



HISTORIC PRESERVATION DIVISION
DEPARTMENT OF LAND AND NATURAL RESOURCES
601 Kamokila Boulevard, Suite 555
Kapolei, HI 96806

MAUI / LĀNA'I ISLANDS BURIAL COUNCIL
DRAFT MEETING MINUTES

MEETING DATE: Wednesday, July 14, 2021

TIME: 9:00 AM

LOCATION: Online Via Zoom

ZOOM LINK: <https://hawaii.zoom.us/j/92727326269>

Meeting ID: 92727326269

Passcode: 808482

I. CALL TO ORDER

[9:03] Chair Maxwell calls the meeting to order

II. ROLL CALL Present:

Recording [9:04-9:06 AM]

Chair Dane Maxwell, Lahaina
Vice-Chair Kaheleonolani Dukelow, Honua'ula
Member Johanna Kamaunu, Wailuku
Member Iris Pe'elua, Landowner/Developer
Member Kyle Nakanelua, Hana
Member Scott Fisher, Landowner/Developer [9 AM-11:28 AM]
Member Everett Dowling, Landowner/Developer

SHPD Staff:

Andrew Kealana Phillips, Maui Island Burial Sites Specialist
Chris Ikaika Nakahashi, Cultural Historian
Tamara Luthy, Ethnographer
Iolani Kauhane, Maui Archaeologist
Andrew McAllister, Maui Archaeologist
Sheleigh Ka'ahiki Solis
Lesley Iaukea, O'ahu Island Burial Sites Specialist

PRESENTERS AND TESTIFIERS:

Cindy Young, Deputy AG
Sharron Paris
Reynaldo Nico Fuentes
Noelani Ahia
Janet Six
Kaniloa Kamaunu
Kai Markell

MEMBERS OF THE PUBLIC:

Jennifer Noelani Ahia
Janet Six
Foster Ampong
Cheryl Hotta
Kaniloa Kamaunu
Fay McFarlane
Lesley Iaukea
Kai Markell
Marcus Ohlheiser
Consuelo Apolo-Gonsales
Carol Lee Kamekona

Recording [9:06-9:07]

Dane [9:06] Housekeeping 5 minutes for presenters and testimony is 3 minutes
Please remain on topic and be respectful to the council fellow general public SHPD staff and AG. We are here to mālama our iwi and conduct ourselves in that way and hold the space in high regard for the kuleana

Ikaika [9:07] – if public has questions for SHPD, email SHPD and we will set up a time to meet and give information
Dane [9:07] if topic not on agenda, reach out to regional rep or Chair Maxwell and can discuss meetings in outside meeting and maybe agendaize that

III. APPROVAL OF MINUTES

Recording [9:08- AM]

[9:06] *No updates from SHPD on the meetings minutes but draft minutes are available on the SHPD website. The minutes will be available for the next meeting in two minutes*

Dane [9:08, 9:09]
Kealana [9:08]

- A. January 15, 2020
- B. June 3, 2020
- C. June 17, 2020

D. July 15, 2020
E. August 26, 2020
F. September 30, 2020 – Executive Session
G. October 8, 2020 – Executive Session
H. October 28, 2020 – Executive Session
I. February 24, 2021
J. February 24, 2021 – Executive Session
K. April 21, 2021L. May 19, 2021
M. May 19, 2021 – Executive Session
N. June 30, 2021
O. June 30, 2021 – Executive Session

IV. BUSINESS

Recording [9:09-9:19 AM]

A. Training for Maui Lāna‘i Islands Burial Council on membership, roles, and responsibilities. Information/Discussion/Recommendation: Discussion on the above item. (BRING BLACK TRAINING BINDER) The Council may go into Executive Session pursuant to Hawai‘i Revised Statutes section §92-5(a)(4), in order to consult with its attorney on questions and issues pertaining to the Council’s powers, duties, privileges, immunities, and liabilities.

Summary: This pertains to upcoming training next month on the MLIBC membership, roles, and responsibilities. The training will be in person as per governor mandate that all boards and commissions resume face to face meetings in pursuance of the Sunshine Law. Representatives from the AG’s office will be coming to Maui to conduct the training. The date remains to be determined.

Dane [9:11, 9:13, 9:14, 9:17, 9:18]
Kealana [9:10, 9:12, 9:14, 9:17]
Kahele [9:13, 9:15]
Kyle [9:14, 9:15]
Everett [9:15]

Dane [9:09] – introduces subject; training on the 28th on the same agenda item; hash out the best date to reconvene for training

Kealana [9:10] – want to discuss some options for dates, when we can set up training. Deputy AG will run the training, SHPD will be there to assist, in August set up meeting maybe? Challenge with August every board and commission meeting must be in person; August-end of the year governor mandate allowing for virtual meetings ending till January 1 when boards and commissions can meet once again. Need to check with deputy AG for when they can get to Maui in person for training. Hawaii island and Kauai are doing training same time as normal IBC so is that an option for this council or a separate day and time just for training

Dane [9:11] – if required to meet in person it will change things significantly and impact schedulign training. Do we wait till we have to meet in person

Kealana [9:12]– unless something happens everything moving forward will be in person as of now but he will talk to AGS about this

Dane [9:13] if we are meeting in person what is everybody's comfort?

Will we be back at office?

Kahele [9:13] are we certain governor again will allow virtual meetings in January or do we need to encourage him?

Dane [9:14] think its expiration of executive order

Kahele [9:14] – no space to continue to meet virtually? Mandate is in person?

Dane 9:14 Sunshine Law unless reinstate or extend

Kealana [9:14] – something on the books in January to allow option again but he doesn't know much but there will be a dead period to meet in person

Kyle – 9:15] ok meeting in person

Kahele – [9:15] ok but we are more efficient online

Everett [9:15] ok

Kyle [9:15] he likes virtual meetings, its more efficient

Dane [9:17] when is the soonest we could do training

Kealana [9:17] it is a powerpoint and its ready to go so just working around Deputy AG schedule

Dane [9:17] - how long presentation? 9-1 meeting

Kealana [9:17] - yes

Dane [9:18] - other than that need to reschedule. Anything else?

