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

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

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

DATE: July 19, 2017
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
Johanna Kamaunu
Kalani Ho-Nikaido
Scott Fisher

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

Excused: Sol Church
Leiane Paci
Nani Watanabe

Guests: Juan Rivera – County Wastewater Reclamation
Gabriel Der - Kiewet
Elle Cochran
Tama Kaleleiki
Trevor Yucha – Cultural Surveys Hawai'i
Dana Naone Hall
Kaniloa Kamaunu
Clare Apana

III. APPROVAL OF MINUTES

A. June 21, 2017 –

- SHPD Burial Sites Specialist Kealana Phillips address the council. Mr. Phillips explained that he was not able to complete the draft minutes in time for this meeting; will have it ready for approval at next MLIBC meeting.

IV. COMMUNICATION

A. Letter Dated June, 2017 from the First Responder Network Authority (FirstNet) re: the release of the Final Programmatic Environmental Impact Statement (PEIS) for the Nationwide Public Safety Broadband Network (NPSBN) in the non-contiguous region of the United States (Alaska, Hawaii, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands).

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

- SHPD Burial Sites Specialist Kealana Phillips let the council know that this item is on the agenda for notification purposes. Mr. Phillips reminded the council that this item was placed on a previous MLIBC agenda. Mr. Phillips did not have any information to share re: this item.
- Council recommends additional information be provided to council.

B. Letter Dated June 23, 2017 re: Section 106 Compliance: Kaupo Ranch Forest Restoration – Fence Installation. The U.S. Fish and Wildlife Service (FWS) is supporting a project to construct a fence for exclusion of feral animals from a portion of Kaupo Ranch, Ahupua'a, District of Kaupo, on Maui Island (TMK(2)1-7-004:004)(Kaupo 7.5' USGS quad) (Figure 1).

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

- SHPD Burial Sites Specialist Kealana Phillips let the council know that he did reach out to Ms. Donna Ball who is with the USFWS Conservation Partnerships Program to request a representative be present at the meeting to present on behalf of the project. Ms. Ball office is located on the Big Island. Mr. Phillips was informed by Ms. Ball, that his request would be passed on to Andrea Buckman, Coordinator of the Leeward Haleakala Watershed Restoration Partnership. Mr. Phillips was under the impression someone from the project would attend meeting.

- Council recommends the agenda item be deferred to next MLIBC meeting.

C. Treatment of Human Skeletal Remains Under 6E and NAGPA
Discussion and Recommendation on the applicability of the above statutes, rules and codes: Discussion on the above topic.

- Council chair Kapulani Antonio explains that this item was placed on the agenda because of the previous discussions (past meeting), regarding whether state needs to follow its own laws (6E), or Federal laws (NAGPRA). This issue came to light because of the discussion for final disposition of burials at Kaulahao, according Ms. Antonio.
- NAGPRA process takes months, if not years to complete; 6E much shorter
- Council member Kahele Dukelow questioned the department, why/how did the burials at Kaulahao trigger NAGPRA?
- Burial Sites Specialist Phillips replied that because we receive Federal funding, SHPD should have been following NAGPRA. Mr. Phillips explained that the decision to follow NAGPRA for this case was made internally by the supervisor
- Chair Antonio mentioned that perhaps because of personnel changes, now we are discussing the applicability of NAGPRA vs. 6E. Ms. Antonio stated that 6E was always followed.
- Mr. Phillips replied yes.
- Ms. Dukelow asked, what about Kaulahao made it different from other sites?
- Mr. Phillips replied that he is not sure why the decision was made to follow NAGPRA for this specific case.
- Chair Antonio mentioned she is unsure whether council following 6E or NAGPRA. Ms. Antonio proposed question whether 6E preceded NAGPRA.
- Council member Johanna Kamaunu mentioned that who has possession of the iwi determines when NAGPRA kicks in.
- Vice Chair Dane Maxwell stated that because SHPD is classified as museum is another reason why NAGPRA kicks in.
- Right of possession could mean that landowner has physical possession of iwi, but State has jurisdiction, per Ms. Kamaunu.
- Perhaps Federal Lands has something to do with it, asks Ms. Kamaunu.
- Mr. Maxwell stated that SHPD is federally funded, SHPD has jurisdiction, despite possible curation (possession) not by SHPD; NAGPRA triggered.
- Council member Scott Fisher stated the trigger for NAGPRA, with respect to Kaulahao, may be because discovery is made on state property as opposed to private property.
- Mr. Fisher mentioned that iwi is falling off hillside onto the beach. Mr. Fisher also mentioned that HILT has an easement on adjacent property (Kahului side). Easement set aside to repatriate iwi, according to Mr. Fisher.
- Question was proposed as to how far is the cemetery from the ocean?
- Mr. Fisher replied that it is on the water, extending back until the access road.
- Council member Maxwell made a motion to go into executive session to Executive to discuss burial locations/descriptions
- Council member Kamaunu second motion
- All in favor; aye. No one opposed
- Public asked to step out of room
- EXECUTIVE SESSION BEGIN 9:17am
- EXECUTIVE SESSION END 9:24am

