



**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**

DATE: January 15, 2020  
TIME: 9:00 AM  
PLACE: Department of Land and Natural Resources  
Maui District Office Complex  
Conference Room  
130 Mahalani Street  
Wailuku, Maui, HI 96793

**I. CALL TO ORDER/PULE**

The Burial Council Vice Chair Dane Maxwell called the meeting to order at 9:05 AM

**II. ATTENDANCE:**

Members: Dane Maxwell – Chairperson  
Kaheleonalani Dukelow  
Scott Fisher  
Johanna Kamaunu  
Kyle Nakanelua  
Iris Pe'elua

SHPD Staff: Kealana Phillips, Burial Sites Specialist  
Ikaika Nakahashi, Cultural Historian  
Cailee Gomes – SHPD Intern

Guests: Foster Ampong  
Nick Molinari  
Rob Cooper  
Josie Yucha – CSH  
Angela Yates – CSH  
Kirstin Punu  
Andrew Chianese – HBT  
Marcus Ohlheiser – HBT  
Kai Rozet

Joycelynn Costa – Aha Moku  
James Sagawinit – Kanaka  
Kalai Costa – Aha Moku  
Noelani Ahia  
Leilani Miranda  
Kaniloa Kamaunu – Aha Moku ‘O Wailuku  
Trevor Yucha – CSH  
Reynaldo Nico Fuentes – Atlas Arch  
David Yamashita – County Parks Dept

### III ELECTION OF NEW MLIBC VICE CHAIR

- Council Chair asked council for nominations.
- Councilmember Nakanelua nominate councilmember Kahele Dukelow.
- Seen as there are no other nominations for Vice Chair. Proceed to voting
- Motion made by councilmember Fisher: MLIBC nominates Kahele Dukelow Vice Chair of MLIBC.
- Councilmember Nakanelua second motions
- All aye; No nay
- Motion carries; Kahele Dukelow Vice Chair of MLIBC.

### IV. APPROVAL OF MINUTES

- A. **October 16, 2019** – Item deferred to next MLIBC meeting
- B. **October 16, 2019 – Executive Session** - Item deferred to next MLIBC meeting
- C. **December 11, 2019** - Item deferred to next MLIBC meeting

### V. BUSINESS

- A. **Training for Maui/Lāna‘i Islands Burial Council on membership, roles, and responsibilities.**  
**Information/Discussion:** Discussion on the above item.  
**(BRING BLACK TRAINING BINDER)**
  - 6E/13-300.
  - Deputy AG on phone line. Few questions/clarification. One thing is language, terms, definition. Council interpretation. Hopefully empower council.
  - What need answered from training. 13-300, language, motions made in past meetings.
  - Department in process of getting Deputy AG Cindy Young on the line.
  - Plan is to go over terms, definitions. AG clarify if council had any questions.
  - Cultural Historian Nakahashi conduct training.
  - Mr. Nakahashi mention there has been questions about different terms. Read what the rules/statutes say. Deputy AG clarify.
  - HAR 13-300. Section on definitions.
  - Definition of previously identified read aloud. Councilmember Fisher – *Burial sites containing human skeletal remains and any burial goods identified during archaeological inventory survey and data recovery of possible burial sites or known through oral or written testimony.*

