

**MAUI / LĀNA'I ISLANDS BURIAL COUNCIL
FINAL MEETING MINUTES
JANUARY 15, 2020
9:00AM
DLNR, MAUI DISTRICT OFFICE COMPLEX CONFERENCE ROOM
130 MAHALANI STREET
WAILUKU, MAUI, HI 96793**

I. CALL TO ORDER

II. ROLL CALL

Members:

Iris Peelua
Dane Maxwell - Chair
Kahele Dukelow
Kyle Nakanelua
Johanna Kamaunu

SHPD:

Ikaika Nakahashi Cultural Historian SHPD. We have a new intern, Cailee Gomes, she will be helping us out at SHPD

Guests:

Foster Ampong
Nick Molinari
Rob Cooper
Josie Yucha – CSH
Angela Yates – CSH
Kirstin Punu
Andrew Chianese – HBT
Marcus Ohlheiser – HBT
Kai Rozet
Joyclynn Costa – Aha Moku
James Sagawinit – Kanaka
Kalai Costa – Aha Moku
Noelani Ahia
Leilani Miranda
Kaniloa Kamaunu – Aha Moku 'O Wailuku
Trevor Yucha – CSH
Reynaldo Nico Fuentes – Atlas Arch
David Yamashita – County Parks Dept

III. ELECTION OF NEW MLIBC VICE CHAIR

Dane: first item of this morning is the election of our new MLIBC vice chair. So, do we have any nominations or --- for vice chair?

Kyle: I would like to nominate Kahele

Kahele: Thank you

Dane: Any other nominations? [silence] So no need secret ballot like the last time? [laughter]
You ready Ikaika?

Ikaika: yup

Dane: Alright! Seeing as there's no other nominations for vice chair [inaudible], I hereby nominate you as vice chair of the MLIBC [clapping]

Ikaika: we need to make a motion, don't we?

Dane: oh yeah sorry. All those in favor of Kahele Dukelow being the MLIBC vice chair

Kahele: Do we need a motion?

Ikaika: Someone make a motion

Scott: Ok so the motion would be the

Motion:

The MLIBC nominates Kahele Dukelow to be the vice chair of the MLIBC

Kyle seconds: all in favor, none opposed, motion carries

Ikaika: Now it's official!

[clapping]

[inaudible discussion amongst the council]

IV. APPROVAL OF MINUTES

A. October 16, 2019, B. October 16, 2019 – Executive Session C. December 11, 2019

V. BUSINESS

A. Training for Maui/Lānaʻi Islands Burial Council on membership, roles, and responsibilities. Information/Discussion: Discussion on the above item. (BRING BLACK TRAINING BINDER)

Dane: ok where did Ikaika go? First item of business is training for the MLIBC on the membership roles and responsibilities. Hopefully everybody brought their binders or has their handbooks on 6E and the 13-300s. We are going to have the AG online and there are a few things we want to discuss this morning, some of them specific to language. I know one thing we have had over the years [inaudible] is the term "burial site" and "previously identified" so as soon as we get them on the line we can go ahead and [inaudible discussion] But - since we are gonna have her on the line, if you folks have any other things or discussion you want to have prior to us whether it's about the language and our interpretation or what - what we need answered from training either in regards to 13-300s or just language in general and motions we've made in the past. I know we've had correspondence and letters over the years over the past 6-7 years

[inaudible discussion]

Dane: Clear yeah. No mic anymore that's why. [inaudible discussion amongst council members]
So yeah

Attorney General [henceforth written as AG]: Hi [inaudible voicemail message]

Dane: That's our AG, hopefully she answers, and it doesn't go to voicemail. We will defer to Ikaika this morning. Do we have the 13-300s in front of our - do we just want to review...?

Ikaika: So, the hope was we are gonna go over some terms, definitions for training, and the AG was then gonna clarify any questions. She should be on the phone soon. She's on Oahu. one sec excuse me [inaudible]

Dane: Ikaika you wanna text me here number? Then I will call her

Ikaika: Recently there has been a lot of ah discussions kinda about previously identified inadvertent so we wanted to go over the definitions in the laws and then the AG can clarify any questions about any of those.

Kahele -[inaudible] is she gonna be speaking on what the language already is or [inaudible]

Ikaika: She's probably going to verbatim. But we will ask her when she comes on the phone what she is going to say. Training section - so this is on the HAR 13-300 if you got to um definitions - can someone help me read what those previously identified means -

Scott - Sure. "Previously identified means burial sites containing human skeletal remains and any burial goods identified during an archaeological inventory survey when they recovered possible burial sites or when they are known through oral or written testimony." And then we continue?

Ikaika: No uh any questions on previously identified and what are the criteria to - um, for a burial to be considered previously identified?

[inaudible, Kahele speaking]

Ikaika: it's up to the council if they want to take testimony at this point or at the end of the training

Kahele: At the end

Ikaika: ok, that's previously identified.

Kahele - So I guess the - I mean the point of contention here is that according to the law only those items that have been identified during the archaeological inventory survey

Ikaika: My understanding based on this HAR is that this is the definition of previously identified so for a burial to be classified as previously identified it would have to meet these criteria

Scott - So I guess a general question is what recourse does the burial council has if they can demonstrate that an inadequate um inadequate performance of AIS review for example they did not - oral testimony, they did not talk to the right people, they talked to people who maybe had no lineal connection to that area

Ikaika: that is an excellent question for our AG to respond to

Dane - I would write that down. As soon as we get her on the line we can ask her

Ikaika: I talked to the AG this past week and she was in - if you could also send things in writing, that way she could respond exactly to the question. But these are things - she's on standby to respond. K so anymore discussion and questions about the definition of previously identified?
[silence] Alright. Go ahead vice chair. She's not answering. He's calling right now

Scott [quietly speaking]: we don't review at all the quality of the AIS [unclear] burial treatment plan

Ikaika: The next one we wanted to cover in this training is this under the burial laws there's two types of burial classifications - one is the previously identified that we covered earlier and the next one is inadvertent discovery. Could someone please read that for us?

Dane: Inadvertent discovery? Lemme see if I can talk about it. "Inadvertent discovery means that unanticipated finding of human skeletal remains or burial goods resulting from unintentional disturbance erosion or other ground disturbing activity." [sighs] [inaudible discussion amongst the council]

Kyle - I guess if I had a question or for some clarity...I guess for me inadvertent discovery means the *unanticipated* finding of human skeletal remains and burial goods resulting from unintentional disturbance erosion etc. etc. Correct? So unintentional - if we're *anticipating* it, what?

Ikaika: That's an excellent question especially for places that we know have a history --

Kyle - For example like at Ho'okipa and what's that place in?

[inaudible --- didn't catch the name]

Ikaika: That's a question um we want clarity on ---

Kyle - Or Maui Lani for a matter of fact

Ikaika: exactly. And that's one, Kealana is trying to get the AG on the line [inaudible] we can send her your question in writing, and she will give you an official response.

Kyle - So what if its anticipated - is the question

[unclear, discussing Wi-Fi access]

Ikaika Any other questions on this one and I can just read it verbatim and then the AG can clarify or expound on the definition

Johanna - Can I ask to recap what the definition was decided with the council on inadvertent?

Dane - Sure - i think we just reading definitions we don't really have our own definitions, we don't introduce our own definition we are just reading the letter of the law [inaudible] and then we want to - the AG is supposed to be on the phone, that's what's making it difficult right now, because we have questions about anticipated vs. unanticipated and -

Johanna - [unclear] potential - if we have the history of the area, how do we find whether or not its unanticipated?

Dane - That's why we need her on the phone

Kahele - [unclear] So whether it is anticipated or unanticipated, whether it is probable, expected or predicted

Dane: Predicted?

[unclear]

Ikaika: Yes, um the meeting just started, is it ok if we put you on speaker? We have some questions

Dane: here we go, I think we have our AG, our representative from the AG's office

Johanna - They followed the letter of the law so exactly that I think we lose the intent of the law and that's a problem, somehow there has to be a way to respond to the situation and not to the letter of the law

Kyle - so what is the spirit of the law?

Johanna: Exactly! The intent

Ikaika: Alright - good morning, we have Cindy on the phone she is our state AG assigned to SHPD morning can you here us

Cindy: Good morning I can! Good morning chair and members of the burial council

Dane: Hi Cindy so this morning we have already covered a few definitions and we will probably go back to the one we are not on now which is previously identified - but right now we are on inadvertent discovery and the definition of inadvertent discovery - we had a question, maybe I will pass it to you Kyle. We have Kyle Nakanelua

Kyle - So my question was, under the definition of inadvertent discovery means the unanticipated finding of human skeletal remains, and any burial goods etc etc, so what if the finding is now anticipated? It doesn't seem like it would fall under this definition to me

Cindy: So there's two types of burial right, there's previously identified and inadvertent and previously identified - sorry I'm just going to turn to the definition section, um, so in - I am looking specifically at Hawaii Administrative Rules Section 13-300-2 which is the definitions section of the rules, relating to burial sites and human remains, and previously identified means burial sites containing human skeletal remains and any burial goods identified during archaeological inventory surveys and data recovery and possible burial sites or known through oral or written testimony. Everything else basically comes under inadvertent

Kahele - correct, so that's our question because there seems to be a gap between previously identified and inadvertent. Because in many of the contexts that we are working now, even in though these burials are not identified in the AIS, they are obviously probably or anticipated or expected given the history of the work in the area so that's the point that we are struggling with

at this time where we all sort of know it's there but because they weren't identified in the AIS they are still being treated as inadvertent discoveries. So, we believe that there's a certain gap there which seems to be where we are most of the time and we are trying to figure out how to address the inadequacy of many of the AISs that were done because many of them are very old and limited in their scope.

[16:13 AG response] Cindy - so then we go beyond what I am prepared to address - see the thing is that the definitions are what they are. I suppose if you wanted the definition to be more concise than could be achieved through a rule amendment I suppose, um,

Johanna - What would allow for an amended AIS -

Cindy: Um ---

Johanna: Tell me anything

Cindy - I think once it's been approved, I'm not sure what circumstances - maybe SHPD staff are you aware of any circumstances which one would be amended?

[Unknown female speaker, possible Noelani Ahia??? inaudible] would have to include everything that was found after the AIS

Ikaika: Hey Cindy this is Ikaika um my understanding Susan Lebo and the archaeology branch would be the ones to determine that, the ones to make that determination on behalf of the staff

Cindy: That's true, it's a different branch, um, I don't know, I think that's a different question - so does it fall within an amendment to the AIS or within the duty of the or the responsibilities of the burial council I guess that would be - it wouldn't fall within. So, part of it is that your - the agenda item that you are talking about now is limited to duties and responsibilities of the burial council training, I don't know the answer to that question because i don't know [unclear] archaeological inventory surveys, if you wanted to submit a question in writing I will totally take a look at that

Johanna - Cindy in the meantime would council action allow for support from SHPD

Cindy - I'm sorry what was that?

Johanna - if the council were to make a motion regarding the disposition of the iwi being found and the necessity for an amended AIS would the council's decision have the support of SHPD?

Cindy - I can't speak for SHPD - I'm not sure what the - whether it's within the burial council's authority to require an amended AIS - [inaudible] Your powers are limited under both statute and also in the rules that talk about your powers as well as a burial council.

Johanna - Ok so it appears that our archaeologist should be the one to make the decision, but we are without one, and that puts us in a very vulnerable position. We need to decide. Until such time the council will probably make decisions where the arch is not available to us. Will you support us?

Cindy: I guess I can't say more than I have already said, which is that I don't think that the burial council - I can't see where it is within the powers of the burial council to require an amendment to the AIS.

Johanna - Ok so outside of the AIS the burial council makes the decision to say declare an area a burial ground. That's not anywhere presented in the AIS.

Cindy: Ok so there's not - so just to be precise with terms there is no such terminology burial ground in the rules or in the statutes that we could define, but there is a burial site and that has a very specific definition.

Johanna: Yeah, see and that's the problem, burial ground is more appropriate for this situation. Hard questions this morning

Scott: So, I guess my question Cindy is within burial site, I am looking at the definition right now, means any specific unmarked location - what if we find a geographic area you know bounded area maybe not even bounded but just a specific area where we are finding a high concentration of burials does that constitute a burial site or is the burial site only the individual her or himself and the immediate context around it

Kyle - because it doesn't say that

Cindy: well, it says the location where the human skeletal remains and their associated burial goods are interred - so that is a specific location - and it goes down further - and its immediate surrounding archaeological context

Kyle - So that's the surrounding area, right?

Johanna - So that would qualify a burial ground not a burial site

[inaudible as several people talk at once]

Kyle: so, what's an immediate surrounding archaeological context then - what is that definition

Cindy: There's no definition I am not an archaeologist but as I understand it it probably means something to archaeologists, folks in the field - but it's not, i think there's a reasonable area where it could be the immediate surround archaeological context and then I think there is some area too far away from the burial and all - and the burial goods are located to be considered an

immediate surrounding archaeological context. You know that's probably up to somebody in the archaeology field

Kyle: Right and if you have this - if we as a people have developed that perspective [unclear - through graveyards maybe??], that is - that would be applicable - but the archaeological context is pre-graveyard period situation, right?

Cindy: Well immediate surrounding archaeological context - I mean the other thing is "surrounding archaeological context" right?

