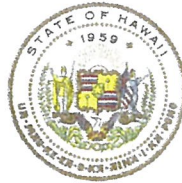


DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

July 26, 2019

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

SUBJECT: Settlement of Enforcement Action against the Edwin C. Olson Trust No.2 during the course of land altering activities without a permit. Amauulu Camp Cemetery, Pu'u'e'o Ahupua'a, South Hilo, Island of Hawai'i. **TMK:** (3) 2-6-008:028.

SUMMARY: This submittal requests the Board accept the settlement of the violation that the Edwin C. Olson Trust No. 2 violated Hawaii Revised Statutes § 6E-11(c) by altering historic properties without a County approved grading and grubbing permit.

DATES OF

INCIDENT: Beginning on or about March 15, 2016, and continuing through September 11, 2016.

AGAINST: Edwin C. Olson Trust No. 2
P.O. Box 446
Pāpa'ikou, HI 96781

I. SUMMARY:

As described in Exhibit 1, no later than March 27, 2016, private historic properties located in Pu'u'e'o Ahupua'a, South Hilo, Island of Hawai'i. **TMK:** (3) 2-6-008:028 ("property"), were injured and altered during the course of land alteration activities. This original submittal was deferred because the notice to Edwin C. Olson Trust No. 2 (hereafter referred to as the Trust) was addressed to and delivered to the wrong party, so the Trust was not properly notified. Subsequently, the State Historic Preservation Division (SHPD) staff met with the Trust in an effort to settle the alleged violation. Exhibit 1, is the original submittal to the Board, which sets forth the basis for the assessment originally recommended as a resolution of the enforcement action against the Trust.

II. PROPOSED SETTLEMENT:

1. To resolve the alleged violation, the Trust will pay \$35,000 to be deposited in the Historic Preservation Special Fund.
2. The Trust does not admit to any fault in this matter.

III. DISCUSSION:

The assessment proposed in Exhibit 1, was \$50,000 for damage to historic properties plus an additional \$4,960 for associated administrative costs. The \$50,000 assessment represented \$10,000 each for damage to three headstones, one crypt, and \$10,000 for damage to the cemetery proper. This represents the maximum amount that can be assessed for each individual violation.

The damage to the gravestones, crypt, and to the Amaulu Camp Cemetery as a whole was promptly reported to SHPD by the Trust's representatives. The Trust also promptly reported the second incident involving damage to a grave marker, which appears to be located outside the boundaries of the cemetery. Had the Trust not self-reported these matters, it is quite possible that SHPD would not have learned of this. After the Trust reported, it cooperated fully and completely with the SHPD and DOCARE investigation.

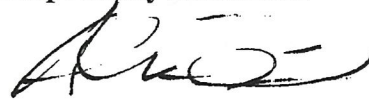
The SHPD regards the prompt self-reporting and full cooperation with the investigation as mitigating factors. In light of these mitigating factors, it seems reasonable to accept less than the maximum assessment for each alleged violation.

While the proposed settlement amount of \$35,000 is lower than the assessment originally recommended by SHPD, it is both a reasonable and substantial assessment.

IV. RECOMMENDATION: That the Board

1. Approve the settlement of \$35,000 as a resolution of the violations alleged in Exhibit 1.
2. The settlement amount to be paid to the Hawai'i Historic Preservation Special Fund.

Respectfully Submitted



Alan Downer, Administrator
State Historic Preservation Division

APPROVED FOR SUBMITTAL



Suzanne D. Case, Chairperson

EXHIBIT "1"

DAVID Y. IGE
GOVERNOR OF Hawai'i



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

January 12, 2018

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

SUBJECT: Enforcement Action against the Edwin C. Olson Trust No. 2. Alteration of historic properties during the course of land alteration activities without a permit. Amaulu Camp Cemetery. Pu'u'e'o Ahupua'a, South Hilo, Island of Hawai'i. **TMK:** (3) 2-6-008:028

SUMMARY: This Notice of Violation requests the Board find that the Edwin C. Olson Trust No. 2 violated Hawaii Revised Statutes § 6E-11(c) by altering historic properties without a County approved grading and grubbing permit, and requests that the Board assess an administrative fine pursuant to Hawaii Revised Statutes §6E-11(f).

DATES OF INCIDENT: Beginning on or about March 15, 2016 and continuing through September 11, 2016

AGAINST: Edwin C. Olson Trust No. 2
P.O. Box 446
Pāpa'ikou, HI 96781

I. SUMMARY

No later than March 27, 2016, privately owned historic properties located in Pu'u'e'o Ahupua'a, South Hilo, Island of Hawai'i. **TMK:** (3) 2-6-008:028 ("property"), were injured and altered during the course of land alteration activities. See Exhibit A, Figs 1, 2, and 3. These activities consisted of mechanical impacts to at least four (4) individual historic properties and to a historic cemetery itself. The project was not reviewed pursuant to Hawaii Revised Statutes ("HRS") §6E-42 and its implementing regulations because the violator failed to get a County grubbing and grading permit in violation of County ordinance. See Exhibit B. This constitutes a civil and administrative violation under HRS § 6E-11(c) and subjects the property owner conducting the activities to civil and administrative penalties under HRS § 6E-11(f). See Exhibit A, pg.5.

