

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

MICHAEL D. WILSON, Chairperson

Gilbert S. Coloma-Agaran, Deputy to the Chairperson
Board of Land and Natural Resources

Rae S. Loui, Deputy Director
Commission on Water Resource Management

- Aquatic Resources
- Boating and Ocean Recreation
- Conservation and Resources Enforcement
- Conveyances
- Forestry and Wildlife
- Land
- Office of the Chairperson
 - Aquaculture Development Program
 - Community Services Coordinator
 - Fiscal Office
 - Kaho'olawe Island Reserve Commission
 - Personnel Office
 - Public Information Office
- State Historic Preservation
- State Parks
- Water Resource Management

AGENDA
MOLOKA'I ISLAND
BURIAL COUNCIL MEETING

Date: Wednesday, November 19, 1997
Time: 9:00 a.m.
Place: Queen Lili'uokalani Children's Center -- Lili'uokalani Trust
Moloka'i Office, Activity Room
Kalama'ula (Kalaniana'ole Colony)
Kaunakakai, Hawai'i 96748
Telephone: 553-5369

- I. OPENING REMARKS**
- II. APPROVAL OF MINUTES OF SEPTEMBER 11, 1997, MEETING**
- III. BUSINESS**

A. MAPULEHU GLASS HOUSE

Information/Recommendation: Discussion of Burial Treatment and Proposed Development Plans by Nene O Moloka'i.

B. CASE UPDATES AND INADVERTENT DISCOVERIES:

Information/Recommendation: Update of ongoing cases; arrangements for reburial where necessary; and other follow-up by SHPD, including inadvertent discovery of human skeletal remains.

IV. ANNOUNCEMENTS

V. ADJOURNMENT

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LIEUTENANT GOVERNOR'S
OFFICE



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

MINUTES

MOLOKA'I ISLAND
BURIAL COUNCIL MEETING

DATE: WEDNESDAY, NOVEMBER 19, 1997
TIME: 9:00 A.M.
PLACE: QUEEN LILI'UOKALANI CHILDREN'S CENTER --
LILI'UOKALANI TRUST
MOLOKA'I OFFICE, ACTIVITY ROOM
KALAMA'ULA (KALANIANA'OLE COLONY)
KAUNAKAKAI, HAWAII 96748

ATTENDANCE:

Members: William Akutagawa Myrle Florea
Lawrence Aki Pearl Hodgins
Anna Goodhue

Staff: Sara Collins, Archaeologist
Ka'iana Markell, Burials Program Director

Guests: Mililani Hanapi, Hui Malama I Na Kupuna O Hawai'i
Arleone Dibben-Young, Nene O Moloka'i
K. Mahealani Davis, Native Hawaiian
Leimana K. Naki, Kanaka Maoli
Harry K. Aki
Donald Kalaiwaa, Jr., Hui Malama I Na Kupuna O Hawai'i
Pili'alo'ha L. Kalaiwaa, Hui Malama I Na Kupuna O Hawai'i
Raymond Naki
Richard S. Young, Nene O Moloka'i

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ABSENT: Ronald Kimball (excused)
Edwina Cacoulidis (excused)
Luana Hamakua (excused)

I. OPENING REMARKS

Chairperson William Akutagawa called the meeting to order at 9:16 a.m.

Burials Program Director Ka'iana Markell stated that the purpose of today's meeting is to address Mapulehu and to facilitate proper treatment of exposed *iwi* (bone) on the surface. We hope to get a general background of the proposed treatment plan for the burials and the proposed development and come to an agreement between the community, the landowner, the burial council, and the State.

II. APPROVAL OF MINUTES OF SEPTEMBER 11, 1997 MEETING

Due to a lack of quorum, action was deferred until Member Anna Goodhue arrived at the meeting.

Before adjourning the meeting, a motion was unanimously passed to approve, as submitted, the Minutes of the September 11, 1997 Meeting.