[9:18] *Public testimony opens by Kahele*

Dane [9:18] keep mics muted even council

Ikaika [9:19] no one signed up to testify

[9:19] *Kahele closes public testimony*

V. UPDATES

Recording [9:19-12:47 PM]

A. Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8- 099: pors. Discussion to include: Review of motions passed by the MLIBC at previous meetings. Update by descendants and representatives from HBT. Information/Discussion/Recommendation: Discussion about the above item.

Summary: This pertains to the history of the Maui Lani Subdivision Phase VI project. The Council reread all motions since early 2017. The Council inquiries about re-evaluating the original AIS and Andrew McAllister describes how HAR§ 13-284-11 allows for a review findings based on the permitting agency. He suggests that the Council may request the county to trigger the process to reopen an AIS. HBT representation will comment on previous motions at the next meeting. Discussion of the inadvertently discovered human remains occurred simultaneous with Agenda Item "Update A," but are summarized under Agenda Item "Inadvertent A"

[9:20] *Iris Pe'elua recuses herself*

Dane Maxwell [9:20, 9:24, 9:29, 9:30, 9:31, 9:32, 9:33, 9:34, 9:36, 9:39, 9:40, 9:41, 9:42, 9:43, 9:44, 9:45, 9:46, 9:47, 9:49, 9:50, 9:53, 9:54, 9:55, 9:57, 9:58, 9:59, 10:02, 10:04, 10:05, 10:16, 10:20, 10:21, 10:22, 10:31, 10:35, 10:38, 10:52, 10:53, 10:54, 10:57, 11:00 11:01, 11:02, 11:29, 11:32, 11:33 11:42, 11:45, 11:46, 11:56, 11:57, 11:58, 12:00, 12:01, 12:02, 12:03, 12:04, 12:05, 12:07, 12:08, 12:09, 12:11, 12:13, 12:14, 12:15, 12:17, 12:19, 12:22, 12:23, 12:24, 12:28, 12:29, 12:30, 12:37, 12:39, 12:42, 12:43, 12:44, 12:47]

Kahele Dukelow [9:20, 9:27, 9:29, 9:31, 9:32, 9:34, 9:36, 9:37, 9:44, 9:45, 9:51, 10:00, 10:02, 10:05, 10:16, 10:20, 10:2, 10:32, 10:35, 10:52, 10:59, 11:01, 11:45, 11:47, 11:48, 11:49, 11:50, 11:53, 12:02, 12:14, 12:19, 12:29, 12:30, 12:32, 12:34, 12:35, 12:37, 12:43]

Scott Fisher [9:34, 9:49, 10:26, 10:37, 11:02, 12:00, 12:01, 12:03, 12:05, 12:06, 12:07, 12:09, 12:13, 12:21, 12:25, 12:27, 12:28, 12:32, 12:36, 12:37, 12:39, 12:41, 12:42, 12:43, 12:46]

Everett [9:59, 11:02, 12:09, 12:28, 12:29, 12:35]

Kyle [10:03, 10:24, 10:49]

Johanna [10:27, 10:54, 11:56, 12:05, 12:06, 12:17, 12:19, 12:25, 12:29, 12:30, 12:34]

Andrew McAllister [9:54, 9:55, 9:57, 11:30, 11:32, 12:15, 12:18, 12:19

Ikaika [9:19]

Cindy Young [11:57]

Janet Six [12:11, 12:12, 12:20, 12:23, 12:33, 12:33, 12:37, 12:39, 12:40]

Noelani Ahia [10:06, 10:17]

Kaniloa Kamaunu [11:36]

Kai Markell [11:39, 11:43]

Nico Fuentes [9:24, 9:25, 9:27, 9:29, 9:29; 9:30, 9:31, 9:32, 9:34, 9:35, 9:36, 9:40, 9:42, 9:43, 9:44, 9:45, 9:47, 9:49, 9:50, 9:52, 9:53, 9:54, 9:59, 10:00, 10:04, 12:33, 12:34

Sharron Paris [9:21, 11:46, 11:48, 11:50, 11:51, 11:52, 12:02, 12:03, 12:04, 12:33, 12:34]

Dane [9:20]– mahalo Iris

Kahele – take updates then review

Dane [9:20] Nico already unmuted and someone in Mike Carroll's place and any other cultural descendants please raise hand

Sharron Paris, attorney for HBT [9:21] – She has taken Andrew Chianese's place – update HBT is that HBT has responded to Andrew McAllister request for reports and maps dated Feb. 12, 2021 responded on May 18 and HBT submitted determination and longterm buffer for 505457 for a number of features (check the recording a long list) submitted on May 10, comments request May 14. Cultural descendant requested more time to respond and made prelim comments. HBT responded May 18 and extend to May 24, 2021. July 10, 2021 draft burial site component features 376, 177, 178, 180 were submitted. Request comments by July 10 and acknowledged short deadline but deadline in admin rules which is within 90 days of det. Request being approved then the BSPP should be approved too. Other than that construction increment for – June 30, 2021

Nico Fuentes [9:24; 9:25; 9:27; 9:29; 9:30, 9:31, 9:32, 9:34, 9:35, 9:36, 9:40, 9:42] June 30 archaeological monitor observed human skeletal remains in northeastern portion and area previously discussed. At this point individual appears scattered from previous activity –

Dane [9:24] is this Inadvertent A on the agenda?

Nico [9:24] yes this is inadvertent.