Kyle: From a 21st century viewpoint filter or the pre-21st century viewpoint filter

Cindy: I mean this is what it says in the statute so i think the term surrounding would be given a logical definition

Kyle - Yeah so it would be with a 20th century viewpoint and understand of society's creation of graveyards. But the problem is the burials happened prior to that so that definition of burial site seems to have been left out of this definition or defining process. Does that make sense? I am not trying to argue a case here it's just [inaudible] lawyer [chuckles]

Cindy: As I understand the burial council is coming from - as I understand it's not always - it doesn't always match up nicely where you have the Western statutes and laws and everything trying to address native Hawaiian burial and historic property issues. Right? And so, um you know --

Scott: So 6E, what we are kinda up against and the real dilemma is this: that there is an area that is lets say its 80-100 acre area, and within that 80-100 acre area there is a very high concentration of burials and what we're - it seems to me we are caught in the middle of is that the law seems to have as its written right now the law seems to have some ability to determine a burial site as the individual within that 80-100 acre area or possibly the whole area because there are so many that they are not - the iwi kupuna are not laid out in a systematic way, they are a feature of the landscape in that they are interred uh ---

Johanna: randomly

Scott: right randomly- so what we wanna do is say we want to say that a general area ought to be designated as a burial site not the individual um iwi that ends at wherever the contest of that burial is. So, we wanna try and broaden that definition to include a much larger area than what may be comfortable with for the yeah whomever, development

Cindy: So, I guess without really having specifics I mean we have - [inaudible] in terms of where the burials and the goods and the archaeological context is uh, I mean I couldn't really answer your question I would need a lot more information in order to answer your question, if one is being posed on a certain type of situation

Dane: Cindy let me ask you something really quick. When you look to determine what immediate surrounding or what the threshold is for immediate, who would you consult? Would you take SHPD's current definition and how they've practiced it into consideration or is this something you are willing to listen to the council's interpretation of it, or who would you turn to? Is this something going on in Hawaii's case law? How would you folks -

Cindy: I mean certainly, you are a client right, the burial council is our client. Of course, if you had a question as to a specific interpretation as you said - if you said for example, we think this is a higher area should be - these are our reasons why. Certainly, we see cases that you might think fit within the statutes. But without specifics and on the fly on the phone, it's really difficult to, or even if we were to have a meeting, it is really difficult to answer a question that is very fact intensive and has more moving pieces that I think can really be realistically discussed in a meeting and also keep in mind that the item at hand is the training generally under duties and responsibilities etc.

Dane: Yes so we are trying to apply "burial site" and that's in our training and the definition portion of it - but the reason I asked that question is we are trying to see how immediate surrounding archaeological context is approached in SHPD because they are the one who practice this and determine how it is used in the past - if we wanted to challenge that language or the interpretation of that I am curious as to who would be consulted when making your recommendation to us your client as to what that interpretation is and I am curious as to what maybe this is a submit email question but I am curious because that would affect how you consult us because we already know, we have seen in the past how SHPD's determination, err how SHPD has interpreted immediate archaeological context and the majority of us have witnessed it as being a case by case independent iwi but i think surrounding immediate archaeological context can mean more than what we have seen

Cindy: Ok I think thought that a case by case analysis is really what is required right because what is the immediate surrounding archaeological context in one specific situation kith differ depending on certain things, topography or so on and so forth than another burial so I can see where it is a little bit case by case depending on the specific circumstances - similar to what I said, if we were to look at a specific question on what is - what could, what the burial council is looking at a particular uh immediate surrounding archaeological context for a certain situation, we would need the specific facts

I hear you and the thing is we have - it is a case by case, but they have been treated in this immediate surrounding archaeological context has pretty much blanketed all of the findings with SHPD. Correct me if I'm wrong, SHPD, but I think it's very similar, so we are just trying to go well yeah. We don't want to continue that, and we have our own interpretation so even though its situational i am not sure if its practiced or looked at that way every time - so ok, we will try to filter and narrow it down and put that question into an email as well. Kealana, do we have another definition that we are going into

Kealana: Ikaika just stepped out - um, what have you guys...what have you guys talked about already?

Kahele: So, we have another question so we as the burial council we have recognized certain areas as burial sites, and I believe it does fit within the particular summary of the law that we are looking at however what we are struggling with is how to advocate for that determination with the developer and the county and the state agencies. And I think that that's our question with basically all our motions, we are trying to figure out how they are carried and how they are adhered to maybe? Or how our recommendations are even considered once we make those determinations. So - I guess we are wondering that when we make a motion, is the county planning department considering those motions when they are giving out permits? And i think that that's - I don't think that there is - i don't know if it's a practice or process or procedure or policy that they are supposed to follow but that's what we are sort of - that's what we are dealing with at the moment, well that's what we are always dealing with

Kyle: Because it seems like - our point seems to fall on deaf ears and are mute. So that's our struggle

Kahele: so what's our recourse?

Cindy - I think again we need more specifics on is this a - you're making a recommendation on - i think correct me if i am wrong SHPD I think the building permits and things like that the county approval, actually go to SHPD for review, right? I think. I'm not sure where or what approvals for the things from the county would go to the burial council unless it's a county project where there are burial sites or things of that nature. Maybe I need more specifics.

Johanna - A question on the buffer - in 13-300-34, it talks about how we can protect the remains and one of those things that we can use that's allowed to the council that's allowed for the preservation so it appears to me that having gone to the sites where it appears there is no buffer zone around remains, the individual remains that are coming up, so once the council establishes that there is a buffer zone, that should be applied to the remains, then that entire area with the buffer zone would be the burial site yes?

Cindy: The burial site is the definition that is in 6E-2, but the buffer area could be the buffer area for tons of burial sites. But the buffer area is not the burial site, the buffer area is actually around the burial site, right?

Johanna: Right, but the buffer zone is meant as a mechanism to protect - I am not saying that it is - we can call it the burial site, but shouldn't the buffer zone be considered as part of the protection for the whole remains? In other words, we have a set of remains and we put up a 40 foot buffer around it then no work should be done in that 40 foot buffer zone, just as an example

Dane: SHPD

Johanna: That's long term measures

Dane: Buffers are, correct me if I am wrong, in agreement with the landowner. Is that right?

Cindy: Correct. There is generally I think it's called a preservation plan I believe. Yeah.

Dane: So, if they agreed to the terms within the BTP and violate the buffer zones is there recourse for that or are they - do they have the power to go back on the BTP? I don't believe that they do but yeah. Is there - cause that seems to...i don't know exact specifics but that seems to hypothetically....do we have any more language that we needed to discuss?

Ikaika: Jurisdiction was the other question

Dane: Jurisdiction of the council and just duties?

Ikaika: To clarify -

Dane: 13-300-40 yeah?

Ikaika: Yeah so 13-300-40 can someone read the jurisdiction over inadvertent discoveries and remains please

Kyle: I'll read it so right there. A? Do you want me to read all of it through 3 or...?

Ikaika: Just A

Kyle: K. A. the department shall have jurisdiction over any inadvertent discovery of human skeletal remains and any burial goods over 50 years old regardless of ethnicity - the department meaning SHPD?

Ikaika: SHPD

Cindy: Its SHPD

Ikaika: And then Cindy can you clarify the role of the burial council in regard to inadvertent discovery of human skeletal remains?

Cindy: Um. one of the roles is that with respect to remains that are believed to be native Hawaiian, the department is to consult with appropriate council members so generally I think its the council members who represent that area or ahupua'a, the landowner, and any known lineal or cultural descendants. So, there is a role in that the department consults with one or more of the appropriate council members

Ikaika: Thank you

Johanna: Cindy is there a place in that definition that allows for cultural perspective or cultural responsibilities cause this doesn't cover that.

Cindy - I mean the definition is what it is so - it appears to give it a whole lot of context because the context involved is really the archaeological context so to that extent perhaps there is some cultural context to the archaeological context? I don't know because I am not an archaeologist but um that's something that perhaps you could discuss with the folks that would make the determination or would assist you in analyzing whether - what is the immediate surrounding archaeological context

Kahele - here is another question so in March 2019 our council recommended that a particular area be designated as a burial preserve area and we make this recommendation i guess to SHPD, and they have not answered us yet because according to the law they're supposed to - accept or not accept our determination. So, um and I believe that there are a few motions where SHPD has failed to respond in any way. So, what is our recourse as a council to encourage or - what do we do when we do not get responses from the department that we are supposed to be recommending to?

Scott [quietly] - Ikaika can you put [unclear] under multiple skeletal remains or - [inaudible] that's not very helpful

[long pause]

Dane: I don't know I think that's an email question

Cindy: I mean I don't think that there's anything that we - that's an issue between you and SHPD I don't know what recourse you would have.

Dane: yeah

Cindy: You work with SHPD, provides you administrative support, um, you know they have their role, you have your role, um,

Kyle: So, for me, that would mean if they're supposed to provide administrative support and we are making these kinds of recommendations and motions and we are not getting answers, that means that they are not being administratively supportive. That's what it means to me

Cindy: well, there are certain decisions that are up to the department and then you know you are asking what are the decisions that have been made and so you're expecting a response

Johanna: Ok. Cindy when is a request for a response - when is the deadline for a response? Because i mean you can't be waiting years for a response for some projects that are not going to wait for us.

Cindy: I guess what i should say is i think that the question that you are asking is not a legal question, it's really a matter between the council and SHPD but it's not a legal question

Johanna: Does a legal question to you require that we be in executive council? Executive session?

Cindy: Well, see there's no rules there's no statutes that say SHPD you have to provide a response, or you have to provide a response within X amount of time so it's really a not a legal issue its really something between the council and SHPD

Dane: Ok I just want to reel us back in real quick um the initial intent for the training, letter A, under business was to propose protocol between us and SHPD but i was made aware of it yesterday or the day before that we need to agendize each of these things specifically so in announcements, at the end, I want to agendize things that we feel important o have either status updates on iwi kupuna or i want to make a - i want when BTPs are registered with the DOC I want make sure that we are aware when it happens, that's where it's falling sure. I want to get to it at the end, that's for announcements, but for now i think if we are maika'i we are gonna move on, but I think we have to take testimony on this item on training. Maybe i can ask - since we have this training agendize do we have to take testimony?

Cindy: Since there is yeah

Dane: Alright we are gonna open the floor to public testimony again we have a few things on the agenda that we want to cover, and I will be shifting a few items around to accommodate these schedules so please keep your testimony to three minutes in respect of everyone else who would like to testify so. And it seems like we are gonna have a *really* big timer today on the TV screen so um - that will help us stay on time and on track

Ikaika: So, if anybody would like to testify, please sign here [unclear] on this agenda item for training

Dane - ok we have Noelani who will be on first. Anybody else sign up for any of our agenda items? Make sure the specific one on there too?

[inaudible; woman asking question]

Dane: If you need to stand in front of something [laughs]
[inaudible discussion]

Dane: Ikaika you ready

Ikaika: Let's go for it. [inaudible]

Noelani: I'll be really quick. Just a couple things. It seems like, i don't know if you guys have the full rules or if you just have the summary but there's so many little subsections that address these things that the AG was clearly not addressing like 13-300-31 which goes through that process that you are supposed to work through SHPD with that they never addressed. One of the other things that the AG brought up was looking at archaeological context is up to an archaeologist but actually under the way this process works it's not but i don't know if you guys know but when Barker Fariss was talking in here, once the iwi are deemed prehistoric or pre contact or 50 years old, it actually goes to history and culture department archaeologists actually have zero say. Barker was actually trying to point out that we need to look at it in context but it's actually the history and culture branch who has been looking at them as individual sites and not as context so - and i think as far as reopening AISs you [unclear if she said "can't" or "can"???] have anything done to an AIS, it was done in Kelly vs. Ocean Side Partners [inaudible, speaker's voice drops in volume, this portion of testimony is roughly 49 minutes in, the difference between "can" and "can't" changes the speaker's meaning but audio quality is poor so it is difficult to accurately represent the speaker's intent here] That's all!

Dane: Ok then we have Kaniloa and --

Kahele - Wait question were they forced to do it, or did they do it on their own?

Noelani: Well, they had to go to court, that's why its Kelly vs. Ocean Side Partners. I think this is the case she references. So, I think a lot of this stuff may actually need to be [unclear: either litigated or re-litigated?] because clearly, it's just a whole bunch of going back and forth and [unclear] in the same circle for years and ask the same questions and get the same [unclear - maybe non-answers???]. Maybe the burial council can have a litigation. Just an idea [inaudible] Just to get clarity you know, it's not personal

Dane: Yeah, which Ocean Side Partners is which

Noelani - Kelly vs. Ocean Side Partners???

Dane: next?

Ikaika: Next we have Kaniloa and Joyclynn

Kaniloa - So um - [inaudible] My concern is the response of SHPD. they failed to do that. I'm not saying the Maui office. I'm saying actually the Honolulu executive part of SHPD. They have all the time to make determinations on a timely manner they let things such as not having burial council going to the point where issues such as Waihee has expired and not gonna come back to because they waited more than 45 days. These guys' thinking are, we gotta get one [inaudible] or timed minutes - those things need to be read and you know it's sad to say that several years ago Alan Downer as well as Hinano Rodrigues came in front of the county council and did a presentation full of very irritating and obscenity and for them to respond in a manner to say that because they failed to have staffing and to have money that they were letting go of

their fiduciary duties as [unclear] - a lot of these places never had any archaeological, had any type of SHPD to go and check and he stated that they just sign off on papers. He was asked by councilman Guzman at that time saying you guys don't do anything other than signing that he responded yes. And his excuse was again lack of staffing and as well as money but that's not our problem they go and cash their checks each and every month or twice a month they get paid their fiduciary duties they get paid for, so they need to respond. They need to be responding in a timely manner and they need - it's not just you but to the public. We come here and we spend our time we take off time of our day to come here and spend hours and days of our time coming over here to testify and then to have a public body that gets paid by taxpayer money and they fail to do their fiduciary duties is very improper, inappropriate, unacceptable. Because they get paid and to come back with the lame excuse of they no more money that's not my problem. We got to get paying jobs too. Not sending people out to places like Waihee and let these guys get away with just digging in the forty five day window because this body failed to do their fiduciary duties in unacceptable and that needs to be addressed and that cannot continue to happen. Thank you

Dane: That's an interesting thing right so what do we do with legacy issues when SHPD was understaffed? And do we have - can we nullify those permits or those approvals during that process? I don't know enough of the specifics of when that - when they testified on that and what it affected, what the impacts were. I am going to revisit that one. [53:54]

Kaniloa: Not [inaudible] there's nobody [inaudible]

Noelani: I also think putting it on the list of job openings [unclear]

Ikaika: Next we have Aunty Jocelyn -

[unclear discussion of council]

Aunty Joyclynn - so i have a couple of questions, I guess. Since the AG is on the phone thank you. Title 13-300-4 h - oh no I'm sorry, 13-300-43 - previously identified I think you read this this morning? Previously identified burial sites containing human remains during archaeological inventory data recovery from burial sites OR known through oral OR written testimony - does that require all three or one is sufficient to identify as previously identified? That's my question

Johanna - I'm still trying to find my [unclear]

Joyclynn: Is the AG still on the line?