ITEM I-1

II. FACTUAL BACKGROUND

A. History of Permit Review on this property

On March 27, 2016 in response to a request from the landowner the Edwin C. Olson Trust's No. 2 (hereafter referred to as "Olson Trust") representative, Mr. John Cross, Mr. Sean Nāleimaile, State Historic Preservation Division (SHPD) Hawai'i Island Archaeologist conducted a site inspection of the subject property, which is a historic cemetery, which meets the statutory definition of a historic property. Mr. Cross had requested the site visit to obtain SHPD input on the disposition of the cemetery, in connection with a County of Hawai'i after-the-fact grubbing permit application. At the time of this visit, Mr. Nāleimaile observed clear evidence that heavy equipment had been in the cemetery and that several headstones, including a crypt had been damaged. Mr. Nāleimaile also observed that adjacent parcels had also been subject to recent land clearing activities.

Prior to the SHPD site visit, the County of Hawai'i Department of Public Works inspector, Mr. Conrad Alicuben, visited the parcel and witnessed an excavator on site. Mr. Alicuben contacted the property owner and informed the land owner of the permit violation. See Exhibit B.

B. Investigation of Violation

On March 2, 2016, Mr. Cross discussed the cemetery with Mr. Naleimaile. Mr. Cross followed up on that discussion on March 8, 2016 via email (Exhibit C) forwarding a map showing the cemetery, a photograph of the area which shows downed and standing trees, as well as a photograph of the headstone of Mary Waahia Kepoo, 1870-1929, and a glass bottle in previously cleared brush. In that email, Mr. Cross stated that "We are in the process of trying to determine the physical limits of the cemetery by spraying the area with herbicide and removing some of the log and tree growth". (Exhibit D, Figures 1, 2, 3) Officer Shishido interviewed Mr. Cross on May 11, 2016. In that interview Mr. Cross spontaneously admitted to having knowledge of the graves in the area no later than January 2016. See Exhibit D, Part 2, pg. 2.

During his March 27, 2016, site visit Mr. Nāleimaile observed that the area had been impacted by the removal of large trees, some of which had apparently been present near the cemetery area. Aerial photographs show the canopy of trees that was present on the parcel in the area of the cemetery, but many of the trees seen in the aerial photo had been removed by the time of Mr. Nāleimaile's inspection.

Mr. Nāleimaile observed alterations and damages to individual burial sites and to the cemetery, which had clearly been done via mechanical means. Mr. Nāleimaile conducted a limited pedestrian survey of the cemetery to examine the extent of the cemetery, as well as the extent of land clearing activities within the cemetery. Upon completion of the site visit, it appeared that there was evidence of a potential violation pursuant to section 6E-11(c). At the conclusion of his inspection, Mr. Nāleimaile contacted the County of Hawai'i (County) to report his findings and make them aware of the possible violation. He also notified DOCARE, as well as Dr. Susan Lebo, SHPD Archaeology Branch Chief.

Mr. Nāleimaile determined that an additional site visit was necessary and that additional documentation was needed. A site visit was conducted on April 28, 2016. Mr. Nāleimaile was accompanied by Mr. Glenn Escott, archaeologist representing SCS, the archaeological consulting firm retained by the

land owner to prepare an Archaeological Inventory Survey (AIS) in support of the after-the-fact permit application. Also present were Mr. Cross and Mr. Troy Keolanui both representing the Olson Trust.

In addition to the damage previously observed, it was evident that a large vehicle had been within the boundaries of the cemetery. This was confirmed by Mr. Cross. He explained that a large machine entered the cemetery area and once the operator saw the headstones he left the area. Large excavated areas were observed at several locations, which Mr. Cross attributed to bottle collectors. It is Mr. Nāleimaile's professional opinion that some of the observed ground disturbance may have happened prior to the February 2015 purchase by the Olson Trust 2, however, much of the damage was more recent.

On May 3, 2016, Mr. Nāleimaile accompanied DOCARE Officer Edwin Shishido to the property. Mr. Nāleimaile and Officer Shishido concluded that an investigation would be initiated and a report filed. See Exhibits D and E. Mr. Nāleimaile's observations lead him to conclude that the excavations observed were unlikely to be the work of "bottle collectors." Further research into the area indicates that this is a known cemetery known as the Amaulu Camp Cemetery. It is likely associated with the area known as the historic Amaulu Camp (Site 50-10-35-07443), which is just mauka of the cemetery.