Dane [9:24] perfect don't want to cover twice is all. This reported on June 30 and inadvertent a so please proceed

Nico [9:25]– work continuing in this area and area had been impacted by previous activities before construction of fourth increment the area subjected to sand mining late 80s early 90s and prelim observation appears sand mixed in – that individual from that activity it appears. “different grades of sand” – this is from much lower in the sand dune itself, very orangey coarse grain sand. A grade. At top of current construction area so some level of mixing. Prelim investigation suggesting no in situ component is this individual and lines up with fragmentation. We have some paperwork with SHPD and maybe approved [unclear] recovery provisions letter we sent and when that is approved SHPD we will proceed

Kahele [9:27] what are you suggesting?

Nico [9:27] condition provisions letter is to investigate that area to see if suspicions correct or find in situ provisions (provision 1) and wants to go through the pile to confirm that there are no more remains in that pile so screening and in lieu of that had discussion in field with SHPD staff and Ahia and others it is a sensitive topic – if we do not want to screen for some reason reasonable alternative to take pile and place in lot that owners agree to not develop. Have a pile of sand from area previously disturbed have an individual if you don't want to screen can place pile elsewhere to be screened later or not screen

Dane [9:29] can stop timer

Nico [9:29] lot 144

Dane [9:29] 144A – next to burial preserve

Kahele [9:29] – in lot or road?

Nico [9:30] – road and house pad itself

Dane [9:30] – suspicions place of origin

Nico [9:30] tricky, no in situ portion, already displaced, origin is where we see remains coming out, it is a secondary deposit not the current location

Dane [9:30] another individual?

Nico [9:30] no, the initial place of internment, person got disinterred

Kahele – 9:31 for us whether primary or secondary doesn't make much difference as far as how burial should be treated

Nico [9:31] yes on same page it is still on a person.

Dane [9:31] yardage of unscreened material?

Nico [9:31] twelve feet three feet high

Kahele [9:32] that pile still there

Nico [9:32] yes monitor watching blade and see remains. We have strategy for pile. As excavation occurs pile adjacent to machinery – taking precautions making sure we have two sets of eyes on it. We know that pile associated with that person

Dane [9:32] if we recommend it not be screened then can sand go back to where it was from?

Nico [9:32] originally where?

Dane [9:33] no he has suspicion during sand mining face this areas had much higher elevation. On the slope – they pushed down machinery and subsequent activity, reformed for house pad house lot, so

to put it back in original place is probably not possible. It came likely from higher elevation which is no longer present

Kahele [9:34] what kind of work was being done?

Nico [9:34] controlled excavation as part of AMP

Dane [9:34] what purpose

Nico – slop side walk

Dane [9:34] not area you can backfill then?

Scott [9:34] measures you want to take are screen sand to account for scattered iwi and determine general location of where iwi came from?

Nico [9:35] close need to find how much remains present in pile investigate surrounding area for any in situ components. He presumes no in situ component but wants to check and make sure not partially mixed in fill

Kahele [9:36] if there is a pile the lot before close to burial preserve – 143 A

Dane [9:36] 143A in sidewalk

Nico Fuentes [9:36] 144A 143A – that lot is very close to preserve and is currently demarcated by orange construction fencing because it is very close so consultation with ownership they are preparing to not develop that

Kahele [9:37] whole process Maui Lani phase 6 consistent advocating for burial to be left in place and not moved no matter what – at some point they need to stop

Dane [9:39] grade a sand – 162 182 and 40 and 42 – all these in situ burials on most recent [], what type of sand composition where they found in

Nico [9:40] which ones?

Dane [9:40] these are deeper sand right? Original elevation vs graded – does the sand match the sand graded from

Nico [9:40] no

Dane [9:40] how many grades of sand 9:40

Nico [9:40] really interesting question and a big one, tells you a lot of the dunes –

Dane [9:41] in this small area

Nico [9:41] basically three types: lithophyte sand/sandstone, then you have b grade sand which is aeolian sand closest to the surface no matter what with organic materials more blue, brown gray, and then other mid loam sands found in lower elevations or maybe higher – that sand usually devoid of organic material. Roots usually cast covered in calcium carbonate. Three major types of sands. It could have been closer at some point but pushed down by erosional process

Dane [9:42] is grade it is found in irrelevant

Nico [9:42] 162 182 then 144 – you see these? 162 is lithophyte. 182 lithophyte with interface of loose sand. 144 – lot is completely inconsistent with these sands 0 it is a grade and b grade very mottled.

Dane [9:43] prior to project original elevation of 144 lot.

Nico [9:43] talking to archaeologists – 15 to 20, maybe 30 feet above the current present lot

Dane [9:44] – heavy grading and excavation and continuing of preservation area?

Nico [9:44] might have been 15 feet above present

Kahele [9:44] when we look at lots 10 11 and 12, those were included in interim pres area because of pattern of burials in adjacent golf course area?

Dane [9:45] Maui Lani (unclear)

Nico [9:45] unclear

Kahele [9:45] in her analysis, if you look at lots 10 11 12 and then preserve, common sense tells her patterns would continue on through and follow in lots 143a 144a and maybe 145a or beyond.

Dane [9:46] – trend data, preservation area and area adjacent to 145 and 143, can't expect to take a hard line. Natural orientation. recommends preservation in place

Nico [9:47] for the scatter?

Dane [9:47] you have all these in situ burials in 10 to 15 feet from where you find the scatter. Look more lahaina you don't see as concentrated as peak of preservation area. We know it is secondary deposit but its original place of origin is probably pretty close so he wants it preserved in place. Would you agree its from a nearby deposit

Nico [9:48] yes I believe it is coming from slopes of the nearby dune but for preservation in place and relocation are terms you use – but preserving in place in a stock pile not in earth is a no no?

