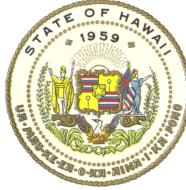


DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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STATE PARKS

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

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MAUI / LĀNAʻI ISLANDS BURIAL COUNCIL MEETING MINUTES

October 28, 2020

I. CALL TO ORDER

II. ROLL CALL

Kahele
Iris
Dane
Scott
Kyle
Johanna

All council members present

9:30

SHPD staff on the call:

Kealana Phillips, Maui Lanai burial sites specialist
Andrew McAllister, Maui island archaeologist
Iolani Kauhane, Maui island archaeologist
Kaahiki Solis, cultural historian
Leslie Iaukea, Oahu burial sites specialist
Tamara Luthy, ethnographer

A few changes for today's meeting:

Testimony of three minutes per testimony

If you wish to request to agendize an item in the chat - say your name and what agenda item you are testifying for

Testimony will be taken after SHPD recommendations for descendants

III. APPROVAL OF MINUTES

Kealana reports that his minutes for the January, March, and May meeting minutes are almost done - summer meetings are under way with Ikaika. Kealana will work with IT to get more meeting recordings uploaded. Hopefully soon. Two meetings are available in draft form in the council's Google drive. Some others are available in draft form on the SHPD website along with the recordings.

- A. January 15, 2020
- B. March 4, 2020
- C. May 20, 2020
- D. June 3, 2020
- E. June 3, 2020 – Executive Session
- F. June 17, 2020
- G. June 17, 2020 – Executive Session
- H. July 15, 2020
- I. August 26, 2020
- J. August 26, 2020 – Executive Session
- K. September 30, 2020
- L. September 30, 2020 – Executive Session
- M. October 8, 2020
- N. October 8, 2020 – Executive Session IV.

BUSINESS

A. Draft Archaeological Preservation Plan for the Palauea Cultural Preserve, Palauea Ahupua'a, Honua'ula, Maui, TMK: (2) 2-1-023:034. Information/Discussion/Recommendation: Discussion on the above plan.

Brutus - Mahalo nui chair and council. We are required to do a preservation plan for Palauea Cultural Preserve. SHPD who approved the draft plan on the 3rd of Sept, Maui Cultural Resource Committee and they are working with them to present at a later time and of course with the burial council. Hope you folks were able to see the outcomes of the preservation plan - there are 12 sites they want to protect; he wants to emphasize that this wahi kupuna is a place OHA is committed to protecting and preserving. They are open and committed to community consultation. They had their consultants' approach 26 people. They themselves approached some people as well. This is by no means the end all be all. As people approach them, they are happy to include them. They are open to additional community consultation as the project goes on. They don't have any development plans for this site except what is recommended in the plan to help protect and preserve. They currently work with some cultural stewards for the site including people from the UH Hawaiian Studies department, and through them utilizing the site primarily for cultural education.

Kahele - are we voting on this today?

Dane - We have to approve their preservation plan

Kahele - she may have to recuse herself because she is one of the cultural stewards for UH Hawaiian studies, so she recuses herself.

Dane asks Brutus - question about one confirmed burial and one unconfirmed burial - are they protected enough, are they obvious, do you want to go to executive session to protect the exact location and status of the site which is relatively hard to recognize and get to? When they install fencing and other protection methods and it will be really solid.

Brutus - the burial isn't very easy to get to or recognizable as it is now and once you have fencing and protection it will really be solid.

Dane - he is satisfied but if the rest of the council wants to go into closed session they can. Dane is confident in the location, but he is open to discussion.
No community testimony

Scott - this is in our kuleana and he is going to say they approve -

Motion on the floor -

The Maui/Lana`i Island Burial Council approves the preservation plan for the Palaea Cultural Preserve, Palaea Ahupua`a, Honua`ula, Maui, TMK: (2) 2-1-023:034.

Kyle seconded

Johanna - she has one question. Because this is a significant site and a significant opportunity for the community, the burial council should play a vital part in the future of this preservation plan. She wants to come up with an idea. Is it already in the plan for the council to continue to participate? Does the council even wish to entertain this? When we have not followed through in the past and kept up to date on all the preservation plans in the county...we need to start changing that. Perhaps this would be a best place to start as it is a significant site and we have an opportunity to do something. Our minds are more open to this. She would be happy to see and hear discussion in this direction about this.

Dane - this is a unique situation because the person whose kuleana this is, Kahele, represents this moku, and she is somewhere incorporated into this preservation area already through her work with UH Hawaiian Studies. SHPD has a kuleana to review preservation plans and they as the council do too, but this situation is unique because the person who has this kuleana to this moku on the MLIBC is already working with OHA (namely Kahele). How do you envision this motion, Johanna?

Johanna - She wants to see some way in which the burial council can continue to play a part to have continuity in the future once their current term ends [and new MLIBC council members without the institutional knowledge join] there is a different mindset that comes into the council. The past council members can signal their intent that we put in our motions today, [the institutional memory of this discussion] will already be there [for future council members]. She wants to see continuity. How do we open up to allow the council to continue to have some say in this preservation plan going into the future?

Scott - are you envisioning some sort of ongoing right or something else that the MLIBC would have? How do we encapsulate that in the existing motion (which is not preferable because it should be clean and succinct) or do we want a second motion that maybe captures what she is hoping for? He wants to know exactly what she is asking for to draft this motion.

Dane - our kuleana is solely limited to the iwi kupuna on the property. In this instance he would like to defer further review. The moku or ahupua`a rep would be the one you turn to but Kahele has had to recuse herself. It's an interesting situation, what would her mana`o be?

Scott - Kahele could speak as a private citizen affiliated with UH and not as a burial council member. He had to do that for some projects in the past to testify.

Dane - Kahele would you like to testify?

Kahele - what would you like me to testify on

Dane - How the preservation plan incorporates further stewardship and communication between burial council and future generations?

Johanna - basically she is hoping we could add language or something into the preservation plan that leaves a backdoor open to the council members, to keep the council as part of the review process if questions or changes arise, even if they leave the council. The council doesn't need to be an active part but there needs to be an opportunity to come back and revisit this

Scott - it's either approve the motion or don't, but we could make a motion for future amendments that may come to this preservation plan

Brutus - thank you for the manao. This is not really codified anywhere but it is their practice at OHA to continually involve the organizations and constituents involved in their projects, at this location and in other sites as well. OHA, SHPD Oahu, and the CRC are in constant communication with and it is their policy in the legacy lands division to always let people know [of changes] or gather manao, especially if there are changes in specific parameters, plan design, etc that should be shared. OHA is coming to this preservation plan with the manao that this is kind of like a living document, because the needs of people may change and the resiliency of people is to adapt and nalu with everything. In a future time if things change, whether it is minuscule or really big and different, they want to come to the burial council to seek their manao whoever may be the members at that time. Not sure if that's enough, but that's how the legacy land department works.

Johanna - can you do a yearly review or annual report to the council? As simple as that? Is that necessary Kahele?

Kahele - If anything changes or if there is action that needs to be taken it's necessary but just because of her involvement [missed the words here] - this particular place is a reserve, so there is very little human encounter beyond what you see right off the road where the cultural activities happen and right across the street at the beach. It is a good idea to always - if something changes significantly it is important to get feedback from the burial council and community and ohana that come from that area.

Johanna - especially since those residential communities are being planned right around it. Who knows if there aren't more things on those residential plans that are also being made?

Kahele - the way the reserve was developed, there were definitely sites everywhere and the deal that was struck was these 27 acres would be preserved and whatever was around it would be recorded, and the land would be developed. It is definitely not the case that sites were only found on the 27 acre preserve. There are clusters of sites in the preserve, but for sure there are sites everywhere outside of the preserve. Johanna is right about that.

Kyle - our concern here is only in regard to the iwi that are already there, right? If it has to do with additional burials in there, it will automatically trigger a notification of us, right?

Dane asks if this was right

Brutus says yes.

Dane - Do we want to come back with a revised preservation plan?

Johanna - would be easier if this language was included somewhere in the preservation plan.

Kahele - Andrew McAllister has a point to make

Andrew - The preservation plan already has a stipulation for site stewardship which talks about designees so his understanding from reading the plan is that OHA will continue to develop this with the community. He doesn't want it to get revised so much to where SHPD has to review it again if you add additional stipulations. Maybe look into site stewardship and see if the existing part of the preservation plan about site stewardship is sufficient and if that's easier rather than reworking everything. See if the moku rep can be incorporated in that. The language in the preservation plan is broad, which allows OHA to do a lot to work with the community to develop the stewardship program.

Dane - I defer to the community on this on how they want to mālama this place. The council members are meant to be voices for people who have none, and in this case, there *is* a community that is involved. As it is, he is ok, but this is a council so let's all get on the same page.

Scott - we have two options: 1) we could send the preservation plan back to OHA and say include this provision or 2) we could approve as it is with an additional motion that says any alterations to the PP should at least notify the burial council so they can be involved.