III. BUSINESS

A. MAPULEHU GLASS HOUSE

Information/Recommendation: Discussion of Burial Treatment and Proposed Development Plans by Nene O Moloka'i

Mrs. Arleone Dibben-Young ("Arleone") said she did two burial treatment plans for the property because at one time the property had two different TMKs. It was consolidated in 1951 and because the eastern side was in the ahupua'a of Mapulehu and the west side was an LCA to the Kaluna family, I treated them as two separate burial treatment plans and because the second inadvertent discovery is on the Mapulehu side. The previous burial disturbance done by Ellen Osborne, our previous tenant who vacated the premises on October 14, 1997. That area is 10,665 sq. ft. or .245 acres and is located one-tenth of a mile east of the 15 mile marker on the mauka side of Kamehameha Drive Highway on the east end of Molokai within the ahupua'a of Mapulehu on LCA 4092 to Kaluna. It was a Pahale kuleana 6179 which is a portion of the property now known as the Mapulehu Glass House. This area on the property was used in 1930 - 72 for the quarantine of probationary species of sugar cane by HSPA. There's burial easement site which is recorded at the BOC. This site is currently operated as an endangered species facility by us, Nene O Molokai. On November 6, 1991, an inadvertent discovery of human skeletal remains was reported on the subject property. An investigation was opened by DLNR's SHPD and DOCARE and the Moloka'i Island Burial Council to determine if a violation of HRS §6E-43.6 had occurred. It was discovered that the remains of approximately 30 individuals had been uncovered in May 1991. This was done by Sam Pedro under the authorization of Ellen

Osborne under her direct supervision. Further investigation revealed that she failed to report the event and destroyed evidence by tilling the remains. The civil case is on file on Maui. This resulted in a \$10,000 fine to be paid quarterly over the next 12 months and 150 hours of community service. The four skulls that were retrieved in a bucket by an employee of Ms. Osborne have never been located or retrieved. There are historic sites on the property because of the nature of over 50 years. First a well that was constructed in 1872 by Mr. Charles Cockett, the second is the 5600 sq. ft. glass conservatory and 32 sq. ft. outhouse built in 1930. In the addendum we have identified the rock piles as piles of stones that were rolled down the hillside for planting of tomatoes and they were being store there to finish building a rock wall fence that was around another LCA on the other side of the property that HSPA owned. The rock wall that goes from west to east that also was constructed by HSPA of the larger boulders. Since this burial treatment plan was done, we have thoroughly traversed the hillside and we have found no evidence of any archaeological sites. The previous landowners was in 1853 Kaluna, 1858 passed to Eric Kaluna, in 1899 passed to heir Keliiaa, in circa 1899 it was sold to Noa and Kauhane AKA Kahu; at an unknown time, the land transferred to Alice Nakio Kawainui. In 1932, she sold it to George Paul Cooke, In 1928, he leased it to HSPA, they used this portion for their horse corral. In 1930, HSPA purchased the land, in 1997, it was purchased by a donor for the non-profit. Notices have been placed in the Maui News, the Molokai Advertiser News, and The Honolulu Advertiser, and we have now complied with the unmarked burial site notice herewith. HSPA maintained extensive details of the property from April 23, 1930 until October 15, 1972. Because this area was used as a quarantine station, it was kapu to anyone coming on the property. There were only several HSPA employees that were actually allowed to go onto the property. These records are available for public viewing at the HSPA Archives in Honolulu. They list the name and date of every individual entering and exiting the property, what their purpose was on the property, the name of the company they were with, the boat they came on, what they brought with them, as well as every receipt on the property. From that time until the time of this particular inadvertent discovery, not one family member, lineal or cultural descendant came forth. In the past, the Aki family and John Sabas have claimed lineal descendancy, however, nothing has been documented to date. The previous land use based on historical documentation and oral testimony was used for the cutting and collection of firewood by landowner Alice Nakio Kawainui and it's documented in the deed dated August 21, 1922 in which she sells the property to George Paul Cooke. Maps from the 1800s and early 1900s showed fences on the property and indicate that the area was used for either grazing or holding of Cooke stock. Kaunakakai resident Mr. Otsuka whose father worked on the property from 1930 until World War II, says he spent considerable time as a child from 8 in 1933 until the 14 years old . He recalls where the area where the current burial easement is located was fenced in and used as a horse corral and that bones would be unearthed when the kiawe trees blew over, when there were heavy rains, or when the horses kicked the soil surface so there's probably a lot of fragments scattered outside of the current burial easement that we have to deal with in addition to the ones that are currently there due to the grading by Ms. Osborne. Mr. Otsuka also said that his father told him that skeletal remains were discovered when fence posts were dug in an unknown area. Mr. Alapa'i Hanapi states that Kupuna Auntie Clara Ku gave oral testimony to him that there was a school on the property when she was a little girl approximately in 1920 that she was told not to play in the area of kiawe trees. This was not consistent with historical records and I've been able to through this addendum been able to document additional information I'll include at this time. The older