Dane [9:49]

Nico [9:49] we don't know I haven't checked the ground

Scott [9:49] want to determine location of iwi – asking to do two things to facilitate preservation in place

Nico [9:49] depending on findings. If he is gonna screen it, he will have remains which will go in curation so they are no longer in the pile. Preservation in place is for a stock pile is

Dane [9:50] but we know what lot it came from

Nico [9:50] – maybe 1/8 acre is the lot where stockpile came from

Dane [9:50] know where it comes from general location and it came from 144 generally so you know generally where it came from

Kahele [9:51] not asking to preserve in place in the stock pile want to return to original location in 144 A

Nico [9:52] what if we find out it was a fill deposit to form a house lot because that is what it looks like

Kahele [9:51] even if previously disturbed, the less it is moved that is always their goal

Johanna [9:52] one concern moving back to the lot. She likes the idea she did that but how do you determine how much kupuna is in the sand? She doesn't like sifting through that.

Nico [9:52] this is where it gets tricky. Presumably remains in stock pile and in area where stock pile generated so without checking these locations you don't know how much

Kahele [9:53] or just return excavated sand and leave it be

Dane [9:53] do we have anyone from the project? Is it true 143 is in the preservation area?

Is that being entertained?

Nico [9:53] – archaeology firm isn't privy to negotiations with the land owner in court case.

153 is gonna be part of the preservation area

Dane [9:54] 143 – what changed – is that a result of negotiations

Did you find anything else?

Nico [9:54]

Dane [9:55] wants to call Andrew really quick for developments

Andrew McAllister [9:55] got notification from Jennifer and Nico and set up field inspection and verified Nico's info didn't find any in situ component. We looked at soil and it is basically as Nico describes and he thinks one important thing as archaeology is he wants to continue archaeological monitoring – construction project is for dry well or catch basin and it doesn't extend where Nico identified the remains or where they are suspected to have originated from. If you want further investigation he will comment regarding the monitoring methods. Right now Nico proposes blading the area and screening. If he saw something indicating a horizon or burial pit feature would require hand excavation but it seems to be a fill area. Construction is not requiring that area to be further disturbed it will be filled in to his knowledge

Dane [9:57] this area is probably fill but also cut and graded.

Andrew [9:57] this is actually some of the fill material which is mottled sand cemented in human remains indicating it originated from that fill deposit. Area subjected to multiple activities so fill that adhered to the remains consistent with upper 1 2 3 feet. Below you run into lithophyte.

Dane [9:58] question from council

Everett [9:59] is it possible to provide the elevation from other burial from Maui Lani – to determine at what elevation remains were found at for each burial at Maui Lani.

Nico [9:59] yeah

Dane [9:59] I think we had that but maybe not the most updated version can you compile relevant current data

Any other questions

Kahele [10:00] these lots directly adjacent to preserve (205 206 207a; 145a) – those still subject to utility trenching and other work?

Nico [10:00] yes – 140 205 206 2017

Kahele [10:00] interment preservation if you look at middle largest preserve on bottom and top parts of map you see the pattern clearly and she feels like every time we begin to do work in the area that is a kinda obviously part of the burial pattern you continue to find iwi. No sense we are continuing. At the very least we would (honor that pattern in the middle)

Dane [10:02] 118 through 115a you see pattern continue going south

Kahele – yes

Dane [10:02] talks about original configuration of these burials; wants to go back and look at motions and recommendations wants to preserve entire dune structure – we have seen finds over past 8 years trying to shrink size of [impact]

Kyle [10:03]

Nico [10:04]

Dane [10:04] anyone want to provide anything else from project

Nico – he is not privy to everything between descendants and ownership 10:04

Dane [10:04] want to steer far from court cases but hoping it leads to better protections

Nico [10:05] this is the burial and archeology info he has to offer

Dane [10:05] thank you

Kahele [10:05] official cultural descendants to speak

Noelani [10:06] she has two agenda items so she may need a little more time. All these issues we are talking about are because no complete AIS – would have identified burials redesigned construction. She went on site visit last week – agree that there should be more work in area kupuna came out esp. If in situ component. Wants hand testing not machines in that area. She wants SHPD to determine preserve in place and then if need to sift then talk again and put all kupuna and sand back in – don't know exact boundaries. Also say that because of sand mining – doesn't mean can continue to desecrate it is sacred all of it wherever iwi shows themselves. More iwi moepu or anything else with kupuna. Court case scheduled for November – in meantime if prevail from court case or in case or appeals or supreme court if they rule in her favor it is a moot point. Calling these inadvertent finds is offensive – they are known burials.

As far regular update, when we go back, they were grading by burial preserve lots 205 and 206 because we don't have burial site component and there was no burial zone or buffer none of the things included in the new plan. Wants meaningful consultation and more time to review. Document sent in may asked for clarification if this burial sites component intended to include other burials or is there another we will be receiving after that? It falls short. Doesn't have complete info. Given different document told not present plan that they would be given a different one. Confusion on her part. They want to put roads over burial and she is not ok with that nor side walk with grass over it where dogs will

pee or poop. Increase preservation to include all burials – maybe find outer zone to see all burials in context. Settler colonialism and cultural genocide. Not ok with white fences and houses by burial preserve – not ok with foreign home owners having parties by the burial preserves

Kahele [10:16] 10:16 chair go back to questions or testimony

Dane [10:16] – BTP on Olina road and burials - 123 114 in situ and 114s and b, majority

Jennifer Noelani Ahia [10:17] those five are listed: 376 177 178 180 – we don't have preservation plans for all the other ones. Both sides have burials outside of designated preservation area. People with no mo'okuauhau making decisions.

