumstances arise; cover all bases. Particularly notification process. Mr. Ampong stated he is a recognized lineal Descendancy to his grandparents (2007). Recognized Cultural descendant to iwi kupuna inadvertent dug up at Hyatt (2013 ??).

- Councilmember Ho-Nikaido stated that to Kahele point, written monitoring plan should be a proactive plan, including consultation with recognized descendants.

- Burial Sites Specialist Phillips clarified Descendancy. Mr. Phillips explained that a recognition of Descendancy is specific to a set of skeletal remains. If new remains are unearthed in a particular ahupua'a, those that are already recognized to iwi in said ahupua'a will need to re-apply for Descendancy, if they are interested in being recognized to the new find. Applicants can use the previous recognition as evidence to justify connection to the ahupua'a.

- The MLIBC recommends the drafting and approval of a monitoring plan in consultation with lineal and culture Descendants and to consider hiring a cultural monitor for this project as part of the Sheraton Wastewater Pump Station Modifications project.

- Councilmember Fisher propose motion

- Councilmember Dukelow second motion

- All aye; no nay

- Motion carries.

- Trinette Furtado address council. Ms. Furtado stated that it is concerning not see a legal representative (corporation council) at meeting because of issues hearing, items deliberating on. Very important to have one. Other county boards have one; disservice to council and public by not having one. Ms. Furtado explained that County DEM should be well aware they need to have a plan in place for if/when things are found. If iwi kupuna found in area, will more than likely have more. Should not be considered inadvertent. Just because was not found first time around; not inadvertent. Concerning, even if only 6 inches of soil affected. Useful, necessary upgrade to pump station. More deliberation, more discussions as it comes before council. No legal rep here from council to clarify. Will ask for attendance by corporate council in future council meetings when county items on agenda per Ms. Furtado.

- Councilmember Ho-Nikaido clarified that burial council not a county board; state. No Corporation Council. Consult with AG for opinions.

- Kaniloa Kamaunu address council.

- Mr. Kamaunu stated commission should do a better job to regulate process and procedures to ensure things are consist across the board from project to project, so that council can do a better job in their decision making.
- Department should ensure reports/plans are submitted and be available to review for future work in area to ensure historic properties identified and be able to be protected.
- County and State need to follow their rules. How expect public to follow rules if departments aren't.
- Council Chair Antonio close public testimony.

B. 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 September 26, 2018, September 28, 2018, and October 1, 2018, Ahupua'a of Wailuku, District of Wailuku, TMK: (2) 3-5-099:225

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

- Nico Fuentes address the council on agenda item.
- Mr. Fuentes acknowledge recent site visit attended by representatives from Developer, Archaeologist Nico Fuentes, Councilmember Dukelow, SHPD staff Mr. Phillips, and Mr. Nakahashi.
- Discuss various positions of those in attendance. Mr. Fuentes stated that it is his understanding operating within the accepted AMP (within law). Councilmember Dukelow alluded to a standard about the law. Discuss further in this meeting.
- Mr. Fuentes explained the recent finds. On September 26, 2018, during monitoring of the installation of the main sewer line within Roads E, N, and A, per accepted AMP, all excavations within the 100 ft. cluster of known burials are under controlled excavation. A possible burial pit designated TS176 was identified in road A approximately 3 ft. below surface. All excavations were halted, pit was record by archaeological personnel and caution tape and orange protective fencing installed around pit. TS176 is located in the center of the proposed were line, which must be installed approx. 8 ft. below surface. Due to the circumstances, construction activities will be relocated away from this area until consultation is performed with SHPD and possible alternative routes are designed for the sewer line.
- Mr. Fuentes clarified that the general rule is that if a burial pit is found inside of a known burial ground, presumed to be primary in situ. No need further testing.
- Two days later, on September 28, 2018, TS 177, a possible burial pit was observed in Road A, approximately 5 ft. below surface. All excavations halted, pit was recorded, and orange protective fencing was installed around pit. TS 177 is located at the western edge of the utility corridor per Mr. Fuentes.
- October 1, 2018, a scatter (TS 178) was observed on the southern side of the utility corridor. Excavation in this area was halted and relocated to the northern side of the utility corridor. Later in the afternoon, another scatter was observed (TS179) in the northern side of the utility corridor. Due to these circumstances, and if no additional possible burial pits are identified, the proposed SMH will be relocated further east, approximately 20 ft. from TS177.

