

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

ROBERT K. MASUDA  
FIRST DEPUTY

DEAN D. UYENO  
ACTING DEPUTY DIRECTOR - WATER

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

**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: September 19, 2018  
TIME: 9:00 AM  
PLACE: County of Maui, Planning Commission  
Conference Room  
Kalana Paku'i Building, 1<sup>st</sup> Floor  
250 S. High Street  
Wailuku, Maui, HI 96793

**\* MEETING HELD WITH NO QUORUM\***

**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

SHPD Staff: Ikaika Nakahashi, Cultural Historian  
Barker Fariss, SHPD Lead Archaeologist

Excused: Kalani Ho-Nikaido  
Leiane Paci  
Johanna Kamaunu

Guests: Reynaldo Fuentes, Atlas Archaeology  
Foster Ampong  
Josephine Yucha, Cultural Surveys  
Kamana'o'i'o Gomes  
Auli'i Mitchell, Cultural Surveys  
Trevor Yucha, Cultural Surveys  
Victoria Kaluna-Palafox  
Walter Kanamu  
Annette Heu

Noelani Ahia  
Amy Halas  
Barb Barry  
Clare Apana

- SHPD Cultural Historian Ikaika Nakahashi read aloud from Sunshine Law re: meetings held without quorum.
- Board members present may receive testimony and ask questions of testifiers. No deliberating amongst council members or decisions are to be made.

### III. APPROVAL OF MINUTES

#### A. June 20, 2018

- **Item Deferred due to lack of quorum**

#### B. July 11, 2018 (Site Visit)

- **Item Deferred due to lack of quorum**

### 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.

##### - **Item discussed with no quorum**

- Reynaldo Fuentes from Atlas Archaeology present on agenda item.
- Mr. Fuentes provide background; continuation of discussion had from June 20 MLIBC meeting. 2 historic burials on found on property during AIS. Able to i.d. 1 person, connect to family. The other burial was not able to i.d. Mr. Fuentes stated per MLIBC request, original draft BTP was bifurcated. What council has in front of them is the draft BTP for the for unknown burial. Draft BTP associated with Mr. Opupele ‘ohana has already been accepted.
- Mr. Opupele burial will be relocated to Maui Memorial; other unknown burial will be preserved in placed. Vertical buffer 4/5 ft. Horizontal buffer 10 ft. to nearest utility.
- Mr. Fuentes pointed out signage was a concern at the last MLIBC meeting. It will be imbedded in concrete. Individual heavily decomposed. Still have small remnants of individual. Will be wrapped, appropriate protocols will commence.
- Council Vice Chair Maxwell asked How to verify burial if it was heavily decomposed. Mr. Fuentes replied there was enough diagnostic features in bone fragments, as well as portions of burial chamber (cavity where coffin was located) and a cranium in association.
- Definitive date roughly late 1800’s (1890) based on burials goods (buttons).
- Council member Dukelow asked in terms of protocols, who will do it, how will it be done?

- Mr. Fuentes reply that if recognized descendant, differ to them. If not, usually someone vested in it, or archaeologist would do it.
- Council member Dukelow recommended archaeologist reach out to a community group. Ke'eaumoku Kapu? Protocol done by some community member during reburial.
- Mr. Fuentes stated that individual is believed to be Native Hawaiian based on burial goods discovered.
- Much of material found above/with individual will be placed back.
- Council Chair Antonio asked if there is another option for the driveway? Tentative plan for driveway is to be above burial. Mr. Fuentes replied No, because it is a Flag lot. Landlocked parcel. Bring utilities from sides. No other options for driveway.
- Some disturbance from later period. Dog buried next to burial. Mr. Fuentes explained evidence dog was buried at later date because of different elevation and not consistent with burial method of individual (interred different manner).
- Council Vice Chair Maxwell wanted to clarify based on funerary items found, what is date of burial? Mr. Fuentes replied in the 1890 range, each material type has diagnostic range; try to average it out. Any similarity traits with regard to funerary items of this unknown burial, compared to Mr. Opupele 'ohana burial asked Vice Chair Maxwell. Different status? Mr. Fuentes replied higher number of artifacts with unknown burial, smaller (small area). Mr. Opupele 'ohana burial consisted of many domestic artifacts (bottle fragments, marbles, food stuff, faunal remains). The coffin also had brass fittings, window. Window gave tight diagnostic range 1920-1925 before embalming.
- Mr. Fuentes also stated that previous land use was agriculture. No other archaeological features on surface outside of some terracing.
- Council Chair Antonio open up meeting to public testimony.
- Remind testifiers to limit testimony to 3 minutes
- Kamana'oi'o Gomes address council
- Mr. Gomes stated that he is present at meeting because he believes lot of unrest going on in 'āina. Mishandling of iwi. Iwi being moved, desecrated to make room for development. Very important to respect people that have passed on. Our iwi kupuna deserve respect.
- Victoria Kaluna-Palafox address the council
- Ms. Palafox stated she lives in Ukumehame. Works closely with Ke'eaumoku Kapu, travel to Pu'ukoholā annually. Ms. Palafox would like a system of protocols in place so that those individuals that handle iwi kupuna, are doing so appropriately. Resource sheet for people to follow. If people educated, remedy the feelings and attitude of people that have true connection to the iwi kupuna.
- Council Chair Antonio close public testimony. Move on to next agenda item because unable to discuss due to no quorum.