Additional Damages: September 7, 2016

On September 9, 2016, Mr. Nāleimaile was notified by Mr. Escott that he had been informed by Mr. Cross that land clearing activities had occurred in an area adjacent to the cemetery and that a previously undocumented grave marker had been disturbed. On September 12, 2016, Mr. Nāleimaile, accompanied by Officer Shishido, made a third site visit to assess the most recent unpermitted work that had occurred in this area. During this site visit, Mr. John Cross arrived on site and explained that the work in the recently impacted area was approved by the landowner, Mr. Edwin C. Olson. During this site visit, Mr. Nāleimaile and Officer Shishido confirmed that a previously undocumented burial site had been impacted by the clearing activities.

On September 16, 2016, Mr. Nāleimaile conducted a fourth site visit accompanied by Dr. Susan A. Lebo, SHPD Archaeology Branch Chief, Mr. Escott and Ms. Suzan Escott (another SCS Archaeologists), Ms. Alexandra Kosik, SHPD Architectural Historian, and Officer Shishido. The recent disturbance was clearly visible and the recent damage documented. Ms. Kosik also assisted in assessing the previously observed damage to the grave markers.

It was SHPD's understanding that the stop work order issued by the County was still in effect and that no work was supposed to occur on the parcel until such time that the County issued the grubbing permit. See Exhibit B. On September 9, 2016, Mr. Nāleimaile confirmed with the County Engineer, Mr. Kelly Gomes, that no permit had been issued for the parcel that would have authorized any land clearing activities on this parcel.

It should also be noted that the original intent of the proposed grubbing was to provide areas for agricultural purposes. However, as noted in the Officer Shishido's report, during the September 12 site visit, posted signs on the property indicate that the area is under review for a subdivision and impacts to the parcel may be greater than originally described. See Exhibit D.

The violations observed included:

1. Damage to the headstones found in the eastern portion of the cemetery. It is apparent that the headstones were damaged or altered during recent land clearing activities. The observable alterations are the obvious cracks and breaks that are, in the professional judgment of SHPD staff, recent and are inconsistent with long term exposure to the elements. In the professional judgement of SHPD staff the alterations to the headstones are the result of recent land clearing activities and are inconsistent with alterations caused by a bull on the loose over 65 years ago as suggested. This impact constitutes an alteration and destruction of a portion of burial sites. See Exhibit A, Figure 5.
2. Damage to the large crypt located southwest of the previously described violation. While the crypt appears to be impacted by the presence of roots from the large tree that is in the vicinity of the burial site, it is likely that the damage shown in Exhibit A, Figure 6 occurred recently when the nearby tree was cut down. As in the previous violation, the cracks appear to be more recent than something done prior to the current owners' recent activities in the cemetery area. This impact constitutes an alteration and destruction of a portion of the historic property. See Exhibit A, Figures 6 & 7.
3. Damage to the burial site as a result of recent disturbance to an area adjacent to present headstone. The deep cuts in the dirt have been made very recently and the original location of headstone can no longer be ascertained. This impact constitutes an alteration and destruction of a portion of a historic property. See Exhibit A, Figure 8.
4. Damage to a previously unidentified burial site caused by the most recent land clearing activities. The grave marker had not been identified in the ongoing archaeological inventory survey. The presence of this grave marker was buried and obscured by 5-6 foot tall overgrowth of grasses. The presence of this grave marker significantly extends the boundaries of the cemetery from previous estimates of its extent. While the grave marker was previously unidentified and obscured due to overgrowth, the work that uncovered and damaged the grave marker in this area occurred after the issuance of the stop work order by the County. See Exhibit A, Figure 9. This area was also designated as an area of no work as indicated in a grubbing plan provided by Mr. Cross.
5. Additional clearing activities conducted within the historic cemetery resulted in further alteration or damage to the cemetery as a whole. While some of the damage in the cemetery may have occurred when the property was under previous owner or owners, Mr. Nāleimaile's professional judgement is that of the damage identified in this assessment is clearly too recent to be attributable to activities prior to the current clearing activities. Further, Officer Shishido documented new damage that could only have occurred after the initial documentation of the damages observed in SHPD's and DOCARE's initial investigation. This later damage occurred after the County had issued the stop work order. See Exhibit C.

C. Notice of Violation

At the time of SHPD's March 27, 2016 visit, Mr. Cross, representing the Olson Trust, acknowledged that a County permit was required for the work that had been done and that the Olson Trust was in the process of applying for an after-the-fact permit to authorize any past and future ground disturbing work. After the initial site visit, SHPD discussions with County staff revealed that the County was already aware of the grubbing that was occurring without the benefit of a permit. As of September 12, 2016, the date of SHPD's last visit to the property, no County permit had been issued.

III. LEGAL AUTHORITY FOR ENFORCEMENT

A. Violation of HRS §6E-11

HRS §6E-11(c) states that:

It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property . . . during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

Hawaii Revised Statutes §6E-42 applies whenever any agency or officer of the state or the counties approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site.