Dane - it's all situational, every PP is different and here it is a community driven preservation plan. Johanna what do you think?

Johanna - She says you could do the two motions to approve the PP and move forward. It's the easiest way to approve the PP and move forward. It's a good plan but she wants to make sure that they are kept aware of any future developments pertaining to the council's kuleana. It's too easy when things are off the agenda not to remember anywhere

Scott makes another motion:

The Maui/Lāna'i Islands Burial Council requests that the Office of Hawaiian Affairs notify the MLIBC of any proposed future amendments or alterations to the preservation plan, and for the MLIBC to participate in any revisions of the preservation plan at the Palaea Cultural Preserve, Palaea Ahupua'a, Honua'ula, Maui, TMK: (2) 2-1-023:034.

Johanna - Can we also add if there are any changes to the stewardship agreement? Or if agreement with adjacent owners/developers' changes?

Scott revises the motions:

The Maui/Lāna'i Island Burial Council requests that the Office of Hawaiian Affairs notify the MLIBC of any proposed future amendments or alterations to the preservation plan, and for the MLIBC to participate in any revisions of the preservation plan at the Palaea Cultural Preserve, Palaea Ahupua'a, Honua'ula, Maui, TMK: (2) 2-1-023:034.

The Maui/Lāna'i Islands Burial Council requests that the Office of Hawaiian Affairs notify the MLIBC of any proposed future amendments or alterations to the preservation plan, or changes

to the stewardship agreement with the developers and/or adjacent landowners, and for the MLIBC to participate in any revisions for the preservation plan at the Palauea Cultural Preserve, Palauea Ahupua'a, Honua'ula, Maui, TMK: (2) 2-1-023:034.

Both motions pass, no dissent

B. Descendancy Recognition Application of Mary Ann Kahana to Unidentified Human Skeletal Remains at Haneo'o Road, Ahupua'a of Mokae, District Hāna, Island of Maui, TMK: (2) 1-4-010:004

SHPD recommendation: The applicant submitted her genealogical info to SHPD pursuant to HAR 13-300-35. The applicant has provided sufficient genealogical evidence - in the form of birth certificates, death certs., marriage license, deeds and tax map information - to demonstrate connection to an ancestor who once resided in the ahupua'a. Ms. Mary Ann Kahana was also previously recognized on March 21, 2018 MLIBC as a cultural descendant to another set of iwi kupuna in the same ahupua'a. SHPD recommends MLIBC recognize the applicant as a cultural descendant.

Uncle Ed Cashman - Mary couldn't make it, she had to work today. They want to bring back the iwi that SHPD has, they tried to bring them back before but previously the ranch owned the land, so it made it difficult. Now their group in Hana has purchased the land so maybe it is easier now [to kanu the iwi kupuna in SHPD's curation facility]. There are some on the shoreline and some on the hill. They want to do it in the correct way.

Dane: SHPD has iwi curated from this area, Kealana, from that wahi that the ohana is applying to help with reinterment?

Kealana: that is correct

No public testimony

Motion:

The Maui/Lāna'i Islands Burial Council recognizes Mary Ann Kahana as a cultural descendant to Unidentified Human Skeletal Remains at Haneo'o Road, Ahupua'a of Mokae, District Hāna, Island of Maui, TMK: (2) 1-4-010:004.

Motion passes, none opposed

C. Descendancy Recognition Application of Edward Cashman to Unidentified Human Skeletal Remains at Haneo'o Road, Ahupua'a of Mokae, District of Hāna, Island of Maui, TMK: (2) 1-4-010:004.

SHPD recommendation - the applicant Mr. Cashman, provided sufficient genealogical evidence with the submittal of birth certificates, death certificates, marriage licenses, and tax and deed information to demonstrate connection to an ancestor who resided in the ahupuaa. Furthermore the applicant was already recognized as a cultural descendant to a different set of iwi kupuna in the same ahupua'a during the Feb 21, 2018, MLIBC meeting. SHPD recommends recognition as a cultural descendant.

Dane - is SHPD getting iwi makaukau for possible reinterment?

Kealana - SHPD did a site visit in the beginning of this year before everything got shut down and met with families out there and we have been in discussion with the families and SHPD is ready when they are.

Uncle Edward Cashman - same thing, we are just trying to do it the right way. More descendants will try to come forward, not only 1-2 people making the call, we hope to get 6-8 people making the call. It's better for us. We feel that some of the people being recognized are probably lineal descendants, like Mary, but that's easy to say but hard to prove. We feel we just bring in more people and we all share in the responsibility.

Dane - The descendants did an amazing thing by purchasing the land and finding a resting place in perpetuity for the iwi. You did the best you could for the kupuna. Mary doesn't need to tell us that she's lineal, she is doing the best she could for those kupuna, he appreciates that very very much, for all of them to do the right thing by the iwi kupuna.

No questions or public testimony

Motion:

The Maui/Lāna'i Island Burial Council recognizes Edward Cashman as a cultural descendent to Unidentified Human Skeletal Remains at Haneo'o Road, Ahupua'a of Mokae, District of Hāna, Island of Maui, TMK: (2) 1-4-010:004.

Motion passes, none opposed

D. Descendancy Application of Jacelyn Barrozo to Identified Human Skeletal Remains at Kahoma Valley, Site #s 50-50-03-08807 and 50-50-03-08808, Ahupua'a of Kuholilea, District of Lāhainā, Island of Maui, TMK: (2) 4-5- 017:001.

SHPD recommendation - For the purpose of establishing lineal descendancy claim, the applicant has made a lineal descendancy claim to the iwi kupuna at above location pursuant to 13-300-35. She has submitted her application and genealogical info to SHPD. The applicant was able to identify her ancestor as David Kekahuna Kalaluhi who is buried in Kekahuna Kalaluhi family burial plot and she also identified other family members buried on the property. She provided sufficient evidence to demonstrate direct genealogical connection to those human remains. SHPD recommends the following individual to be recognized by the MLIBC as a lineal descendant to human skeletal remains at above address.

No questions for Kealana

Jacelyn - she is just filing for a lineal descendancy claim and if you have questions you can ask.

Dane - he asked of the last ohana and usually asks all applicants - what is your reason for wanting to claim lineal descendancy?

Jacelyn - Actually in our family, her aunt was the one who was carrying their genealogy - on their aina in Honokahua and she did genealogy for the family and she had passed away and she was the one who received all that info. She began to do the family genealogy...She pauses then asks to go into a closed session.

Scott makes a motion to go into closed session to discuss the descendants claim made by Jacelyn Barrozo

Seconded by Iris none opposed

Kealana from SHPD joined as is the whole council

The MLIBC goes into a closed session ~55 minutes into recording, at which time closed testimony occurs

After the closed session -

Scott makes a motion:

The Maui/Lāna'i Island Burial Council recognizes Jacelyn Barrozo as a lineal descendent to Identified Human Skeletal Remains at Kahoma Valley, Site #s 50-50-03-08807 and 50-50-03-08808, Ahupua'a of Kuholilea, District of Lāhainā, Island of Maui, TMK: (2) 4-5-017:001.

Motion passes. None opposed

IV. UPDATES

A. 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.

Andrew Chianese is here for questions. He reports no changes in regard to the lawsuit.

Noelani - She received a letter from her attorney earlier this week. There will be a firebreak installed by the project proponents on Nov. 2 and 6 at Maui Lani Phase 6. She is waiting to hear back, reached out to her attorney. She wants more information on this firebreak - the map she was sent didn't have an exact location. Maybe Unahe street but not labelled? Doesn't say the scope of work. The map didn't say anything about the scope of work, trenching, etc. Her position is that there should be no earth moving in this project till the lawsuit has been completed (her speech here is unclear as case breaks up) - the lawsuit is still in the preliminary injunction phase of the case but Judge Rhonda Loo has allowed the project proponents to move forward with their construction plans which she finds highly irregular. She filed a motion for judgement. Noelani wanted to move the case to a higher-level court but that motion was denied. Her attorney filed a motion to appeal summary judgement comes up in November. She is hoping that the burial council can (unclear, recording breaks up). Maui Lani HBT partners should not be doing any earth moving at all here in Maui Lani Phase 6 Increment 4 till the lawsuit is complete. We need to make sure the iwi kupuna are protected from anything that happens in that project.

Dane - what is the ask?

Noelani - You folks have made several motions that you don't want any earth moving in Maui Phase 6 Increment 4. She wants to repeat a motion like that particularly in response to firebreak that the MLIBC is against earth moving, given the past position on this project it is prudent to continue to make our stance clear that you folks also don't want a disturbance in this area that is

a known burial ground and have already made motions acknowledging that this is a known burial ground. If you could make a repeat at this particular junction.