- Public brought back into room
- Ms. Dukelow recommend that we have a determination.
- AG present?
- Mr. Maxwell stated that from what he understands, AG would not provide answers at meeting. Would follow up at alter time with a formal answer. Mr. Maxwell reminded council that this is why item is on the agenda; request a formal answer with respect to 6E vs. NAGPRA
- Mr. Maxwell stated that his preference in terms of whether we should be following NAGPRA or 6E, is we follow 6E because of its written provision for Hawaiian culture; tailored to it.
- Chair Antonio recommends we seek clarification from the SHPD Administrator.
- Ms. Kamaunu request that we look for a legal reason as to why we would use 6E. Ms. Kamaunu mentioned that because we are in the state of Hawai i, we should follow 6E.
- Ms. Dukelow has some concerns because of the changes in personnel at SHPD (what brought about this conversation), Ms. Dukelow is wondering is the process that's been followed going to continue to be the same, with respect to interaction with council, or are things going to change?
- Mr. Phillips replied that, he could not speak for the Archaeology or any other branch, but for History and Culture, Mr. Phillips cannot see anything (if operating properly), changing.
- Mr. Phillips reiterated that the idea behind this item being placed on the agenda was to figure out if council should reach out to department for clarification. Mr. Phillips stated that once we do receive clarification from department, at that time, we will re-agendize item and can discuss it further.
- Mr. Phillips recommends sticking to whether or not seeking clarification from department with respect to 6E vs. NAGPRA and not discussing 6E vs. NAGPRA at this time.
- Mr. Maxwell made a motion to seek clarification from SHPD administrator as to whether or not MLIBC or SHPD should be applying 6E or NAGPRA for SHPD current and future discoveries
- Motion has been seconded by Mr. Scott Fisher.

- Chair opened meeting for public testimony on motion.
- Kaniloa Kamaunu address the council on this matter. Mr. Kaniloa mentions the status of our Hawaiian people, being in a political realm, NAGPRA should be triggered (Federal). Not a United States citizen; status of people determines what rules to follow.
- Mr. Maxwell asked Mr. Kamaunu what does he think would offer the iwi more protection, 6E or NAGPRA?
- Downfall to 6E, take it out of the hands of the people, per Mr. Kamaunu. Contrary to what law states in 1860, to what it states in 6E. Power is taken from individual, given to foreigner (developer). Owner or property, then to the state, then to the people.
- NAGPRA stronger because it must do with the status of the people, per Mr. Kamaunu
- Clare Apana address the council on this matter.
- Ms. Apana asks what is going to happened to the remains that are found. Are the family members consulted/notified when a discovery is made?
- Chair Antonio close public testimony on motion.

- Ms. Kamaunu shared her concern that once we hear back from administrator, that will be his opinion, but it will not answer all the questions that will remain.
- Mr. Phillips replied that it will be more of a directive than an opinion at that point. His letter in response to council request will be on placed on a future agenda and open to further discussion at that time. Mr. Phillips mentioned that from what he understands, whatever is decided from council's discussion and SHPD administrator directive, that will be the course of action.
- Ms. Kamaunu wants us to look at the documents that compel us to act a certain way. Not much faith in system; lack of communication. Lack of AG; time constraints.
- Ms. Dukelow mentioned that in a way, maybe we shouldn't ask. If we don't ask, we can do it our way, what's best for our iwi kūpuna.
- Mr. Maxwell asked the department what is the status on the NAGPRA process with respect to Kaulahao?
- Mr. Phillips replied that consultation process is complete. SHPD has not contacted NAGPRA yet. Once NAGPRA is contacted, then the next step would be to publish the Notice of Inventory Completion (NIC).
- Mr. Maxwell stated that at the previous MLIBC meeting, the council was told that NAGPRA is one set of remains or Kaulahao in its entirety.
- Mr. Phillips responded that the inventory takes into account everything at Kaulahao.
- Mr. Maxwell concern is that in the future, would SHPD/MLIBC have to go through entire NAGPRA process.
- Mr. Phillips answered that it is too early to answer/discuss these items until we get further directive from Dr. Downer.
- All in favor of motion; aye. No one opposed.
- Independent body of state; provide comments to department. 6E/NAGPRA should be guidelines to follow; should not govern council according to Ms. Kamaunu.
- Council member Ho-Nikaido comments that 6E is very specific as to what prevue is; use that as guide to what issues discuss at meeting.