In this instance, a grading and grubbing permit was needed. No later than March 11, 2013, the property owner and contractor engaged in land development and land alteration activities without a required County grading or grubbing permit. On March 16, 2016, the County of Hawaii notified the property owner via certified mail that a County permit was required for the work the owner was carrying out. The return receipt was received by the County on March 24, 2016. See Exhibit B, pg. 3.

Undoubtedly, because the work was to be done in an area around or directly adjacent to a historic cemetery, the intended work was likely to affect historic property. In fact, while engaged in grubbing and grading without a required permit, the Olson Trust 2 did alter and injure historic property. The Olson Trust 2 did violate HRS §6E-11.

Regulatory Context:

- a. The land clearing activities on the subject parcel were carried out without a County of Hawai'i grubbing permit. County of Hawai'i DPW staff notified Mr. Cross of the need for a grubbing permit for land clearing activities that were being carried out on the subject and adjacent parcels. See Exhibit B.

According to HRS §6E-42(a) Review of proposed projects,

Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity to review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-42, including those listed in the Hawaii Register of Historic Places.

- b. Because no County Grubbing Permit was applied for, the SHPD did not have the opportunity to review and comment on the effects of the proposed project on historic properties as required by statute, the SHPD did not have an opportunity to comment on the current project. If the proper County permit had been submitted, SHPD would have reviewed the project pursuant to HRS §6E-42 and requested that an archaeological inventory survey be conducted and submitted to SHPD to document historic properties on the parcel, and, as necessary, recommend measures to avoid or mitigate any effects of the proposed project on historic properties. See Exhibit A, pg. 1
- c. Since a County grubbing permit was needed for the land clearing activities on this parcel and adjacent parcels, and no permit was obtained, any alterations to historic properties can be considered and assessed as violations to HRS chapter 6E.

According to HRS §6E-11c

it shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies without the required approval.

- d. As previously indicated 6E-42 applies because a County grubbing permit was found to be required for any land alteration and activities, requiring that SHPD be afforded the opportunity to comment upon the project's effects to historic properties resulting in the alteration or destruction of historic properties.

The observed violations previously described above in Section II.B. included:

1. Damage to the two headstones found in the eastern portion of the cemetery. This impact constitutes an alteration, damage, and destruction of a portion of the burial sites. See Exhibit A, Figure 5.
2. Damage to the large crypt located southwest of the previously described violation. This impact constitutes an alteration, alteration, and destruction of a portion of a burial site. See Exhibit A, Figures 6 & 7.

3. Damage to the burial site as a result of recent disturbance to an area adjacent to present headstone. This impact constitutes an alteration and destruction of a portion of the historic Amauulu Cemetery. See Exhibit A, Figure 8.
4. Damage to a previously unidentified burial site caused by the most recent land clearing activities. See Exhibit A, Figure 9. This area was also designated as an area of no work as indicated in a grubbing plan provided by Mr. Cross.
6. Additional clearing activities conducted within the historic Amauulu Cemetery resulted in further alteration or damage to the cemetery as a whole.

While some of the damage in the cemetery may have occurred when the property was under previous owner or owners, Mr. Nāleimaile's professional judgement is that the damage described in this assessment is clearly too recent to be attributed to activities prior to the current grubbing. Further, Officer Shishido documented new damage that could only have occurred after the initial documentation of the damages observed in SHPD's and DOCARE's initial investigation. This later damage occurred after the County had issued the stop work order and prior to the issuance of the required County of Hawaii permit. See Exhibit B.

B. Administrative Penalties for Violation of HRS §6E-11(c)

As previously stated, the property owner conducted land alteration activities that excavated, injured, and altered known burial sites and a known historic property (Amauulu Cemetery), which the property owner had located prior to the damage discussed in this assessment, without obtaining the required County approval that was subject to HRS §6E-42. This action constitutes a violation of HRS §6E-11(c).

Any person who violates HRS §6E-11(c) shall be fined not more than \$10,000 for each separate violation (HRS §6E-11(f)). Additionally, if the violator directly or indirectly has caused the loss of, or damage to, any historic property, the violator shall be fined an additional amount determined by an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished

IV. ANALYSIS

The legislature has declared:

that the historic and cultural heritage of the State is among its important assets and that rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage (HRS §6E-1).

To this end, the legislature enacted HRS Chapter 6E and the department has adopted implementing rules. Chapter 6E creates a historic preservation program to implement, among other things, a state review process to assure that: (1) historic properties are recorded; and (2) that appropriate

avoidance or mitigation takes place in the event that development threatens to destroy the historic integrity of a resource.