Keeaumoku has some great concerns with brush abatement which could incur some kind of collateral damage in those areas that the burial council mentioned, in spite of litigation and what's happening in the court. It is really important and imperative at this moment to entertain this motion to make sure burials are protected. Despite what has occurred from this point on. Really important that the burial council entertains a motion to protect and maybe get feedback - there is one commissioner wants to know what brush abatement is for and if the area isn't in any way contradictory to something that may happen in the future he doesn't see the importance of any abatement or clearing the land.

Kaniloa Kamaunu - this area has been a fiasco from the beginning of the AIS even to today, for work that's been allowed to be done in that area, it is injurious to him as a kanaka and the ancestors, the iwi. As this case goes on and goes through the case materials, they have come to a lot of knowledge as to how bad the archaeology response was done here. Dr Crabtree who is an anthropologist, was an expert witness on some of the documents, and many things she said needed to be done, haven't been done in the documents. She refers to the way that the pictures are taken, the way the diagrams are made - with her expertise she can see it's not the ones with MA writing the reports due to the verbiage, things that are missing in inventory, that she would consider important. Even just diagrams being shown, and the use of terms like "foot" and "leg" that are not professional terms. Dr. Crabtree suggests that you need to name the bones, so you have a better picture of what you are actually looking at. He goes back to 13-283-1 which details the standard of osteology analysis of human skeletal remains. The policy reads from 13-283-1: "Burial sites with human skeletal remains have cultural significance to descendants and are sensitive historic properties significant to the descendants and to the relevant cultural groups. Burials are quite different from other historic properties. Human remains under the American law cannot be owned; rather the burials are held in trust for the descendants. Treatments must meet this trust with the utmost sensitivity. It is the policy of the DLNR to preserve burials in place when at all possible however when removal occurs osteological analysis must take place." He refers to this because when Dr. Crabtree reads these documents, she isn't sure if osteological testing was actually done because there is no mention of who did it. The record should be there of who did the analysis? What is their background? These are the things for the council to make recommendations, you need to have this information. Going through this case there are a lot of things missing which is detrimental to us as a people. They never told us how many bodies were actually found in the Maui Lani Development. Thank you.

Kahele - Noelani, can you clarify for us the judge's decision and what were your two additional filings? Maybe give a quick update on the recent decisions and the two filings then she will ask Andrew (the developer rep) to weigh in here.

Noelani - She is not an attorney so she will do her best to explain the way her attorney explained to her, but as soon as HBT filed a motion to continue construction after the GPR report was turned in, they filed a motion for summary judgement, i.e. asking the judge to make a decision one way or another, either we win or lose and if we lose we go to appeals. They filed this motion [for summary judgement] after their motion to continue construction was approved. But the judge ruled against them and chose not to close the case. They have another motion pending, which is an appeal of her other decision on the summary judgement. We must go before her again to appeal her decision of summary judgement. She hopes she didn't misspeak;

she wishes her attorney were here, and she can ask him for further clarification next time the council meets if necessary.

Kahele - so presently the judge has allowed them to continue construction?

Noelani: That is true and correct. Andrew did say at the last burial council meeting that they didn't have any plans to continue construction at this time which was a big relief to hear. One of the arguments their attorney made is that if they do construction and it comes out in case and they are wrong and HBT loses, they run the risk of desecrating the burials but also, they would have to undo houses they built. When it comes to desecrating burials it is irreparable, you cannot undo that. She hopes they are being wise and choosing not to do anything, but she's concerned about firebreak because she doesn't know the scope of it or what it entails.

Kahele: Thank you. Andrew, can you clarify for us the developer's current plans or stance on moving forward with development and also if you have any information on this present request or plan to build a fire break.

Andrew C.: Yes, and also just to reiterate Noelani's description of the lawsuit that is generally accurate. A small difference is that the motion they (i.e. Noelani and lawyer) filed a motion to start an appeal, just a little different, but otherwise what she said was absolutely correct as related to the status of the lawsuit. The construction that they are going to do on Nov. 2 work is for a fire access, not literally a fire break, it's for fire access, and while there are no immediate plans, they are trying to get any additional permits and trying to finalize plans to do construction, but there are no immediate plans for construction beyond the fire access.

Kahele -can you talk a little bit about the location of this fire access, is the fire access a road and is it in close proximity to any other burials?

Andrew C: It is a road and it basically goes up from Olina to the end of Unahe place and it does not obviously go in areas that have not been -----

Dane - Andrew can you share the screen, or do we have to visualize this is in our heads?

Andrew: yes, I can do that

Dane - we need to be pau by 1 pm because Dane has to go. So does Kahele.

Kyle - have there been any finds in this area he has been talking about so far

Kahele - we are trying to determine

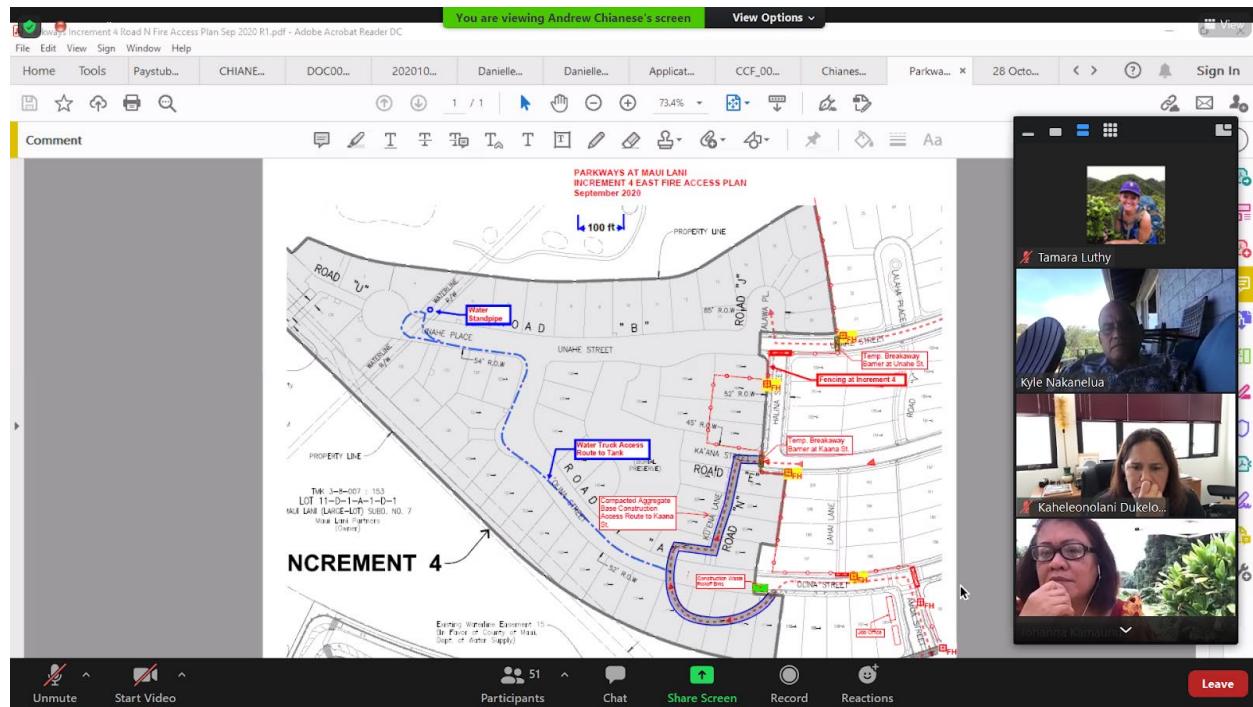
Dane - are you talking about the GPR or just in general? Because there have been many finds

Kyle - have there been any finds in this area where pathway fire break is going to be?

Dane - We know the kupuna located in this phase but trying to get bearings on where the access road is proposed to be so we can see proximity to the kupuna we already know to be there

Johanna - her biggest question is, the project is so well developed already, are they opening up even more space? I thought we already observed through GPR testing the path they are supposed to take? What has not been opened up for travelling that they need to do a firebreak now? Is this mainly to deal with the issue of a possible fire? Has there been overgrowth that they are required to do revetment work?

Dane: if there is iwi on the map you plan to show us can we not - we might want to go into executive session, if it's a general map with potential road plans we can show it but if there are marked kupuna we want to go into closed session. Was it Olina and Unahe?



Dane: we made such a motion in the past as Noelani requested. Let's keep that in mind

Andrew: There are no areas in the access that have not been GPR'd. The access is not over areas that have not been GPR'd.

Kahale: So, all these areas have been GPR'd and found to be void of anomalies?

Andrew: Well, [void of] historic properties but the anomalies have been assessed.

Dane: real quick Andrew, are you all putting down asphalt on top of that or will it remain dirt?

Andrew: Ultimately there will be asphalt.

Dane: And I also noticed that there is a water pipe that comes from the top of Unahe road - is that going in the same time?

Andrew: Just the road is going in now. A one maybe two-day process.

Dane: And you guys are planning to put down asphalt?

Andrew: The asphalt won't go in during initial [work coming up], ultimately it will be a road

Dane - It looks clear, are you planning on widening the existing path because if you look on Uena lane, it is adjacent to the sand dune, one of the preservation areas, are you guys planning to widen and push into the preservation site?