**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.

- **Item discussed with no quorum**
- Cultural Historian Ikaika Nakahashi read aloud SHPD recommendation.
- Auli'i Mitchell address council.

- Mr. Mitchell work for CSH, Vice Chair of O‘ahu IBC. Mr. Mitchell come in front of council as descendant of Lahaina. Davis/Shaw ‘ohana. Working with Waiola Church to reinter these iwi kupuna that was removed from Lahaina Wastewater Project. Mr. Mitchell is in support of Mr. Among application for Descendancy.
- Foster Among address the council
- Mr. Among stated that he has 2 cultural claims pending. One for iwi at Waiokama and the other is for this iwi here at Honokōwai. Mr. Among stated that his ‘ohana came to Lahaina in 1819. That section of family genealogy. Last 200-years family lived all throughout ahupua‘a in area. Mr. Among stated he will share genealogy with council, just not publicly (executive session).
- Victoria Kaluna Palafox address council.
- Ms. Palafox is in support of Mr. Among cultural Descendancy application for iwi kupuna at the Lahaina Wastewater Project.
- Council member Dukelow asked Mr. Among if he is involved with drafting the BTP. Mr. Among replied no. That is one of the reasons why he would like to be recognized so that he can be involved in discussions. Have very strong feelings about burials. For context, grandparent’s older sister, Aunty, buried at Pu‘u Keka‘a (current day Black Rock). Iwi dug up during Sheraton construction in the 1960’s, reinterred throughout islands. Really question how iwi is to be cared for/reinterred. Mr. Among stated that when it comes to iwi kupuna kahiko (pre-contact), we should care for them/reinter/honor their lives when they lived (without) Christian influence.
- Council Vice Chair Maxwell stated that when iwi at this project discovered, community members testified in front of council that they would like iwi removed because of the close vicinity to the treatment plan.
- Council member Dukelow asked that once applicant is approved, who relays that info to developer?
- Cultural Historian Nakahashi stated that an acceptance letter is drafted and mailed to applicant and typically SHPD does, as a courtesy contact landowner/arch firm, etc. However, Mr. Nakahashi stated that the accepted applicant should make contact with landowner/developer as well just to ensure they know.
- Mr. Among stated that when he first heard of the discovery of iwi at the wastewater plant, his first reaction was to relocate. Not acceptable to preserve iwi in place, in light of activity there. Intend to be part of discussions re: drafting of BTP. Mr. Among stated he’s been working with Burial Specialist Kealana Phillips. Plan to follow up with Mr. Phillips when he returns.
- Council member Dukelow stated that protocol done at reinternment is traditional and not Christian in those cases. Unless recognized lineal descendant then the kuleana/decision would fall on them.
- Mr. Among provide background on Christianity and its connection to his ‘ohana. Just because people lived during time period of Christianity (post contact), does not mean people were Christians and buried in cemeteries.
- Auli‘i Mitchell address council
- Mr. Mitchell clarify status of BTP. Allow na‘au to open to all religious systems in world. Mr. Mitchell is cultural advisor to the four offices of CSH. Might be important to provide update on status of BTP. Mr. Mitchell stated that he has been the liaison between CSH and Waiola Church in the consultation process. Tama Kaleleiki was present in front of council when iwi was initially

discovered, reported to SHPD, council. Mr. Mitchell is looking forward to open dialogue with Mr. Ampong in the process.

- Council Vice Chair Maxwell asked if Tama involved in discussions re: disposition of iwi. Mr. Mitchell replied yes. Some uncertainty re: whether Tama Kaleleiki is recognized as a descendant to the iwi in questions.

- Trevor Yucha of Cultural Surveys Hawai'i address council.

- Mr. Yucha stated that CSH submitted draft BTP to SHPD for review. Draft BTP states the relocation of burials to Shaw family plot at Waiola Church. Mr. Yucha states that he is happy to work with Mr. Ampong and open up/continue consultation process. Mr. Yucha stated that the relocation of burials was made by SHPD. Plan is to work with Foster going forward, stated Mr. Yucha.

- Council Chair Antonio close public testimony. Move on to next agenda item because unable to discuss due to no quorum.

**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.

**- Item discussed with no quorum**

- Victoria Kaluna Palafox address the council.

- Ms. Palafox is a cultural practitioner who already practice in the area.

- Ms. Palafox shared her reasoning for wanting to be recognized. Ms. Palafox stated that you attach yourself to a cause and eventually you find your meaning/purpose. Ms. Palafox stated that she is connecting to her kupuna that is buried in Wailuku.

- Ms. Palafox provide her genealogical information orally to council.

- Ms. Palafox explained her connection to Maui Lani area, goes back decades from when she was young. Ms. Palafox remembered charcoal pits where iwi kupuna was buried.

- Ms. Palafox stated that her Kumu is Kapono'ai Molitau.

- Council Chair Antonio open up agenda item to public testimony

- Clare Apana address council.