For private properties, the review process is triggered when the State or a County issues a permit for a project that may affect historic properties. At that point, HRS §6E-42 affords SHPD an opportunity to comment on the project, and if historic properties will be affected by the project, SHPD and the landowner should come to an agreement on measures to avoid or mitigate the effects of a project on historic properties before the approving agency issues a permit and allows the project to proceed. In this case, HRS §6E-42 would have been triggered because the landowner should have obtained a grubbing and grading permit from the County but failed to do so. Under HRS §6E-11(c) this is a clear violation. However, some explanation of the magnitude of the violation is needed.

Based on the facts and circumstances of this case, the property owner did not comply with County requirements to obtain permits prior to initiation of ground disturbing activities and persisted with those activities after being directed to stop by the County and being notified by SHPD of damage to historic properties. Furthermore, the continued activities resulted in additional damage to historic properties, even in areas the property owner advised SHPD that there were no plans for ground disturbing activities as part of the project. Having not obtained the required permits prior to starting work, the property owner by-passed SHPD review.

Despite having been directed to stop work by the County, the property owner allowed work to continue. Likewise, after consulting SHPD regarding the historic Amauulu Camp Cemetery and being aware of damage to historic properties resulting from prior activities, the property owner did not halt activity. These persistent activities resulted in alteration or damage to additional historic properties. The land owner's actions resulted in damage to at least five (5) historic properties. This is a violation under HRS §6E-11(c). The property owner's failure to comply with these statutes and rules should result in a penalty of \$10,000.00 per burial site, and \$10,000.00 for the impacts to the Amauulu Camp Cemetery as a whole.

In considering the amount of damages to recommend, the SHPD regards the fact that the Olson Trust was aware of and attempting to locate the cemetery and that it self-reported the initial damages as mitigating factors.

The SHPD considers as significantly aggravating factors that by January 2016 and certainly no later than March 2, 2016, the Olson Trust was aware of the presence of the cemetery on the property. Furthermore, no later than March 8, 2016, the Olson Trust had located the Cemetery and was actively engaged in activities to identify the boundary of the cemetery. By the time the Olson Trust actions that damaged the historic property occurred, the Olson Trust was both aware of the cemetery and had located it.

V. RECOMMENDATION: That the Board:

1. Find that the Edwin C. Olson Trust No. 2 has violated HRS §6E-11(c) by altering or damaging a known historic property without a permit.

2. Find that has Edwin C. Olson Trust No. 2 damaged 4 individual burial sites and also impacted the Amauulu Camp Cemetery as a whole.
3. Fine the Edwin C. Olson Trust No.2 \$10,000.00 per each of the five individual burial sites and \$10,000.00 for impacts to the Amauulu Camp Cemetery, for a total fine of \$60,000
4. Assess administrative fees of \$4,960.00.ⁱ

Total Fine and Fees: \$64,960.00

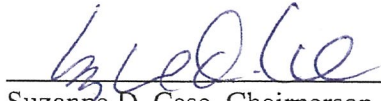
All fines and fees to be paid to the Hawai'i Historic Preservation Special Fund.

Respectfully Submitted



Alan S. Downer, Administrator
State Historic Preservation Division

APPROVED FOR SUBMITTAL


Suzanne D. Case, Chairperson

ⁱ Administrative assessment is entirely for SHPD staff time: \$1684 for Mr. Naleimaile's time; \$2647 for Dr. Downer's time; \$214 for Ms. Kosik's time; and \$415 for Dr. Lebo's time.

EXHIBIT A

FIELD REPORT: Documentation of Potential Violations at TMK (3) 2-6-008:028

To: Dr. Alan Downer, Administrator of the State Historic Preservation Division

From: Sean Nāleimaile MA, Staff Archaeologist

Date: October 6, 2016

Subject: Report on March 27, 2016 and September 9, 2016 Site Visits in Response to Unpermitted Grubbing at the Amaulu Camp Cemetery, Puueo Ahupua'a, South Hilo, Hawai'i Island
TMK (3) 2-6-008:026

Background

On March 27, 2016 at approximately 11:00 am SHPD staff archaeologist Sean Nāleimaile arrived at the aforementioned parcel in the Puueo district to conduct a site visit. The purpose of the site visit was to visit the site described by the applicant's representative as a cemetery. The applicant's representative, Mr. John Cross had asked that I visit the site for my advice regarding the disposition of the cemetery, in connection to a County of Hawai'i grubbing permit application for parcel 028 as well as parcels 026, 027, 032, and 031. Upon visiting parcel 028, it became evident that the current permit application was an after-the-fact permit application and that much of the area where the cemetery is located had already been impacted without County of Hawaii approval. Nāleimaile noted several areas within the cemetery that appeared to have been impacted by mechanical ground disturbance in and around several of the burial areas. In a letter dated April 12, 2016 (see attachment 1), Mr. John Cross indicated his knowledge of the historic cemetery and stated that no activity was being proposed for that area. Mr. Cross explained that an archaeological inventory survey (AIS) had been commissioned by the land owner and that no work was to take place in the cemetery area. Additional areas in the adjacent parcels also appear to have been altered by recent land clearing activities. The results of the field visit are presented below.