- Mr. Nakahashi asked if there are any questions re: definition of previously identified? And criteria for consideration.
- Item open for public testimony at the end of training.
- Councilmember Dukelow mentioned the contention among (council, community) with definition. Only burials found during AIS.
- What recourse does burial council have if determine inadequate AIS asked councilmember Fisher. Or deficiency is process re: Oral testimony. Did not talk to the right people. Excellent question for AG. Deputy AG request; send things in writing.
- Under burial laws: 1) previously identified 2) inadvertent discovery.
- Chair Maxwell read aloud definition of inadvertent discovery – *the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity.*
- Councilmember Nakanelua asked what if anticipating find. What then? Excellent question, particularly in places where high concentration (history of finds).
- Follow letter of law. Miss the intent/spirit. Problem. How to bridge gap. Ensure protection.
- Deputy AG Cindy Young on the phone.
- Chair Maxwell recap what was recently discussed.
- Councilmember Nakanelua asked question again. Under definition of inadvertent (unanticipated finding). What if finding is anticipated. How to classify. Doesn't seem to fit definition.
- Deputy AG Cindy Young replied two types of finds: 1) previously identified 2) inadvertent. Read definition aloud. HAR 13-300-2 – Definitions Section. Read definition of previously identified aloud. Ms. Young stated that everything else (not meeting previously identified criteria) falls under inadvertent.
- Council question. Gap between previously identified and inadvertent exclaimed Vice Chair Dukelow. Many context currently working in/with, burials not found during AIS. However, burials being continually discovered; expected, anticipated given the history of finds in area. Point struggling with at this time. All know it's there. Wasn't found in AIS. Treated as inadvertent. Council struggling on how to address the inadequacies of many AIS. Many AIS old, limited in their scope.
- Deputy AG Young stated definitions are what they are. If wanted to change language, could be achieved thru a rule amendment.
- What would allow for an amendment to an AIS asked councilmember Kamaunu. Once approved, unsure of circumstances that mandate amendment. SHPD?
- Cultural Historian Nakahashi replied that it would be up to the archaeology branch (Dr. Susan Lebo, branch chief) to determine that.
- Deputy AG Young stated that an Amendment to AIS wouldn't fall within duties, responsibilities of IBC. Current agenda item being discussed is limited to duties and responsibilities of BC. BC Training.
- Deputy AG Young stated don't know answer to question. Don't deal a lot with AIS. If wanted to submit something in writing. Suppose Deputy AG can take a look at it.
- In the meantime, would council action allow for support from SHPD asked councilmember Kamaunu. If council were to make a motion re: disposition of iwi and necessity of amended AIS, would council decision have support of SHPD?
- Can't speak for SHPD. Not sure it's within the power of MLIBC to request amended AIS.
- No Maui SHPD archaeologist. Appears as though they would be the ones to make decision. Vulnerable position. Need to make decision. Until such time, council make decisions. Arch not available. Will Deputy AG support council, asked councilmember Kamaunu?
- Can't see where it is within power of council to request amendment to AIS stated Deputy AG Young.

- Councilmember Kamaunu stated council makes decision to declare area burial ground. Not anywhere presented in AIS.
- Just to be precise with terms. No such thing as burial ground in rules or statutes per Deputy AG Young. There is burial site.

**B. Update on Maui Lani Subdivision Phase VI, Ahupua‘a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors.**

**Information/Discussion/Recommendation:** Update on the above project.

--Councilmember Iris Pe‘elua Recuse herself.

- Councilmember Scott Fisher make motion: **MLIBC objects to further exploration of anomalies (probable burial sites) which are reasonably believed to be iwi kupuna located in Maui Lani Subdivision Phase VI, Ahupua‘a of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. We make this recommendation based on the fact that:**

- **There are numerous known burial sites in this area (i.e. it is a burial site complex);**
- **The identified anomalies number approximately 300 (with approximately 93 selected for further testing); considering the density of previously identified iwi kupuna in this area (over 180 burial pits and human remains) the likelihood of the anomalies containing iwi kupuna is unacceptably high;**
- **MLIBC has previously identified this area as a known burial site complex;**
- **The anomalies (probable burial sites) identified during previous investigative work are reasonably believed to be Native Hawaiian remains older than 50 years;**
- **According to HRS 13-300-43, which identifies potential penalties for the disturbances of iwi kupuna (“It should be unlawful for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy or alter any burial site, or the contents thereof”) any work done in this area is subject to penalties, under this statute.**
- **Meaningful, and reasonably accurate, alternatives can be used which would avoid physical excavation of these anomalies. These include historical pattern analysis of such anomalies.**
- **The following motions were approved at previous Maui Lāna‘i Island Burial Council meetings:**

**MLIBC March 6, 2019**

**MOTION**

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.

**MOTION**

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.

**MLIBC March 6, 2019**

## **MOTION**

**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.

## **MOTION**

**MLIBC recommends** additional exploratory archaeological testing, including, but not limited to Lots 9-12 of Maui Phase 6.