Dane: She should still be on the line, but I am just trying to uh get the -

Joyclynn: Uh that would be 13-300-4

Dane: Oh, so still gotta go to definitions -

Joyclynn - the definition for previously identified - the key word is two letters -" or" - and so we have always gone with during archaeological inventory or inadvertent if there is no AIS but, in this citation, it says OR known through oral OR written testimony. So, does it require the AIS or oral testimony or other testimonies [unclear]?

[council has inaudible discussion over exact location of this discussion]

[female voice, unknown identity] What was your question again?

Kahele: She is asking if you need - because it says archaeological inventory survey and data recovery OR known through oral OR written testimony -

Johanna - it doesn't say AND it doesn't say MAY

[unclear question]

Joyclynn - the definition for previously identified - you folks read that this morning - 13-300-4 under definitions

[unclear quiet council discussion with page turning]

Joyclynn - so also, I wanted to retrieve from your title 13-300-24(h) - the council shall be authorized to take any other appropriate actions in the furtherance of this chapter. Nothing in this chapter shall be construed to limit the authority of the council in matters provided in 6E. So that is 13-300-24(h). And that is duties and responsibilities

Kyle: [quietly] very good!

Dane: I remember us going over this at one point too when we talked about our powers and making our limitations going beyond the scope of everything else but that line H specifically - you know, was something that came up twice

Johanna: i knew we had the power to do that!

Dane: Uh Cindy are you looking at 13-300-24?

Cindy: Yes

We are looking at H right now. Are you able interpret H right now for us or give us the AG's interpretation or opinion?

Cindy: I mean I can just generally - like the council is authorized to take appropriate action for its to further this chapter and it says generally what the council does and the power that it has um

and then it goes on to say nothing in this section shall be construed to limit the authority as a matter of authority provided in chapter 6E but 6E is actually the statute that creates the provision which is provided under 6E 43-5 so [unclear] powers that are enumerated in 6E -43.5 that chapter doesn't limit what you have under that provision

Dane: Sorry you are getting a little quieter can you repeat that please?

Cindy: Um so there is a statutory provision and there is a section in the Hawaii Revised Statutes Chapter 6E specifically it is section 43.5 - that is the statute that establishes the island burial council including the MLIBC. It talks about the composition of the council and it talks about certain responsibilities of the council - it says that the council shall 1) determine the preservation or relocation of previously identified Hawaiian burial sites 2) assist the department in the inventory and identification of native Hawaiian burial sites, 3) make appropriate recommendations regarding appropriate management treatment and protection of Native Hawaiian burial sites and on other matters related to native Hawaiian burial sites 4) elect a chair person for the term of no more than two consecutive terms and 5) make a list of appropriate Hawaiian organizations agencies and offices to notify regarding the discovery of human remains

Johanna: Because we were told that their authority is mainly on inadvertent, but we need to clarify the council shall determine the preservation or relocation of previously identified human remains as well. Do we have any authority over both [or maybe she said those" - unclear]? The section is correct me if I am wrong with the criteria of 6E - it reverts back to 6E-43-6 and all of these things from C 1, 2, 3 has to be in line in order for the not only the council but SHPD to make any kind of action is that correct? I'm looking at 6E-43.6 c 1, 2, and 3.

Cindy: the rules are consistent with the statute in that the rules also provide that the burial council make the determination either to relocate relating to previously identified - native Hawaiian burial sites and the department makes the determination for burial sites other than previously identified.

Johanna: Correct, what I am referring to is um 6E-43 B so even if previously identified it goes to 43.6 which is the means in which you decide which is C 1, 2, 3, if I am reading it correctly, you treat it the same way as an inadvertent, all these procedures need to be followed is that correct? Because ti does cite 6E-43.6 as previously identified. So, all the requirements are met - that's my question. Needs to be met

Cindy: I'm sorry I couldn't hear all of what you said but 43.6 would relate to inadvertent discoveries and they would be - I mean that's all the kind of stuff the department is making the determination but maybe I am misunderstanding the question.

Johanna - So i guess the previously identified site or burial - the letter of the law for 6E-43.6 is only for inadvertent

Dane - Sorry can we get these questions to one of us and then we will get a clear answer and we will get an email or a written response - that might be good for all of us actually. Do we have anyone else agenda? Ok. Can we move on? Ok i think we are looking at moving to Maui Lani, business item B. ah there's a few people in the audience that have to leave early, and I have to cover a few inadvertent before that kind of need immediate attention.

VII. INADVERTENTS

Dane: Um looking at putting inadvertent A B and E and doing [those] now and taking testimony and then we can come back later and take testimony. Is that ok with everyone? Yeah? Ok so we are gonna start off and move over to inadvertent quickly and look at Item A

A. Inadvertent Discovery of Human Skeletal Remains at Hāmākuapoko Beach, reported to the Maui Office of the State Historic Preservation Division on December 14, 2019, Ahupua'a of Hāmākuapoko, District of Hāmākuapoko, Island of Maui, TMK: (2)-2-5-004:024. Information/Discussion: Discussion about the above find.

Dane: You guys ready? We do kinda have to separate them A, B, and C but these are all the same general area with the same testimony I believe so, similar testimony

Ikaika: so, in your burial council packets we have our summary of the SHPD [inaudible] for these - so for agenda item [A], so this one is for Hamakuapoko beach areas - here is our map of it on the county website, it's the beach between [something shoals or shells? Inaudible] and Ho'okipa, this [unclear] - its currently owned by A&B - they are the ones beyond the gate that was recently taken down - so this is one of our hotspots on this side of Maui, due to erosion, the king tides, big surf, burials are being exposed on the coastline. And this is one of the places where burials have been exposed for many years. For this one we were notified on Dec. 14, that some burials were exposed, we were able to respond, i went there on a site visit myself, some burial council members and the Maui police department, they looked at it and determined it was not a crime scene, no missing persons, no forensic value, SHPD assessed the site and the burial appeared to be 50 years old - we were able to collect whatever was loose and on the surface and anything that was still stuck in the substrate we tried to cover with sand [inaudible] but we didn't want to damage any bones or accelerate any erosion.

Ikaika: You know for future presentations on this type of topic with inadvertent I think I would prefer that we not show location. Yeah, please

Ikaika: alright!

Dane: People who are here to testify may not know these things [inaudible, I think that's what he said] Sorry, kala mai

Ikaika: let's close all of this

Dane: I know we ruined all your work, that will be my [inaudible] I don't know if we have a problem with that

Johanna: it's just for us to look at

Dane: for us to look at! And if we do need to look at it, I say we go into executive session. That would be my preference.

Ikaika: that's what happened, i leave it to your notification and whatever was collected on the surface because you can tell that it was low tide, the tide was going to come back in, more bones were going to be exposed, as we were there, there were a bunch of fishermen had some guys in the corner camping, tourists walking the whole coast and the lines {inaudible] at the sea level on the shoreline either we spread more along the shoreline [unclear] so SHPD needed a determination to recover what was visible accessible whatever was still stuck in the substrate we just stacked it and covered.

Kahele - So we talked about this before - i think about this particular site and about the real problem is just that there's human? between the bones and what the intention was right? Instead of us taking them and putting them further mauka and then 20, 30, 40 years from now we continue to do the same thing, if we can consider maybe figure out a way to promote that process by finding a way to instead of putting them back on land letting them continue their journey into the ocean. So, and I know that that' something that you know you guys going have to figure out but i think that its time where it's not gonna stop its gonna continue so I think it's time to [1:09:27] try and figure out how we do that. So that it's not just sort of reversing the process and having to revisit it because I think there are some already – re-dug up, exposed, so I think some kind of koa out in the ocean where it is a designated area that we can take these kupuna to? Or something

Johanna - What's the burial recommendation from the people in the area to do something like that at the site? [unclear]

Dane - I am hoping we can hear that during testimony and then also we would --

Johanna - we talked about it once two years ago

Dane: Yeah, and then we forgot to agendize I think specifically that topic. But it's definitely something that is going to happen more and more frequently. My question would be because these iwi are curated and SHPD would be facilitating the internment, how would the SHPD interpret or feel about ocean burials? And how does it - i think i look at the natural process of the iwi, it would have just scattered out, in its locale, and do what happens, compared to putting them all in one place by the kai.

Ikaika - I think at this point SHPD as a division has not taken a stance yet about relocating burials found on the coast exposed from erosion and assisting or accelerating the process of those [unclear] into the ocean. We have not taken an official stance

Kyle - Question. What's it gonna take to get the administration - because obviously it's an upper level administrative decision - what's it gonna take for them to have a conversation?

Ikaika - a strongly worded letter to be sent but

Kyle - We made motions and they never answer

Ikaika: We get it going. SHPD at this time has not taken an official stance on relocating burials front he coastline into the nearshore or reefs area

Kealana: But since we've been on board both Ikaika and I we've never done any type of ocean reinterment but i think in 2020 with the way that - how frequent iwi is being exposed along the coastline I think we need to entertain all options at this point. I know there's varying opinions about what's appropriate or not so that's one issue that we've talked about internally for a while - [unclear] should be made in exploring all options

Dane: I think we have to agendize that and I think it will be situational to moku

And I think if the burial council advocated for it or lineal descendants or cultural descendants that would help to move forward the direction if that's what the burial council and the lineal and cultural descendants want

Dane: Alright do we have any more discussion? Do we have anyone who signed up for testimony?

Ikaika: yes, we have Joyclynn for this agenda item which is Hamakuapoko beach.

Dane: Ikaika? Time

Ikaika: Oh! Yes

Dane - not trying to --

Joyclynn - I would request for the council to consider deferring this matter until we meet as Aha Moku as well as a community within Hāmākua. I don't separate Hamakuapoko and Hamakualoa because they are all pretty much related, but it does affect all [unclear- lineal????] Hamakualoa. So when you say it's a random find, no its specific site for the time that they were there so there is known heiau, there is known burials, and i want to offer to you the files historical files within SHPD - thank you for Ikaika for allowing me to go through your library - that specifically says that it will happen again it is known it has historical - so it's all the way from Kaulahao, Ku'au all

the way through Maliko, Ho'okipa. we have archaeologists that lend to the files like Theresa Donham so I would like for you to at least consider this to be previously identified because it is not an if or anything, it is there and um we are gonna be in conversation with cultural and lineal descendants of the area so we can come up with a BTA instead of a BTP, a burial treatment agreement, and I am also in conversation with Jason Koga I'm hopeful that maybe we can somehow maybe we can take control over that particular area that he has control over it now as well as from OHA to see if we can get some - I'm not sure who is authorized since SHPD is the one who has made the report - do they make the [unclear] instead of us using our wallets and having us pay for it ourselves? Because it's a big requirement within 6E and Title 13. So, my three minutes is almost up. I just want to read this part. "Hawaii laws make an important distinction in decision making authority between ___ characterized as previously identified and those characterized as inadvertent discovery. Previously identified iwi and [phone rings loudly, speaker inaudible] or encountered in areas of [unclear]. It says here "generally, from the perspective of kanaka maoli, wanting to protect iwi is more favorable or iwi to be characterized as previously identified because the law provides a longer time frame for decision making and greater participating by kanaka maoli in that process, so I implore you to be brave enough to use your authority to identify these as previously identified. Thank you

Dane - we don't have to defer the item we are just in discussion, but we will agendaize and we will talk about that. Any more discussion or questions? Do we have anyone else? No more. Ok we are going to move onto D for now.

B. Inadvertent Discovery of Human Skeletal Remains at Puamana Beach Park, 0 Pualei Drive, reported to the Maui Office of the State Historic Preservation Division on December 15, 2019, Ahupua'a of Polanui, District of Lāhainā, Island of Maui, TMK: (2)-4-6-033:001. Information/Discussion: Discussion about the above find.

C. Inadvertent Discovery of Human Skeletal Remains at 32 Akumu Way, reported to the Maui Office of the State Historic Preservation Division on December 27, 2019, Ahupua'a of Waihe'e, District of Wailuku, Island of Maui, TMK: (2) 3-2-010:017. Information/Discussion: Discussion about the above find.

D. Inadvertent Discovery of Human Skeletal Remains at Ho'okipa Beach Park, reported to the Maui Office of the State Historic Preservation Division on December 28, 2019, December 30, 2019, and January 6, 2020, Ahupua'a of Hāmākuapoko, District of Hāmākuapoko, Island of Maui, TMK: (2) 2-5-004:025. Information/Discussion: Discussion about the above find.

Dane: Kealana or Ikaika?

Ikaika: Yep so, the - so this one is another hotspot in the Hamakuapoko moku, this one happened at Ho'okipa beach, we got a call from the lifeguards and MPD. I guess they were saying that big surf and a bunch of the sand berms that have never moved before were exposed, and we responded. This one was a pretty active response. We had representation

from the police DOCARE SHPD community ocean lifeguards everybody all hands on deck and a similar thing. Burials were exposed from the king tide and high surf again SHPD made a determination to recover whatever was accessible at the time it was determined that it was 50 years old or older, we were not able to collect everything because we picked up, recovered everything just on the surface, there was more underneath, and the tide was coming, the tide was actually almost getting us wet so we made the call to stand down, recover whatever wasn't collected with sand, a perimeter of some pohaku and some la'au - were kept as much as possible. Whatever was collected was gathered and taken to the SHPD curation facility.