Location of Field Visit:

The location of the field visit occurred within the area depicted within the white outline in figure 1. The project area is located within the Pu'ueo Ahupua'a between the 160 and 100 feet elevation. The subject parcel is defined in the Tax Map Key as (3) 2-6-008:026, and totals 18.57 acres.

History of Correspondence:

There is no recent correspondence relating to this parcel on file at the SHPD office in Hilo. There are no recent permit applications for the current area of the potential violation.

Complaints Received:

On or about some time in the month of March, the County of Hawaii Department of Public Works received a complaint about unpermitted grubbing occurring at the aforementioned parcel. As per a phone conversation with DPW staff, Mr. Cy Alicuben, he stated that he had visited the parcel and witnessed an excavator on site. Mr. Alicuben contacted the property owner and was informed of the permit violation.



Figure 1: TMK Parcel (3) 2-6-008:026 with approximate location of cemetery

Survey of Damages: 27 April 2016, 11:00am to 11:15am and 2 May 2016

On April 27, 2016 Naleimaile arrived at the subject parcel at 11:00 am and proceeded to inspect the cemetery area as described by Mr. Cross. Mr. Cross had indicated that an AIS was in progress and that the documentation of the cemetery was underway. At that time Mr. Naleimaile was not aware that any mechanical clearing had taken place within the boundaries of the cemetery. Mr. Cross, in a recent office visit, had shared that to his knowledge, a neighbor's bull on an adjacent parcel that was tied to a large truck axle had gotten loose and dragged the axle through the cemetery knocking over headstones and thus damaging areas in the cemetery. While some of the damage could have occurred this way, much of the disturbance in the cemetery looks to have been caused by a large machine within the boundaries of the cemetery.

Nāleimaile observed that the area had been impacted by the removal of large trees, some of which could have been present near the cemetery area (Figure 2). Aerial photos from Google Earth (Google Earth 2013) (Figure 1) show the canopy of trees that was present on the parcel in the area of the cemetery, but many of the trees seen in the aerial photo have now been removed indicating that these trees have since been removed.

Naleimaile observed that impacts to the cemetery had clearly been done via mechanical means (Figure 3). Nāleimaile conducted a limited pedestrian survey of the cemetery to examine the extent of the cemetery area and the extent of land clearing activities within the cemetery. Upon completion of the site visit, it appeared that there was evidence of a potential violation pursuant to Chapter 6E-11(c). Naleimaile then attempted to contact the County of Hawaii to report the findings and make them aware of the possible violation.

In addition, DOCARE was notified as well as Archaeology Branch Chief Dr. Susan Lebo. Several attempts were made to contact Mr. Kelly Gomes of the Hawaii County Department of Public Works to discuss the possible violation; the office provided Mr. Naleimaile the contact info for one of their inspectors, Mr. Conrad Alicuben.



Figure 2: Large trees and bulldozer in the vicinity of the cemetery.



Figure 3: Tracks consistent with heavy machinery.

Naleimaile explained the situation and provided location information of the possible infraction with Mr. Alicuben and he indicated that there had been a complaint about the unpermitted grubbing and that he had been out to the site and had witnessed large machinery at the location of the cemetery.

Mr. Nāleimaile determined that an additional site visit was necessary and that additional documentation was needed. A site visit was planned for April 28, 2016 with archaeologist Glenn Escott. Additional vegetation clearing was planned in order to assist in completing the AIS and Mr. Escott was going to be present during that activity. Mr. Naleimaile got to the site and was met also by Mr. Cross and Mr. Troy Keolanui. It was during this site visit that it was determined that a large vehicle had been within the boundaries of the cemetery. This was confirmed by Mr. Cross. He explained that there was a large machine that entered the cemetery area and once the operator saw the headstones he left the area. Large excavated areas were observed at several locations in which Mr. Cross attributed to bottle collectors. It appeared that some of the ground disturbance may have happened previous to the current land owner, Mr. Olson. Mr. Olson purchased the land in February of 2015.

On May 3, 2016, Officer Edwin Shishido of the DOCARE was contacted and request was made to initiate an investigation of possible 6E violations that occurred on the aforementioned parcel. Officer Shishido accompanied Mr. Nāleimaile to the property and it was concluded that an investigation would be initiated and a report filed (See attached report). Further research into the area indicates that this cemetery is a known cemetery known as the Amaulu Camp Cemetery. It is likely associated with the area known as the historic Amaulu Camp (Site 50-10-35-07443) which is just mauka of the cemetery.