- Ms. Apana stated that this has been a long process. Ms. Palafox been attending meetings for over a year trying to get Descendancy. It appears some people Descendancy application gets pushed through quick, while others take a while. Ms. Apana explained that she's seen some of the correspondence between SHPD and applicant and it does not seem clear/concise what she needs to provide to SHPD in order to be considered. Not a fair process. Controversial area where iwi kupuna need to be protected. Political.

- Council member Dukelow would like department to clarify Descendancy claim application process.

- Cultural Historian explained that on application can be found on the SHPD web site. Mr. Nakahashi how to fill out each section of the three-page document. Once application is complete, submit to Burial Sites Specialist Kealana Phillips. Mr. Phillips would then review application and supporting docs and would render decision based on info submitted.

- Annette Heu address council

- Ms. Heu stated in Maui Lani project district, there is concentrations of burials; pre-contact. Regarding to Descendancy, human being. Never, ever desecrate a grave. Ms. Heu stated she has come to burial council for many years. What's happening in Maui Lani is desecration; always inadvertent. Don't know how to explain this anymore. Don't know why doing this explained Ms. Heu. Graves of ancient old Hawaiians. Our responsibility to future generations to protect ancestors. Why need roads; why need to build houses on burials? Ms. Heu submit Descendancy claim application. Story of Kakanilua.
- Ms. Heu got involved in process when platform was bulldozed near house. Recognize people, spirit of the place. Recognize as human beings. Even though you take away the bones, person is still there.

- 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.

- Item differed
- Council member Leiane Paci requested item to be on agenda. In light of her absence from current MLIBC meeting, move to defer.

- 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

- **Item discussed with no quorum**
- Councilmember Kahele Dukelow lead discussion.
- Councilmember Dukelow go over Q & A. Councilmember Dukelow wanted clarity from department re: how is temporary buffer zones determined?
- Cultural Historian Nakahashi replied they are spelled out in the accepted AMP.
- Councilmember Dukelow seek clarity on SHPD ability to ask for stop work order.
- Lead Archaeologist Barker Fariss replied that it depends. If it is a question of procedure (violation, error in procedure, new info brought forward about area) can request a stop work order on county permit (stop project).
- Councilmember Dukelow asked about SHPD suing to reopen AIS because treatment of burials treated individually and not as collection body.
- Response: Overall goal to try treat inadvertent finds collectively, thus the continuous redesigns to preserve majority of burials in place.
- Council Vice Chair Maxwell wanted clarity of whether council can request/recommend SHPD to reopen AIS.
- Archaeologist Fariss stated that it's seldom requested. AIS is done to gather information. Monitoring under 6E is also done for identification purposes. Reopening an AIS doesn't make a lot of sense because already know what's there. Questions is, should it be done under monitoring or done under data

recovery? Preservation plan in place. Don't really need inventory survey per Dr. Fariss. No need more trenches dug in ground. Different example, Makena where things were missed in AIS, need documentation, inventory survey done. Perhaps, AIS need to be reopened. For burials, need to see in ground. Non-invasive ways to discover. Not right course of action to re-open AIS in Maui Lani per Dr. Fariss.

- Councilmember Dukelow stated reason behind question is that AIS missed a lot of burials in this case. How do to address problem? Dr. Fariss answered that monitoring for identification purposes takes these burials out of domain of inadvertent and puts them in domain of previously identified.

- Dr. Fariss stated that monitoring done for identification purposes. That's the way it's termed under 6E. Other places in Country, monitoring only done only when site is identified, monitored to ensure not disturbed. Not precautionary monitoring; monitoring for identification purposes. Scrap back sand slowly to try to identify what's there. Monitoring or data recovery?

- Councilmember Fisher wanted clarity on process.

- Dr. Fariss explained that County permit (grading/grubbing) contingent on process being fulfilled. AIS done, SHPD recommend monitoring for identification purposes. Loop hole/ flaw, report for monitoring doesn't come until construction is finish. Need to change law.

- Legally, monitoring is being done for identification purposes to identify what's there. Have we identified what's there??? In Dr. Fariss opinion, no, and thus burials shouldn't be considered inadvertent.

- Councilmember Fisher asked if there needs to be a change in law or policy at SHPD? First thing need to do is have AG office weight in if policy change within SHPD or change in 6E, legislature needs to be involved. Change in policy/law would create designation of finds as previously identified and be council responsibility to make determination.

- Councilmember Dukelow read aloud Questions and Answers to #5 and #6 (please see attached doc)

- Council Chair open up public testimony on agenda item.

- Vicky Kaluna-Palafox address council

- Ms. Palafox stated that looking at the Q & A, cannot truly protect iwi right now. Nothing in line, nothing centered. Need to find the source, core and come together to figure out how can truly protect iwi kupuna.

- Noelani Ahia address council.

- Ms. Ahia thanks council for seeking answers to these questions. Ms. Ahia states that one of the main functions of the council is to advocate for the iwi, in place of the ohana. In light of what Dr. Fariss stated, Ms. Ahia request that the council, when quorum, draft a letter to H & C branch chief that would point out fact that monitoring would take iwi out of domain of inadvertent. Preservation Plan in place? Comprehensive preservation plan.