Dane - quite an interesting situation ah?

Ikaika: About a few days later if you look at the dates another find was exposed about 20 yards on the [Unclear] side of Ho'okipa so same thing. The king tide exposed some erosion and iwi came out again.

Dane: It's the same location?

Ikaika: Same beach, definitely different people, maybe about 20 yards apart for the finds

Dane: same amount of human living traffic too in the area?

Ikaika: yes, as we were there, a lot of people looking at burials and tourists and one lady doing yoga - um it was pretty bad. Just a lot of traffic and unfortunately one of the finds there's a clear trail path that splits the burial site so people - over the burial that was not collected, and this was this property over the county. It's a county parcel.

Dane: any discussion or any question for SHPD

Kahele: so SHPD in these instances what kind of buffers are you - can you provide these iwi? What kind of buffers are you set up?

Ikaika: We put up some caution tape and rope with a [unclear] to minimize foot traffic but buffers would have just been a vertical buffer of sand. We just tried to bury it. Just to protect it -

Kahele: And how long are those buffers?

Ikaika: Real small because I would say maybe 20 feet. There is kinda a buffer around it

Kahele - Is there any kind of - what is that - formula that you use for that, and how long were you able to keep up those buffers

Ikaika: So, what's tricky is from the high tide mark below that's all state land and the high tide mark above, that's the county park. When i got there, the lifeguards already put a fencing permit up so just utilizing there fencing permit was an option -

Kahele: So, what I'm saying is that if this is going to continue to happen then maybe we should come up with some standard agreed upon buffers and the kind of buffers that we would put up so that we can be as sure as we can be that people aren't going to infringe upon those buffers

Ikaika: I talked to the police while we were there and I asked them if it was a crime scene how big of a buffer did, they make, and they said as big as they need to. But it's not a delineated, where i can actually ask for 20-30 feet just use 20 - at the time that's as much caution tape as we can get with the permit

Dane: the problem with the caution tape too is that high tide comes in and washes all the plastic into the ocean and it's not - one of those things that's a real problem. I was going to ask; you guys have high water mark delineated state from county part? And it's undermining the road right now so what happens, what are you going to do? Are you guys going to talk with the state about the shoreline and are they doing any mitigation for the undermining - is the county doing any mitigation for the undermining of the road? Because it seems as if the iwi is going that way underneath the road

Ikaika: i don't have that information at this time. For the state side it would be our land division, those are the ones responsible for the coastal lands. I don't know what they are planning -

Dane: Is it possible to agendize this topic and have them come in and have a discussion

Ikaika: Definitely we could request them

Kahele: And also, we could have you guys figure out some sort of normal procedure that would take place every time something is you know like - the buffer is gonna be this wide, this kind of buffer, this kind of whatever, notification to the public or whatever.

Kyle - So question for the chair, in support of the vice chair's comments - cause this trigger the burial treatment plan so does this qualify for a burial treatment plan? We're gonna establish a buffer zone, it's gonna be x amount of feet by x amount of feet, this is going to be the perimeter based on the radius of the found already previously identified burials

Dane: Is this are we looking at an in house protocol by SHPD or are we looking to make a BTP specific to this locale because this coastal erosion is happening everywhere. This BTP sounds local, and we want a protocol established by SHPD in house so if we make recommendations - they are here. Maybe its recommendations. We should agendize this and motion that these are the steps and protocol taken by SHPD when approaching coastal erosion.

Kahele - especially in this area i mean

[inaudible discussion amongst council]

Dane: we are going to take public testimony very shortly. For us - do we have any more questions or discussion? [inaudible] [name of testifier]

Dave Yamashita - Kyle gave me - [unclear] player from the Parks department. So, I just wanted to provide some information - Carla is the director and normally she would be in attendance but she couldn't make it so she asked me to come. A couple things one is we are doing or thinking of preparing to do plans for Ho'okipa beach park and it hasn't started yet, we have a scope of work we have a consultant but we have really pushed the start of the project for i think several reasons, one of which is to try to get a handle on how to deal with this because this is really complex site and i think the discussion here kinda underscores that because it's such a narrow site that there's a lot going on and then you have these cultural resources and so we wanted to be really thoughtful about how this is done and so that's i think what I'm kinda pondering and this is not your problem this is our problem but the consulting budget is really kind limited so that's another thing where i think we need to think this through a little better because this is really more than just typical go in and figure out ok how do we fix all these things? And so anyway that's just information i don't have an answer to that question yet but the second site i would bring up too that we were given this project by the council several years ago and the county acquired i think 276 acres of its called the Hamakualoa Open Space Preserve Park and there isn't an official name and so we also were given some money again kinda not really enough to do a plan and the directions from the council which set up a special investigative group was they had ideas on agriculture on all kinds of different things and some kind of open space but then also as another really complex site because its 276 acres that includes two gullies and there is an in [unclear] also and that's where - it includes the Peahi site. So, there is a larger question of what does the county want to do with this? So anyway, but what we did think and we have this - [unclear, baby gurgling] but Carla with the department decided to was the first step was to do a cultural assessment, a cultural study, because we know that there are a lot fo sites so we thought this is really the first thing that we do before we start putting lines on a map

Dane: are you folks planning to do an AIS?

Dave: - it could be something like that, the idea was to a study that was similar - but another study i saw in the area was a professional consultant - [unclear]

Dane: like a cultural impact assessment?

Dave: Yes, some kind of - really kind of overall assessment so those are two kinda projects that are starting up, will be starting up. I think the Hamakualoa one will start sooner, the Ho'okipa one we really need to - we pushed it off into the fall but i think we need to revisit

Dane: Would you mind coming in if we re-agendize an item? Would you mind coming in?

Dave: Certainly - [unclear] but the county the parks department is going to be doing a vulnerability assessment of all of these parks and its um it started out as sea level rise close to

the road but also really broadly looking at the historic cultural resources also in these parks to identify what do we have to deal with so maybe part of these issues is mitigation. What happens? So anyway, our part of it will be added on to an existing contract that department of parks management is doing for wastewater lines, sewage treatment plants, so our part is going to be added on to that. So, we don't have any more information than that we will be part of this

Dane: So, your name was Dave?

Dave: Dave Yamashita right. I will sign in

Dane: Thank you

Ikaika: And next we have Alfredo talking about Hamakuapoko - excuse me Ho'okipa

Alfredo - Just a very quick [unclear] regarding the erosion part. When they made the ends, the northwest swell stops and then we have all that [unclear - ashes???) that goes into the south end and east end side so the east swells take away the sand front the beach, deposits them in the middle of the bay, pretty much the whole coast and that happens every year. We not gonna have this - So through the summer months all waves are going to be exposed because the east swell collects all the sands from across the coast area and put them in the ocean. Not gonna have them all sent back till the very first north swells which arrive in [December 9th???) and you got like four feet of sand [unclear] and the iwis [unclear] protecting the iwi and that's all regarding that erosion for you. Thanks.

Ikaika: Anybody else wanting to testify about the burials at Ho'okipa?

[unknown female speaker, speaking too quietly to catch her name, maybe Leilani based on next testifier]: Hi I am from the Kula area, [unclear] protecting these areas I have officially gone and [unclear] try to block off traffic in the areas and stuff like that. But out of curiosity um i did want to pull back to what [unclear] Aunty Joyclynn was speaking about [unclear] inadvertent and that it is [unclear] regularly happening [unclear, child making noises] I also wanted to ask you, SHPD, as far as the procedure involved - what part they have in this process if at all?

Dane: What was the question?

Speaker: What hand do you guys have in this whole process at all?

Ikaika: So for Ho'okipa beach we typically respond to calls, we got a call from Elise [unclear] and went down met the police there, DOCAR team, we assessed the site, the police verified not a crime scene not a missing person, there's no forensic value SHPD assessed the site, the burial appeared to be fifty years or older - and the determination was made to collect what was accessible on the surface because of the tide was coming in, tons of materials on the beach, whatever we couldn't collect was left behind and covered with sand. [unclear] pohaku berm or barrier was put out to try to slow down the ocean recovery of the site.

Speaker: Did you guys have a standard of where it comes when you guys make this decision, [unclear] participate to come and collect them [unclear, speaker too quiet to hear]

Ikaika: Everything piece by piece but if it's an inadvertent depending on the circumstances the SHPD staff will decide of whether they need to be recovered because they will be damaged or tampered with or can we just be reburied and left behind

Speaker: Can you verify what the [unclear] with an inadvertent [unclear] is?

Ikaika: That's a good question. I never heard this before. [silence, long pause] Then our, these laws and rules, are on the SHPD website. So inadvertent discoveries - this is the definition that SHPD follows for inadvertent discoveries,

Speaker: I am aware I was just wondering because [something rings loudly over speaker] I just wanted to clarify when these are called inadvertent and however you choose to store them, however you choose to store them. When this whole process happened, [unclear] they were not verified and our whole jobs situation then your guys' position has holes and to me it's a big issue because to disrespect them is to disrespect my [unclear] and I have personal efforts going down to these areas to protect them so what do you do?

Ikaika: thank you for your question, I am going to have to get back to you.

Speaker: I just wanted to ask

Dane: Do we have any questions? Ok mahalo. Anyone else signed up Ikaika?

Ikaika: Anyone else to testify on Ho'okipa burials?

Speaker: Ok I wasn't going to but I'm from Hamakuapoko [unclear] Lani is my granddaughter. We went there, this is not just findings, this is a whole burial site period. That's it. Let me speak you aren't listening. Ok. because you know they don't know they don't care. It's like i remember when we were with Aha Moku. Honolulu did not listen to us so we just went and did our own and I hate to say it but we need to like protest already because nothing is happening. I hate coming to meetings and talking. You know? This is Oahu, they're not going to do anything. You guys - i don't know who is running you guys but you guys are a whole mess. So actually, we need to just you know Mauna Kea just bring it to our burials to because we aren't getting nowhere. I'm getting older I'm gonna be dead by the time you guys' figure this all out. I just thought I'd let you know that.

Kealana: don't be sorry. Mahalo

Dane: Don't be sorry

Probably Noelani? Doesn't introduce herself: Just to follow up on what they were talking about with inadvertent the AG was saying earlier about inadvertent find OR known by oral or written testimony. We had Halealoha here in December of 2017 and he was one of the authors of the 6E laws and he was very clear about the OR known by oral and written testimony part because if we don't have that or rolled into the testimony, that means that the only burials in Hawaii that are considered previously known [read: identified] are ones that have been through a construction process. With everything else in Hawaii doesn't count basically so clearly, they put that in there for that reason and why the AG and SHPD has refused to see that is a whole other issue I just wanted to say that about previously known

Dane: Any discussion? Ok moving on to E.

E. Inadvertent Discovery of Human Skeletal Remains at Kaulahao, reported to the Maui Office of the State Historic Preservation Division on December 28, 2019, Ahupua'a of Hāmākuapoko, District of Hāmākuapoko, Island of Maui, TMK: (2) 2- 6-009:023.

Information/Discussion: Discussion about the above find.

Ikaika - similar to the other beaches we talked about, we got a call from a community member saying there is a skull [unclear] and a bunch of bones [unclear] s SHPD responded with the police, the police again determined doesn't appear to be a crime scene, doesn't appear to be a missing person, no forensic value, SHPD assessed the bones to be 50 years old or older based on the context and [unclear] other bones, the determination was to not leave the skull on the cliff where a bunch of people were taking pictures of it or walking by [unclear] people, so the call was made and we were able to get assistance from community members to safely recover the skull and the long bones off of the Pali the cliff and again the bones were transported to the SHPD storage facility.

Dane: Do we have anyone signed up?

Ikaika: We have Aunty Joyclynn

Joyclynn: I forgot to submit - [unclear] written testimony, the citations that concern about - one of my other concerns now that we have this discussion is that high water mark. Because like with land stuff if you go to the office right here and it is to do with the ocean area its "oh not my jurisdiction" so does aquatics also have jurisdiction over bones? Are we only talking to one party and not the other because if they are rolling into our surf and they're within the high water mark who really has the jurisdiction and determination for that? We are crossing jurisdictions again, we have land and water, so I think we need to look at that as well. Again i would like to defer all of the Hāmākuā to give us the opportunity to create our own actually should be a BPD - burial treatment draft until it becomes an agreement i don't think a preservation plan burial treatment plan has teeth because i have witnessed before if it transfers over authority to someone else, they transfer the property, that plan is no good. They don't have to follow it anymore but if you make an agreement it is solid and it goes with the land so I'm looking at a burial treatment draft until we create an agreement and make it solid for their [unclear] what they are mandated to do

not compromise not figure out the problems to be solved for the development coming in but strictly for the preservation [unclear]

Dane: did you say the BTP is not transferred with the property?

Joyclynn: BTP is not, not when you sell the land

Dane: Cause you get registered ---

Joyclynn - It's a plan, it's not a ---

Scott: With the deed of the property

Dane - doesn't it get transferred?

Scott: It's a deed, you would need an encumbrance on the -

Dane: Encumbrance, right? Is it the BTP?