- To confirm, first two finds were pits (presumed primary in situ), later two were human skeletal remain finds per Mr. Fuentes.
- Mr. Fuentes mentioned that he has had a conversation with SHPD re: assessing scattered remains (highly variable/could occur in a variety of manner). Mr. Fuentes stated that as part of due diligence at archaeologist, need to ascertain if whether primary, secondary, scatter (no known location for origin).
- Upon further testing, it was determined that TS 178 is a partial in situ/primary burial of a child or infant. Scattered remains were identified at a higher elevation in disturbed sand. After these remains closed, partially articulated elements of this burial were identified in a primary context. Once in situ portion discovered all manual investigations halted and the collected/disturbed skeletal remains are curated on site.
- After further testing, TS 179 is determined to be a scatter of cranial fragments from an adult male. The scatter was collected within disturbed sand comprised of the distinct Grade A yellowish brown coarse sand. All Grade A fill sand was screened and appeared to overlie another fill layer comprised of the finer, brownish grey sand. Initial troweling and screening of the brown grey sand was negative for human skeletal remains. Based on adjoining profile, the fill layer appears to continue for another 4 ft. below surface. The collected, disturbed skeletal remains are curated on site per Mr. Fuentes.
- In light of these recent finds (as well as others previously discovered in close proximity), portions of sewer line will need to be redesigned in area. Survey crew has recorded location of finds. Currently in process of updating current construction plans, as well as determining possible re-designs for area to preserve TS177 and 178 in place. Once possible options for sewer line are determined, consultation will be undertaken with SHPD to determine appropriate treatment and preservation measures of burials, according to Mr. Fuentes.
- Found 4 people within 5 days. Per AMP, operating within the law per Mr. Fuentes. That is where discussions, and in some way ended. As to whether higher standard can be invoked; Absolutist argument. On one side, group does not want anything to proceed in area. Other side, group motivated to do something in that area. How to come to understanding. Integrity of archaeologist not be compromised nor the gentlemen of the State, but as the law is written and accepted. All Mr. Fuentes can do is offer information.
- Councilmember Dukelow asked Mr. Fuentes to confirm where burial preserve is located in this area.
- Mr. Fuentes pointed out preserve to council.
- Councilmember Fisher wanted clarity on size of scatter. Mr. Fuentes replied that TS 179 roughly 10 ft. by 5 ft.
- Council Vice Chair Maxwell asked Mr. Fuentes what exactly was found (scatter) TS 179. What is interpretation of scatter? Fragments? Isolated finds? Mr. Fuentes replied that find was of an adult male, approx. 40, upper portion of cranium. That's all that was found. No layer of undisturbed earth along bones; no other indication of other skeletal remains. No idea how bones got there. Disturbed meaning the earth altered to some extent, compacted, driven over for a period of time per Mr. Fuentes. Chance it was naturally scattered via erosion or single scatter from episode that happened and hit again, misplaced. Breaks indicate that it was post-mortem. Did not occur when individual was interred. Level of bleaching exposed for some time. Activity in area going on for 20 years. Interred, disturbed and immediately covered up.