Dane [10:20] thank you

Kahele [10:20] lets review all our motions then do public testimony

Dane [10:20] share screen

Dane [10:21] has everyone reviewed this – shall we read these motions so everyone up to speed

Kahele [10:21] reads motions

| 1 | Date | Subject | Motion | | | | |
|----|------------|-------------------|---|--|--|--|--|
| 7 | 12/21/2017 | Maui Lani Phase 6 | The Maui / Lana'i Islands Burial Council 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. | | | | |
| 8 | 5/16/2018 | Maui Lani Phase 6 | MLIBC recommends the Maui Lani Landowner conduct consultations with the Maui Lani Community (Lineal and Cultural Descendants, Malama Kakanilua, and Aha Moku) to discuss the expansion of buffers and other related issues, in order to provide appropriate protection and to protect integrity of iwi kupuna in the Maui Lani Phase 6, increment 4 work area. | | | | |
| 9 | 10/17/2018 | Maui Lani Phase 6 | 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. | | | | |
| 10 | 10/17/2018 | Maui Lani Phase 6 | 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 | | | | |
| 11 | 10/17/2018 | Maui Lani Phase 6 | 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 | | | | |
| 12 | 10/17/2018 | Maui Lani Phase 6 | 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 | | | | |
| 13 | 1/16/2019 | Maui Lani Phase 6 | - Councilmember Dukelow referenced Dec 2017 MLIBC meeting, council made a motion, paragraph in motion stated no further decisions be made re: iwi kupuna until comprehensive inventory of burials is compiled for Maui Lani Phase 6 and adjacent lots. -Consistently asking for inventory of all burials. Reason for that is so every single time look at something and council going to make a decision, have an accurate idea of where every single burial is. Just wanted to remind council of that per councilmember Dukelow. Would like to see that before deciding on any type of redesign, stated councilmember Dukelow. | | | | |
| 14 | 1/16/2019 | Maui Lani Phase 6 | MLIBC recommends against the use of horizontal augering during the installation of the proposed sewer line infrastructure at Maui Lani Phase 6. | | | | |
| | | | - MLIBC recommends the designation of the remainder of Maui Lani Phase 6, increment 4, to be | | | | |

Dane [10:22] take note council if you want to discuss any of these motions [reads motions]

Kyle [10:24] reads motions

Scott [10:26]

| 1 | Date | Subject | Motion | | | |
|----|--------------------------|--------------------------------|---|--|--|--|
| 14 | 1/16/2019 | Maui Lani Phase 6 | MLIBC recommends against the use of horizontal augering during the installation of the proposed sewer line infrastructure at Maui Lani Phase 6. | | | |
| 15 | 3/6/2019 | Maui Lani Phase 6 | - 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. | | | |
| 16 | 3/6/2019 | Maui Lani Phase 6 | - MLIBC recommends additional exploratory archaeological testing, including, but not limited to Lots 9-12 of Maui Phase 6. | | | |
| 17 | 3/6/2019 | Maui Lani Phase 6, Increment 4 | - 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. | | | |
| 18 | 3/6/2019 | Maui Lani Phase 6, Increment 4 | - 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. | | | |
| 19 | 5/15/2019 | Maui Lani Phase 6 | Council Member Kahaleonalani Dukelow make a motion that MLIBC request that the SHPD to make a determination regarding the recognition of the March 6th, 2019 MLIBC motion (MLIBC recommends the designation of the remainder of Maui Lani Phase VI, Increment 4 to be designated as a burial preserve area, with the designated area to be determined by the Wailuku representatives and cultural descendants of the Wailuku ahupua'a) regarding the Maui Lani Phase VI, Increment 4 as a burial site, burial preserve, or burial complex in accordance with state law. | | | |
| 20 | 10/28/2020 | Maui Lani Phase 6 | The Maui/Lāna'i Island Burial Council recommends that the State Historic Preservation Division acts to cease and disallow all ground altering activities at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. until such time that additional information has been provided to the MLIBC in order to evaluate the impact to the preservation plan and process of the proposed work to iwi kupuna, and to ensure certainty that the iwi kupuna in this pa'ilina will be protected in perpetuity. Another motion: | | | |
| 21 | 10/28/2020 | Maui Lani Phase 6 | The Maui/Lāna'i Island Burial Council requests that SHPD apply penalties based on HRS 1300-300-72, for the disturbance of iwi kupuna at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. in the event of a disturbance of burials in this area known to contain iwi kupuna. | | | |
| 22 | 2/3/2021 | Maui Lani Phase 6 | [1:48:24] Scott makes a motion: Maui/Lāna'i Island Burial Council requests additional information and updates about the status of the iwi kupuna from the landowner, and for the State Historic Preservation Division (SHPD), in consultation with the MLIBC to establish and implement interim protection measures to ensure the appropriate protection of iwi kupuna prior to the issuance of any Maui County work permits at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) | | | |

Johanna [10:27]

Dane [10:31] what is the current status of SHPD entertaining requestss

Kahele [10:32] – recurring themes inthe motions from 2017 – inadequacy of the AIS, creating burial preservation that is adequate, and continuing to use “inadvertent discovery” in an area that is obviously a burial complex – iwi that continue to be disturbed should not be inadvertent – just sticking to AIS is an interpretation and wants to challenge that

Dane [10:35]

Kahele [10:35] only those identified in the AIS

Dane [10:35] this is part of their kuleana to identify burial areas but still identified as inadvertent discoveries. The AG will just read us the law again and that is the pilikia again – maybe an opportunity to change the law

Scott [10:37] you said it perfectly

Dane [10:38] how do we fight for what we believe to be true

Document Maui Lani phase 6 motions and SHPD responses in google drive

Taking 10 minutes break [10:39 AM]

Return at [10:38]

Kyle [10:49] they moved that SHPD should find these people on this one article – wants to hear statement that they are not going to do something – with regards to developers he wants to see courage to say we are not gonna do that because we don't have to if that's the truth of the situation – then can all decide how to move forward

Dane [10:52] clarity would be great wanted us to look over document to see whose kuleana is what to go forward – great to craft motions knowing whose kuleana it is – so we can craft a stronger motion. Have Cindy Young here

Kahele [10:52] can we carve out time each meeting to review status of motions

Dane [10:53] can someone volunteer to keep track of motions – Scott is the motion man and he wants to go back and set kahua for new council so they have a database – SHPD support is good but they take ownership of their own board

Joahanna [10:54] look at march 6 motions – both are at heart of issue with them. First motion – remainder designated as the burial preserve – SHPD said we have no authority to do so.