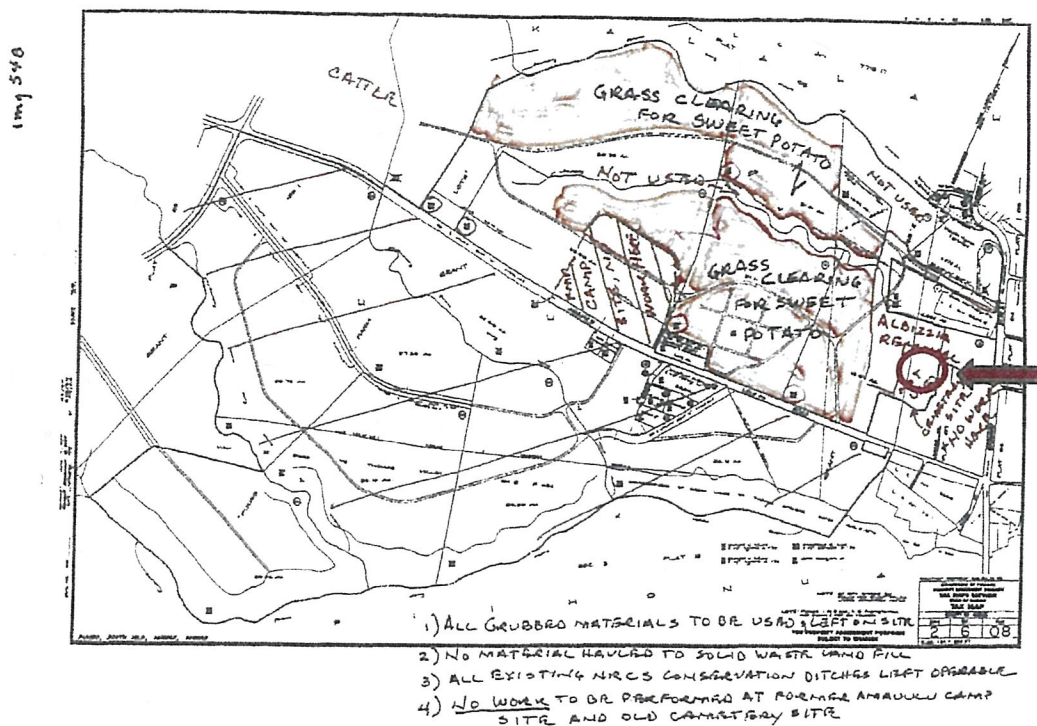
Additional Damages: September 7, 2016

On September 9, 2016, Mr. Nāleimaile was notified by SCS archaeologist Mr. Escott that he was informed by Mr. Cross that land clearing activities has occurred in an area adjacent to the cemetery (Figure 4) and that an undocumented grave marker had been disturbed. Mr. Nāleimaile (SHPD) conducted a third site visit on September 12, 2016 with DOCARE (Officer Edwin Shishido) to assess the most recent unpermitted work that occurred in this area. During the site visit Mr. John Cross arrived on site and went on to explain that the work in the recently impacted area was approved by the landowner, Mr. Ed Olson. It was confirmed during this site visit that a previously undocumented grave site was impacted by the clearing. On a fourth site visit on September 16, 2016, which included Dr. Susan A. Lebo



Figure 4: Recent impacted area (September 9, 2016)

(SHPD Archaeology Branch Chief), Glenn Escott and Suzan Escott (SCS Archaeologists), Alexandra Kosik (SHPD Architectural Historian) and Officer Shishido (DOCARE), the recent disturbance was clearly visible and efforts were made to document the recent damage as well as to further document the previous damage with the assistance of Ms. Kosik.



Map 1: TMK map with area of proposed impacts. The red arrow indicates the approximate location of the area most recently impacted. The map designates this area as an area on no work.

It was SHPD's understanding that the stop work order issued by the County of Hawaii was still in effect and that no work was supposed to occur on the parcel until such time that the County issue the grubbing permit. On September 9, 2016, Mr. Nāleimaile confirmed with the County of Hawai'i Engineer, Mr. Kelly Gomes that in fact no permit was issued for the parcel to allow for any land clearing activities. It should also be noted that the original intent of the proposed grubbing was to provide areas for agricultural purposes. However, as noted in the DOCARE report, during the September 12 site visit, posted signs indicate that the area is under review for a subdivision (see *DOCARE Rpt. 3 17-175 HA*) and impacts to the parcel may be greater than originally described.

Regulatory Context:

The land clearing activities on the subject parcel were carried out without a County of Hawai'i grubbing permit. County of Hawai'i DPW staff notified Mr. Cross of the need for a grubbing permit for land clearing activities that was being carried out on the subject parcel and adjacent parcels. According to HRS §6E-42 Review of proposed projects, "(a) Before any agency or officer of the State or its political subdivisions approves and project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity to review and comment on the effect of the proposed project on historic properties, aviation artifacts, or

burial sites, consistent with section 6E-42, including those listed in the Hawaii Register of Historic Places."