- Council Vice Chair Maxwell asked when scatter found, no more in-depth testing? Mr. Fuentes replied that what is testing? Applying archaeological capabilities? If burial not archaeological site; no can test. Mr. Fuentes explained that what he can do, per AMP is to inform state and council.
- Councilmember Dukelow asked how many burials identified within preserve? Mr. Fuentes replied that he does not know. Mr. Fuentes is present representing Atlas Archaeology. PI for the firm that previously did work is not present at meeting.
- Burial Sites vs. Archaeological Sites. Burial sites treated as individuals. In term of cumulative info re: burial sites, might be little bit more difficult get.
- Re-design trigger AIS? Not need to put more holes in ground (traditional procedure for AIS). Some discussions with CSH to integrate GPR. Previous councils were not receptive to that. In lieu of digging a trench near someone's grave, get an imagine instead. Council can weigh in on what's more invasive.
- Substantial size of burial preserve (assume substantial amount of burials located within) commented Councilmember Dukelow. Asked Lisa re: GPR, not just during construction but during AIS. Looking for burials to make better decisions. Some reasoning for not using it is a false positive, might say it's there, but might not be. Do not get false negative. Look at GPR, not looking for burials, but for open/negative space. Develop re-design around that.
- Councilmember Dukelow was under the impression that re-design was done in consultation with archaeologist. However, untrue according to Mr. Fuentes. Re-design done by engineers (landowner/developer).
- Councilmember Fisher asked about flexibility of moving Road A? Mr. Fuentes stated that if there is a burial in the middle of the road, need to re-design. Feeling developer is getting from SHPD is that there will not be any relocation of burials going forward.
- Councilmember Fisher mentioned in the past, one of only times, have to relocate burial in road came from DOT, stating that cannot move roadway.
- One thing to keep in mind, per Mr. Fuentes is that there may be precedence for relocation of burials (in road) or for burials to be preserved in place under road.
- Councilmember Dukelow asked re: Road A, road that goes between two preserves, there has been previous relocation of burials? Answer is yes. Decision was made thru consultation with MLIBC and SHPD.
- Preservation area located on both sides of road. Preservation area under road. Vertical buffer. Question of semantics per Mr. Fuentes.
- Councilmember Kamaunu asked about lots with burials located within. Under impression lots would not be used (given as part of preserve). Maps showing something different. Mr. Fuentes explained that not privy to current maps. Lot numbers, designation, sizes may have changed/be different.
- Councilmember Dukelow stated that one thing she would like to see is in order to have a meaningful discussion about area is a map showing not only current, but previous finds as well. Council Vice Chair Maxwell wanted to know proximity of recent in situ finds (TS 178) to sewer corridor. Mr. Fuentes replied that it is situated near a proposed lateral line going from main corridor to a house lot.
- No need a statistical, predictive model, even though a very helpful one was done by former Maui Lead Archaeologist Dr. Barker Fariss. Can see where burials is/will be. In conjunction with GPR, can utilize some natural clues. Never see a lithification of sand on top of burial. See burial dug into lithified sand. Question of time, per Mr. Fuentes. Use knowledge of sand dunes

construction, and exposed profiles. Not be interfering with trenchless excavation. One thing to consider is the absolute depth of burial in territory (15-17 ft.). Proposed utilities will be 20 feet deep. Might not have burials that deep, but according to OSHA, need to dig wide for safety. Red / hot zone. Good chance of finding more, per Mr. Fuentes.

- Trenchless, thru strata that is sterile, least invasive. GPR depth? Varies per Mr. Fuentes. Not best arch to speak on behalf of GPR. Learning curve using GPR in area. Might be best method at this point.

- Comprehensive map of burials at ML VI. Ask Lisa? Nico? State? Councilmember Paci recommended asking the landowner. Landowner would be the one to authorize, landowner kick it down to archaeologist. Or perhaps the department may have that info (SIHP numbers).

- Burial Specialist Phillips replied that similar to our conversation earlier in the meeting, Mr. Phillips would need to speak with GIS Specialist Mr. Mike Wahl as well as Branch Chief Hinano Rodrigues to check on status. And when complete, who will have access to map. Mr. Phillips stated he will follow up and provide update to council.

- Question arose re: SIHP numbers. Is SIHP assigned per burial / or one for an entire preserve. My understanding is that each burial would have an SIHP number assigned to it, unless it is part of larger preserve. If that's the case, the preserve would be identified with one SIHP encompassing all burials per Mr. Phillips.

- Atlas Archaeology currently in consultation for use of GPR with CSH.

- Council Chair Antonio open item for public testimony.

- Noelani Ahia address council on agenda item.

- Per Ms. Ahia this is a Wahi Kapu. Paradigm separation exist between people who are motivated to develop and people who want it stopped. Our 'Āina, our iwi kupuna, our collective mana of our lāhui. Should not be disturbed according to Ms. Ahia.

- Previous testifier, see pit in known burial ground, said "all those burials", if developer archaeologist referring to it as known burial ground. Not inadvertent finds.

- Ms. Ahia referenced book Ho'i Hou I Ka Iwikuamo'o, legal primer explaining definition of previously i.d. iwi kupuna. Burial identified thru known oral or written testimony. Point that Halealoha brought up last December.