Dane [10:54] yes

Johanna [10:54] when it comes to authority Cindy always looks for something in writing that said we can do something but doesn't always mean everything written in law because even in 6E caveat – want to preserve whole place but no definition burial ground in the law. Second one – cessation of all earth moving suggests two March 6th motions and May 18th motion and make motion to file in bureau of conveyances

Dane [10:57] they are not in compliance with our belief but what law are they not in compliance with? Would need to find violation

Kahele [10:59] we are a council that makes recommendations - should ask for rational for why they haven't complied with our recommendations

Dane [11:00] – our legal council is here – it is their council and motions but would be useful if legal guidance tells us what we can or cannot do to know

Kahele [11:01] when they say no authority I think SHPD means themselves

Dane [11:01] do we want executive session with Cindy since she is here? Guidance on motions prior to it being made so not spinning their wheels

Everett [11:02] be clear on comments we have made?

Dane [11:02] AG also reviewed this?

[11:02] Scott makes a motion:

“I motion to move the council into executive session”

11:02 Seconded by Everett; Iris Pe'elua recuses; all in favor, none opposed, motion passes [11:02]

[11:29] Move back to main session

Dane [11:29] asks Andrew if revisiting the AIS would be helpful

Andrew [11:30] for him to review project again would have to be triggered from request from permitting agency. SHPD has already made determinations for monitoring and mitigation. If request is for SHPD or Archy to review findings request would have to come from the county under 284-11 review of findings based on agency request. That is an option but must come from reviewing agency and if during the review find inaccurate significance or general mitigation or flaw in mitigation plans

then come to agreement with project proponent and county. Doesn't necessarily mean they must do additional testing but maybe redesign – if you go into that process that will be the outcome. SHPD, project proponent and agency are the three parties. If project proponent wants to do voluntary additional work archy branch will review any additional testing or archy work.

Dane [11:32] lots of testing has occurred. What else could be utilized to mitigate impacts

Andrew [11:32] Jennifer's comments excellent regarding that. Nice to know extent of concentration of burials – accomplished by various means. Outlining burials with solid trench perhaps. Maybe extent of GPR work identifying anomalies and what everett was talking about general stratigraphy and elevation burials found not consistent not sure if blading or slowly grading large sections to expose burial pit outlines for large areas. Various things to discuss for more accurate testing not just random trenches through project areas – haven't been effective.

Dane [11:33] more questions Andrew? Is Nico listening to this? Can petition county to ask for re-review of AIS he sees Janet. Would they cooperate with some of these testing strategies on their own. Public testimony

[11:34] *Public testimony opens*

Kaniloa Kamaunu [11:36] still finding iwi. Very disturbing – shows inadequacy of archaeologists, developer, SHPD. Upset with violations and all recommendations made through years. Same thing and they get away with it

Kai Markell [11:39; 11:43] in looking at all the motions on the project which is super helpful, burial council in 13:300-2 inadvertent discovery I defined as unanticipated and previously identified is oral or written testimony 13-300-24 assist department of inventory and identification of burial sites. SHPD is to make an inventory of burial sites. Council makes recommendations to department and on burial site identification – make recommendation to say every burial there is a previously known burial site, at least. DLNR. Not 6E8 – DLNR holds authority of burials in trust for descendants. No person can alter burial site without permission. Burial council is the expert and help descendants – duty to prevent illegal desecration of iwi – DLNR has to step up at some point. Do we intentionally continue to allow these to get destroyed? Congressional oversight of burial in Standing Rock and Hawaii. He says continue to make record for judge and jury.

Dane [11:42] bring up violations of AMP – a bunch of re-occurring agenda items regarding these things to talk later. Inventory burial sites and catalog – choose not to recognize their recommendations. Is there recourse?

Dane [11:45] mahalo

Kahele [11:45] any other testifiers; *public testimony closes*

Dane [11:45] thinking of bringing up Nico for any comments

Kahele [11:45] quickly ask Sharon Paris on response for motions

Dane [11:46] also nice to have Andrew

Sharon Paris [11:46] general comments – this has been mentioned – recommendations made but no specific requests for owner to respond specifically – needs to be communicated. May 15th motion was request for SHPD. Making any new motions – Johanna's comments on potential motion for recording in bureau of conveyances. Slander? Anything not noticed on agenda – open to discussion

or consideration at future meetings properly noticed. Anything with specific comment or action can do that

Kahele [11:47] have you never viewed these motions as something you had to take action on or consider.

Sharon [11:48] council free to make recommendations but owners follow the law and proceeded with construction as allowed by court order. Not required to do certain things

Kahle [11:48] so you have not considered any of our recommendations

Sharon [11:48] if there is a specific questions we could answer that specific question but these motions date back to 2016 that is a broad question

Kahele [11:49]

Sharon [11:50]

Kahele [11:50] how do you consider our recommendations

Sharon [11:50] take recommendations to client and discuss and give report of what these are

Dane [11:50] court order you be on our agenda so proper notice – that's not the case on every meeting you are on our agenda

Sharon [11:51] action proposes must be publicly noticed

Dane [11:52] when did you start

Sharon [11:52] new case to her since adnrew left

Dane [11:52] thank you

Kahele [11:53] continue to make motions on agendized items

Johanna [11:56] motions are recommendations

Dane [11:56] if we made motion would it be in violation of sunshine law – can cindy comment

Cindy [11:57] what was the motion

Dane [11:57] but if we commented on or recommended something to do the title would that be a violation of sunshine law

Dane [11:58] catalog agenda items and keep our own records

Scott [12:00] what motion do you want to make right now

Dane [12:00] recommend to SHPD hand testing methodology

Scott [12:01] has two motions relating to the inadvertent

Dane [12:01] anythins specific to Updates A so we can close it out

Kahele [12:02] request from Maui Lani responses to motions at our next meeting

Dane [12:02] are you willing to compy

Sharon [12:02] we will respond

Everett [12:02] can we add provide elevation at which it was found

Dane [12:03]