Andrew: No. We are not touching the preservation sites.

Andrew: Can you tell us what the purpose of doing this now is?

Andrew: The ultimate purpose of this is to be in compliance with fire access codes and regulations so that a fire truck has to access the area if there's a fire

Kahele - what exactly would be done in order to do that

Andrew: Are you asking what literally is happening on Nov 2? He is sorry, he doesn't know exactly what they are planning on doing other than creating the access

Kahele - she is trying to assess if there is already something there, are they going deeper, are they going to widen it, are they going to put asphalt? She is trying to figure out what does create this fire access entail

Dane - compacted aggregate base construction access road so he assumed they will put down gravel. He is concerned that they might widen. There is a corner that is really close to the dune [on google maps].

Would be good to say if there is an overlay of adjacent iwi next to this if we can go into executive session. Andrew do you have a map with this road proposal in proximity to any burials?

Andrew: it does not go over any burials but that is not part of this map. Sorry for that.

Johanna - she believes that this *does* go through existing burials - is she to understand that it is the solid blue with the red dashed through it from Nalina and connect to Halina? That is the part that wasn't completed when they started work there. So almost right up to where that road is going to be is where we found multiple clusters of iwi.

Dane - the blue line is that also the proposed access for the water truck, or are we talking about hard blue lines with the red dash to it that goes back to the aggregate base construction access road to Kahana street?

Kahele - clarify on the map where this fire access road is?

Andrew: His understanding is creating access for both blue areas

Kahele: And you don't know what they mean by creating access?

Andrew: He doesn't know the specifics of what they will be doing to the road area to do that, but he can find that out and provide an update

Johanna - her problem with this is that we are running into almost the same situation as last month where they made a decision and then almost immediately afterwards work began in earnest, but they think is, how they are defining the work they are doing. There is a big difference between cold planing and digging a trench which should not have been overlooked and in this case, we don't know how deep they are going to go, and she doesn't know if their survey already included this area. So, when they did GPR they were supposed to do blue dot dash line because it was supposed to be the most direct path to continue their work - just for that, the GPR was supposed to be this. If they did anything else, this road that they are trying to work on falls under the category of it hasn't been checked yet [by GPR].

Kahele - A couple people, Noelani and Clare, wanted to say something

Dane - he thinks that they are closed for public testimony. Did we take it? Yeah, we did. Are we planning to make a motion with the council? He doesn't feel comfortable with the proposed overlay because it doesn't show how it relates to known burials. Are we planning to make a motion as a council? He would recommend that they come back. But then again it will be too late.

Scott - we can make a motion recommending the complete cessation of all ground disturbing activities until the courts have had a chance to weigh in. that seems to be the cleanest way of doing it until the courts have an opportunity to rule. Would that be sufficient?

Kahele - Except that they have permission to continue construction from the judge

Scott - We can ask them please don't continue construction. It's just a recommendation

Johanna - actually we have a stronger application of authority than just a recommendation. Our recommendation is for SHPD to act on this but they as a council have responsibility to ensure that certain things be done. The MLIBC has their own responsibility and powers as a council. She wants to make them accountable for any work outside of what they expect to see done. She wants to add one more thing to the motion citing 13-300-72 which is for penalties - it is an update on the penalties, which is 25,000 in this case. But use the definition that someone knowingly continues work - that constitutes a desecration. If we ask for a cessation of work and the work continues, regardless if it's a judge, we know we are going to find iwi, it's a real possibility of disturbing iwi and if you do, then the penalties should apply.

Foster - he wants to make a comment as a recognized descendant. What is taking place now in the discussion segues into his correspondence in Agenda Item 5D. The lawsuit Ms. Ahia is engaged in with Tom realty. His question: is the burial council stepping in as part of the active lawsuit, which he is trying to not get the Aha Moku involved in, she is the complainant in this lawsuit and he is not, he is just a cultural descendant. He wants to make sure - he got pulled into this. His concern is: is the burial council getting involved in the lawsuit or are they concerned about the kuleana of the recognized descendants?

Dane - the reason that they went into the lawsuit, even though he doesn't agree with everything in the lawsuit, but he does see a deficiency of the AIS and the burials when it comes to previously identified and inadvertent finds. They as the council feel that more needs to be done to protect the iwi kupuna, not necessarily the court case. Besides kakoo'ing cultural descendants, in this particular phase 6 process something is wrong with how they did the AIS and the result was not adequate, and it was not what was intended by the spirit of the law. He isn't trying to inject himself into the lawsuit, but he supports the descendants wish to mālama the

iwi and the wahi. He did not agree with the GPR and how it needed to be tested and that was a horrible result from what the intentions were supposed to be. There are two cultural descendants. He kakoo's both Foster and Noelani's endeavors in what you personally undertake to mālama these kupuna. They will support her in her court case and anyone else in what you undertake to mālama this wahi.

Kahele - often when we have developments that go on for many years is that, part of what they try to do is identify and to protect in any possible way - that [the Council] tries to identify those actions that could possibly cause harm. She thinks whether there was a court case or not, they are taking in info from the public of what is happening surrounding this particular issue, whether it is a lawsuit or what Foster or anyone else is dealing with. They are trying to figure out what they can do with their mana as burial council to continue to protect these areas that we know are very sensitive and have things there. One thing she would like to ask the developer for, is that the last time you were here you said no more plans for development, but now we see that you are. Even though it is being called a fire access, it is still construction of some sort, and we have only been shown the general maps but there is still potential for harm, it is definitely within the proximity of burials at various points. It appears that the developer is not honoring what they said last time, which is that they have no plans for moving forward with construction at the time being. Creating a fire access road is actually construction. She is asking - what are the details for how you build this fire access road? Is it laying concrete, is it widening, is it any kind of earth moving activity of any sort? The council needs more details. That's what she wants to ask for

Kyle - speaks in support of what Kahele is saying. As a former fire officer, in order for it to be a fire access for fire vehicles to roll on it and function on it, it has to be a significant road, not just a dirt road, because those vehicles aren't made to operate on just a dirt road. As the son of a 40-year road construction person, you must cut and lay, it is the beginning of a roadway, that's what they are doing, it is definitely construction work. They are going to have to do that. The developers are going back on what they were saying.

Dane - the court case took it out of the Council's jurisdiction. We can still make comments and all that. Says mahalo to Kai for his comments in the chat box.

Kai Markell in chat box - "MLIBC's jurisdiction and kuleana centers on previously identified burials. If MLIBC focuses on protecting previously identified burials in a known area and recommends cessation of ground disturbing activity for fire access road until more information is obtained, then SHPD can take recommendation and also ask for voluntary cessation. If work proceeds and burial impacted, it could be knowingly altering burial and subject to possibly civil and criminal fines. If SHPD supports MLIBC expertise. That motion can be used in a court case to argue for a plaintiff's position but the MLIBC is making the motion for exercising its kuleana, not for the benefit of a litigant. No activity until more information is provided to MLIBC at the next meeting. Reasonable...."

Foster - Ms. Ahia's lawsuit is one facet of our concerns, and he thinks they all share the same concerns, and he thinks that they are all paddling their canoes to the same destination, but the info we are seeking, the facts we are seeking, should be coming from the developer and the lawsuit remains separate which is why he is staying separate from the lawsuit. He is trying to be objective. Our decisions should and must protect Tutu and that's it, at the end of the day. Lets fact check and do our due diligence by all means, but the *developer* needs to be front and center and because he has concerns and questions and he wants the developer to answer these questions. Foster needs more info and wants to defer to the next meeting. He hopes we can all be objective and fair in the whole process.

Dane - It was Noelani who brought up the expansion of the road and it remains on the agenda because it is an ongoing court case - ultimately the reason they are here is because the burial council is entrusted with mālama kupuna but ultimately we have the same thing in mind. He wants more factual information from the developer and whether that happens is at the discretion of the developer and right now what we have is just Andrew. If by any chance they want to keep us more abreast of what is taking place he is all for it. He thinks we need to make the two motions. Is there anything Foster wants to add to this road expansion?

Foster - He needs more information and this item should be deferred until the next meeting to get the facts. His concern is that he hopes we can all be objective and fair in this whole process.

Dane - we don't have enough info and he wants to hear from the developer. We need to wrap this up

Noe - please request from the AG that they request from the developer any communications in regard to this lawsuit, so they don't get left out of the loop. She doesn't have to be the one to relay communications about what they are going to do. She doesn't mind doing it because it is part of the protection of the iwi kupuna, but she feels like maybe the AG needs to be the one asking their attorneys for this info. In the motion, she would prefer instead of "until the judge weighs in," she prefers "litigated to the fullest extent of the law" or "until completion" as the wording. Judge *has* ruled on the project, but the project is not completed, and the judge ruled they can engage in construction.

Scott - not sure what that means - how about till you make a final ruling?