brother, Mr. Ernest Otsuka, is the one brother who actually worked at HSPA. In mid 1930s at age 15. His father, Mr. George Otsuka, told him that a doctor previously owned a house in Mapulehu Valley. This is consistent with the historical documentation. This house was owned by Dr. Arthur Marit and he treated his patients there. The verandah of this house was used as a Hawaiian school sometime after the doctor moved out and before the Cookes purchased the land. From 1890 until 1905, Dr. Marit lived at the Mapulehu house. Additional documentation follows Dr. Marits to Kilauea, Kauai to 1905, Honolulu in 1916, and living in Honolulu at least until 1932. This house is seen in a stokes photo of 1909 and another circa at 1911 by Jerome Baker in which it is identified then of the house of Judge Conrad, the current owner of the ahupua'a. Both photos don't have kiawe trees in them. They weren't introduced in that area until the mid-1920s. Mr. Clarence Cooke purchased the land in 1912. This may be the school mentioned by Aunt Clara Ku in the proposed burial treatment plan. A photograph of this property taken by William Brigham in 1888 shows a structure located at the location indicated as a church in several documents. This church had a koa wall. It had a rock wall surrounding the area that is currently a recognized cemetery area on the property a fenced in barn, a smaller shed, and an accessory building which is located where the current Nene O Molokai parking lot is. This structure was also built out of coral. I also have an 1893 map which shows the fenced in barn and the church just outside of the property on land now owned by Mrs. Petro. The map drawn by Dr. Maritz shows the same barn built in 1872, an old government road running across the top of the HSPA property, and a church just east of the old government road. This road is still visible today, and it goes across of the north side of the Mapulehu glass property, turns makai to meet Kamehameha Drive Highway, it is now a paved driveway of the Petro family. Additional oral testimony given to my by Mr. Otsuka says he maintained this old government road and he used it for access to the west side of the ahupua'a and continually graded it to keep vegetation on to it. The land directly mauka and makai of this road was farmed extensively in tomatoes. No burials or historic sites were ever found in those areas. I have a May 26, 1930 HSPA letter from the Mapulehu Glass House Project to the main office in Honolulu and it shows the property being cleared of kiawe trees which were then present on the property and construction of the experimental station. Other documents show there was no school on the property but instead about a 1/2 mile up the valley from the property. The area of almost 1/4 acre includes a 20 ft buffer zone around the actual burial site. It's currently heavily overgrown with vegetation. We propose to clear the area by hand according to state guidelines and we wish to place low-growing vines and food that do not interest the nene on the area to prevent the nene from desiring to nest within the burial area. If high vegetation is planted or leave it as is, the nene will nest in there, will dig small pukas and may disturb the site. We've found human remains scattered outside the existing easement and believe there are some in several push piles near the area and propose to manually sift and retrieve those by volunteers and Hui Malama helped to sift through this and reinterred within the current burial easement. May 1998 is completion date, includes vegetation clearing and reinterment. After that we need to plant the area and introduction of Nene in the area. Any future human remains - we propose they remain on the property in the lauhala basket and leave the interment baskets. To date, I haven't received any response by Mr. Aki. Any additional fragments be reinterred within the burial easement. We expect that due to the disturbance of both the horse corral, grazing, land use over the past 42 years by HSPA and other landowners and the disturbance by Ellen, we'll probably be dealing with scattered remains for the rest of our time on the property. We'd like those remains to be reinterred within the current burial easement. We'd like to landscape and

prepare the area for the introduction of the Nene. If iwi is found, we'd like them kept in the lauhala baskets on the property until the final reinterment. June 30 1998 being the last reinterment. providing access by supervised walk-in restricted to normal business hours from 9 a.m. to 5 p.m. for lineal/cultural descendants during the months of April through August. No entry is allowed unsupervised or at night or during the Nene breeding season September to March due to the aggressive, territorial behavior of the Nene and the risk of disturbance or harm to the adults, the goslings, or their eggs. Hui Malama will be allowed one supervised night time access per year during the months of April through August for the interments for future finds. We're hoping to get together as a community to resolve this so we won't have to worry about future reinterments. When we purchased the property, we knew there was a burial easement on the property. Our program is for historic preservation. The current burial disturbance by our tenant was told that everything had been resolved and the case was closed. We have found out since then, she did not advertise for lineal or cultural descendants. We've done that at the cost of under \$2,000. She didn't do a burial treatment plan. I did this myself. I got quotes on plans from \$7,500 up to \$15,000 per plan. I've done two. Before we bought the property, I had done some research on the ahupua'a which made it a little easier to prepare the plan.