- Ms. Ahia stated loop/ flaw report doesn't come in till after construction done. ASH hadn't turned in any reports up until stop work order last February. Monitoring report done, 169 finds for ML VI. If no reports turned it, use that as justification for stop work order. No burials listed outside of preserve??

- Auli'i Mitchell address council

- Reopening AIS/Monitoring going on. Just some thoughts, is it too late? Time period? Addendum to AIS. Would it fit this situation? Left in a conundrum. IBC's do a great job; volunteer their time. Hands are tired. AIS, allow council to advocate only in place or treatment of burial during AIS. Rules don't allow

council to decide on inadvertent, natural/erosion burials. Inadvertent discoveries not pono. Council stuck. Who is not stuck are those that come before council per Mr. Mitchell. Is it too late? Time frame for addendum? He mana‘o wale no.

- Clare Apana address council.

- Ms. Apana states that buffer zones can be determined by burial council. Maui Lani project, 3 meters for single burial / 10 meters for concentration per Ms. Apana. (from AMP). AMP is a mitigation, but community doesn't get a voice. Really wrong. HAR rule states community need to be included in consultation process. Know where concentration of burials is. Wouldn't need road if stop building homes; abandon project per Ms. Apana.

- If this is considered inadvertent burials, burial treatment plan. Not considered inadvertent, all decisions about burials come to burial council. Project started with burials not inadvertent. Found during AIS. When deciding to put utility road next to burials, shouldn't developer come before council; not to H & C? Need to preserve and hold onto whatever power council has. If not, easy to get overrun by bureaucracy.

- Amy Halas address council.

- Ms. Halas stated new permit, exploratory grading in burial preserve, issued by PWD July 2012, why wasn't it brought before MLIBC. Fly over Maui Lani. Started off at Maui Waena and fly south east direction, literally see burial concentration.

- Ms. Halas explained that Dr. Dega, SCS, Napua Greg on land use commission, testified that Waiale project, Ms. Greg stated that 400 remains found during test digs. Some of finds determined to be Ali'i. Found iwi buried with kahili, Lei Niho Palaoa. Intend to move them to make a nice preservation area. Reason why Ms. Halas mention this is the sand dunes at Phase 6, Maui Lani Parkway is literally in line with this concentration of burials.

- Ms. Halas also asked why Ms. Lisa Rotunno Hazuka and Mr. Jeff Pantaleo is not publishing in newspaper. If you look at HAR, supposed to place a notice in paper. There are burials outside; not just on ridge. Need to look at Dr. Neller 1984 find -2787 (golf course).

- Councilmember Dukelow asked about testimony by Napua Greg, what project is this for? Ms. Halas responded it was in regards to project A & B / Waiale. Bisected by Waiko road. SCS just started clearing area. Napua disclosed that testimony was in 2012.

- Clare Apana address council.

- Ms. Apana asked who can move a discovered a burial? Who can determine if it is iwi and who can move it? Can a non-archaeologist move a bone?

- Dr. Fariss will answer questions after break.

- **Meeting called to recess at 10:54AM**

- **Meeting resumed at 11:03AM**

- SHPD Lead Archaeologist Barker Fariss address council. Dr. Fariss responding to questions proposed by council/testifiers during meeting

- Question of negativity/aggression/blame, Dr. Fariss explained to please look at letters that come from SHPD. The people that are signing the letters are the ones making the decisions per Dr. Fariss. Those are the people that community should be addressing with questions, concerns, etc.

- First Question Dr. Fariss addressed is, are historic properties with burial component features archaeological sites? Are burials archaeology sites? Addendum to AIS? Dr. Fariss explained that, yes, SHPD does addendums to



AIS all the time. Dr. Fariss stated that it was he who placed the stop work order on Maui Lani and it was he who did all research. Looking at all sources that were mentioned, info submitted by ASH and Atlas and doing own GIS and statistical analysis, presenting reports to superiors. Dr. Fariss left with the question, are burials considered arch sites. The answer to that questions determines how much say in the process the archaeologist has. Can do addendum to AIS. But if no arch sites in Maui Lani, what's the point? Per Dr. Fariss. Dr. Fariss advised that do addendum to AIS. Do non-invasive exploration of areas around the dunes. GPR, Electro Magnetic Resistivity, Magnetometry. Technology has advanced far beyond what it was in 80's. Certainly, would id areas where can do minimal exploration to id burials. Expand buffers. Are ways to do this that are minimally invasive per Dr. Fariss. If addendum AIS, that is methodology used instead of trenching.

- Dr. Fariss address buffers. Per Dr. Fariss, buffers are determined on case by case basis. Provisions in AMP are only temp measures for when inadvertent find. Permanent buffer zones defined in preservation plan. Or BTP or BSC of preservation plan. AMP approved by archaeology branch in July 2018 (revised AMP). Stop work order was not lifted by archaeology branch. Dr. Fariss direct people to who signs letters. Question about when iwi is discovered. First step, per Dr. Fariss is to call the police. Police then contact SHPD if they believe not a crime scene. Arch from SHPD id if iwi human, 50+ years old. SHPD, history and culture branch take over the determine disposition of remains.