Sharon [12:03] can pass request to client

Scott [12:03]

Everett [12:03] so we say Maui Lani or land owner

Dane [12:03] Sharon who do you represent

Sharon [12:04]

Dane [12:04] do you represnt

Sharon [12:04] HBT of Maui Lani LLC

[12:05] Scott makes a motion:

MLIBC requests from HBT of Maui Lani, LLC responses to the previous motions made by the MLIBC dating to 2017

Johanna [12:05]
Dane [12:05]
Scott [12:05] revises motion
Johanna [12:05]
Scott [12:06]
Johanna [12:06]
Dane [12:07] does county have any updates

[12:07] Scott makes revised motion:

“MLIBC requests from HBT of Maui Lani, LLC a review of previous motions, and to provide options associated with those motions if unacceptable, made by the MLIBC dating to 2017.”

[12:07] Seconded by Kahele; Iris Pe‘elua recuses; all in favor, none opposed, motion carries [12:08]

Dane [12:08]
Scott [12:09] drafting motion on elevation map
Dane [12:09]
Scott [12:09] do that as part of update
Everette [12:09]
Dane [12:09] want quick update Janet
Janet [12:11] helped one agency to agency reconsideration she brought in court council. She speaks to public works on descendants about reconsideration. County has done one in the past. Changed effect with mitigation
Dane [12:11] request permitting agency
Janet [12:12] needs to talk to director
Dane [12:12] need to justify reasoning for reconsideration
Scott [12:13] at least we can say AIS insufficient
Dane [12:13] we said that
Kahele [12:14] make more specific request to county
Dane [12:14] they have power to reopen
Kahele [12:14] in motion ask how we want them to respond to us
Dane [12:15]
Andrew McAllister [12:15] make sure use language 13-284-11 review findings based on agency request if you want county to trigger that process
Dane [12:17]
Johanna [12:17]
Whatever SHPD does SHPD must have evidence
Andrew [12:18] can't comment on the outcome would have to review motions
Kahele [12:19]
Johanna [12:19] what could you recommend
Andrew [12:19] depends on information presented needs to look at background of project
Janet [12:20]
Scott [12:21]
Dane [12:22]
Janet [12:23]
Dane [12:23]

Scott [12:23] Scott makes a motion

MLIBC requests a comprehensive review of the Archaeological Inventory Survey at Maui Lani Subdivision Phase VI, Ahupuaʻa of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. based on Section 13-284-11 - Review of Findings Based on Agency Requests. This request is based on deficiencies in the original AIS, as documented by the County of Maui's review of this project.

Dane [12:24]

Janet [12:24] public works and corporation council

Scott

Dane [11:24]

Johanna [12:25]

Scott [12:25] MLIBC requests the Department of Public Works conduct a comprehensive review of the Archaeological Inventory Survey at Maui Lani Subdivision Phase VI, Ahupuaʻa of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. based on Section 13-284-11 - Review of Findings Based on Agency Requests. This request is based on deficiencies in the original AIS, as documented by the County of Maui's review of this project.

Andrew [12:25] find out permit application

Scott [12:25] drew from agenda

Everett [12:26]

Scott [12:26]

Kahele [12:27]

Scott [12:27]

Dane [12:27]

Scott [12:28] MLIBC requests the Department of Public Works conduct a comprehensive review of the Archaeological Inventory Survey conducted for HBT of Maui Lani, LLC at Maui Lani Subdivision Phase VI, increment IV, Ahupuaʻa of Wailuku, District of Wailuku, Island of Maui. based on Section 13-284-11 - Review of Findings Based on Agency Requests. This request is based on deficiencies in the original AIS, as documented by the County of Maui's review of this project.

Everett [12:28]

Dane [12:28]

Kahele [12:29]

Johanna [12:29]

Dane [12:29]

Everett [12:29]

Kahele [12:30] 180 but only five identified in AIS

Dane [12:30]

Johanne [12:30]

Dane [12:31]

Kahele [12:32] 182

Scott [12:32] Scott makes a motion

MLIBC requests the Department of Public Works conduct a comprehensive review of the Archaeological Inventory Survey conducted for HBT of Maui Lani, LLC at Maui Lani Subdivision Phase VI, increment IV, Ahupuaʻa of Wailuku, District of Wailuku, Island of Maui. based on Section 13-284-11 - Review of Findings Based on Agency Requests. This request is based on deficiencies in the original AIS, including the number of burials found. At the current time, this includes 182 individuals uncovered after the closing of the approval of the Archaeological Inventory Survey. The

deficiencies of the AIS are more comprehensively documented by the County of Maui's review of this project.

Nico [12:33]

Janet [12:33]

Nico [12:34]

Kahele [12:34]

Johanna [12:34]

Everett [12:35] just say in excess of

Kahele [12:35]

Scott [12:36]

Dane [12:37]

Kahele [12:37]

Scott [12:37]

Janet [12:37] also look at significance evaluation

Scott [12:39]

Janet [12:39]

Dane [12:39]

Janet [12:40] send requests to public works must go through channels

[12:41] Scott makes a motion:

"MLIBC requests the Department of Public Works work with the County Archaeologist to conduct a comprehensive review of the Archaeological Inventory Survey conducted for HBT of Maui Lani, LLC at Maui Lani Subdivision Phase VI, increment IV, Ahupua'a of Wailuku, District of Wailuku, Island of Maui. based on Section 13-284-11 - Review of Findings Based on Agency Requests. This request is based on deficiencies in the original AIS, including the number of burials found. At the current time, this includes 182 burial finds uncovered after the closing of the approval of the Archaeological Inventory Survey. The deficiencies of the AIS are more comprehensively documented by the County of Maui's review of this project."