Noe - prefers "litigated to the fullest extent of the law"

Scott - what does final ruling mean?

Kahele - don't need to be wordsmithing. Will consider what you say

Noelani - Also, looking at the map, there are iwi in the trajectory of that map and she stood there for the first few months of ground truthing and watched them digging by hand, as painful as it was - she doesn't trust the process or the GPS [sic: GPR], things came up that didn't ping on machine and things that pinged didn't mean anything. They asked for an extensive AIS not just GPR. GPR isn't trustworthy.

Johanna - instead of that "to the fullest extent of the law" comment that Noelani wants, the purpose of the council is the fullest extent of taking care of kupuna rather than fullest extent of the law

Scott makes a motion

The Maui/Lāna'i Island Burial Council recommends that the State Historic Preservation Division acts to cease and disallow all ground altering activities at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. until such time that additional information has been provided to the MLIBC and the courts have had an

opportunity to make a final ruling. Additionally, MLIBC requests that SHPD look into penalties based on HRS 1300-300-72, for the disturbance of iwi kupuna at this site.

Dane wants that in two motions

Johanna - if we feel there hasn't been pono preservation for these kupuna, we must continue. We need a pono preservation process in place regardless of what happens in the court. If we do not feel there has been pono preservation we have to continue. She wants to take out the whole section about the courts. We the Councils do have rights beyond the court. She says take out the whole section about the courts and state opportunity to approve a final preservation. That's within our authority to do. The currently written motion allows the court to make decisions in spite of and above us, but they don't have that ability. Their rights as a council come from common law [as stated by Kai] which goes back even before the kingdom - the Council's power and authority is of the power and authority of that time. In today's venue, who can call on that authority from that time period and invoke it today? Not the courts, but the descendants can do that, and when they can't do that part, then the burial council has that obligation. This is not about a lawsuit; this is about honoring our kupuna. The kupuna are not being honored by this process.

New motion revised by Scott:

The Maui/Lāna'i Island Burial Council requests that SHPD look into penalties based on HRS 1300-300-72, for the disturbance of iwi kupuna at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors.

Discussion of the exact wording of the motion goes on for some time. Dane says the council has not yet seen a map with an overlay of iwi kupuna, they heard testimony and he believes the density of the iwi kupuna to be high. Let's not limit our scope. We don't know about the depth. More discussion of exact wording ensues

Johanna wants to move away from legal language. It's better to use Hawaiian context words. Preservation, mālama, iwi kupuna. She isn't ready to give up her kuleana to the state

This place is pa ilina, and ilina, a burial site. It is a burial ground 180+ in Phase 6.

Iris has to recuse herself from this issue, so she does

Revised motion:

The Maui/Lāna'i Island Burial Council recommends that the State Historic Preservation Division acts to cease and disallow all ground altering activities at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. until such time that additional information has been provided to the MLIBC in order to evaluate the impact to the preservation plan and process of the proposed work to iwi kupuna, and to ensure certainty that the iwi kupuna in this pa 'ilina will be protected in perpetuity.

Another motion:

The Maui/Lāna'i Island Burial Council requests that SHPD apply penalties based on HRS 1300-300-72, for the disturbance of iwi kupuna at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors.

Johanna - She is concerned what happens after this point. It is a request that they apply penalties. She isn't looking at past penalties, so much as knowing actions that will be taken which will cause requirements for penalties to be applied. They must know the community is outraged about what is happening, which makes it legal to apply penalties. The law requires that it be a knowing outrage, that the community is outraged. She isn't sure if that is being said here.

Scott - SHPD does not apply the penalties.

We should make another motion that says we require penalties be applied should the situation occur of a knowing disturbance in this project.

Dane calls upon Kealana - 13-300-72 - is that equated to desecration 711-11-07?

Johanna - unfortunately the MLIBC training manual doesn't have this particular section, doesn't go up to 72 - 7111107 Penalties - the penalties increased from 10,000 to 25,000

13-300-72 - Johanna sent this to everyone by email, the section regarding penalties

Scott - he is just going to put in DLNR because DOCARE, DLNR, SHPD are all involved so DLNR is a more blanket statement

Johanna - I don't think we can, mainly because SHPD is a federal mandate even though it's housed under DLNR it has a federal obligation. We should do a second motion then go for a third one. The second one is important because no one is applying the penalties.

Dane: 13-300-72 is actually the citation

Johanna: 6E-11 is for desecration, this one is for penalties

Scott - we don't need to figure out for them how to do the process, they can figure it out. This is a known burial area, that's the main thing.

The Maui/Lāna'i Island Burial Council requests that DLNR apply penalties based on HRS 1300-300-72, for the disturbance of iwi kupuna at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. in the event of a disturbance of burials in this area known to contain iwi kupuna.

None opposed, motion carries, Iris recused

B. The Kahana Solar Project, Kahana and Māhinahina 1-3 Ahupua'a, Moku of Lāhainā (formerly Kā'anapali), Maui, located at TMK (2) 4-3-001:017 (por.), 082 (por.), 084 (por.)
Information/Discussion/Recommendation: Update on the above project. Mara Mulrooney (Pacific Legacy) and Julia Mancinelli (Innergex Renewables) to give PowerPoint presentations.

Kealana - he talked to Mara regarding this project which was discussed at the last meeting after quorum was lost. He believes she is available if there are questions or concerns. The power point presentation is in the google docs. Her presentation was after we lost the quorum last meeting.

Dane - they will be coming back further down the road. This is preliminary. But if we do want to ask questions now is the time.

Johanna - why are we reviewing this, is there a possibility of iwi?

Dane - The closest burial was more makai when we went, and we looked at their presentation. Is this just for our review?

Mara - she is not here.

Five minutes break. The time is 11:57

Need to revisit Updates "A" on Maui Lani and adjust the motion because the section citing Penalties was not accurate

Dane: Not sure how we will do this, but apparently there is no 13-300-72, there is a 6E-72. How do we correct this?

Scott: redo the motion again

Kai states that: It was on the agenda, duly noticed and discussed, so just a matter of revisiting the motion of the previous agenda item and amending it to cite the proper citation which is 13-300-43 for penalties. That automatically incorporates all the 6E chapters. Rules stop at 13-300-67 so there is not a 13-300-72

Just need to amend the proper citation which is 13-300-43 for penalties.

Dane laughs and invites Kai Markell to attend every meeting to give such advice.

Scott makes a motion for Updates A:

The Maui/Lāna'i Island Burial Council requests that DLNR apply penalties based on HAR **13-300-43**, for the disturbance of iwi kupuna at Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. in the event of a disturbance of burials in this area known to contain iwi kupuna.

None opposed, motion carries, Iris recused from this motion

V. CORRESPONDENCE

A. Kā'anapali Beach Restoration Project. Information/Discussion/Recommendation:
Discussion on the above item.

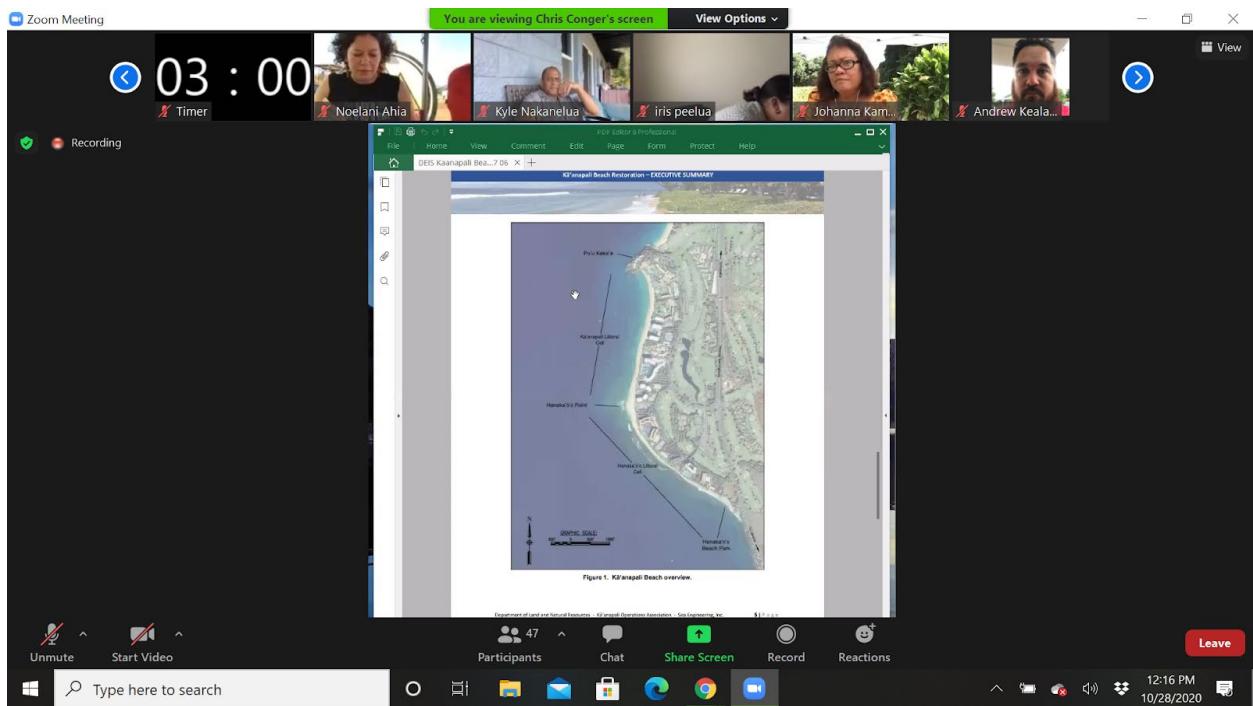
Dane - believe we have a few people from the project who came and are willing to present. He saw this a few weeks ago and thought it would be pertinent to have them come and talk about it because of the relation to Puu Kekaa and what their resource is, which is sand from this area. Mahalo Sam and Chris Conger, we look forward to your presentation.