## **MLIBC January 16, 2019**

## **MOTION**

MLIBC recommends against the use of horizontal augering during the installation of the proposed sewer line infrastructure at Maui Lani Phase 6.

## **MLIBC October 17, 2018**

## **MOTION**

**MLIBC** requests Towne Realty provide following information 1) comprehensive, up to date map of iwi kupuna found in Maui Lani Phase 6 and 2) accounting of the number of iwi kupuna found at Maui Lani Phase 6. - Councilmember Fisher propose motion

## **MOTION**

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

## **MOTION**

**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

## **MOTION**

**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).

## **MLIBC May 16, 2018**

## **MOTION**

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.

## **MLIBC May 15, 2019**

## **MOTION**

MLIBC requests that 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 are to be determined by the Wailuku representatives and cultural descends 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.

### **December 21, 2017**

#### **MOTION**

The Maui / Lanaʻi 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.
- Role and credentials of Primary Investigator.
- **Recognition of this area as a site with a burial concentration.**
- Re-open and re-examine the Burial Treatment Plan to include consultation with cultural and lineal descendants, as well as cultural practitioners and generational community members.
- No further decisions should be made regarding iwi kupuna until a comprehensive inventory of burials is compiled for Maui Lani Phase 6 & adjacent lots.

- Council Vice Chair Dukelow second motion.
- Councilmember Fisher – “aye”
- Council Chair Maxwell – “aye”
- Council Vice Chair Dukelow – “aye”
- Councilmember Kamaunu – “aye”
- Councilmember Nakanelua – “aye”
- Councilmember Peʻelua – “Recused”
- No “nay”
- Motion Carries

#### **VI. CORRESPONDENCE**

- A. **Letter dated July 31, 2019 from the Department of Attorney General Land Transportation Division re: Petitions for Contested Case Hearing from HBT of Maui Lani LLC and Maui Lani Partners.**  
**Information/Discussion:** Discussion about the above letter.  
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#### **VII. INADVERTENTS**

- A. **Inadvertent Discovery of Human Skeletal Remains at Hāmākuapoko Beach, reported to the Maui Office of the State Historic Preservation Division on December 14, 2019, Ahupuaʻa of Hāmākuapoko, District of Hāmākuapoko, Island of Maui, TMK: (2)-2-5-004:024.**  
**Information/Discussion:** Discussion about the above find.  
  
- SHPD Cultural Historian Ikaika Nakahashi address council on agenda item.

- B. Inadvertent Discovery of Human Skeletal Remains at Puamana Beach Park, 0 Pualei Drive, reported to the Maui Office of the State Historic Preservation Division on December 15, 2019, Ahupua‘a of Polanui, District of Lāhainā, Island of Maui, TMK: (2)-4-6-033:001.**  
**Information/Discussion:** Discussion about the above find.
- SHPD Burial Sites Specialist Phillips address council on agenda item.
- C. Inadvertent Discovery of Human Skeletal Remains at 32 Akumu Way, reported to the Maui Office of the State Historic Preservation Division on December 27, 2019, Ahupua‘a of Waihe‘e, District of Wailuku, Island of Maui, TMK: (2) 3-2-010:017.**  
**Information/Discussion:** Discussion about the above find.
- SHPD Cultural Historian Nakahashi address council on agenda item.
- D. Inadvertent Discovery of Human Skeletal Remains at Ho‘okipa Beach Park, reported to the Maui Office of the State Historic Preservation Division on December 28, 2019, December 30, 2019 and January 6, 2020, Ahupua‘a of Hāmākuapoko, District of Hāmākuapoko, Island of Maui, TMK: (2) 2-5-004:025.**  
**Information/Discussion:** Discussion about the above find.
- SHPD Cultural Historian Nakahashi address council on agenda item.
- E. Inadvertent Discovery of Human Skeletal Remains at Kaulahao, reported to the Maui Office of the State Historic Preservation Division on December 28, 2019 Ahupua‘a of Hāmākuapoko, District of Hāmākuapoko, Island of Maui, TMK: (2) 2-6-009:023.**  
**Information/Discussion:** Discussion about the above find.
- SHPD Cultural Historian Nakahashi address council on agenda item.

Meeting adjourned at 1:16 PM