- According to Ms. Ahia, last December, council made first motion for phase 6. None of things addressed. Recommend when write motion, forward to department heads so everyone in system understands council thoughts and points of view. Not relying on SHPD recommendation.

- SHPD, H&C branch, who is responsible for taking on Hinano role for inadvertent discoveries when he is not here? Kealana?

- In terms of reopening AIS, case precedence, Kelly vs Oceanside partners. Should not dig more trenches. Re-open with use of GPR. Ms. Ahia reference predictive model generated by former SHPD Lead archaeologist Fariss. Last meeting, Mr. Fuentes stated used predictive model to find burials, if looking for burials (using model), should be considered previously identified (not inadvertent) per Ms. Ahia.

- Sewer lines next to concentrated burial preserve... 'a'ole. Burials found during AIS, was not that many (inadequate). How advocate for those? Council still have prevue over that. All changes should come before council; community groups should be consulted with. Have not been. Ms. Ahia made mention of the

monitoring report that Lisa submitted to SHPD. It was one of Dr. Fariss stipulations, in order to lift Stop-work order. Report list 160 burial finds within ML VI.

- Issue of whether there is a pattern to the burials??

- Reporting of iwi to OHA. No idea who it gets reported to. According to Ms. Ahia, everyone she spoken to at OHA has not been getting inadvertent reports from SHPD. Reporting find to District Reps? Finds being reported to right people?

- Amy Halas address the council.

- Ms. Halas stated that Mr. Fuentes made a reference in his testimony re: find TS 178. Prior to that, according to Ms. Halas, Mr. Fuentes stated he does not know how much burials in area.

- Ms. Halas has a summary of initial find of burial information. 169 archaeological features. What waiting for? Halealoha mentioned in previous testimony re: how bringing scattered remains together (whole) is not right, not pono. No way to know which iwi belongs to which people per Ms. Halas. Ms. Halas concerned that there is no archaeologist at SHPD. Worried about iwi kupuna in Maui County. Where is Dr. Susan Lebo?

- Ms. Halas referenced AMP. Allege, community witnesses, of stipulations not been followed, adhered to. No enforcement. Ms. Halas made mention that AMP states No burials outside of concentration. However, documented in AMP, burials found outside of concentration. High probability to find more iwi (ML VI, inc 4) per AMP.

- Ms. Halas question structure of ASH / ATLAS. Whose doing work at ML VI? Which company? No archaeologist. Hinano absence, Dr. Lebo in Kapolei. SHPD breaching fiduciary duties?

- Kaniloa Kamaunu address council.

- According to Mr. Kamaunu, no clear format how things are handled, business done. Left up to developers re: what does and doesn't need to be reported. No regulations on archaeology, not licensed by the state, doesn't have to register. Problem with that is there are laws that are being found, supposed to be reported to police (MPD). Medical examiner need to examine find, determine if crime scene or not. Haven't been happening per Ms. Kamaunu.

- Mr. Kamaunu referenced project on Waiko Rd. According to Mr. Kamaunu, arch monitor removed bones, put into package and brought to supervisor. Not osteologist. Should not do that. What if crime scene? It's occurring all over. No regulation, to regulate any of these actions. How community know that scatters are not associated with crime scene. No standardization to ensure rules follow, laws aren't being broken per Mr. Kamaunu.

- Dis concerning things taken so lightly. These are laws. Legislative laws for protection of people. Finds in areas of known burials. Still talking about inadvertent finds. No

distinction of what actually is being found. Not sure what council, SHPD, department adhere to. Wild west.

- Clare Apana address council.

- Ms. Apana referenced AMP. Essentially AMP is blueprint/approval that allowed developers to conduct work which endangers burials (precious to Hawaiian culture). Take this very seriously. Only thing they've given community is the AMP, per Ms. Apana. One monitor One earth moving machinery. What methodology used in testing. Community ensure stipulations followed. Take kuleana very serious. Not adequate to protect iwi kupuna, but this is what is given to us. Expect Archaeologist to follow

agreements/follow law (AMP).