VI. INADVERTENTS

- A. Inadvertent Discovery of Human Skeletal Remains at American Savings Bank FSB, Kahului Branch Project at 150 Ho'okele Street, reported to the Maui Office of the State Historic Preservation Division on July 5, 2017 Ahupua'a of Wailuku, Moku of Wailuku, Island of Maui, TMK: [2] 3-8-102:004**
Information/Discussion/Recommendation: Discussion about the above find.
- Burial Sites Specialist Kealana Phillips address the council on this item.
- B. Inadvertent Discovery of Human Skeletal Remains at the Lahaina Wastewater Reclamation Facility Modifications Project at 3300 Honoa Ilani Hwy, reported to the Maui Office of the State Historic Preservation Division on July 5, 2017, Ahupua'a of Honōkawai, Moku of Ka'anapali, Island of Maui, TMK: [2] 4-4-001:104, [2] 4-4-002:029**
Information/Discussion/Recommendation: Discussion about the above find.

- Juan Rivera from the County Wastewater Reclamation Division, Trevor Yucha from Cultural Surveys Hawai'i, and Gabriel Der from Kiewit Construction address the council.
- Trevor Yucha address the council about history of area.
- Burials agricultural field, early sugar production pre-date 1880's, probably a lot earlier
- 1970's sugar cultivation in parcel, up until plant was built
- 2007 SCS conducted AIS for subject parcel. Subsurface testing; No finds. Archaeological monitoring recommended. SCS draft monitoring plan; CSH hired to conduct monitoring.
- Ground disturbing activities started on July 5, 2017, 3 feet below surface human skeletal remains found; July 7 SHPD conduct site visit.
- SHPD made determination to relocate
- Osteologist identified 1 complete semi flex burial and several bones from a second individual (burials 1 and 2)
- July 12, dig between 5 and 10 feet below surface, CSH found human remains in another location (8 feet below surface). Determination pending (burial 3)
- Beneath area of burials 1 and 2, 2 additional burials were found (burial 4, 5) at 8 feet below surface
- SHPD staff, along with Dane conducted site visit on July 18.
- At this point, burials 1 and 2 have been removed and curated on site. Burials 3, 4, and 5 are in place pending determination.
- Mr. Fisher asked at this point in the project, could the burials be left in place; plans altered.
- Mr. Juan Rivera address the council
- 1970/1960's technology doesn't work at this point. The plant can meet our current needs for the Westside, however, no redundancy right now. Plant shut down, no back up.
- Current project calls for an aeration basin to be built to provide plant with backup.
- Mr. Rivera answered Mr. Fisher question that if iwi were to be preserved in place, it would cause a big delay in project
- Ms. Ho-Nikaido asked if this project will help with redundancy and alleviating wells?
- Mr. Rivera answered it will help with redundancy; it will allow half of the plant to close for maintenance. Mr. Rivera also stated that this redundancy basin will be used, once all maintenance is done, as population grows, mandates change.
- Ms. Kamaunu asked how long this project will last; how long basin is good for.
- Mr. Rivera answered that entire project is 3 years; basin should be finished by end of next year; useful life of basin is dependent upon population growth, probably 20, 25 years. Mr. Rivera couldn't provide a concrete answer, based on population growth.
- Mr. Maxwell asked Mr. Yucha, based on where burials were found (in close proximity to each other), what are the chances more burials are discovered?
- Mr. Yucha replied that 5-10 feet (second lip), possibility of additional finds. Next lip 25 feet, as they go deeper, less chance to find additional iwi. Natural soils, bedrock the deeper they dig.
- Ms. Dukelow mentioned that the choice to move/relocate the iwi is a logical choice.