- Council Vice Chair Maxwell asked if burials are considered an archaeological site, what difference would that make.

- Dr. Fariss replied that in his professional opinion, burials should be considered archaeological sites, however, archaeologist should not decide what to do culturally with them. Location with signification. Collection of them together, constitute something larger than individual sites.....Complex. Difference between how archaeology might look at it vs somebody else.

- Council wanted clarity whether that he stated in the law or a department policy. Unsure???

- Burials are historic properties. They get SIHP numbers. But the question is, are they archaeological, because if they are, need to ask who is making decisions in terms of interpreting data per Dr. Fariss. If a burial, defer to cultural practitioners, minimal data. If collection of burials, may be room for some interpretation in terms of what that means.

- Question of Who moves burials, whose allowed to handle. Archaeology branch of SHPD review permits. Give permits to people do archaeological work. Vetted by SHPD, given number to do work in Hawai'i. Archaeologists are the ones that do monitoring, do the disinterment as well typically involved with reinternment. However, per Dr. Fariss, archaeology branch does not review any docs of disinterment or reinternment. No reports provided to arch branch. How does archaeology branch provide guidance, regulate archaeologist in State of Hawai'i if SHPD arch branch doesn't know what they are doing? Who is info sent to??

- Councilmember Fisher asked if there is a database/list of all iwi that get removed/discovered.

- Dr. Fariss replied that there is an inventory/database.....SIHP. Councilmember Fisher asked, with the SIHP number, would somebody be able to track iwi?

- Not sure per Dr. Fariss.

- Another issue/question is when state has possession of iwi, what law applies??
  - Councilmember Dukelow asked about submittal of monitoring report after construction is finished. Dr. Fariss replied, yes, the legal requirement is to submit monitoring report once the monitoring is completed. One provision that Dr. Fariss has included in letters is that if project goes beyond 1 year, firm must submit annual/bi-annual reports.
  - Auli'i Mitchell address the council.
  - Collection of iwi constitutes, as a Hawaiian, as indigenous methodology as well as scientific methodologies used in applied sciences today. Cultural monitors working side by side with archaeological monitors. Deep enduring knowledge systems, methodologies applicable to scientific methodologies today. What to call burial sites? Archaeological? First and foremost traditional cultural sites. Want to be clear. Mr. Mitchell stated that he is a big fan of archaeology. Cultural Anthropologist, discipline of archaeology. Sit on society for Hawaiian archaeology. Hope that one day can deconstruct that. Until get koko, go through every type of educational system that Hawaii provide, cannot call yourself Hawaiian Archaeologist. Makes process easier if consider archaeological because there is a process in place. Traditionally Cultural Sites
  - Dr. Fariss responded that he not suggesting burials should be called archaeological sites. Appropriate to keep them with H & C jurisdiction. Discussion could be had as to why other traditional features/artifacts are considered archaeology and not H & C. Point Dr. Fariss raising is about historic properties with burial component features whether iwi or not (burial pit, grave goods, etc.), does it constitute something archaeological? Know Dr. Fariss background, where come from, adamantly opposed to archaeologist going in and exploring to do science. Dr. Fariss suggesting taking burial sites out of prevue of SHPD at large and ignore what SHPD arch can provide, particularly data acquisition and analysis is misguided.
  - Council Vice Chair asked about data acquisition interpretation of Maui Lani VI. How differ from Cultural Branch? Data acquisition done by arch on ground per Dr. Fariss. Monitoring for id purposes. Where does that stop? Once id, then continue monitoring until project finished. Once id, what next? That's the loophole. That's the problem. Dr. Fariss analysis, take SIHP number (point locations), can do systematic analysis of them to predict with high confidence that going to hit more burials. Continue to hit burials. With data that have, analyze and predict. If can predict, still consider it inadvertent?
  - Councilmember Dukelow stated that we are in an interesting time here on Maui dealing with these issues. Historically roles were switched. Archaeology was the discipline that caused a lot of disruption/desecration of iwi. That is the reason, that laws were created in particular ways. The reality today is to realize that it's not black and white that way, in this particular instance, roles sort of turned where we have our own people playing that role. Justifying, validating desecration. Archaeologist that is disenfranchised from being part of a possible solution. Difficult as council, archaeologist. Ever changing landscape. Political.
  - Noelani Ahia address council.
  - Any opportunity to apply 106 process because SHPD curate's iwi kupuna. Dr. Fariss replied that probably not 106, but perhaps other federal laws. Legal question as to NAGPRA applicability. State attorney general need to make the call per Dr. Fariss.
- Council Chair Antonio close public testimony on agenda item

## V. SHPD/INADVERTENT DISCOVERIES/CORRESPONDENCE

### A. 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 July 24, 2018, July 30, 2018, August 29, August 30, 2018, and September 6, 2018, Ahupua'a of Wailuku, District of Wailuku, TMK: (2) 3-5-099:225

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

#### - Item discussed with no quorum

- Nico Fuentes address the council. Mr. Fuentes representing Atlas archaeology. Mr. Fuentes stated he is Principle Investigator of Atlas Arch.

- In the event of a discovery of HSR, procedure is to contact SHPD, per the accepted AMP, and proceed based on directive issued by the department per Mr. Fuentes.