Arleone said that the second subject area is approx. 96 sq. ft. and located on the east side of the property on lca 32182 Loui Royal Patent 7232. It's a portion of the property known as the Mapulehu Glass House. On October 13th, the day before vacating the premises, tenant Ellen Osborne dug an unauthorized hole to bury rubbish and uncovered skeletal remains at a depth of six feet. She notified me, I came down, saw the remains, drove into town, purchased a tarp, came back, put dirt on top of the remains, and covered it with the tarp. I then notified Sara Collins of SHPD that the remains had been found. She said to wait until the remains had actually been identified as human until our site visit on October 29th. They remained covered until then. We took over the premises on October 15th and instructed by Markell to give Hui Malama member access to the site, he reinterred the remains at the disturbance site and not within the recorded burial easement. It had not been identified by SHPD members prior to that reinterment. Shortly after clean up of the property with volunteers, human skeletal remains was found top of the grass lawn onto the roadway and out of the property. This was reported to SHPD and these were observed on the October 29th visits. I got access to the property across the street owned by the Chow family. Mr. Aymes Chow was the backhoe operator to remove the shadehouse poles for Ms. Osborne. In return for his work, he was given some of those poles. He brought them to his property. I got permission to go on his property. I found a vertebrae cemented into the bottom of one of the poles. I believe the iwi was removed by Alapa'i on Sunday. Historic sites on this side of the property was the well. Previous landowners of the ahupua'a prior to the mahele was the Holmes missionary family. Lewis was granted rights to his mother's estate to his brother John George Lewis. His mother was Polly Holmes. 1852 was the lca to Akaki Lewis. The four acres surrounding the Holmes house was mortgaged to Dole. 1889 Cockett conveyed the property to James D. Cockett. 1890 James D. and Stella K. Cockett did a trustee to J.A. Magoon trustee for Elizabeth E. Cockett. 1890 the estate was sold to Dr. Arthur and Anita Moritz. At an unknown time, S.P. Dole sold the house and dwelling lot to Dr. Arthur Moritz. 1899 Dr. Moritz sold the property to Hawai'i Sugar Company. In 1899 Kamuela sugar company leaves the land to above the 125-foot elevation H. J. Hitchcock for grazing. In 1903, Dr. Moritz sold the property again to the Banister who defaulted on the mortgage. In 1904, Kamalo remortgaged to Maritz. 19905

conveyed it to Maritz; 1005 Hitchcock subleased to the Codron. 1905 sold it to Conrad; 1907 Conrad indentured it to Luisa Erins; unknown time defaulted it on mortgage; 1912 Conrad mortgaged to Clarence Cooke; unknown time Cooke conveyed to brother George Paul Cooke, 1930 Cooke sold to HSPA, 1951 HSPA sold to Petro family, 1997 purchased by for use by Nene O Molokai. No lineal descendants remain in the ownership or leases. Land use was mostly for office by HSPA. A barn was there and the well. Kaunakakai resident Mr. Cowboy Otsuka recited that when HSPA employees dug a 10 foot diameter well in an unidentified location that he believes was in back of the current outhouse that the human remains of approximately 10-15 individuals were uncovered within the shaft. He says he was told were in an upright standing position packed like sardines. His father told him that these human remains were reburied in a 4x4x4 wooden box in an undisclosed location on the property. Since then, we've had additional oral testimony by his brother who was the actual employee and this was he believes the first inadvertent discovery that took place on the property during the time that he was at HSPA. This disturbance was prior to his actual employment. He recalls it was an Egyptian style well which was described as being a vertical shaft with a 45 degree side shaft step to provide access for an individual carrying to water buckets on the ends of a wooden pole. Mr. Ernest Otsuka said that skeletal remains were found laying horizontally at the bottom of the well shaft and that these remains were reburied somewhere on the property. I have a wetland delineation performed by the Soil Conservation Service which is now the Natural Resource Conservation Service and places the water table at the location that Mr. Ernest Otsuka remembers the well to be at 39 inches and at 45 inches of depth where Cowboy Otsuka remembers the well to be. Another wet area near the mailbox may be the location of a now filled in well although both of these men said that nothing was found in this area. This is also the well of record at the water commission even though it was filled in the 1930s. The second inadvertent discovery on this portion of the property occurred at approx. January or Feb. of 1937 when 87 3'x3'x3' holes were dug in fields T7, 8 by an employee supervised by Mr. Ernest Otsuka in preparation for planting coconut and mango trees on the property. The human remains of one individual were found at a depth of 3' in a single mango tree hole. The employee placed the skull on a fend along the highway and when Mr. Otsuka saw this, he ordered Ernest to put all the bones in a burlap bag and bury them under a coconut tree. This was done in the first row of coconut trees on the Kaunakakai side of the coconut orchard under the second tree makai of the boiler room. Ellen Osborne had since bulldozed these coconut trees into the current burial easement. We paced off this area based on a 1949 photo of the existing mango and coconut trees which were still there at the time Osborne leased the property and we believe we have found this location. There's difference in the soil that would show there was a digging at this spot to a depth of at least two to three feet according to the wetland delineation. Mr. Ernest Otsuka himself found a third set of skeletal remains found on the subject property and that was in 1951 when the property was subdivided he was digging a fenced host pole on the Kaunakakai side of the now Petra driveway. The digging stopped when he found the top of what appeared to be a human skull, and the bones were left in place unmarked. The same documentation is consistent with both of the burial treatment plans. This one site, the 96 sq. ft is very well contained. I've been monitoring it with the heavy rains. No additional fragments have been left in the pile of topsoil that was removed from the site prior to the disturbance. The same treatment is proposed for this particular site that we plant it with a low growing plant such as pauhiika or nanea. The future plans for the subject property in its entirety is going to be for a Nene reserve. One of our first projects is restoration of the wetland. This is