[12:41] Kahele seconds; Iris Pe'elua recuses; all in favor, none opposed; motion passes [12:42]

Dane [12:42] will follow up

Scott [12:42]

Dane [12:42]

Scott [12:43]

Kahele [12:43] didn't do Everett's motion about elevation

Dane [12:43]

Dane [12:44]

[12:46] Scott makes a motion:

"MLIBC requests from HBT at Maui Lani, LLC a map indicating the elevations of each discovery of iwi kupuna at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors., have been found."

[12:46] Everett seconds; Iris Pe‘ehua recuses; 1246 all in favor, none opposed, **motion passes** [12:47]

[12:47] Dane tables **Items B and C** in Updates; the council moves to **Item A** in Inadvertents

B. Office of Hawaiian Affairs Burial Sites Working Group. The Hawai‘i State Legislature has requested the Office of Hawaiian Affairs to form a Working Group to Examine the Burial Sites Program Under the Department of Land and Natural Resources State Historic Preservation Division and Improvements to the Islands Burial Councils.

Information/Discussion/Recommendation: Discussion re: MLIBC specific concerns to provide to the working group.

C. Shoreline Erosion. Discussion to include: •Town hall meetings to discuss shoreline monitoring, curation, moku repository, internment practices, etc. Shoreline inadvertent discoveries and the responsibility of both the state and private landowners.

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

VI. INADVERTENT

Recording [12:48-1:01 PM]

A. Inadvertent Discovery of Human Skeletal Remains at the Maui Lani Subdivision Phase VI, reported to the State Historic Preservation Division on June 30, 2021, Ahupua‘a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors.

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

Summary: This item discusses the identification of human remains inadvertently discovered by an archaeological monitor on June 30th. Nico Fuentes states that the isolated remains appear to be a secondary deposit with no in situ component. The remains are currently in a stockpile. The council prefers preservation in place in the area from which the stockpile came.

Ikaika – [12:48] *Public testimony opens*

Angela Neller – [12:48] general testimony

[12:49] *Public testimony closes*

Dane [12:49, 12:50, 12:55, 12:59, 1:00, 1:01]

Scott [12:49, 12:50, 12:51, 12:53, 12:59]

Kahele [12:55, 12:56]

Johanna [12:57]

Andrew [12:51]

Scott [12:49]

Dane [12:49] hand testing not hand screening

Scott [12:50]

Dane [12:50]

Andrew [12:51]

Scott [12:51] The MLIBC recommends to Mr. Nico Fuentes of Atlas Archaeology hand testing and hand screening of the sand that is associated with the iwi kupuna at Maui Lani Subdivision Phase VI, Ahupua‘a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors., inadvertently discovered on June 30th, 2021. MLIBC understands these measures will ensure protection of the individual by accounting for all scattered human remains, recovery of other possible remains in the area, and their location, and will assist in the return of the individual to an area in close to the original burial area. Furthermore, MLIBC recommends that the iwi to be preserved in place.

Johanna [12:53]

Scott [12:53] The MLIBC recommends to Mr. Nico Fuentes of Atlas Archaeology hand testing and hand screening of the sand that is associated with the iwi kupuna at Maui Lani Subdivision Phase VI, Ahupua‘a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors., inadvertently discovered on June 30th, 2021. MLIBC understands these measures will ensure protection of the individual by accounting for all scattered human remains, recovery of other possible remains in the area, and their location, and will assist in the return of the individual to an area in close proximity to the original burial area.

Dane [12:55]

Kahele [12:55]

Kahele [12:56]

Johanna [12:57]

Dane [12:59]

[12:59] Scott makes a motion:

“The MLIBC recommends the return of all stockpiled sand that is associated with the iwi kupuna to its original location at Maui Lani Subdivision Phase VI, Ahupua‘a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors., inadvertently discovered on June 30th, 2021; This recommendation is subject to additional input from cultural descendents.”

[12:59] Everett seconds, Iris Pe‘elua recuses; all in favor, none opposed; ***motion passes*** [1 pm]

Dane [1:00] - Updates B and C will appear on the next agenda for the meeting on the 28th

[1:01] PM Meeting adjourns

VII. ANNOUNCEMENTS

A. Next meeting is scheduled for Wednesday, July 28, 2021

Pursuant to Hawai‘i Revised Statutes (HRS)§92-3, all interested persons shall be afforded an opportunity to present oral testimony or written testimony on any agenda item. Additionally, pursuant to a policy adopted by the Maui Lāna‘i Islands Burial Council at its August 25, 2005 meeting, oral testimony for items listed on the agenda is limited to three minutes per person per agenda item. Interested persons can submit written testimony in advance of each meeting that will be distributed to Council Members prior to the meeting. Written testimony must be submitted no later than 24 hours

prior to the meeting to ensure time for Council Members to review it. Late written testimony will be retained as part of the record, but we cannot assure Council Members will receive it with sufficient time for review prior to decision-making. Submit written testimony to andrew.k.phillips@hawaii.gov. Pursuant to HRS§92-4, §92-5(a)(8), and §6E-43.5, and upon compliance with the procedures set forth in HRS§92-4, the Council may go into a closed meeting to consider information that involves the location or description of a burial site or to discuss confidential genealogy. A request to be placed on a Council meeting agenda must be made in writing with the SHPD History and Culture Branch staff at least two weeks preceding the scheduled meeting date. In addition, the request must be accompanied by all related documents. Failure to comply with this procedure will delay the item to the following month's agenda. Materials related to items on the agenda are available for review at the Maui State Historic Preservation Division located at 130 Mahalani Street, Wailuku, Maui, Hawai'i 96793.

INDIVIDUALS REQUIRING SPECIAL ASSISTANCE OR AUXILIARY AIDS OR SERVICES (E.G., SIGN LANGUAGE INTERPRETER), PLEASE CONTACT STAFF AT LEAST 72-HOURS PRIOR TO THE MEETING AT (808) 243-1285 SO THAT ARRANGEMENTS CAN BE MADE.