- Mr. Fuentes provide council with update on finds at Maui Lani VI, increment 4  
- Inadvertent find July 24<sup>th</sup> consisted of a very small scatter of skeletal remains in previously disturbed sand. After further testing, scatter is believed to be from 3 individuals; 2 children, 1 adult. It is not associated with TS 155 as previously reported, per Mr. Fuentes.

- Inadvertent find July 30<sup>th</sup> consisted of a scatter of skeletal remains in previously disturbed sand. It was found at 10 cm below previous scatter found on the 24<sup>th</sup>. After further testing, remains are believed to be associated with find from the 24<sup>th</sup>, according to Mr. Fuentes.

- Mr. Fuentes explained that there was a one-month hiatus of job in which time SHPD was discussing within department on how work should proceed. SHPD requested work be stopped; Mr. Fuentes voluntarily stopped work until more discussions between arch and department could be done to ensure everyone on same page.

- When work resumed, scatter of skeletal remains (TS172) in previously disturbed sand was discovered on August 29. The remains are believed to be associated with the finds reported on the 24<sup>th</sup> (TS 170) and 30<sup>th</sup> (TS171) of July. Remains (scatter) was assigned TS 170, 171, and 172. They are all scatter of the same individuals found on different dates per Mr. Fuentes.

- TS 173, a primary in situ burial was identified on August 30 in the sewer line corridor and vicinity of the median burial preservation area. Mr. Fuentes explained that all work was stopped, monitor Cody Sheets and P.I. Nico Fuentes notified SHPD burial specialist Kealana Phillips and initial protective orange fencing was placed across the entire sewer line and roadway corridor.

- Site visit occurred on August 31<sup>st</sup> with Burial Specialist Phillips, H & C branch chief Hinano Rodrigues, landowners, and Atlas/ASH staff. During meeting, authorization was given to proceed with controlled excavations of the utility corridor, as specified in AMP, outside of a construction buffer for TS 173.

- Mr. Fuentes explained that TS 173 was identified in shallow original sand deposits, south for the extensive roadway fill. Because 173 primary burial, no further work, documentation warranted beyond vertical and horizontal locational data. Final protective buffer zone was established around TS 173 and encompassed all original sands surrounding TS 173 to the north, east and west and contained portions of the road fill. Within buffer zone, only manual shovel scraping (where warranted) could be performed.

- Mr. Fuentes stated that controlled excavations commenced on the northwestern end of utility corridor and later moved to the north central portion outside of buffer zone. Both locations contained the road fill layers, and grading continued for about another week.
- On September 6, monitor observed primary burial (TS 174) in original soil approximately 9 feet below surface. Find was reported to SHPD and per consultation, all work stopped, buffer zone erected, and location information collected. According to Mr. Fuentes, during documentation of TS 174, possible pit outline was observed in the cut profile, designated TS 175. Did not investigate TS 175. Located within effected buffer zone. Mr. Fuentes said that additional sand was placed against cut profile to further protect the possible burial pit.
- According to Mr. Fuentes, corridor no longer viable based on recent finds. Location data collected for finds and landowner is reviewing various design options for the utility corridor.
- Councilmember Fisher asked that if corridor being redesigned, how confident that redesign area will not have iwi?
- Councilmember Dukelow referenced Dr. Fariss predictive model. Consult with redesign?
- Dr. Fariss stated he is not involved with redesign.
- Statistical analysis proved pretty accurate is predicting iwi, per Councilmember Fisher. In light of Dr. Fariss departure from SHPD, will replacement be aware, be able to utilize type of method? Dr. Fariss explained that statistical analysis pretty common.
- Dr. Fariss stated he knew what area was when he visited. Dr. Fariss attend MLIBC meeting voluntarily at the request of H & C branch to answer any questions. Listen to testimony, seen data. During stop work order did statistical analysis, historical background research on previous studies. Recommendation made by Dr. Fariss was noninvasive investigation of the area around existing burials and the way this done archaeology, find one, move out an increment, and keep going until you have negative results. That's where buffer is placed; not around each one individually per Dr. Fariss. Statistics accurate, but not precise. High confidence burials would be discovered.
- Councilmember Dukelow request a copy of Dr. Fariss report.
- Landowner will redesign, archaeologist will monitor per Mr. Fuentes. Arch not typically involved with the redesign process, outside of finding a burial and letting them know cannot work in this location, need to work elsewhere.
- Councilmember Dukelow asked if the interim buffer around these newly discovered burials considered in the redesign? Mr. Fuentes replied yes. Who is giving landowner advice on how to redesign asked Councilmember Dukelow. Councilmember Dukelow is aware that landowner (arch representing landowner) typically comes in front of council to consult re: redesign plan but that is usually after redesign is done.
- Dr. Fariss explained that what happens in these construction projects is that they take into account their bottom line when doing redesign. Engineering specs, etc. That's what drives the redesign. Then they bring that info to SHPD/IBC for advice.
- Consultation is done with all of SHPD (archaeology as well as H & C branch)
- Dr. Fariss reminded council that there is one other player in the process.....County of Maui. It is there permit. Not just the state, developer and the arch firm.