makai of the recorded burial easement. It includes rubbish removal, hand clearing, dredging, and fill. We propose to use an arch monitor when we do dredging. This restoration is going to be done with a grant from the NRCS. We also propose removal of the wiliwili hedges, and planting of a grass lawn mauka and lanai of the current burial easement. The removal of the hedges by the roots will be monitored by an arch monitor. Our intent for the entire property is to remove all of the non-native vegetation which is essentially is just about everything there now and plant it with all native Hawaiian plants, plants considered culturally significant, and plants used in la'aulapa'au. The site is going to be used for a seed conservation center for genetic seed control of native Hawaiian species and those species found on Molokai. We're proposing removal of six monkey pod trees and a Chinese Span Palm Tree by the roots. We're working with Molokai Ranch right now. They're interested in these trees in exchange for use of their arch monitor for the removal of these trees and for the hauling away of the rubbish. We're in an emergency situation right now. We discovered we don't have a power easement from the Petro property and that our power is being removed from the premises. We're proposing to put in power poles for the power and telephone. We're going to be grading golf cart paths. The system on the property is a four-gated security system. Once in the vector control area, the shoes must be washed, etc. Beyond that area, golf carts only, no additional heavy equipment in. We're constructing three to four staff houses, small cottages no more than 1,000 sq. ft, a potting shed, expansion of the current barn, and remodeling it into the vet clinic for the birds, expanding and remodeling the current house into the operations incubation and quarantine building, we may have to dig foundations and septic systems in the event we'll use an arch monitor for, restoring the glass and out house with associated cess pool, excavating for a well using an arch monitor for maintaining hydrology of the wetland, placing a water tank somewhere on the property for firefighter's facility and storage of water to maintain wetland. If do this upgrading of a pad, we'll use an arch monitor for that. We're constructing a gazebo around the well built in 1872. We're going to be pouring a cement slab around it, digging a foundation, and building a Victorian style screened in gazebo that would protect anyone from falling into the well, and when students come they can sit on benches on the inside. That's the majority of our future plans and burial treatment plans.

Markell said that there's three main issues that the department is reviewing right now. The possible violation of Chapter 6E by Ellen Osborne on her last day on the property when she directed an equipment operator to dig a hole and bury debris when remains were uncovered. There was also another hole that was excavated and covered up. Our enforcement division is conducting an active investigation and will be consulting with the attorney general on this matter. They'll be taking a hard line approach with what's happened on the property given the fact of the previous burial disturbance and how outrageous it was. It's unfortunate for the current landowners who inherited this, but I've been instructed to notify HSPA, Ellen Osborne that there is an active investigation going on. The Attorney General may even try to attach the \$40,000 that HS--

Arleone said that it's already been paid.

Markell said yeah, but she can move in on it. So that 's why we're trying to speed up that. That's going to progress. Enforcement will give us a report, report to the Attorney General's, we'll bring it back to the council, and discuss what's happening in that case if there was a prosecution. The

second issue we have is a burial treatment plan for the iwi that was disturbed. We have a burial preserve, we have iwi that's still on the surface although a lot of it may be covered up and hard to see, but we know it's there. That is something--

Arleone said that in addition, we need to sift through it, if it remains overgrown we don't want the nene nesting in those areas.