Scott: that's a good question

Joyclynn: i propose in the council that [unclear] land

Dane: oh yeah burial site component of a preservation plan - that's what gets transferred

Joyclynn - the plan is with the people that have made the plan but it's only a plan, there's two different things - when you go Burial Treatment Agreement, it moves with the land, that's what I was told, and you may want to put that in your understanding to the AG

[unclear discussion]

Ikaika: Anything from the county since this is your county lot? Anyone else wanna testify on the burial at Kaulahao? [unclear]

Aunty Jocelyn, I think? Oh, and there's much information on those files I submitted

Dane: OK any further discussion on E? Ok. we are gonna move back to Business Item B next and for understanding our SHPD agenda I know last meeting in December people couldn't testify and I wanted to make sure that we covered it this time around so. Update on Maui Lani Subdivision Phase 6.

V. BUSINESS, Part II

B. Update on Maui Lani Subdivision Phase VI, Ahupua'a of Wailuku, District of Wailuku, Island of Maui, TMK: (2) 3-8-099: pors. Information/Discussion/Recommendation: Update on the above project

Dane: So, who is giving us our update today?

Ikaika: We have representation from the landowner. Do you have updates to share?

Andrew Chianese? We have no updates to share on the lawsuits - [unclear] no action but we do anticipate the need to [unclear] there's been no action in the lawsuit since mid-December with this last meeting. We do anticipate beginning to assess the anomalies sometime next week. But other than that, we have no additional updates

Dane: and how many anomalies was that?

Andrew: ah something like 93-96 anomalies.

Dane: Who is doing the assessment on the anomalies? Who is the conducting the assessment?

Andrew: Atlas Archaeology

Johanna: What is their plan?

Andrew: In regard to the actual process?

Nice Fuentes: Nico Fuentes with Atlas Archaeology. The plan consists of operating inside of the order passed by Judge Cardoza and that's stipulated mix of mechanical and manual excavations, currently the number that's been thrown around for the analysis is 93, we plan to do it in smaller sections, so we are not going to do all 93 at once of course.

Kahele: Where are you going to start? What's your relationship to the concentration?

Nico: Oh, towards the southern south side

Kahele: Are you siding with the furthest away or the nearest

Nico: Uh not the furthest away would actually be way over there on golf course side by the very end of the [unclear] we are going to be starting kinda nearby the entrance of the property but its close its within either about 100 feet of the dune that's currently there

Kahele: So how did you guys decide, how did you guys prioritize where to test first

Nico: Um we started - we are starting towards where the road is, where you drive in to come onto the property, that's where we started. There's not a particular methodology behind where

you start because as stipulated in the order, they all have to be studied. Are you referring to a previous council meeting where there was a suggestion about Road B?

Dane: I think we may have suggested testing towards the corridor area first

Kahele: Yeah, I think we talked about if we don't want you to check, but if you have to check because you will check because you are [unclear] to check, how do you prioritize?

Nico: It's not cleared its ordered, it's part of the order from the judge

Kahele: but that's what you are going to do, that's what Maui Lani wants to do. How do you - given the area, how do you prioritize what we look at first

Nico: so, i debated about that to some degree um - there's different approaches on one side I thought about going all the way to the very edge of the property - but then looking at the context i know that area to be filled so those anomalies i mean - they are going to be all checked at some point but those ones are not likely to be what we're trying to investigate in others words we have witnessed that area before by [unclear]

Kahele: how long is it going to take

Nico: a long time

Kahele: like, how long

Nico - that's a little bit tricky because some of them are like 3 [3? 30? Unclear] feet below the current [grave? Grade? unclear], others are down 9 feet below the current [grade?] depends on what kind of strata we are going to [unclear] if it is sand, it will be a lot easier, [unclear] sand [unclear] easy. It depends on what you run into right. It's going to be a meticulous process just like [unclear]

Dane: so, 90 feet - would you have - if an anomaly didn't appear there would you have had to have gone that deep in those areas in the first place?

Nico: yeah, that was part of the intent of the GPR itself which was focused on areas that required excavation or planned to be excavated.

Dane: I'm trying to think of what goes 9 feet electrical? [unclear discussion] sewage?

Kahele: so, all of them need to be excavated before construction begins?

Nico: well not too clear on that point but what I do know from my perspective and my understanding of the process is that everything that is discovered - you go in for your first [unclear] check that becomes positive. Stop in that area then the BC becomes alerted, SHPD

becomes alerted, all the firms become alerted. At that point I have a feeling that there will be more discussions as the investigation continues moving forward

Johanna - I've got a question. With the court order, how did the judge address the possibility of your discovery being a disturbance and as such a disturbance that would require a penalty?

The judge in an order cannot require somebody to do something illegal so when you look at that, he can't order somebody to do something that's not legal. Aside from that, I know, I see [unclear] try to put me in jail, [unclear] along with my associates, everybody watching. I understand that. But it clearly states there's a couple little words [unclear] - we are permitted by the department. That's not something that i invented, that's something that exists, the department is there. If you get concerned about the objectivity of the archaeologist, remember this everybody - my back is towards the law, I am with the law, that's where I stand. Whether or not the project proceeds are one thing, whether or not it stops - the intent is to discover the things that are relevant to our conversation. I'm not gonna be found to be doing something illegal. And i won't move till i have clarity on those points. So, whether or not you are producing documentation that says that he is doing something bad

Johanna: We are definitely on a different page when it comes to that ok? So as far as - anytime you come across iwi now that we know it's there, we've come across it and we find it, you will have disturbed it, you will have caused a disturbance and that requires a penalty. I understand they asked you what a judge would say about it - it's because we didn't know how the case was going as far as that specific idea. But what the point is i was trying to make last time when we talked to your attorney, when you said they were still gonna go ahead and do this even though they knew that would consider it as a penalty, and i understand we are here as consultants and we are here to provide recommendations but the general public is not and i speak for part of that general public and I almost guarantee that they are not going to sit down and watch this continue

Nico: the recommendation of the council is heard by the public me and the state. If you want action on your recommendation, you need to stop looking this way

Johanna: i am just letting you know, whether you like it or not, you're involved, it's not your fault granted and i am not making it seem like it's your fault I'm sorry if I'm making it look that way, but this is how we look at it, this is how I as a Hawaiian look at it what's happening and since i am a member of this council and I have responsibility to the people in my community specifically this area i have to be their voice here and for them I say what's on my mind not necessarily what i would like to say but I am just letting you know, i am just giving you a heads up on all of this

Nico: You know I appreciate that, and I also appreciate you're having come to the site and having talked about this and also Kahele is the [unclear] the president - as far as archaeological [unclear] [there has no work conducted because we're still building it into our [unclear]

Dane - I think we are going to - unless there is anything else that needs to be presented by Maui Lani - i think we are gonna take public testimony. Do we have anyone signed up for this?

Ikaika: only Kaniloa so far

Kaniloa - so um as i have been for the last 14 or 15 years, I still object to this nonsense even after [unclear] you know they are trying to raise both sides because the problem is the more you recognize the other side, that is a foremost potential is developers. And it's unfair that they archaeologists who say they are following the laws get supported by the system that is going to infringe upon our rights. [unclear] it's our rights. I don't care what they say whether its [unclear] but maybe an individual person i have rights, rights to care for my ancestors. [unclear] Whether they like it or not. These laws are supported in the HRS. 60% of the HR is Hawaiian Statutes refers to Kingdom law. Such as the 1860 [unclear] which also I believe in the state's mentions in the 6E which states that anybody front he conception to the time of the offense of disinterment remove of any [unclear] is responsible. So, the person who came up with the idea, who went and signed off on the permit, put it in they are responsible. Person that done sent the permits they responsible. The person that did the archaeological work, they're responsible. The person who goes and finally digs it up and ruins is responsible. So, they didn't protect our people. So, we gave them the right to be there. And the first question the ask is who, what authority do you have upon this person to remove them and desecrate their final place of rest. State fails to fulfill their fiduciary duties to protect the people of this place. And they are mandated in their own constitution section 12 article 5 [unclear] section 7, they will follow the cultural - they will protect all cultural rights? Where is it? We are -- the only ones getting protection is those that are foreign who have foreign economic values which doesn't include protecting us. The only guys taking the loss is us and the laws that are provided are not being taken seriously and are benign pushed to the side such as not meeting the 45 days for meeting - folks we come back and we stuck, we stuck because if there are no meetings then what we going to do? And when the 45 days has lapsed, oh sorry. So, they go, and they dig up my grave, or someone's grave, because of all those [unclear, bell ringing] you guys haven't made the 45 days. But it's dishonest. All the guys who call me up constant. They mad for justice. We are the ones always [unclear] but you guys gotta realize, this is what the voice [unclear] to them. That we come here, we follow the rules too, the only guys that protect the right [unclear] is them. So, it's not fair this process 0 only one side is listened to and only one side is allowed to move even in the courts.

Dane - mahalo.

Ikaika: Aunty Joyclynn, she is ready already.

Joyclynn - Aloha. I was following this Maui Lani for several years and back in 2010, 2011, i had asked for a meeting with the AG to make some definitions because at the time Maui had a coroner and the process that Ikaika, Mr. Nakahashi had talked about, in Hamakuapoko, was they call in the police, they make the determination, they call in the other [unclear] to decide. SHPD makes a determination [unclear] so I'm glad that the archaeologists are here from Maui Lani wants to follow the letter of the law because if you look at the conception of Maui Lani, they

have been out of compliance from the get-go. When they first discovered iwi, they never called the police, they never called the coroner nor - they only relied on someone who was not an actual qualified archaeologist [Lisa something?]. And so, from the get-go if we want to speak legally this project was not supposed to go. The permitting process allowed it like he said. "I'm not breaking the law, they gave me permission." i think we need to look at, i think we were asking about, how to we get to do another AIS? I think we need to bring that up. I think that now the police department has - maybe not the qualification - but the authority to be the coroner. But at the time from the inception of Maui Lani, I called the police department, they have no record, nor did SHPD, when I asked Hinano Rodrigues produce for me the police report they said there is none. Then they cut me short on the meeting their tutu was there and said it's not on the agenda, we will agendize it, and we will bring the AG in. that never happened this is 2020. Ten years later we have not addressed the inception of Maui Lani being in non-compliance to begin with [unclear] Kaniloa. And I also wanna bring to the table, why are you folks created? Why have five senses right - hearing feel smell sight and taste touch. So that should be pretty cut and dry and they were missing a component and that is the spirit. Because in our culture you cannot - we have 6 senses we don't have 5 - and that is why you folks are here, to address the portion that the state cannot. Because evidently Ikaika Nakahashi said "I cannot pule for this iwi because i am a state representative. That's where you folks come in. that's the spirit of the law here. The noncompliance of Maui Lani from its inception. There has been no record of their compliance.

Noe: As a recognized cultural descendant I do not think that previously informed consent [unclear] i said it at the last burial council and at the press conference about it, there should be no digging in the burial area. You folks have already decided that it's a known burial area, based on 6E laws, last time there was a motion to send a letter to the court and I just wanted to check in with you folks if there was a letter to the court sent. The motion that you folks made - to my recollection - did not include all of the council members - I believe Aunty Johanna specifically said in that motion that the burial council does not want there to be digging and that was not included in the motion

Johanna - I asked that they include the [unclear] penalties that we would be considering in the event they found iwi. That was not in the letter

Noe - so i just wanted to follow up with you guys and see where you are at with your part of this and see how you can inform the court that digging in a known burial area is not ok ever. Mahalo

Dane: any discussion?

Johanna - one thing. Most of our successful motions have been the ones where the community brings us something that we can act on, and I would think that that's the solution right now. Maybe we - we may be tied by the parameters of the law but we can support them and the reason we need to support them is because in any case as we start to move forward they are going to need to know how we felt about it - in other words they are gonna need to know some things were done and if we can recognize any action that comes from the community then it will

act as a support for it. I mean, here's all of the examples that we tried to do something, and folks did it - that's what a court needs to see so if anything, we could encourage the community to provide us some kind of action they are going to take that we might be able to support

Kahele: So, we sent that letter?

Dane: Uh Kealana we forwarded the motions to all the departments and also the court?

Kealana: The motion was forwarded to the county, to the landowner, to the archaeologists, but I don't believe it was forwarded to the judge

Dane: Who was the judge on that case now?

Kahele: Mendoza [unclear] Randall [unclear]?

Kealana - I know it we discussed at the last meeting perhaps drafting a letter. I don't remember exactly what was discussed with that. Was that letter independent of the motion or was the motion that - covering it

Johanna - we had made previous motions so Kahele was saying that we need to reiterate that motion and then I added to that on the subject of the penalties, how that would be viewed. Cause we didn't know how the judge treated that

Scott - so should we make it another motion reiterating our objection to further exploration in this area? Is that - at this point since Judge Cardoza has ruled, we can only - i think our main recourse is to say we object, we don't think that is a pono thing so that we any further work - it will be publicly stated. And then that we - draft a letter and stipulate it to whomever.

Kealana - because the motions I transmitted I transmitted over email so it's a word document that i create and i will attached that via email and send that out via email. So perhaps some things - a more formal letter?

Dane: what is the start date for the testing again?

Andrew Chianese [unclear] next week

Scott - so what I can say, the motion i have written is:

Motion:

"The Maui Lani Island Burial Council objects to further exploration of anomalies which are reasonably believed to be iwi kupuna located in Maui Lani Subdivision Phase 6 Ahupuaa Wailuku, District of Wailuku, Island of Maui, **TMK: (2) 3-8-099: pors**

Johanna: Could you add on the penalties, the subject of the penalties, because they're moving forward already and at this point, we don't know if the judge is aware of the penalties that's used

Dane: Why are we objecting? Are we going to state that? Because [unclear, council members all talking at once]

Scott - what we could do, we could just make them - state - this is the first portion of the motion: "On the grounds of -- "and then we list out exactly why we object

Kahele - and then we can use all the previous language we said

Scott - bullet point below that. Ok so then it would be something like "Maui Lanai Island Burial Council objects to further exploration of anomalies which are reasonably believed to be iwi kupuna located in Maui Lani Subdivision Phase 6 Ahupuaa Wailuku, District of Wailuku, Island of Maui, **TMK: (2) 3-8-099: pors** on the grounds that...."