- Council Chair Antonio asked how long will it take to find a replacement to Dr. Fariss? What happens in the meantime?
- Dr. Fariss explained that in light of the fact the arch 3 position hasn't been filled for over a year, not overly confident that position will be filled quickly. Everything goes to Oahu, Kapolei office.
- Burial Council Chair open up item for Public Testimony.
- Noelani Ahia address the council.
- Ms. Ahia question the fact that Mr. Fuentes representing Atlas Archaeology. New company? Ms. Ahia asked where ASH representative? Not sure why Atlas presenting info to council.
- Most important thing, not inadvertent, could be there, would be there. Little bit of misrepresentation of process. Ms. Ahia referenced email drafted by Amy Halas to Council Chair Antonio. Question arose in re: testing methodology, issuance/review of permits, stop work orders. Even if scatter, disintegrated to dust, still iwi kupuna per Ms. Ahia.
- Amy Halas address the council.
- Ms. Halas thanked Dr. Fariss for his service. Ms. Halas stated that she lives in the Towne Parkways. Since April 2017, bringing this to attention. Bullied and threatened by superintendent and assistant at Towne. Ms. Halas stated she is haole, but husband and daughter is kanaka. This low lying pu'u has so many stakes, markers. Sad current burial council has not made recent visit to area. Ms. Halas stated that Hinano Rodrigues is acting administrator of SHPD when Dr. Downer is out. As acting administrator, per Ms. Halas, Mr. Rodrigues can indeed lift stop work orders. Urge council to make site visit. New access utility road, getting closer and closer to Dr. Earl Neller 1984 Bishop Museum SIHP - 2797 burial site which arch Lisa has not protected and not identified. Nico is employee of ASH; did not realize Nico is part of Atlas. Lisa (ASH) still involved?
- Clare Apana address the council.
- Ms. Apana happy to hear moving a little bit forward. Using archaeology methodology to be careful in identified locations of iwi kupuna. Upset about Mr. Fuentes reporting. Did not use map, create map to help identify iwi kupuna. Need new report, updated to use best methods. Monitoring report, who is going to read it? History, all could be lost. No more building in area. What happened to other sand dune. Sand gone; apparently no burials. Subdivision map of Phase 9 and 6 come together in an arch. Right next to each other. All burials. How come still building houses. Why community can't say anything. Not see map of burials. Ms. Apana state that they are recognized cultural practitioners in area. Work hard to be recognized as so, so that they can be involved. OHA should be contacted. MLIBC should have the greatest voice. Known burials.
- Councilmember Fisher asked if Ms. Apana a recognized cultural descendant of area. Ms. Apana stated she lives in area. Ms. Apana said she applied but was not given because she was unable to connect herself to a family member that resided in area 100 years ago. Is able to connect herself to family in area from 50 years ago. Recognized as cultural practitioners of area by circuit court. Believe that hui area people interested in what's going on; can have a say. Don't want to be ignored.
- Ms. Apana been told repeatedly that only Dr. Downer, Dr. Lebo would be handling project. Appears as though SHPD Maui office/branch having voice silenced.

- Council Vice Chair Maxwell asked if it is true that Dr. Downer is responsible solely for decisions re: this project.
- Dr. Fariss replied that that is correct. Dr. Downer has taken over all decisions that SHPD will make re: this project moving forward. Ms. Apana stated she had given Dr. Downer 3 letters (Clare, Amy, Noelani) outlining objections to this project moving forward. Ms. Apana stated that Dr. Downer would try and answer, since July. No response per Ms. Apana.
- Councilmember Dukelow wanted clarification re: SHPD kuleana when an inadvertent find is reported to department.
- Cultural Historian Ikaika Nakahashi stated that Burial Specialist Kealana Phillips would handle all of that. Mr. Nakahashi stated that it is his understanding that when Mr. Phillips receives a report of a discovery of human remains, that MPD is called. Once/if MPD declares it is not a crime scene, SHPD takes jurisdiction. The notification process by SHPD includes reporting find to [burials@oha.org](mailto:burials@oha.org), geographic rep of the MLIBC as well as the medical examiner. According to Mr. Nakahashi, because of Maui has no medical examiner/coroner on island, chief of police is the acting medical examiner/coroner. Mr. Nakahashi also stated that as means of notification/transparence to notify public, SHPD always places item on upcoming MLIBC meeting agenda.
- Councilmember Dukelow asked if any lineal or cultural descendants are notified? Mr. Nakahashi replied that according to law, need to notify any known descendants. But because iwi is considered inadvertent, no recognized descendants.
- Theoretically, if an individual recognized as descendant to iwi kupuna at Maui Lani, would person be contacted for every find going forward, or is each find considered separate. Yes, each find would be considered separate. No recognized descendant to new finds.
- Would DOCARE be able to replace the presence of MPD? MPD always needs to be the first to respond to rule out a crime scene. DOCARE is involved (after hours/weekend) or when jurisdiction is given to the state.
- Walter Kanamu address the council.
- Mr. Kanamu stated he has served on previous councils under various state and county leaders. Mr. Kanamu explained that when issues arose, under council's advisement, always took action to see that whatever problems was, there was a solution. Mr. Kanamu asked that current council do the same. The sand dunes, geological phenomenon. Why taking it down? More than just the iwi. Iwi is important. Mr. Kanamu stated he used to work on aku boat in 70's. Catch thousands of pounds of aku. Boat sank, half crew died. Shrimp boat in 80's, boat went out, 5 never came back. Mr. Kanamu stated he was supposed to be on those boats. Wife said not to go out. Statistical analysis? Women's intuition? Gut feeling? Sensitivity, common sense? Mo'olelo, na'au, 'uhane? Those things important asked Mr. Kanamau. Or just science important? This is Hawai'i. If no sensitivity to land, shouldn't be running the show per Mr. Kamaunu.
- Dr. Fariss answer questions. Atlas vs. ASH. Project proponent has the right to hire who they want to carry out monitoring plan. According to Dr. Fariss, it is his understanding that Towne has hired both Atlas and ASH. No reason why there can't be more than one arch firm working on same project; So long as following plan. Regarding.
- Dr. Fariss was told by Maui County that anyone from SHPD could call and release stop work order. Nothing in law says contrary to that. Question about