Markell said that this is something that should have been done by Ellen and maybe part of her settlement agreement that she's supposed to address, take care of the iwi, because at a minimum sure you can pay a fine and do community service, but it should have rectified the situation, especially if they were the cause of it. Somehow that never happened. Now the new landowners, the proper treatment of the preserve, recovering of fragments, all those elements are incorporated into a burial treatment plan that's what's coming before the council as to whether this is acceptable or not. The third issue is the proposed development on the property. I'm a landowner, I want to build this, this, and this, We have a lot of information that there are a lot of burials on the property just by what we found. Historically, people may not remember people buried there or visiting graves, but they've been finding things, which may place the iwi prehistoric it may have been hundreds of years ago where people don't remember but it doesn't mean that it's not there. So we have to try and figure out what the plans are and if people have a where a sensitive area may or may not be, if monitoring is required, what type of monitoring, that's the type of recommendations we need so today's the two issues are what are we going to do about the burial easement and the which may include hand clearing to look for fragments. We have the burial that was disturbed which is the subject of this investigation we have remains that were found in the cement where these shade poles were on the property were taken out and half ended up somewhere else. Part of the DOCARE investigation is to find out where those poles went. It looks like they dug the hole, iwi was there, now iwi is inside the cement. We don't know if those individuals in the cement were in the hole. That needs to be determined. The second issue is the proposed plans for the property because it does call for a substantial amount of grading in some areas and holes in the ground, and different things.

There was some discussion about a letter coming from the council to the attorney general's office to provide more detailed information about Ellen Osborne's payment of the fine and community service performed.

Mrs. Mililani Hanapi testified that Hui Malama takes a really strong commitment to our ancestors. As I've said before you cannot disturb the afterlife, it is the ultimate sin. I have talked to lineal descendants. I understand there's a whole clan of them. I was told about Mapulehu that many people who are buried there are priests. The last remains that again, as a kanaka maoli, I feel the spiritual connection. I was up late til about 2 a.m. before we buried the law iwi and we came to the burial council and I was emotional then because I was up late til about 3 a.m. typing all of a sudden uhane came. I thought okay, you're not my family, you must be enjoying the moonlight so I kept typing but I felt they were really there. For some reason I thought they were children, and the next morning I woke up my husband, Alapa'i, get up something's happening here and he's like oh babe, I'm really tired. Next morning I find out that the bones we had on the man were children so this is why I say as kanaka maoli we do not separate ourselves from our spiritual being. We

are alive today and sitting at this table because I believe this is what our ancestors did in the old days. Not everybody dealt with burials and not everybody dealt with our dead, but in our civilization there were people who did and were chosen to do so for the larger community. I feel that Mapulehu is a very sensitive area, everything should be stopped until the investigation is finished. They're receiving government funds. This is a conservation kind of project. Government money is going into this place. We as a kanaka maoli have a legal and lawful interest in it that should be protected and it's not unreasonable for us to ask that the project be stopped until an investigation is completely finished, everything put together, compiled, testimonies given, and reports are done. Mapulehu should not be desecrated again. Our ancestors have the right to return to the land they came from.

Akutagawa reported the Anna Goodhue arrived and the council now has a quorum. Markell brought Goodhue up-to-date on the discussion.

Donald and Pili aloha Kalaiwaa testified, but parts of the cassette tape were unintelligible and/or inaudible.

Akutagawa explained that the site has been misused through the years and at the same time, the burials are still there. In looking at the layout of the land, looking towards the Kaunakakai side and you'll see a burial ground -- that's where the iwi is placed inside an easement and repository of all discoveries.

Arleone said that we're not doing any construction on the lower parts of the property, they're all up on the larger parcels. All construction is in the areas previously used to farm tomatoes and previously farmed or graded. The golf cart path are on the current graded paths. The only major thing is the power poles. We have to have power so how do we deal with that.

Member Aki suggested that additional testimony be taken before discussing more business.

Mr. Raymond Naki spoke but most of his testimony was unintelligible.