Sam - thanks the council for the opportunity to address you for this important project. Basically this is a classical beach restoration project at Kaanapali, the reason we are doing it is because the littoral system at Kaanapali beach is beginning to be short of sand, that can be seen most notably in the southern portion of the beach near the beach park where the shoreline is actually

retreating with significant erosion threats throughout the last few decades. This is from the problem of sea level rise. We are experiencing anomalous sea levels that have gotten very much worse in the past five years. If you look at the NOAA tide chart water levels, you will see that there is a persistent 6-8-foot tidal anomaly, basically 6-8 inches higher than the predicted tides. To him this seems like almost "baked in" sea level rise for us, and it is having a tremendous impact on coastal areas all around the state. That's not going away any time soon. We all have to think of the big picture which is we are going to have to retreat from the shoreline ultimately but that takes a very very long time to accomplish that so in the meantime we want people from trying to build prevent seawalls and do things along the shoreline that are inappropriate measures. We think that beach restoration can buy us a little extra time as we figure out a longer-term solution to deal with chronic sea level rise threats that we face. So, we would like the opportunity to do this project, it is about 70,0000 cubic yards of sand retrieved in the near shore area offshore, it is near Black Rock, which is a big concern for everyone. There are probably a lot of other concerns you have about this. It's a shared project between the state and Kaanapali Beach Operators Association people, almost a 50-50% cost share. It's about a 10-11-million-dollar project. Sam is with DLNR.

Chris - Thanks for the opportunity to join you today and talk about the details of the project today. Sam is the project manager, it's a DLNR project, and he himself is with SEA engineering, which is the technical side of this, the design and permitting team. A lot of the details are available on Sam's DLNR website - if you got to the DLNR website, and from there open up the Office of Conservation and Coastal Lands page, you will see at the top toolbar an item called "Shorelines" and if you pull down that toolbar you will see two options, Waikiki and Kaanapali. If you click on Kaanapali you will find a host of informational documents that we posted there. We have fact sheets for individual elements of the project, we have a copy of executive summary as well as links to the drafts EIS and as well as other documents as we are producing them and that website will remain live as the duration of the project goes, as they continue to develop this project. It's a great source of information. Can also follow up with Sam and himself. He shares his screen to show a few maps with all the details.

Shares screen -



So, this is the project area. We are looking to restore the two beach swells between Puu Kekaa and Hanakao beach. There are two active systems here that share sand, and they named them just to have a reference - the north system which they call the Kaanapali littoral cell, the dynamic end which moves anywhere from 25,000-75,000 cubic yards of sand each season, winter swell pushes sand south, summer swell moves it back north.

Then Hanakao point is roughly the bridge between the two. And the southern section which we call Hanakao littoral cell - is more stable but it is chronically eroding. We are seeing a chronic signal here that has been accelerating over the last 30 years and continues to accelerate today, so that chronic erosion is depleting that entire section of the carbonate sand that makes up the beach. The project itself continues through Hanakao beach park down to not quite as far as the lifeguard towers. Then Puu Kekaa is the north end of the project and there is a sand recovery site that is offshore of Puu Kekaa. Recovery site is about 8.5 acres of seafloor and the sand in that site is a very very close match to the beach nourishment. Ideally a very well-designed beach nourishment involves sand that is a very close match. Because the sand has already been sorted and distributed by weight., so this makes sand more stable. Being able to find a match like that in the near shore helps ensure we won't see some of the effects that might occur in other beach nourishment projects where maybe the sand is too fine or too coarse or just the wrong sand. Goes a long way to improving the quality of the project and ensuring that it continues to act naturally in the environment. The goal of beach nourishment is to do the most holistic approach we can to beach management.

At the north end are two sections - Puu Kekaa Berm Enhancement (berm enhancement is their name for dry stacking sand), when beach is wide at the end of summer they can add 3.5 feet of elevation on the dry beach, not extend it out Seward, it's too dynamic for that, but stacked on the beach sand. They will have a 1 on 3 slope which is gentle enough to walk up and at 3.5 feet shouldn't provide safety issues for monitoring the shoreline and also maintain the vistas and view planes. It allows sand to be incorporated into regular seasonal transport [of sand] that happens every season.

At the south end, from the point moving north, looking at the very end of the project, to add about 13,0000 cubic yards of sand. All total it's about 25,000 cubic yards of sand that is added back to the system which is about what gets moved on a moderate year from end to the other.

This area has seen long term erosion chronically, but it is minor compared to the southern end. The north end gets $\frac{1}{4}$ ft a year as an aggregate across the entire section of coast. The additional sand allows it to add volume back to the system and reset the clock with very compatible material. The south end, (spelling?) littoral cell, is actually a beach restoration - we looked historically at where the beach has previously been located. We went back to 1988, which was an interesting year, the beach had eroded prior to that from the 40s and 60s then had grown up to 1988 and was kind of at a wide point but from 1988 to now it has been chronically eroding again so we use that as a benchmark to build back out to. That will be about 50,000 cubic yards and will extend to the 1988 area. Wouldn't be reclaiming any, wouldn't be going beyond the recommendation area, it wouldn't be going onto the seafloor which hasn't seen sand before. It is going to go onto seafloor that was previously covered by a sand beach. That's the intent, not to go further than the beach was previously located. The beach here did extend about 700 feet south of the beach park but a beach is more than dry sand we see - it's actually a connected system between the dry sand and the nearshore sand field, and the nearshore sand field that extended off of that southern section has also been depleted. So, we chose to stop the restoration with the beach park area because to continue it further would have required a very extensive volume of sand and we would have had to rebuild that sand field. We are looking to keep it contained and for something that's achievable with the minimum amount of sand. All total 75,000 cubic yards. The sand recovery area at Puu Kekaa is in waters ranging from 28-56 feet of water depth, again 8.5 acres of surface area. The target recovery depth is about 6 feet. All the modern science engineering and engineering that has gone into looking at design of sand recovery areas has given us some really good guidelines. Shallow is better, and if you can, angle it to be long in direction of tidal movement. So, we see tidal currents here that run north and south so that is the long access and they are keeping it as shallow as possible. We have taken all monitoring data and incorporated that into a modelling package that we ran to see how this area would change with recovery of the sand. And what we have found from the modelling is reflective of what other projects have been reporting out which is the edges will flatten but, it won't become a giant hole which will suck in adjacent sand. Normal sand transport continues after a year. It's basically a 6-foot indentation and then normal sand transport goes and continues after about a year of flattening out the edges then it is back to normal. For the berm enhancement, for the north and south end, these are also within the footprint of the seasonal changes. So, the expectation is that as sand moves north and south with the winter and summer swells, this sand will be turned over and added back into the system. At the south end we are trying to reset the clock by extending the beach back to where it was in 1988. That said, we know that erosion is accelerating. And it took us from 88 till now, almost thirty years, to erode back to present, we know that this won't last 30 years - the expectation is that it will last 15-20 at current rates if things continue as we are seeing now.