whether or not OHA needs to be contacted. Dr. Fariss stated that OHA is always contacted. Dr. Fariss recommends that OHA be the one to investigate the question of NAGPRA.

- B. Discussion about the July 11, 2018 Site Visit to the Burial Preserves located on Ku‘ukama Street, Huluhulu Place, in the Maui Lani Islands and Bluffs Subdivision, at the Maui Lani Regional Park, and along Kuikahi Drive/Maui Lani Parkway, Ahupua‘a of Wailuku, District of Wailuku, TMK(s): (2) 3-8-083:038, (2) 3-8-083: 003, (2) 3-8-083:008, (2) 3-8-083:038, (2) 3-8-087:017, (2) 3-8-086:055, (2) 3-8-007:150**  
**Information/Discussion/Recommendation:** Discussion about the above topic.

**- Item discussed with no quorum**

- Kapulani open item up for public testimony
- Noelani Ahia address council. No quorum, can't have conversation, will all items be re-agendized again? The answer is yes.
- Ms. Ahia stated that her request for the extra meeting was to discuss, focus primarily on phase 6. Ms. Ahia was disappointed that there was no meeting, immediately after the site visit because conference room unavailable. Site visit was supposed to be extra meeting, but the following meeting was cancelled (no quorum) and site visit meeting ended up becoming the monthly meeting.
- Ms. Ahia question number for quorum. Response from council is 5. Lanai and Hana seats vacant. Ms. Ahia stated she hopes quorum can always be met because there is a lot of things that need to be discussed.
- Ms. Ahia stated that site visit was emotionally and spiritually challenging. Lisa is participating in desecration per Ms. Ahia. To have to listen to Lisa provide info to community was painful per Ms. Ahia. Leiane Paci, member of MLIBC, part owner of Mills group. Disappointed did not go to phase 6. Hewa happening. Ms. Ahia would like council mana‘o about signage. No more development in ML VI, as well as whole project district.
- Amy Halas address council. Hoping site visit would be to all sites. Visited about 5, very briefly. Lisa, who contributed to desecration showed up, guided and narrated. At Maui Lani regional Park, Lisa refused to take any more questions. Ms. Halas stated that it was disappointing council didn't look at the dry stack wall at the park. Phase 6, truth is burial concentration is whole strata, explorative grading in preserve. Ms. Halas mention Dr. Neller find abuts golf course. To the south, Maui Lani Towne Parkway development. If move road, guaranteed to encounter more iwi. Encourage council to conduct another site visit. Detrimental development to last sand dune (Phase 9). Hoping would have traversed pu‘u at Phase 9. Detrimental to have both Lisa and Leiane present per Ms. Halas. Proper safeguards, fencing, gate, signage. Acknowledge, respect iwi kupuna.
- Barbara Berry address council. Ms. Berry states that she lives streams meeting for those that can't be here. Testified countless times at county council meetings re: desecration going on at Maui Lani. Being haole, don't really feel like that. Completely qualified to speak on matter. Typically don't speak out of respect for culture, iwi. Pure and simple, cultural desecration; cultural genocide. Should not be tolerated. Really upsets Ms. Berry to see this going on. Any way to see it stopped permanently.
- Ms. Apana wondered council's thoughts on site visits. Go to site and come back into conference room and do rest of meeting. Good thing. Have there been

violations of contracts in AMP's that have gone on for years? Removal of iwi kupuna by people who are not archaeologist. What happens? Is there a violation? Any recourse? What happens when you do things against the law? Does anything happen to these people who do not follow the law, contracts that were made?

- Council Chair Antonio wanted to reiterate to audience that the council is here volunteering time because they, also care, about the iwi kupuna. Ms. Antonio explained that they work with SHPD. It's difficult to hear members of the public demonize people. Ms. Antonio explained that she is Hawaiian, she sees the desecration, but she also sees fellow human beings. Ms. Antonio encourage that come together, go at the issues and not against one another.

**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 12:34 PM

Minutes by Kealana Phillips. SHPD Burial Site Specialist