Ms. Mahealani Davis testified that she was one of Ellen Osborne's employees part of the work crew that prepped the first field which is towards the east side of the driveway towards the glass house. From the first discovery of iwi there, Ellen was ignorant of the fact of the significance. Ellen was made aware that there were burials by the coconut trees. All of us (8) didn't want to work there. We said you better not cut those trees. Maybe after a month after I quit working there, one morning the trees were gone. That was a decision she made. We found on the ground there various artifacts everyday: ulumaika, Hawaiian marbles, etc. The place had been overgrown thickly with hale koa, kiawe, and monkey pod trees. Someone was hired by Ellen Osborne to bulldoze all that out, and we assisted by hand. When we started finding bottles, it sparked her interest. That's when she started digging into the well. All the other items found were just put in a collection box and left in the storage room. Mapulehu's ahupua'a is a pu'u honua. Women and children would go to this particular area to stay until the pilikia was pau. Mapulehu is a burial ground. We only dug down 12 - 18 ft was the depth and we never found any large human bone. How do you mitigate damages when she knew beforehand that this place was

a burial ground yet she did nothing to educate herself more about the history of the land and the significance of iwi. Why wasn't a cultural assessment done? Nothing that we did in this area required digging and looking. You can't walk 10 ft before finding something. Until those coconut trees were cut, that area was a refuge for burials. I doubt Ellen Osborne did any community service. I doubt if any of that money got to the right people. It's inadequate. She's got away with too much. Somebody should be following up on that.

Markell stated that after he hears from everybody, he'll address -- it's important that everyone understand where we're at with the law and what can and can't be done so --

Mr. Harry Aki stated that something about the law -- a couple months back, somebody desecrating somebody's massive burial during the holidays, spray painting on head stones, we need justice. We need to take care of those individuals who did something wrong to the burials, you now. Here on Moloka'i -- our kanaka maoli burials continue to be desecrated. When are we going to be treated equal.

(An unknown female testified that) Brother Harry said for the cultural assessment to be done or inventory of cultural places for the developer coming in would know what to -- what is it that they're buying? Because in the land, we will probably have remains in the land and also artifacts. The land is the receptacle for Hawaiian rights. I'm not looking for parity or balance here. I'm looking for the state to come out and clearly say there are some precedents that have already been established by the Hawaiian people. This is the least developed island, and I think the only island that has more cultural sites per square mile more than Moloka'i is Kaho'olawe, the most undeveloped islands. I think this island in itself represents a living Hawaiian culture, and the state has been for the most part on other islands dealing with amendments of a culture that is no longer actively being practiced. That is not the situation on Moloka'i. It is a living culture. The community still conducts the activities, the routine and daily activities as their ancestors for the most part did, and the state needs to come to grips with that rather than put the burden on the individual developer. I know down west end, they've got a development plan going on right now in the midst of a fishing village, and I don't agree with putting a ribbon around the site is adequate. Move the damn thing over a little bit. You got to be culturally sensitive. We cannot legislate morality and ethics and behavior that your neighbors are comfortable with. You're taking the rights of the people that live in that community that still access and have those resources that they've always had, and that can't continue. You're taking the rights of the private person and saying these are more important and paramount than the whole community down here, and that's not true, and we've got constitutional language that says preserve and protect the native Hawaiian rights and allow them to continue in their role as responsible stewards of the area. When we get to a table like this and we all are in agreement that something needs to be worked on, we want to mitigate, but we also want to preserve and protect, where's the state in this picture, they haven't made any clear definitive statement that Hawaiian culture needs to be preserved and protected.

Harry Aki said that sometimes we need to work with the developers to protect our own cultural resources because our own kanakas won't listen.

Mililani Hanapi said that I believe this Nene project, the land was bought with information that it was a sensitive area. There's record with SHPD, and the sugar planters sold our graveyard, and I don't want to be confused about them and think that that should be something that is pono because I strongly believe that if we're seeking solutions, we'll find them if you really care and thinking about everybody concerned, you'll find the solutions. I don't know who owns the land at Mapulehu right now, if it's the non-profit organization. I would like to know who actually owns the land, and where is the landowner. Why aren't they here at these meetings, and I'd like to know what kind of knowledge did they have prior to buying that land. Was it sold at the highest equitable value of real estate or was it sold with lesser value because it was a graveyard? Kala mai, I think that's an important question that needs to be part of the investigation so that the state stops selling graveyards that belong to our ancestors that they had knowledge that that was a sensitive area. The people who had purchased the lands I believe went in there with their eyes wide open and should be held responsible for that.