All of that said, a tsunami or hurricane a giant Kona storm hitting this shoreline can have a dramatic effect and that's been seen through both Maui and the Hawaiian Islands. This is given general conditions that we are designing for. To do this work requires a sand recovery effort off of Puu Kekaa that will be a barge with a crane mounted on top and the design right now is for an environmental bucket. Environmental buckets are a dredge system that is designed to go done, capture a very confined target sand volume at a depth and width that is predetermined and then you encapsulate that within a sealed bucket and bring it up and deposit it. The environmental buckets are advantageous because you don't have much bleed out of sedimentation as you come through the water column. A fair bit of work has been done on how much sand comes off of those buckets during the recovery and retrieval process? Based on that documentation, a lot of it was done in the Netherlands where they have a university that focuses on this, we are expecting several cubic yards a day, most of it will fall directly onto the recovery site with about 1 cubic foot of material a day making it down to where the reef starts by

Hanakao point. So, 1 cubic foot spread across the entire water column down there. Within the realm of potential impacts, it is fairly minimal. Once recovered it will be loaded onto two barges the barges have a north transfer site for offloading and there is a south one, right in the middle of the beach nourishment area in the Hanakao point littoral cell. The north one will be utilized first and that's just for the transfer of the 12,000 cubic yards at the north end. This project would ideally start in October, we are looking to avoid as many seasons as possible. Between winter and summer swell and coral spawning season, October through early December is the ideal target for timing this. October is also when the north end is at its widest as well. So, we would do that portion first. Knock out the 12,000 cubic yards, dismantle everything, and then focus all of our efforts at the south end. At the south end there is a beautiful fringing reef offshore of the beach, but in the middle of that reef there's an old paleo channel, the area where a stream channel when the sea level was lower cut through the reef and left an indentation which is now sand filled, which is an opportune and ideal location for bringing sand to shore in the south end. That will be the 50,000 cubic yards that make up the beach nourishment at 13,000 cubic yards that do the southern end for the berm enhancement, so about 60,000 cubic yards of material will come to shore here. They will be brought to the transfer stations either by deck barges or scow (????? unsure word usage here) barges, the sand will be loaded onto those barges will be brought around and be moored right next to the transfer station and then they will be transferred there to the beach. Once it is on the beach, there will be a recovery area right on the beach where the sand is deposited then it can be loaded onto trucks and then delivered to where it is being placed. The placement areas will typically have BMPs all around them as well as they will be in basically [an?] isolated construction site. The transport pathways will be identified and traffic monitors and crossing guards will be stationed sporadically to help people get across, and the goal is to minimize impacts to beach goers, to anyone who wants to go to or from the beach. Also working within the construction cycle to make sure that no one is in harm's way. When all is said and done, both transfer stations will be removed and the mooring systems for those will be removed and the end result will be a depression in the Puu Kekaa area of 6 feet deep, 8.5 acres in surface area, 12,000 cubic yards of additional material at the north end, 13,000 cubic yards of additional material at point, also stacked on top of the dry beach, and this southern section of beach an average of 42 feet wider, coming up to the existing beach elevation of about plus 8 feet.

Scott - what measures being taken to address underlying causes of excess erosion?

Chris - Beach erosion is typically related to three things: water level, wave energy (energy value and wave direction) and sand supply. We can't affect water level because we know sea level rising and we are in the early stages of that and we know that will keep occurring, the wave environment can be affected but then you end up with offshore structures that capture or adjust that wave energy before it gets to the coastline, but that doesn't seem appropriate for this coastline at this time, because it is pristine and beautiful its well-used and so many environmental assets in this area. So, the goal is sand volume - how do we augment sand volume? With sand volume you can't change erosion process but we can buffer it, you extend that time again - we have added 25,000 cubic yards at the north end so as the beach continues to erode at about a quarter of a foot a year, this gives it more space and volume to handle that erosion and at the south end where we are seeing erosion rates of about 2 feet a year, we are adding that 40 feet of additional width, we give it that extra time.

Public testimony

Noelani - two main concerns - one, when we talk about sand, we always have to talk about iwi, and it wasn't clear where the sand was coming from, if they were bringing any inland sand, if it

was all coming from dredging, dredging is a big problem because it disturbs the ecosystem. Her biggest concern is the iwi, if there is any inland sand that will be moving which is currently against resource extraction rules, but those rules are going to be possibly changing soon. I Want to make sure no iwi is impacted.

Foster - As he put in the chat box, he testifies as lineal descendant to Ke Kaa - two things he wanted to bring to the attention of the council: 1) for this project half of the cost is provided by taxpayers and 2) no long term impact has been assessed, there was no survey or study done to determine what type of impact along the shoreline is going to happen

Tiare - Hilinai - shares her screen to provide a presentation - she wants to bring context on Kaanapali - she shows a photo of the beach prior to hotel development which was all the way from current road to the golf courses. This is Hanakao - loaded with sand, and Kaanapali now - now all the buildings were built on sand dunes - our kupuna worked for Pioneer Mill and took out the iwi unfortunately. This is what we can expect on Kaanapali - shows earth movers on the beach and lots of disturbance of the sand. It's hard for her to swallow, she would cry. She doesn't know plans on how construction will go, but if that's what the beaches will look like, be ready for the next Mauna Kea because that's where she is at right now. Some technical points she wants to bring up: The sea level rise map that shows the old sand dunes overlay - there is a map that shows where the original sand was and what the beach is today, and that map shows easily 200 years more of sand along most of that shoreline, so managed retreat would provide natural living beaches for 4-5 more generations if allowed to recede. If that is the case, then they need to resurvey to see what exactly those hotels are underneath before dismissing everything as "sand poor" suggests that allowing natural recession will release fine sediments and kill the reef which is the current argument. There is plenty of area to retreat, presumably many of these hotels are nearing their 75-year lifespan and require major overhaul so it's the perfect time to relocate. The plan states the project provides a "nature based" adaptation solution that increases protection for the Kaanapali resort community while restoring recreational resources and natural habitat. Dredging an 8.5 acre living benthic community to bulldoze it onto a living coastline is not a nature-based solution and is not restoring natural habitat. That sentence is intentionally used to deceive the general public. It is quite the opposite in both cases, and it is important that they quantify the amount of benthic and beach community they are going to impact and how they are going to mitigate those impacts. In terms of the beach community, none of the beach clubs were involved, she has reached out to each president of each canoe club on that side of the island and none of the presidents of canoe clubs were consulted. I think we can all agree that some to all of the chronic erosion that is taking place today is from removal of ancient sand dunes and hotel development. The temporary solution is going to be at the expense of taxpayers. She feels like the burial council should take a firm stance on looking at managed retreat solutions. She doesn't see anything holistic about [this project].

Aunty Jocelynn Costa - she has the same kind of questions like when there was a study done for penetration for seeking of iwi but the was test done from a different country. This test that they are supposedly using data from was from the Netherlands - she wants to know how similar are the reef and currents of the Netherlands to Hawaii to utilize the data? A lot of it they are saying are expectations - we can all hope that the expectations come through, but what are the downsides if they don't meet that expectation? Because they were saying that their dredging was going to be done in different seasons to try eliminate possible interruption of the spawning of the reefs, that means they are in the area of the reefs, so what is the impact of the taking on reefs during the mature season? When they say minimize impact, she needs to know the measurements of the impact first to know what they are minimizing. Minimizing is a very pretty

word and it sounds small, but it could be huge. So, without knowing what the impact is, how do you know what you are minimizing? She comes from the North Shore, and she sees Baldwin just disappearing, people say it's just a natural occurrence, but they have been dredging sand out of that area for a long time. She sees people trucking sand out of there. Now the bathroom and the pavilions are going to be in the ocean pretty soon. If you have ever gone to Mama's Fish house - when they did sand restoration, there it was like cement by the time they were done. She never stood on dirty sand at Mama's Fish house. Now you don't want to put your feet in the sand over there anymore unless you are at the shoreline. And even at that it's going into the ocean. So those are the questions she has because the presentation is meant to show the positivity but what she wants to know is what are the negative impacts? They must know what it is if they are trying to prove to you the positive side, there's got to be two sides to this story.

Dane - will be losing quorum shortly at 1 pm and will need to re-agendize these other items that we didn't get to today, but he does want to take care of this today. Any questions by the council to the presenters Chris and Sam? Wants to go over why he wanted to agendize this. They are the burial council and their kuleana is to iwi kupuna. Are you aware of the significance of Puu Kekaa, which is a leina where the kupuna cross over into the next life or a new realm, but also how many burials are located on that hill in the sand dunes out there? Also being the Lahaina representative, he is firm in the belief that there are still many burials and up until recently they have seen other burials that have presented themselves under and in hotel properties very close by. And he believes there are some still in your proposed area for where you plan to collect your sand and dredge. Some of the questions that came to him, will you be monitoring the sand that will be excavated from that area? Will you have archaeological monitors or maritime monitors? Are you planning to have someone in the ocean while you bucket? He can see that being an OSHA problem, but really there are many concerns. And when you cover up the berm, you may stop the flow of burials that are there that might be transitioning back into the ocean to fulfill their role depending on whose belief it is, the kupuna would go back into the ocean and by you covering them up, you would stop the continuity of that process. I know where that sand is, we all know where it is, it can only come back when you do manage shoreline retreat. All the sand is still there, it's just covered by hotels and that has helped to harden the shoreline. He doesn't think he can honestly pay for half of this as a taxpayer and be comfortable with thinking you will be disturbing potential iwi kupuna in the area. So it's very problematic for him as a burial council member. Any other comments by the other burial council members? We are all very aware of the significance of this place.

