

IV. E. Ideas and Questions for Maui Lani, Phase 6.

1. SHPD should preserve all iwi in place from now on.

What is the definition of preserve in place? Leave and preserve exactly where found?

Yes, preservation in place with respect to an *in situ* burial means leave exactly where found.

Collect and bury in proximity at a later date?

If you collect and rebury, this is a determination of relocation.

- Preserve in place, with respect to an *in situ* burial, is when a determination is made to leave the burial in place; not remove/relocate it. However, there can be times where multiple determinations classify a burial. For example, If an *in situ* burial is accidentally disturbed, the portion disturbed can no longer be considered preserve in place. The displaced remains will either be curated off site if curation on site is not possible (if removed/curated off property, which is seldom, or curated on site). Curation on site can either mean that the iwi that was displaced will be curated with the remainder of the person (preserve in place) or in a secure location on property.

2. SHPD should require a 5 foot buffer around all iwi, in all directions.

First, there are two types of buffers, an interim buffer and a permanent buffer. Interim buffers are temporary and imposed when a burial is discovered during an archaeological investigation or during development. Permanent buffers are long-term to protect the burial(s) in perpetuity, and presented in BTP's and BCDRP or BCAPP.

1. What kinds of buffer zones do we see in Maui Lani, Phase 6?

The permanent buffers vary, need to confirm.

2. Smallest? Largest?
3. What is the rationale for establishing buffers?

Permanent buffers are based on a variety of parameters such as quantity of burials, topography, location of burial in relationship to proposed development (roads, house, utilities, etc.) and/or property boundaries.

Interim/Temporary buffers are based on the type of soil/sand matrices the burial is discovered in, the location of a burial in the current man made topography (i.e. middle of slope, base of trench, etc.), the location of a burial in respects to on-going activities and the location of burial in respect to other burials. These temporary buffers have ranged from 10ft. to 50ft. The main goal of the temporary buffer is to protect the burial in its current location while ground-altering

activities are relocated to another area, and while a determination is being considered for that burial. Furthermore, another equally important consideration when establishing the size of a temporary buffer is the likelihood of additional burials in close proximity to the burial. For this situation, a larger buffer zone would initially be erected where manual excavations would first be implemented inside the buffer zone. During hand testing, if no additional burials are identified, the interim buffer may be reduced and slow mechanical grading would continue outside the buffer. Alternatively, if another burial is identified during initial hand excavations and dependent on the location of the additional burial in the interim buffer, the buffer may be enlarged.

- Buffers are seldom mentioned in the History and Culture Rules. It is stated in the Archaeology rules and to that point, it does not state a specific size. It's case by case. Size of buffer, typically depends on the size of the property. Permanent buffer is created in the BTP. Idea of having a buffer (in BTP) is if work is to occur in area, it would decrease the chances of encountering iwi...again. What typically happens is a big buffer is created after initial find, archaeologist allowed to hand test within buffer zone to determine if there are more burials. Results of hand testing determine size of buffer. One question that can be asked is what is more appropriate, location of burial or size of buffer?

3. SHPD should ask the county again for a stop work order on the project since more burials have been found.

- SHPD (History and Culture) only has the authority to stop work in the immediate area of a burial.

4. SHPD should sue to reopen the AIS. If we do not, the treatment of burials will not be considered collectively until the construction is pau.

The overall goal has been to try to treat these inadvertent finds collectively, and why several redesigns have been imposed to preserve the majority of burials in place.

1. Because the AIS was based on their plans at the time it was done, how are they dealing with areas that are redesigned?

The AIS was based on a 45.0 acre subdivision with house lots and utilities, when a redesign is imposed, the redesign is based on the results of the controlled grading or manual investigations in the area.

2. Are they doing adequate testing when they redesign?

The testing methodology should be improved.

No provisions within the law to sue. However, reopening an AIS is an option that is to be determined by the Archaeology Branch. The classification of burials as concentration

relates to the decision to preserve in place or relocate. Cannot stop construction. More burials, more justification to preserve in place. The restrictions and/or adequacy of AIS studies were presented at an earlier MLIBC meeting where it was discussed that one of the ways to conduct more intensive AIS studies in the future was to obtain a temporary grading permit which would allow more area to be opened up at the time of the study. Currently, an AIS study must be completed before a grading permit can be obtained; hence, a catch 22 situation.

SHPD should report on the present treatment of any burials in the area.

3. How many iwi kupuna have been disinterred?
4. If they were disinterred, why?
5. Where are they? How are they being treated?
6. What is the plan for reinternment?

After all options explored to redesign, SHPD in consultation with MLIBC determined relocation of 11 burials primarily due to location in the roadway with utilities which could not be adjusted to allow preservation in place. Approximately 90% preserved in place 10% relocated. Several were reinterred and remaining curated off site.

Rough estimate, 92% preserve in place; 8% disinterred. Disinterred – intentionally removed (*ins itu*). Disturbed – accidental. It really is case by case. For example, SHPD has relocated *in situ* burials within a proposed road. Idea being, if road not built, surrounding neighborhoods inaccessible. All iwi that has been disinterred/relocated off property from projects.

5. SHPD and/or developer should publicly report the amount of burials they know to be in that area (I believe it is around 800+)
 1. We can start with Phase 6, but we should have a count for all the phases.

- Process has begun to compile a comprehensive map. SHPD GIS Specialist working on generating map. Starting point, Phase 6, 9 and expand outward

6. Phase 6 Burial Preserve?
 1. Boundaries?
 2. Where are the burials, both in and out of the preserve?
 3. If burials outside of preserve, why?
 4. Are there burials are under the road? What is the buffer? Why did the roads go over them?

There are no burials outside of a preserve, they are either in large preservation areas or solitary areas created around a single burial that is preserved in place. Preservation boundaries have expanded as more burials or possible burial pits were identified. SHPD in consultation with MLIBC felt the vertical buffer of the roadway provided protection to the burials and possible burial pits, thus it was more appropriate to preserve in place than to relocate.

- Boundaries of the preserve is fluid. It is our hope that as more burials are discovered, the preserve boundaries will expand to encompass finds. Most of the burials at ML VI is located within a designated preserve. Some burials are outside of preserve because decision was made that is was more important to preserve in place than to disinter and relocate to preserve. There are burials under road. It was determined that vertical buffer was sufficient. More appropriate to leave burial in place and build road than to relocate burial.

7. I would like to request a site visit to Phase 6.

- SHPD can work to set something up with Towne Realty.