- Community didn't make up laws; unhappy with them. Archaeologist didn't make up law, need to follow/bound by them per Ms. Apana.
- Burial council can ask questions. Ask SHPD. Is it okay not to abide by stipulations in AMP? Need cultural monitor per Ms. Apana.
- Ms. Apana stated community was asked to accompany OHA Trustee Hulu Lindsey on site visit. Community question monitoring plan. Not given answer.
- Ms. Apana wish community is able to be more involved with project.
- Amy Halas address council again. Ms. Halas referenced Dr. Neller 1984 Bishop Museum find that about golf course and ML VI property. Astounded how allowing this to happen in documented burial preserve.
- Council request to question Mr. Fuentes again.
- Council Vice Chair Maxwell asked how fulfilling all requirements listed in AMP? Social Media pics depict AMP not being followed, untrue. Monitor in pic, community/public not able to identify monitor.
- How know where to work, what to watch asked councilmember Dukelow. Mr. Fuentes Explained that there is a variety of different reasons that determine why certain work/material that is being removed is monitored. Sand / Fill; different material. Conscious where machines move always. Per Mr. Fuentes, problem lies when people that are looking/observing and not know what project entails, what's happening, where material come from, where it's going.
- Mr. Fuentes explained that it is a testament to monitors following the plan that the recently found burials are being discovered (not inadvertently hit/disturbed).
- Who enforces monitoring plan asked the council? Who checks to make sure monitoring? plan being followed. Self-regulate at the moment?
- Archaeologist would be in charge of ensuring monitoring plan is being followed stated the department.
- Mr. Fuentes stated County has approached him the past. Not necessarily about AMP.
- Councilmember Kamaunu alleged that AMP was not being followed when conducted site visit.
- What to do when someone has a complaint? Report to Susan Lebo? DOCARE?
- What happens if allegations made against archaeologist is untrue asked Mr. Fuentes.
- Welcome to deny replied Councilmember Fisher, contest. If investigation, results of investigation will determine how things are worked out. Falsely accused, what's recourse clarified Councilmember Fisher. Mr. Fuentes replied yes.
- Legal means? Probably no protection in burial rules stated Councilmember Paci.
- Make complaint, investigate recommend Councilmember Dukelow.
- Definition of ground? What's ground when disturbed? Left to interpretation. Issues not clearly defined.
- Clarify stipulations in AMP with Dr. Susan Lebo recommended Councilmember Paci. Agreement, some interpretation, construction methodology different for every contractor, every project.
- Request for investigation come from burial council? Or individual/community member?
- Sit with community to resolve issue?
- Form for complaint asked councilmember Kamaunu. Burial Specialist Phillips replied that complaints would be directed to DOCARE. They are the enforcement branch for the state and would conduct type investigations. Other option is the county has a complaint form that can be filled out. Mr. Phillips unsure of County process.

- Motions proposed by the council:

1) MLIBC requests Towne Realty provide following information 1) comprehensive, up to date map of iwi kupuna found in Maui Lani Phase 6 and 2) accounting of the

number of iwi kupuna found at Maui Lani Phase 6.

- Councilmember Fisher propose motion
- Councilmember Ho-Nikaido second
- All aye; no nay
- Motion passed

2) MLIBC recommends use of GPR in engineering redesign of ML VI, increment 4 to identify negative corridors for sewer line.

- Councilmember Fisher propose motion
- Councilmember Dukelow second motion
- 6 aye; 1 nay
- Motion passed

3) MLIBC requests SHPD to conduct an investigation to determine if Archaeological Monitoring Plan is being adhered to (September 15 – October 17) at Maui Lani Phase 6

- Councilmember Fisher propose motion
- Councilmember Dukelow second motion
- 6 aye; 1 nay
- motion passed

4) MLIBC challenges SHPD designation of the finds in Phase 6 as inadvertent; Should be designated as Previously Identified. MLIBC Recommends any finds at Maui Lani Phase 6 moving forward be designated as Previously Identified (not inadvertent).

- Councilmember Dukelow propose motion
- Councilmember Fisher Second motion
- 6 aye; 1 nay
- Motion passed

C. Training for Maui/Lānaʻi Islands Burial Council on membership, roles, and responsibilities.

Information/Discussion: Discussion on the above item.
(BRING BLACK TRAINING BINDER)

- Item deferred

Meeting adjourned at 1:00 PM

Minutes by Kealana Phillips. SHPD Burial Site Specialist