Markell stated that the onus is on the department now to prove that this is a burial under this land because western law gives all these rights to a landowner, and if we come in and say this is a burial here on this portion of your property, by law you cannot disturb it, you cannot alter it, you cannot do anything to disturb, including the pohaku on the surface, that's included in the definition as part of that burial, not just the iwi, we're talking about the whole site, the landowner is basically not allowed to do anything with their property on this portion, and they want to know can I use this portion on my property. As a state agency, we're basically condemning little pieces of people's property every time we know there's a burial there, and sometimes a landowner can go get a tax exemption for cemetery purposes, but no court in the U.S. have ever ruled that a state keeping a burial site on a person's land is a taking of that property where we would have to pay that owner money to compensate them for that portion of the burial. A single burial, five burials relative to an acre, three acres, most landowners they can live with that preserve. When we get into larger portion of properties where this whole area is a burial ground, if its declaring half an acre unusable on an acre property, there may be serious issues that the landowner says hey, I'm going to sue the state as a taking. I want to be compensated, I bought this property, I can't use it. If that goes through, law may be changed, 6E may be wiped out because the state isn't going to pay for landowners every time we preserve burials in place. There's always ramifications that we - 6E is always under attack by landowners at the legislature, they want to get rid of the council and program because it's causes delays and money problems, and they can handle it themselves. That's something that as an agency I have to be aware of jeopardizing the program and the councils of what we have so far today, that if I make a decision and we end up getting sued and people--

Akutagawa stated again that we need to look at our proposed management burial plan, look at every part of it and come to an agreement whether it satisfies all parties with a vested interest in. Akutagawa called a 15-minute break.

The meeting resumed and Akutagawa stated there are three different plans here. I think what the department might do is consolidate it into one. It has to be reviewed by the department and further input from the council. The two things that can be considered here now is 1) the power poles; you got to bring in your power. We realize you don't have any power now, and 2) the

drainage. There's a drainage plan. The grading by the house--because these things--movement of earth, we should discuss it now, but the rest of the plan we'll hold off on that.

Markell said you might want to inform the council as far as what the urgency is on these two projects and what it would entail and what your requirements are as a landowner.

Mr. Richard Young stated that Maui Electric said they'd provide us new poles to bring the power on our property instead of taking the power from the neighboring property. From the existing power pole on the road, we come in 60 feet to the first pole. My suggestion and proposed route would be another pole over on the common property line boundary. It's about a 200-foot run to a second pole and then there's a third pole up by the parking lot, the fourth pole would be between the existing house and the parking lot. Maui Electric says it has to run from a pole that has an existing transformer on it. The alternatives don't get better. Underground requires a 24-foot trench and that's about 500 feet deep. Our neighbor says she doesn't want to encumber her land. There is no legal easement and she won't give a legal easement. It's been verbally told to MECO that if any digging takes place, an archaeological monitor would be required. Who's responsible for paying for that is unknown.

Staff Archaeologist Sara Collins mentioned that MECO could be responsible for paying for the archaeological monitor because there's recent precedent set in Sand Hills/Pu'u One in Maui.

Mr. Young requested permission to clean up the existing drainage swell behind their house that is jammed up. They propose to bring in a tractor to dig it down 1 foot to stop the water from going into the house. No digging would take place. It's about 10-12 feet wide and 32 feet long.

Per Sara Collins, she assisted the monitoring for removal of maunawili stumps a few weeks ago. Nothing turned up except an egret skeleton, a couple pieces of glass, and old bricks. This is a graded area and she'd suspect that what they want to do is okay. There's no known cultural site there and a one foot depth sounds like accumulated silt and leaf rubbish.

A motion was unanimously accepted to permit Richard and Arleone Dibben-Young to clean out their existing drainage ditch behind their house (40 feet long, 12 feet wide, 1 foot deep) in the presence of a cultural monitor from Hui Malama I Na Kupuna O Hawai'i (Aki/Hodgins). Richard and Arleone Dibben-Young further agreed that if any bones are discovered, they would adhere to applicable state law.

Vote: All in favor.

A motion was unanimously accepted to continue this meeting to December 2, 1997, at 9 a.m., at a location to be determined to resolve the remaining issues at hand (Aki/Hodgins).

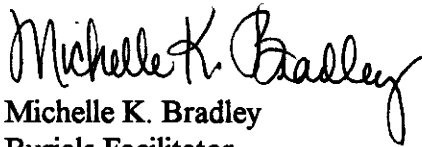
Vote: All in favor.

IV. ANNOUNCEMENTS

V. ADJOURNMENT

There being no further business, Akutagawa adjourned the meeting.

Respectfully submitted,


Michelle K. Bradley
Burials Facilitator