- Mr. Maxwell states that it is a fear of his that, SHPD allow burials to be relocated, more iwi discovered. Area that appears to be a gulch, could be a river. Indication of habitation; possible burials.
- Mr. Maxwell would recommend preservation in place.
- Mr. Fisher asked how much deeper do they need to go?
- Mr. Rivera stated they are about half way done in terms of depth. Need to go to about 25 feet, currently about 12/13 feet.
- Ms. Kamaunu curious about other AIS done in area at that depth. Might provide some indication if more burials expected.
- Mr. Yucha replied that none was reported in other reports; closest sites Hōnōkawai gulch.
- Ms. Ho-Nikaido asked why has this particular site has not been developed, disturbed?
- Mr. Rivera mentioned that he does not know for sure; he would guess it would have something to do with drainage. From a historical standpoint, Mr. Rivera is unsure.
- Ms. Dukelow asked SHPD, what does SHPD plan to do in regards to a recommendation, being that the first two burials received permission to relocate.
- Mr. Phillips replied that based on the fact that there was only one burial discovered at the time, coupled with the fact that the project calls for a sewage retention basin, SHPD provided a recommendation to relocate on site.
- Burials found right below agriculture layer, per Mr. Yucha. To answer Ms. Kamaunu question, 2007 last AIS done; trenches done in general vicinity; not in where burials found.
- To answer Ms. Dukelow question, Mr. Phillips replied that due to the somewhat complicated situation, SHPD will be meeting with Mr. Rivera, Mr. Yucha, and Mr. Der later this afternoon to discuss options.

- Chair Antonio open for public comment on item
- Tamalei Kaleleiki address the council.
- Mr. Kaleleiki representing Shaw family. According to Mr. Kaleleiki, area where the burials found is spot on to where Mr. Shaw would have lived. Mr. Kaleleiki mentioned that because of the nature of the project, he does not want the burial to be preserved in place. Mr. Kaleleiki stated that his 'ohana is buried at Waine'e; can relocate. Mr. Kaleleiki understands it is important to leave 'iwi kupuna where they were buried, but in this circumstance, Mr. Kaleleiki does not agree; request to relocate.
- Mr. Maxwell asked if they burials were to be re-located, is that decision being made because of the fear of the burials being built upon?
- Mr. Kaleleiki replied, yes. Plant expand, land sold eventually, etc. And the fact that it is a sewer plant. Family burials at Waine'e; keep burials safe there, preserved.
- Ms. Kamaunu asked if Mr. Kaleleiki was able to comment on AIS from 2007?
- Mr. Kaleleiki replied no. He was only made aware of project now.
- Kaniloa Kamaunu address council.
- Mr. Kamaunu wanted an answer in terms of how far back did CSH research with respect to identifying LCAs.
- Mr. Yucha mentioned that they did not conduct very much research because they were hired to do the monitoring of project; was not involved from the beginning.

- Mr. Kamaunu is concerned that the first arch firm who conducted the AIS, is not brought back to do the monitoring.
- Process is flawed; need to keep on department, arch firm, etc, per Mr. Kamaunu
- Ms. Kamaunu feels that the burials should remain in place. Ms. Kamaunu thinks that there will be more discovered. As sad as Ms. Kamaunu is that it is in the place that it is, Ms. Kamaunu would like iwi to remain, without development.
- Ms. Dukelow stated that this might be the only time, that Ms. Dukelow would recommend to relocate. Ms. Dukelow stated that the families of the area should be the ones making the decision; no matter what decision is made, it will be a tough choice/decision.
- Ms. Dukelow mentioned that precedent has been set by previous council to relocate when circumstances are as such; even if relocate on site, fact of the matter is it iwi is still near sewage; no easier choice.
- Mr. Maxwell asked Mr. Rivera what would occur if the decision was made to preserve in place?
- Money, time, and so on, but more significantly, according to Mr. Rivera, if this project were to be put on hold, it would affect the way the wastewater facility can properly care for the residents of the west side of Maui (public safety).
- Ms. Ho-Nikaido would recommend exploring options, alternatives. Sit down with SHPD is a good start. Mr. Rivera respectfully disagrees; enough time spent planning project, explored other options with engineers.
- Public testimony reopened
- Elle Cochran address council.
- Ms. Cochran stated that having 'ohana reclaim iwi is very important; existing grave yard (Waine'e) for the Shaw family. Cemetery that iwi can be relocated to; can be protected, cared for.
- Ms. Cochran mentioned that this project is something that is needed for the residents of the west side. Ms. Cochran recommends SHPD take into account the wishes of the family (to relocate).
- Mr. Maxwell asked if a potential lineal descendant, if approved by SHPD, wanted to preserve iwi in place, how do you feel about that?
- Ms. Cochran replied that it would be up to them; however, according to Ms. Cochran discussions with Shaw 'ohana, who is in the process of filing for Descendancy, Ms. Cochran doesn't believe that it is the intent at the moment.
- Manu Pergoso supervisor running the wastewater treatment plant address the council. Manu request to be kept up to date on the progress. Manu is Hawaiian, has Hawaiian employees; would want things done properly/maika'i. Understands the decision will be made by SHPD, consultation with 'ohana, would like to reiterate that this project will benefit residents of the west side for generations to come.

Meeting adjourned at 11:52 AM

Minutes by Kealana Phillips. SHPD Burial Site Specialist