Kahele: we have established a burial site, we have this, this, this, this

Scott: "On the grounds that the MLIBC has previously established - or has previously recognized this area as a known burial area."

Johanna: let's use their term, "site"

Scott: Ok "burial site"

Dane: i don't know, does that pigeonhole us?

[Unclear discussion between Dane and Johanna over terms]

Scott: Well, if we are using the words "burial site" then we are not consistent with [unclear] ok "burial site and area"

Dane: burial ground, complex

Kahele: well, we can provide a definition of what we are saying the burial site is -

Scott: burial site and complex?

Dane: I think if we try and alter the definition of site they might dismiss -

Scott - yeah that's what I'm worried about

Dane: So, if we say complex and we give our interpretation of complex

Scott: So why don't we say burial site and complex?

Kahele: What [unclear, people talking all at once] what we interpret the site is? Because its not a single right?

Scott: Known sites in this area?

Johanna: Cindy you still there?

Cindy: yes

Dane: Thanks for hanging in there, are you able to help us in this language or do we have to go into executive session? Attorney client privileges

Cindy: I am not sure what the authority to do the motion is so - that would be difficult for me at this point. This is just a statement of kind of your general sentiment? I guess i am not clear on how this is proceeding

Scott: Ok so Cindy I think the idea is that we are capitalizing on a previous motion that we made that set aside or designated - or no we didn't designate - we identified this area as a known burial area, a burial site complex. So, what we want to do is now we want to say that now that we know that they will be doing more testing at this area we want to formally state that we object to that.

Cindy; So, are you making a recommendation to the department?

Scott: We're making a motion that recognizes, or specifies, our objection so that then we can leverage that motion in the letter that will then go out to whomever, i guess the chair and the vice chair, it ought to be sent to

Cindy: Ok so I mean the earlier part of this is the earlier motion which i am not that familiar with - i kind of understand generally what happens - in terms of recognizing as an - and i think it wasn't an SHPD staff or correct me if I'm wrong but i think you designated it as a burial preserve which actually is not a term that is used in either the statutes or the rules. Um, and so - that kind of complicates the issue but also what you are trying to accomplish now, i am not sure where that would fit in the rules so I am not able at this time to advise on how that motion would move forward since - i am not quite clear on the authority is to do the motion. Maybe if we had more time to work with the chair and on what you are trying to accomplish and if there is a way to do that

Scott: We haven't passed this, we haven't really discussed this, I think the - from what I understand, the goal is simply to stop the work of further exploration of the anomalies that were identified in this area based on the fact that we know this are a- i mean our goal is to stop the

work, that's what we are hoping to do, based on the fact that we think it's reasonably probable that we will come across more iwi kupuna.

Cindy: so, I am not able at this time to advise you on how to do that because - also keep in mind that there is active litigation on this right and i am not the attorney that's involved in that litigation so I am not sure where that litigation is in the process or what's been decided yet

Scott: If there's litigation wouldn't that make it even more urgent that the burial council as a both a NHO as well as a commission specifically established to address burial issues weigh in on this subject?

Cindy: so again, I would need more time in order to work out what that motion, if it could be made, what that would look like. I can't answer that at this point

Scott - i think we just make a motion and then ----

Johanna: can we work on that motion then afterwards or does it have to be done in the meeting?

Dane: Do we have any limitations on how long we can go on here? Are we going to lose quorum at any point?

Scott: So, what? Let me make sure i get this all down

Dane: and we can revisit this after

Scott - So then we want to list out - we make this recommendation

[quiet discussion amongst council members, inaudible, seemingly about the AG]

Johanna - we are wondering when we do the letter, do we write the letter and then it goes to where it's supposed to and in essence it's supposed to go up a line before it goes out because we are making a recommendations for that. But

Dane: Its existing recommendations

Johanna: But with the fact that we don't have an archaeologist present to advise us on this - we don't have the upward communication open anymore that - we have no alternative if we need to communicate, we just have to send it

Dane: Yeah, I believe you and hand deliver it maybe

Scott - So what i have right now are two reasons why - i just want to be very explicit about why we object, so you know the first part is we object and what I am working on: "we made this recommendation based on the fact that Maui Lanai Island Burial Council has previously

identified this area as a known burial site complex - yeah think burial site complex like at [unclear??] is an actual - there is a precedent for that

Dane: But it also precedes burial laws

Scott: There may be precedence we can rely on there

Probably Kahele?? - The definition because her comment was that it wasn't said that it was a burial site, it was a burial preserve - you can say by definition it then deems itself a burial site or [unclear]

Johanna - Because burial site is not limited to one burial - we can use burial site to [unclear] whole entire site

Scott: And that's the next point, there are numerous known burial sites in this area and i will put in parentheses "a burial site complex" - uh, and then what are the other specific ones. Johanna did you have one

Dane: Penalties, right?

Scott: How did you want to include language on the penalties

Johanna - that exposure [unclear] - we clarified that definition anomaly; we need to put that back in there. Kahele said - probable burial sites.

Kahele: "probable and anticipated"

Scott - ok so "anomalies identified during previous work are likely Native Hawaiian remains." So, we have one two and three. "There are numerous known burial sites in this area, i.e., a burial site complex," then I will talk about the "Maui Lanai Island Burial Council has previously identified this area as a known burial site complex by definition - the anomalies identified during previous work are likely Native Hawaiian remains." According to - what is it? -

Johanna: 13-300-43 Penalties

Scott: Ok. "13-300-43, any work done in this area is subject to penalties"

[inaudible conversation; long pause]

Motion

"Maui Lanai Island Burial Council objects to further exploration of anomalies which are reasonably believed to be iwi kupuna located in _____. We make this recommendation based on the fact that there are numerous known burial sites in this area, i.e., a burial site complex.

The Maui Lanai Island Burial Council has previously identified this area as a known burial site complex. The anomalies identified during previous investigation are reasonably believed to be Native Hawaiian remains older than 50 years and according to HRS 13-300-43, any work done in this area is subject to penalties under this statute”

Scott: Are there any other [things] somebody wants to add?

Nico: May I speak? So, in [unclear, maybe 2004?] I attended a burial council meeting [unclear] You guys know what GPR is? It entails two processes right. It entails 1) non-intrusive noninvasive technique [unclear] and the other part which has been developing for two years now is the [unclear] for you to ascertain what those anomalies are, what the boundaries are [unclear]. So, You guys make a motion to do GPR knowing that we have to do the investigation subsequent to the initial.

Dane: not really. I don't think that's the case. Not initially. We were first interested in AGPR when - we didn't even know what the data were, what the technology was. The first time we got to see what it could actually produce was when Trevor came in on another company, different project, and showed us the results of the data collected, how it could be interpreted. So, we never went in thinking that we needed to test every single site and that would be the results. GPR is not limited to just Maui Lani. we are looking at the technology - we weren't in support that we would have to test every single anomaly and we have talked about this many times on how you were going to get your samples to interpret what's in the ground right and I have asked for different ways besides having to test every single site and we were hoping initially that there was other data from other places that had used GPR that would have similar composition of soil sand whatever that we could use that data on. I don't know up until the past - the beginning, the trial, that's when everything took a turn to "we need to test everything, every single site." that's my recollections

Nico - no, you guys were - that presentation you guys were referring to was, you know, the middle of last year. That's been a couple of times away so the knowledge that this investigation had encompassed this component where excavation was going to be part of it, that has been known to you guys

Dane: do we know the volume of anomalies

Nico: What's the significance? One burial [unclear]

Kahele: What's your point?

Nico: the point is this. You guys in some manner are attempting to entrap people who are attempting to conduct work you initiated

Kahele: we are not trying to - it has nothing to do with you, what we are trying to do is to stop further desecration of iwi. That's what we are trying to do. And if you are taking that personally that's

Kyle [probably]: i think it would matter of those were your bones. I'm just saying for the record because we are in this discussion because you said what you said - he said what he said, she said what she said, so now I'm going to say what I said. And that's for everybody in the room. The discovery of human remains is most important to those individuals of whom those remains that are connected to. If you look at the decisions that are being made - a lot of the discussions that are being made on one side as Mr. Kaniloa Kamaunu stated, a lot of its being heard on the side that they don't descend from those bones. And the discussion that we're having, and the position of Maui Island Burial Council is because the members on the MLIBC are supposed to advocate for the voices of those remains that we belong to! That's my point

Kahele: So, here's my point, if you think we attempted GPRA because we wanted to have you desecrate iwi, then you are wrong. Were we aware of all the implications? I am not sure. On our part what we are trying to struggle with as we are all trapped in this legal network that we are working with - you aren't the only one trapped in this legal network that we are working with - we are, we are constantly trying to figure out given our whatever with the AG, with the laws, with SHPD, we are constantly we are all navigating this legal mess. And it is a mess. Ok we are navigating this legal mess. And for you to stand there and say "hey you guys knew this was going to happen" that's not the case. Our point is that we are consistently trying to figure out ways to work within the law that so that we are not consistently digging up iwi. That's our point. If you get trapped int hat oh well. We are all trapped in it. We are not trying to entrap you. I don't know what that's about i honestly don't. Nobody is trying to entrap everybody what we are trying to do is to figure out - we know it is probably, it is probably. We don't all anticipate that we going to find some more iwi. What are we trying to say is how the hell as human beings can we stop the madness from happening? That's what we are trying to say. Are we trapped? Do we make mistakes? Do we know every law? No! But we are all here, i don't know why you guys are here. Maui Lani, you guys are here to build houses no matter what. We are here trying to figure - and yes were trapped in this system. We are trapped! We struggle every damn meeting. All we want is for you to stop digging up the bones, that's it

Nico: specifically, I am here to provide you, the council, the developer, and state with information yet you offered me an opportunity to investigate using a methodology which you fully understand yet you say stop halfway

Kahele: we did not offer you the methodology to do that. our thing was like - if you guys can identify that there's an anomaly, maybe we can stop there. That's what we wanted, honest to God. That's what we wanted.

Nico - that all I wanted to hear

Kahele: we did not want you to go check. We wanted to say that if GPR says that there's something there, can that stop it? The court ordered you to do something else, that's not what we wanted anticipated or agree with and we are trying to make a motion to say that

Dane: we had a failed AIS. Remember when we had Halealoha here? It was inverse of what the AIS is intended to do, and this is the result of a failed AIS and that is preceded - but that is where - that is why we are where we are today. So, let's continue. Cause this is what we have [unclear] right now. And this is what is at stake. So, we need to pau this and continue. So, I am going to close any comments on anyone right now so we can work on this motion

Noelani: [unclear] who had something to say and is a descendant too who would like to say something

Dane: Did you sign off Foster? Make it quick please, sorry

I am officially on record opposing ground treatment. In June, Yucha took me and my son and showed us explained to us this whole process because like Kahele said initially when we heard about ground penetrating radar scans it sounded like maybe "oh there's an alternative way to discover burial without disturbing them" ok? So, in June - and this was as a result of Johanna reaching out to me in March [unclear] meeting for cultural descendants. And so, something's going on with that, so I need to educate myself. So, i asked Trevor Yucha folks Cultural Surveys Hawaii was contracted to do the scan - to educate so I went out to Maui Lani, spent four hours out there, went to his office, he showed me the programs he used to analyze all the data that he collected, and he explained there is a second part in this process aka excavating. And then i want to educate I realized you know what? Ground penetrating radar is not the answer. Why? Because there's two parts to the process - one you do the initial scan with the radar and then the second process is you going to have to verify the anomalies that it picks up and that entails excavating which I am totally against it! Completely. No more desecrating no more excavating pau. We can look at Maui Lani Phase 6, Phase 9, Phase 8, you look at the whole [unclear] complex, the burials, all our tutus up there. OK? And it made me think there's so much in this that I want to share with the council because this is such a very sensitive, sensitive subject for all of us. But as a result of me being approached by Johanna on email - and I never wanted to get involved in this because there were a lot of hands on deck already, I didn't want to add to any of the confusion - but I felt compelled and [unclear] that I include in my cultural descendancy papers, so I did.

Dane: Foster we gotta get this done

Foster: Ok this is what I am saying - Ms. Ahia decided to throw my name out there. K. I am actively pursuing a remedy for this right now I can't discuss this publicly because I have been in meetings the last two weeks with various entities and there's still hope at the end of the tunnel and hopefully within a few days before HPD does any - any ground truthing work - i have something positive that is going to make everybody be happy. And my goal is not to disturb anymore pau - but I do want to leave everybody with this thought, its very important - all the

evidence and all the reports that I've analyzed - the inadvertent discoveries in the Maui Lani area are our tutu and ohana from *Maui*, not the Big Island! Keep that in mind because it's very important that we have that right now [unclear] these are our tutus from Maui Island, not the Big Island

Dane: Mahalo Foster. Ok

Scott: ok are there any additional points that we want to add to this, anything that would help? To solidify our position at all

Johanna: Can you add our definition for anomalies?

Scott: Uh sure

Johanna: Right where it is.

Scott: Sure? What ---

Johanna: Probable burial sites

Scott: K perfect

Foster: excuse me I am sorry to interrupt this is very important. Because this will come up again

Kyle - the chair asked for you to stop yeah. Foster

Dane: we gotta move on

Foster: I am not asking if you will let me

Dane: I wanna ask Kealana folks. Are we going through you folks? I hope to hand deliver this to the court or to the judge, are you folks going to also do it through your channels as well

Kealana: I think it would be best if you folks were to draft the letter, and then you guys can sign it coming from the burial council. If you were to send something uh via state, you know something official like this it would have to go up from us through Hinano for signature

Dane: yeah ok

Kealana: My recommendation would be if the council were to draft it so that we can help mail it or email copies to people - so if you guys decide to do that also

Dane: stick around [unclear] after this. So how are we feeling with this? Are we ready to go?