Kahele - She kakoo's the idea. She knows from the project proponent's perspective it's great that they are matching the sands. The mo'olelo of Kaanapali tells you that iwi was everywhere in this part of Kaanapali. When you look into the historic mo'olelo, that's what it says about this particular place in Kaanapali that it was just *everywhere*. So, when we think about just the massive amounts of sand you are talking about that we know came from shore and went out and came back in the natural progression - that's what we envision. When we think about 8 acres of sand being distributed among that entire coastline, we are very wary of what that might bring. The second thing is that as a public, the public interest in her mind is what should carry the most weight here. When we think about what our choices are, you are bringing a project to us. We aren't being asked whether the perceived problem, what are the choices? Is there a better option? One choice might be sand restoration, maybe allowing the natural progression of time, maybe mispositioning some of the development on that shore. That's her three issues. This is being promoted here as this is what we need to do, but if we are thinking about the public interest (not the corporate interest), our ultimate goal of making sure that iwi is protected, especially in places where we absolutely know unequivocally that there are iwi here - we know

these kinds of projects are not just problematic but they are also extremely detrimental not just to the environment but potentially detrimental to the iwi in that area.

Dane - Chris Sam do you wish to respond? He doesn't want this to be a one-sided thing. Please feel free to chime in too. Dealing with sand here, especially in those types of areas, will be difficult, would be challenging especially when it comes to iwi kupuna you are going to get a lot of historical data that backs up this place and it should be....hard to even envision this or investing money into planning taking sand right off of Puu Kekaa. Hard to even see us investing money into this because it just seems so absurd.

Scott - he understand the process and thanks for updating on us on the process of erosion and erosion is of course a natural process but there has been a disruption and that's why you can see the dramatic change that Tiare shared with us, but he is not comfortable that a) the underlying reasons have been addressed, cuz this is just going to keep happening, or b) that Puu Kekaa is among the most kapu or sacred parts of the island which is obviously another problematic thing. I always encourage people don't even go on the rock, it's too kapu, too sacred, that is what he encourages people to do.

Kyle - everybody is saying a lot of good things including DLNR and including the developers - I guess that DLNR was asked to support this and therefore as a state agency they are directing tax dollars to help the industry and corporations and to satisfy the visitor industry and provide this wonderful environment for people to pay money to and come to generate this whole economic engine - but the problem is that their ancestors would find this absolutely ludicrous - to replace a beach that was a beach, you took away a beach, now you want to try and put back a corner of the beach and use our tax dollars to do it. It's absolutely baffling and almost infuriating. He's not against anybody, he's not trying to bash anyone either. He is just providing his thoughts for the project. He doesn't think it should go forward but he's only one voice with a thousand other voices with a million other dollars behind them.

Dane - He wants to give Sam and Chris time to respond. He isn't trying to bash you; he just feels that it is important for the MLIBC to consult you early on in this phase and something important to note in your planning for this project. This is not personal, but it is important that we communicate at this stage with you folks.

Sam - He knows it isn't personal having dealt with controversial issues for 25 years in the Hawaiian Islands, being in meetings with very upset and angry Native Hawaiians and Native Hawaiians practitioners and walking out the room and shaking hands and hugging. He knows how it is. Very polite actually off the business, but we have heard you loud and clear. No point in me and Chris trying to discuss cultural issues that we have nothing to do with personally.

Dane - was a CIA conducted for this project?

Sam - Yes, a CIA was conducted. He does want to note that the pictures from Tiare are not exactly what the project would look like, the methods don't look like that. We have done beach restoration projects in Hawaii responsibly and without long term environmental effects because it's all about having a good sand source and having good best management practices in place. From an environmental perspective it's very doable, there would-be short-term impacts but there would-be no longer-term impacts from the sand placement. They are focusing on the cultural

issues which are significant, but he doesn't want to get lost in the rhetoric of environmental impacts, the EIS goes over that very well into long term cumulative impacts and there really are none in this particular situation. The economics are very simple - Kaanapali generates huge TAT and excise tax for the state unlike other places similar to Waikiki, that's why we are partnering with them because it is of economic interest to us.

Need to make a motion - the impacts to burials have not been studied. Yeah, there is a CIA, but there's no real response to maritime archaeology or archaeological monitoring in any way and the significance of the sand in Kekaa is not a viable solution culturally and from the burial council standpoint. Unless we just draft a letter saying those things with the jurisdiction as the MLIBC.

Kahele - we should probably do both - submit a letter and also draft a motion.

Johanna - we need to do both. This is a similar situation to Hamoa where the developer didn't take time to consult the stakeholders or look for other alternatives, no preservation plan that deals with the issues they are looking at, if anything we should include at least those three things. Further consultation should include some conditions.

Dane - He isn't even really concerned with consultation, he just wants to state that the sand in this location is not a viable source for outside of Kekaa or adjacent to Kekaa for beach nourishment because of the historical data we have when it comes to burials in the site, historical burials and precontact burials on top of Puu Kekaa and how it has been used for hundreds of years. It is a puuone and it's just that we don't see it today, we know it's a puuone, it's been a puuone and we know it's a puuone that continues from Honokahua and it is just one more but next to a leina, even more, it shouldn't be a viable source from a burial council perspective. It's just not something we can endorse, and it shouldn't be. He wants to stay in that lane, and if we say that it should not be utilized, the sand should not be utilized, that makes it pretty clear from our perspective. To think that the leina is only above the surface of the water is kind of crazy to him.

Scott - makes a motion:

The Maui/Lāna'i Island Burial Council recommends against proceeding with the Kā'anapali Beach Restoration Project, due to concerns about the impact on iwi kupuna, and the sacredness of Pu'u Keka'a (a known leina)

Dane - The leina is not only above the surface of the water - to think it's only above is kind of crazy

Kahele - This is a good place to make an example of. Just because places have been developed or disturbed that doesn't lessen their sacredness or historical connection to us - even beyond all of those things, it still deserves to be protected after it has been developed or assaulted after all of those years. Our connection to those places is still intact.

Dane - And our connection to one that's in the kai has not been disturbed so it's not disturbed right now it's only altered by nature itself.

Scott - he hasn't read any of the report but to what extent is the cause of the loss of beach attributed to the extensive construction on Kaanapali beach by the number of hotels?

Chris - its separate, the beach erosion is completely connected to the marine ocean and the environment, water levels, waves and sands. No sand has been mined from this coastline, so you are looking at water level and waves. Waves have been consistent; water level has risen. It's separates from beach construction.

Scott - He is kind of having a hard time with this because the only thing that has really changed, obviously there is a really small degree of subsidence, is the presence of hotels. So you're saying the hotels are not having any impact on the erosion accretion patterns.

Chris - so sand is moved by energy. It's wave energy and current energy to move sand - you could be ten feet away from where the waves and the currents are and you're not having an impact unless you are mining that volume. We know that it hasn't been mined. So then it comes down to energy. So where does the energy come from? It's coming from the waves and how does it attack the beach? According to water level. We know that water level has risen and erosion is something that we are seeing around the state and its accelerating while we see even minor fluctuations in sea level. These eddies, these small changes that come through, we can see erosional pulses that follow through with them. So we know it only takes minor modulation of water level to have a profound impact on how the beach responds.

Scott - so just to be entirely clear, you are saying had those hotels not been constructed, the beach would look almost identical to what it looks today.

Chris - Yes. Had the hotels not been constructed they would still look the same today. Because that's what you can see on native beaches. So where there is no construction you can go to longer sections of beach, Makena Big Beach, go over to Molokai, and you can see coastlines that are still eroding even though there is nothing right there next to them and it is because of that relationship - waves, water level, and sediment supply.

Scott - ok I am not a coastal geomorphologist, but it seems a little bit hard to accept but he will leave it at that because it's a separate issue. He would like to talk more about this with Chris if he has time. That would be great.

Motion on the floor by Scott, second by Kahele.

Scott restates the motion:

The Maui/Lāna'i Island Burial Council recommends against proceeding with the Kā'anapali Beach Restoration Project, due to concerns about the impact on iwi kupuna, and the sacredness of Pu'u Keka'a (a known leina)

Votes: none opposed, motion carries

Time is now 1:03. Need to re-agendize those which have not been discussed today

Agenda items that must be re-agendize:

B. Email from Kai Nishiki dated October 13, 2020 re: Olowalu Elua Associates, LLC., unauthorized grading and encroachments near SIHP 50- 50-08-4693, on TMK Nos. (2) 4-8-

003:084, 046, 047 and -001, Olowalu Ahupua'a, Lāhainā District, Maui.

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

C. Letter dated October 12, 2020 from Senior Archaeologist, Michael Dega, Scientific Consultant Services, Inc. (SCS) re: Archaeological Inventory Survey Consultation for the County of Maui D.T. Fleming Beach Park Parking Improvements Project No. P19/001 in Honokahua Ahupua'a, Kā'anapali District, Island of Maui, TMK: (2) 4-2-004:016.

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

D. Letter dated August 12, 2019 from Mr. Foster Ampong re: Compromised Integrity of the Maui-Lāna'i Islands Burial Council. Information/Discussion/Recommendation: Discussion on the above letter.

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

ANNOUNCEMENTS

A. Next meeting is scheduled for Wednesday, November 18, 2020