Johanna: is this going to court? Cite the reference you have 13-300 there but you need to cite the language in there

Scott: Which identities penalties for --

Johanna: Yeah, i think that first part of the penalty [unclear]

Oh here - "it shall be unlawful for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof."

Kahele: Can we add in a spot where we add in all the various motions that we have made over the years?

Scott: i can't do that right now because is that Ikaika, your computer this is on or Kealana' s? K so - what I will do is the "following motion were passed"

Dane: can I ask a question? the anomalies part - we are basing our assumption on these anomalies as probable potential burial sites based on what exactly? Are we taking information provided by those who conducted the GPR? Cause that might catch us. We aren't necessarily experts at GPR, we do have all this evidence, but we have a problem identifying what these anomalies are - we don't have enough samples to say "these are potentially burials" - I think that digging up 93 anomalies poses harm to potential iwi but because of the density of what we already know.

Kahele: well, its proximity

Dane: but I don't know if anomalies is the word - i don't really know what that is - i think testing for these anomalies can and will - well can, will potentially harm iwi. [unclear] 9 feet, you are going to have to shore it back [unclear] and because of the density of how much kupuna are in the area - that was inadvertent. 90 sites outside of an AIS is unheard of the test for, right? Just don't know if we can speak [unclear]

Johanna: Just cite 13-300-4 - it says [unclear] 13-300-4h - previously identified.

Probably Noelani??? There's actually over [unclear] hundred anomalies but the judge only ordered testing for [unclear]

Dane: The reason we are ordering testing for sites is because of the interest versus our cultural and lineal [unclear]

Scott: I don't know perhaps the attorney can identify how these 93 were selected?

[unclear discussion]

Scott - Was there a combination of these looked to be most consistent with the signature of iwi kupuna vs - otherwise if there was a very small....

Dane: Can Trevor speak to this? Are you prepared to speak to this?

Trevor: We just provided the locations of the anomalies. I think the 93 are just in areas where they are planning to excavate in the overall survey area

Scott: so, was there a combination of - did it have to do with proximity to proposed development work? I am imagining some of these anomalies are quite small, like a small rock in there, like you could pretty much rule out that an anomaly that small would be iwi kupuna right? Is that how they were determined? [unclear] methodology

Trevor - the anomalies - i think i showed some the last times I was here - the relation hyperbolic shapes and nothing really clear, the size of them is a little bit ambiguous in the scans so there's just not a whole lot of detail there - so i think the 93 were selected not for an archaeological interpretive reasons but just because they're in the path of where things may be constructed

Scott: Um I think if we - we want to make sure we are clear on everything but at the same time we want to make sure that we are concise because the less concise we are the more likely we are to miss our audience and be misinterpreted by our audience etc.

Johanna - one thing that is missing from it is what we have found so far - right? To show why we figure it's gonna be ---

Scott: "Considering the density of previously identified iwi kupuna in this area" - is there a figure we can put in there?

Probably Noelani? - Over 180 kupuna have been disturbed in the [unclear] acre parcel - over 180 kupuna disturbed in the 11 acre

Dane: When we talk about 180, we are talking about scattered in situ --- so people who are disarticulated and then some that are just ---

Noelani? - 180 that are [unclear] that came out in the court case

Scott: Is that the number of individuals? Yes ok, human remains, bones on the ground, there were 180 bones or individuals. Ok I am seeing a little bit of ---

[people talking over one another, unclear]

Dane: Burial pits, fragments, and ---

Johanna: that includes burial pits and remains?

Dane: remains is all encompassing yeah?

Kahele: so - [unclear] pattern analysis - could we apply the same sort of analysis on this?

Dane: are we trying to make it previously -----

Scott: What Barker was saying is we can come up with a really solid number without actually - what are our other options? Who was it that was saying that alternatives exist that would be less culturally inappropriate to determine if - yeah something like that?

Kahele: what about this idea if we did pattern analysis for area 4 - which is near here right and this particular analysis he said something like there was less than a 1% chance that you *wouldn't* find something - [unclear] that's kind of significant right so why not say that? And that [unclear] that they were asking for which is taking a look at the whole entire area, so like what barker did for these four, how do we use that kind of analysis where we are now instead of what we are doing now which is build a road over there, see if there's anything there.

Probably Noelani: Which is why we are asking for a new, non-invasive AIS which considers ---

Kahele: then we can engage the different protocols and methodologies for assessing or analyzing the burial patterns cause I think that that's something that we are missing right? We are trying to identify the burial patterns. They are trying to identify the opposite.

Johanna - Well we should always remember this is the state hosting our meeting, it's a burial council meeting so we are really talking about burials and their preservation - we are not going to be talking about moving bones.

Dane: We represent our community right

Scott: We are saying a "meaningful and reasonably accurate alternative should be used which can avoid physical excavation of these anomalies"

Probably Noelani: Meaningful reasonable accurate alternatives in the new noninvasive AIS otherwise they will say they can just do these things without having to do a new AIS

Dane: Is there a definition for non-invasive?

Noelani: No that is what we are creating

Kahele: We need to say something such as

Noelani: So what we know so far is that you do statistical analysis which Barker did already [unclear, people talking over each other] with the GPR you can get a larger context without

having to ground truth based on historical data based on whatever else is in the area [unclear] and then you draw a big circle around the outside

Scott: The reason I am a little hesitant to open up the idea of a new AIS is that that would be a separate issue - we would need a separate motion - we already did one [people talking over one another] ok so yeah ok

Johanna: Can you add "historical" before "pattern?"

Scott: Historical pattern analysis?

Johanna: Because we are looking at the historical context, right? The iwi that's been found in that area.

Scott: ok

Noelani: You might also add that the council recognizes that [unclear] historical a known place of burials

Dane: I think we've made that motion before, but I think i want compile those into the overall letter we submit to the court to the judge

Noelani? I think it says that on the SHPD website

Dane: i'm sorry, i cannot talk to the - to be fair to everyone

[unclear discussion]

Dane: We have one hour - we are going to take a 10 minute break starting now, 12:11. Ok?

After the break:

Johanna: Oh, wait we gotta call back the AG

Dane: we don't really need her. We need her at the next meeting. Because she cannot really help with this unless we send it in [unclear] month and by then it's too late

Dane: it's very rare that we have the AG in any of our meetings when in fact they should be here at all of our meetings

Johanna - they are supposed to be here at all of our meetings and this conversation we are having here with her is not supposed to be available to everybody - that's why we are limited in the questions we ask yeah?

Dane: when we get a chance we should [unclear] next agenda item

Dane: ok so we are going to reconvene, we are gonna review this motion and then we are going to vote on it. Any additions or subtractions

Scott: i will go ahead and read you the whole thing, i won't read you all the motions because they are numerous

Dane: are we going to motion that we are going to resubmit those motions?

Scott - i think they have already been passed but what we will do, we will include this in the correspondence but basically from the beginning - thanks for compiling that, where did that come from?

Johanna: i took them out of the minutes

Scott:

Motion:

The Maui Lanai Island Burial Council objects to further exploration of anomalies (probable burial sites) which are reasonably believed to be iwi kupuna located in _____ Maui Lani Subdivision Phase 6 Ahupuaa of Wailuku Island of Maui TMK: (2) 3-8-099 pors. We make this recommendation based on the fact that there are numerous known burial sites in this area, i.e., it is a burial site complex, the identified anomalies number approximately 300 approximately 93 selected for further testing. Considering the presence of previously identified iwi kupuna in this area, or 100 burial pits and human remains, the likelihood of the anomalies containing human remains is expected to be high. The Maui Lanai Island Burial Council has previously identified this area as a known burial site/ complex. The anomalies (probable burial sites) identified during previous investigative work are reasonably believed to be Native Hawaiian remains older than 50 years. According to HRS 13-300-43 which identifies the penalties for disturbing iwi kupuna, "it should be unlawful for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof. Any work done in this area is subject to penalties under this statute. Meaningful and reasonably accurate alternatives can be used which would avoid physical excavation of these anomalies. These include historical patterns analysis of site anomalies. The following motions were approved at previous Maui Lanai Island Burial Council meetings, and they are provided for your reference."

Kahele: You are putting that forth?

Scott: Yeah that's my motion

Kahele: I will second your motion

Dane: Alright do we have anyone?

Iris: Iris Pe'elua is recusing herself

Dane: Alright all those in favor of said motion please say ai. None opposed, motion carries. Ah ok we are waiting on Cindy. Just to the audience we are going to have to go into executive session for this next correspondence. Ok moving on to correspondence Item A

VI. CORRESPONDENCE A. Letter dated July 31, 2019, from the Department of Attorney General Land Transportation Division re: Petitions for Contested Case Hearing from HBT of Maui Lani LLC and Maui Lani Partners.

Dane: Ok we still have quorum, but we have to vote to go into executive session. Information discussion about the above letter. Due to Attorney Client privileges we need to go into executive session so - all those - someone motion that we go into executive session

Scott: Motion that Maui Lanai Island Burial Council goes into executive session at 12:22

Kahele seconds

All those in favor:

Iris: I have to leave because I recused myself

Ikaika: ok we will call you right back

Dane: So just a reminder, we are taking a vote on this agenda item, we will agendize this in February, but we are going to open up the floor to discussion - some discussion and consultation with the AG happened in executive session - anyone signed up for public testimony?

Ikaika: we have only Kaniloa

Dane: No decision today to be made. We are the ones making the decision whether to deny or request the contested case hearing. It is not any other board but the burial council's decision on this and that will be agendize next month. Alright. Ok well on to inadvertent then - we have B inadvertent discovery of human remains at Puamana beach park, 0 Pualei drive, [unclear [dec 15, 2019. District Lahaina, island of Maui.

Kealana: chair Maxwell, the correspondence that you guys have in your guys' packets is that notification that I sent you both you and OHA as well as I think I unclouded Keeaumoku in that as well. So basically, SHPD got called i think it was the second week of December 15th to be exact. SHPD did conduct a site visit that next day so on the 16th we did go out there. What we discovered when we went out there was a skull at the base of the berm was uncovered, the

skull was exposed. We did examine the skull. It was still stuck in that clay material so i decided out there I wouldn't need to disinter without damaging the skull so what i did was just cover it with sand and I put some pohaku out there to cover it up. I did walk the coast a bit and i did see some scattered iwi along the coast which i decided to collect and relocate so it is being currently curated at our facilities. I did open discussions with Keeaumoku about continuous monitoring of the area, so we are seeking some kokua some help from him just to monitor and keep an eye out for him.

You know any iwi that may be potential exposed and then of course the county. We opened up discussion to the county maybe about a year, year, and a half ago when the initial Puamana finds were [unclear] and we really didn't get anywhere. So, it's just kinda initiating, re-initiating communications with them - i did speak to the gentleman that is here from the county, the planner from Parks and Rec. i did relay and i wanted him to let Karla know that we are interested in meeting to discuss possible areas the county can possibly give us to reinter iwi so. I will follow up with them and keep you guys updated.

Dane: Is Keeaumoku planning to curate them on property like he is the others, or you have them in SHPD's storage facility.

Kealana: we do have what we collected

Dane: Any updates? Like did you guys go back and check the site since?

Ikaika: [unclear] this find, I had a pop up meeting with Keeaumoku - he's trying to get a meeting with SHPD along with the County and some people from the area to reinter sites. He is looking at the entrance to Puamana, there is a Ku tree, and it is the most mauka part of the property which is only about 100 feet from the ocean which is a potential reinterment site. We just have to get permission from the county to do it and work with the families

Dane: Has anyone else from Puamana been [unclear] Lahaina

Ikaika: I believe [unclear] [has been notifying through the Aha Moku network but I don't know who he has contacted.

Dane: Do we have any discussion? Any testimony?

Ikaika: we have nobody

[unknown female speaker] i just wanted to share that i spoke with them the other night and we were hoping that [unclear] comes back so he can have one to one with you folks currently at the leg [legislature] this morning so, maybe we can re-agendize it so we can talk [unclear]

Dane: If you guys speak - I am sure you guys will speak to Keeaumoku, if you could ask him to send over a request of what he wants to discuss

Kealana: [unclear] You guys and forward it

Dane: yeah, please

Alright. Moving on to Item C, inadvertent discovery of human skeletal remains at 312
_____ on Dec 27, 2019_____

Discussion about the above findings

Nico [speaks very softly, often hard to understand]: So, this is a site that we discussed - not the last burial council but the meeting before that. The element that was described there was a single element. I suspect it was from the heavy rains that came down since there was no activity on the site. Since then, activity as far as [unclear] will be done before the house structure. The letter was sent on the 27th, the same day the SHPD [unclear] notified.

Johanna: so is there any work being done and is it still

Nico: Yeah it [unclear] [it was kinda further maybe about 5, 10 feet away from the [unclear]/ potentially could have come out from there. Potentially could have had just other erosion coming from the surrounding area that revealed it. But what i did note it was pretty [unclear] bleached [unclear] white [unclear] previously exposed or had been [unclear] exposed again

Johanna: So, it was moved before you found it?

Nico: Yes, and if we recall, that particular lot was subjected to a number of earth moving activities - 2006, 1995,

Johanna: Do you have any plans to move in that direction? Is there work still to be done on their property?

Nico: The excavation component of it was there was raised a [unclear] which they have done, when they had found the first inadvertent last year after that it was primarily footings and i remind you to that there was potential, they already knew that obviously there is potential - their plans [unclear] they had to go a minimum of 8 inches into the grading to accommodate a post. Not that that's [unclear]

Dane: The graded garage area- is that a newly graded area or is that something ---

Nico: it was regraded so if um ----

Dane - how long ago was that, would you say?

Nico: regraded or the original grading?

Dane: Regraded cuz that's ----

Nico: Regraded was sometime in the last four months or so

Dane: The material that was used to grade the area was that screened?

Nico: No that was from the push of the - so the top of the [unclear] was taken down and pushed down. There was going to be a wall there in 2006 and they abandoned the project entirely and that's when they decided to just utilize that flat space as the garage. The screen pile you are thinking of was one that was probably about the size of this area right here that contained over 93% of the individual that they inadvertently hit back when we first got called out before they had monitoring on the job

Dane: any questions, any comments? I guess we will open up to any discussion. I guess we will open up to public testimony.

Ikaika: First we have Kaniloa signed up then Noelani for the [redacted] inadvertent

Kaniloa - so I have a question, is this another finds, or is this the one that you guys previously talked about?

Dane: This is a new find, on the 22nd of December.

Kaniloa: So, this kind of thing - they always asked to establish that as a residential area. They found them all over that place. In fact, one of the people that lived there when we were with the Waihee Community Association told me the story that someone there was someone digging in the back and [unclear] bone hanging in there. [unclear]. Find. [unclear] and we still today - they not even sure where the first find actually came from. They're saying it's previously disturbed statutorily - what is relayed as bleaching meaning that it was exposed previously. Leslie Otani who worked with the DSA county we were going to talk to her. She said 20 years first started in the department there was a person digging in the exact same area without any permits and they found, and he was ordered to stop. So, you know this is exactly what we been talking about this morning is this [unclear] ridiculous thing and you know I mean - I am dumbfounded that this continues you know and comes back to our oral reports. We know it's under a gravesite, cuz that's how we [unclear] found. We get burials up there even though some of them are modern ones. Right cuz you have the LDS cemetery there that took place then you have the Protestant one that is there and then [unclear] the Catholic one and then we have the Chinese and the Hawaiian one all in that same sand dune. So, what makes them think that they not going to find them again? You know when - this was considered insanity continuously to do the same thing hoping you get one different result. Well, is the result different? I say no, the result is the same. Did we tell them not to dig over there? Yes, we did. But more educated person with the degrees supposedly knows more than we do. And that we are discounted because I don't have any credentials after my name [unclear] after my name. So, I get discarded, my family gets

discarded, and poof what happens? This is what we talked about the last time we found one. That this is going to continuously happen. That all burials same things like Maui Lani same thing like Pu'uone- even if [unclear] different. So, when does this become ridiculous and when does this become so absurd that this is allowed to knowingly happen? So, it was asked about citing burial sites. When does it come down to the point that all sand dunes, all pu'uone - is burial, historical burial sites? As stated in 6E, we tried to get this through to these guys for years. And we the ones keeping in the [unclear]. I mean why we come angry. Why have we become confrontational? We have been left with nothing. nothing! we would say this is our footprint, our footprint is of our ancestors, has been taken. I supposed to be one nice Hawaiian "Oh yeah you know." [unclear] Get out of my way. I came here from 89 and go through all these departments. For one day to talk but you know what? [unclear] next confrontation, you know it's a confrontation. Because for me this is ridiculous. What else am I left with? Who do I turn to? The Man doesn't help us. The county council certainly doesn't help us. The state [unclear] effectively just disregards. 45 days this 45 days that we gonna have one meeting nothing. Nothing. Nothing to stop it from happening. Nothing - was disregarded the thing wasn't done. Sorry but [unclear] that's my kupuna. That's my ancestors that's my bones! You are guilty. You [unclear] [unclear] decided. [unclear] civil.

Dane: thanks, Kaniloa. I appreciate it. mahalo

Kaniloa: Tell me where do I look for solace? Where do I look for an answer? Where do I get peace? [unclear] where do I find it? [unclear] But these guys don't care. When do we finally [unclear]?

Dane: Any other testimony?

Ikaika: We have Noelani next

Noelani: Um Ikaika [unclear] Enough already this is totally redundant and ridiculous, but I just want it on record anyway. I am recognized as descendant of this area and i didn't get notified about this find. I talked to Kealana about it that we have to work on our communication a little better. [unclear] patience. I realize that this was a disarticulated iwi that came out because of the erosion and the rain but had this area not been graded in the first place the chances of that happening are [unclear] decreased. And I know most of you will recall that the reason that grading was allowed is because SHPD made a mistake on telling the county that there was no AIS and that there was no historic property. This was [unclear] SHPD's fault. Yeah, enough already that's all

Dane: Any more testimony? I just, again -

Scott: [unclear] wanted to testify?

Dane: And again, please direct all your guys comments this way

Nico: Ok I will try. Nico. [unclear] you said something about it's not [unclear] right? Give me a moment to think about it after we have a break. It's not lost on me that these are the remains of human people alright. It's not lost on me that they had lives. You know this is not the room to talk about this. When you act like maybe I haven't seen something out there in all this time I've been out there feeling when I feel [unclear] neonate. It's lost on the archaeologists; I just happen to be a vector of a lot of this animosity. You know what this guys do when he's not here.

Dane: Ok - how's this, make this relate to Waihee for me please

Nico: this is what I'm talking about. This is the situation

Dane: No but it's not the - it's hard to keep, and i understand it should have been directed to us what Kaniloa was saying but I apologize for that but to have this discussion and we are supposed to be talking about these kupuna specifically in Waihee and have to utilize our time efficiently. This is a larger discussion that cannot happen here. I understand why it's going on that's why I am stopping it. Talk about Waihee. Make it fit if you have to.

Nico: So, Waihee the individual that was observed was an adult female. This element appears to be somebody else. We don't know where they came from. Keep in mind though [unclear] the top of this dune got taken down also there was a retaining wall that was put onto the Western portion of it that - when you look at it in profile, I've got documentation, it will show you that that whole area was dug down ten feet and previously disturbed. So, the suspicion is that probably [unclear]

Dane: So, I just wanna take comments. do we have any --

Unknown female voice: In my limited understand of the law, when iwi is discovered, I thought construction stops so why would the project continue on if there is a known discovery in that area? No matter how it was discovered it's there so where does the law now find this [unclear]

Dane: I think this gives us prompts to ask SHPD so when - before the letter was transmitted to you folks, did you folks get a call? Call the police department and they identified it as beyond 50 year old burial remains?

Kealana: SHPD didn't call the police department

Dane: Oh, but uh they called you though?

Kealana: [unclear] reach out to SHPD

Dane: and then who verified that it is over 50 years old

Kealana: oh, that would have been Nico

Johanna maybe???? Did I Just hear you say that they were never called?

Dane: They weren't called. Nico had identified them as over 50 years old in that process

Probably Kahele: So, would you guys consider that proper procedure

[silence]

Dane: 27th of December, not too long ago. Nico is it - can I ask you a question? Your normal procedure and protocol are to notify the police department or coroner or have the deferred to you or SHPD to make the determination on that 50 year old, just so we know that the current protocol and practice is

Nico: So, there's two different circumstances. One that it always goes in [unclear] channels notify SHPD at that point in the statute it states that it's at the discretion of SHPD that [unclear] warranted. Now warranted was suggested that we check with the Branch chiefs [unclear] warranted would suggest that if you have a situation where you know for instance you have an archaeological burial, within an archaeological component, that the surrounding elements that you discover would be [unclear] or contemporaneous with that - so for instances you recall at Maui Lani, where you have a lot of burials that are in a similar context at some point though it is no longer warranted as per the [unclear] police officers come and say obviously these are all [unclear] so there is kinda like a little bit of play [unclear] with this warranted this word warranted. The idea though, the feeling behind the meaning behind the law, is that it is supposed to differentiate between archaeology and potential crime scenes

Probably Kahele? - 6E-43.6 requires it shall not maybe - you shall report to the departments

Dane: Departments being SHPD

Kahele: 6E-43.6

Probably Kaniloa: So, Maui has been [unclear] they don't have any forensic person on Maui to be able to make that determination. So actually, the police department is not - the only time you [unclear] then you have to call in a medical examiner to examine the body and an archaeologist is supposed to help reconstruct the area

Dane: Sorry I am going to turn to SHPD really quick. I know that we've had this discussion how many times and you guys have tried - not you guys but in cooperation with different archaeologists have tried to follow the same protocol when it comes to calling the proper authorities - what happened with this one? Is it because there was context to this iwi? But it does read out that you do need to follow this protocol every time if I am interpreting - I have to read through it again - but the people who practice this is between you and the archaeologist

Kealana - what happened was well typically we have an archaeologist on staff, that person would have been the one to go out in the field to examine the burial to determine 50 plus years. But i think what happened with this one, this one was reported to SHPD on the 27th of December. I was out of the office at the time. I think this was just sent to me - I think Ikaika who was covering for me at the time was not included in the email, so I think what happened was when I returned to the office I think on the 6th or the 7th that's when I was - attended to this matter and what I did was I sent a notification to Johanna.

Dane: so, they didn't get a response from you. Ikaika did you respond to them? What happened? You guys continued work after without response from SHPD?

Nico - notification was a separate incident. The work itself was already in the middle of [unclear]

Dane: oh, it was vertical [???? unclear????] so what's the status of the iwi right now

Nico: Uh curated on site

Dane: Curated on site. And you guys SHPD got to see and look at the place of curation

Kealana: we did not do a site visit yet

Dane: So, we have any more

Kahele - so under the 174 - inadvertent discoveries - the department shall do the following: 1) ensure that all activity in the immediate area of the human skeletal remains ceases, and that appropriate action to protect the integrity of the burial site is undertaken. How was that done

Johanna - so they need to contact the department first notify the department, the department initiates contact with the PD,

Kahele - because the status of this particular issue right now is that they found it they notified you guys - when did you guys respond to them - this was on December 27th

Kealana - so i think i got back into the office the first week of January, I wanna say January 6th

Kahele - and then what was done between Dec 27th and January 6th on the site

Nico - they had already started forming -establishing the footings

Kahele - so they just continued to do that

Dane: so, did they cover the burial where the remains were located

Nico - the remains were - [unclear] it was exposed so at that point it [unclear] it got pushed down by [unclear - the monitor???) it came out [unclear - Nico speaking very softly]

Kahele - so my question is you were notified you relocated my point is between that day and the 6th is some time where construction continued right

Nico - yeah there was open construction

Kahele - yeah well according to this - that's my point - when it says [unclear] all activity in the immediate area ceases we are not just talking about - just activity in general right. So, I am assuming that this is a law that we all abide by not just a law for you right? It's also a law for you as the archaeologist and the construction crew. So, I guess I am - the obvious is that it happened and why didn't it happen. Just because he was on vacation, and he didn't respond i dunno that's what I am trying to figure out. Because what I am thinking - so when you - it was just you are saying, "ok I am going to take care of it." who made that decision to say I am going to take it and construction is going to continue. That is what I am trying to ascertain

Dane: It is really supposed to be the department's decision within 48 hrs. Right? To make that decision

Kahele. Because you didn't respond. So, I guess maybe we

Kyle - so it got lost on somebody. Somebody lost it

Dane: Do we have anymore comments, discussion? I really - we have this announcements section. I think we are done with inadvertent. I wanna quickly wanna take the time to quickly announce some homework for us. Obviously, we have tons of legacy [unclear] that have followed us and [unclear] determinations made by our council or even things that have come back that haven't been, the follow through didn't take place. Certain things not going through - or even status on iwi that have been in curation for far too long. So i would like to - i wanna talk about those things and how we want to address it in the coming year, do we want status updates, do we want to have property owners come back when they do their [unclear - DOC?] and if they don't, trigger something 6 months down the road to tell us hey, not come back 20 years later and totally burden the families dynamics in their ohana so there are certain things I want us to take so when you do have these ideas of what we should address and how we should have them implemented in SHPDs procedure or our month to months operations and [unclear] we will try prioritize and agendize those.

Kahele - so in this particular instances, somebody decided to relocate.

Johanna - relocate or take custody of

Kealana - Somebody made the decision for the disposition temporarily. SHPD makes that decisions

[unclear discussion]

Dane: we are on announcements. But yeah, you can ask after. We moved onto announcements already

Kahele: well can we agendize this particular one because I have questions on who made the determination to relocate the find and how was it that they could continue with construction without any appropriate determination

Dane: so, the protocol. So, we are gonna ask SHPD back

Kahele: So, we are gonna ask you guys for a report on exactly what happened, what happened from when they discovered to now

Kealana: update on just the process and the procedure pertaining to this find?

Kahele: ok

Dane: And maybe a report on how it has continued and what happened after you guys didn't respond in time and construction continued what has come of it and has it impacted the site, whether iwi came from it, whether you believe it has rolled down or

Kahele - And I think I want to talk about too, like so you know it was Dec. 27th - what - and I will do my own research too - just because they didn't respond in two days, does that give them the green light to continue construction? Because they didn't respond in two days. And i dunno, that's what I am asking, because that's what seems to have happened. But um what - i will do my own research too - but if you do not respond in two days what does that allow for on the developer's side?

Dane: we are still on announcements. Just reading out A - next meeting is scheduled for Wednesday Feb 19, 2020, and like I said earlier please email me any recommendation for things you want to agendize when it comes to protocol and procedure either when it comes to SHPD or for us as a burial council so we can implement it going forward so we can have those things approved by our council. And with that motion to adjourn somebody want to motion to adjourn?

Maybe Noelani? - Because it's on the agenda, the meeting, the AG meeting about the HBT letter about the contested case. [unclear]

Dane: We asked if anybody wanted to testify about that. oh sorry I closed em already but just saying this we have to agendize to take a vote on this so it is us who votes whether to reject or

to accept the contested case hearing so we are gonna take that vote next meeting, it's only questions, so you didn't miss any critical time or anything like that. So, with that anybody want to motion to adjourn?

Kyle: Motion to adjourn

Johanna: second

Dane: adjourned, meeting adjourned at 1:16pm. Mahalo

VIII. ANNOUNCEMENTS

A. Next meeting is scheduled for Wednesday, February 19, 2020