Because no County of Hawaii Grubbing Permit was applied for, the State Historic Preservation Division was not allowed the opportunity to review and comment on the effects of the proposed project on Historic Properties. As indicated in the "History of Correspondence" section of this report, SHPD has not had an opportunity to comment on the current project, therefore, if the proper County of Hawaii permit had been submitted, SHPD would have reviewed the project pursuant to HRS 6E-42 and requested that an archaeological inventory survey would be necessary in order to document historic properties on the parcel, and if necessary mitigate any impacts of the proposed project on historic properties.

Due to the fact that a County of Hawaii Grubbing Permit was needed for the land clearing activities on this parcel and adjacent parcels, and no permit was attained, any alterations to historic properties could be considered to be violations to HRS § 6E. According to HRS §6E-11c "it shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies without the required approval". As previously indicated 6E-42 applies because a County of Hawaii Grubbing Permit was found to be required for any land alteration and activities and that SHPD did not concur with or approve the alteration/destruction of these historic properties. The apparent violations of HRS § 6E-11 are described below:

Apparent HRS 6E-11(c) Violation #1: Impact to Burial Site



Figure 5: Historic headstones with recent breaks

This photograph depicts what is believed to be very recent damage to the headstones found in the eastern portion of the cemetery. It is apparent that the conditions of the headstones were altered during recent land clearing activities. The observable alterations are the obvious cracks and breaks that appear to be recent and not consistent with long term exposure to the elements. The alterations to the headstones are likely the result of recent land clearing activities and not consistent with alterations caused by a loose bull over 65 years ago. This impact constitutes an alteration and destruction of a portion of the site.

Apparent HRS §6E-11(c) Violation #2: Impact to Large Crypt



Figure 6: Large Crypt Feature with damaged area outlined



Figure 7: Close-up of Damage to Crypt

These photographs show the large crypt located southwest of the previously described violation. While the crypt appears to be impacted by the presence of roots from the large tree that is in the vicinity of the burial site, it is likely that the damage shown in figure 6 occurred recently when the nearby tree was cut down. Again as in the previous violation, the cracks appear to be more recent than something done prior to the current owners' recent activities in the cemetery area. This impact constitutes an alteration and destruction of a portion of the site.

Apparent HRS §6E-11(c) Violation #3: Disturbance of Headstone



Figure 8: Disturbance of Headstone due to grubbing

This photograph depicts recent disturbance to an area where the headstone is. The deep cuts in the dirt appear to have been made recently and where the actual location of where the headstone once was, is unknown. This impact constitutes an alteration and destruction of a portion of the site.

Apparent HRS §6E-11(c) Violation #4: Additional Disturbance from Recent Land Clearing



Figure 9: Most recent disturbance of grave marker due to unpermitted land clearing

This photo depicts the damage caused by the most recent land clearing activities that caused extensive damage to a previously unidentified grave marker. The grave marker had not been identified in the ongoing archaeological inventory survey. The presence of this grave marker was buried and obscured by 5-6 foot tall overgrowth of grasses. The presence of this grave marker significantly extends the boundaries of the cemetery from previous estimates of the extent of the cemetery. While unidentified and obscured due to overgrowth, additional work in the area continued to be under the stop work order from the County of Hawaii. This area was also designated as an area of no work as indicated in a grubbing plan provided by Mr. Cross.

Conclusion:

Mechanical land altering activities on the subject parcel altered historic properties. The County of Hawaii issued a "stop work" order indicating to the land owner that a County of Hawaii Grubbing Permit was needed for the land altering activities that took place on the subject parcel and adjacent parcels. This indicates that the land alteration was an action that should have triggered a HRS §6E-42 historic preservation review. Therefore, because HRS 6E-42 applies to this project, and because SHPD, did not authorize the destruction of these historic properties, the action appear to be in violation of HRS §6E-

11(c). Addition violations may have occurred within the cemetery boundaries as documented in the DOCARE report (Rpt. #16-870 HA), however, the timeframe for any additional violations not documented in this report could not be clearly ascertained and may have occurred during the course of the previous owner's land clearing activities. In addition to the violations observed in the first half of 2016, the additional impacts caused by land clearing performed on September 7, 2016 are clearly an additional violation based on the land owner's disregard for allowing the permitting process to be completed. Officer Shishido has prepared an additional report documenting the most recent potential 6E violation (Rpt. #17-175 HA).

Recommendation:

Hawaii Revised Statutes §6E-11 outlines the following penalties for the destruction of Historic Properties:

[§6E-11.5] **Civil Penalties.** Any person who violates this chapter, or any rule adopted pursuant to this chapter shall be fined not less than \$500 nor more than \$10,000 for each separate offense. Each day of each violation constitutes a separate offense. [L 2003, c 104, pt of §2]

[§6E-11.6] **Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted pursuant to this chapter, the board may impose by order the penalties specified in section 6E-11.5

(b) Factor to be considered in imposing an administrative penalty include:

- (1) The nature and history of the violation and of any prior violations;
- (2) The economic benefit of the violator, or anticipated by the violator, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action;
- (4) Good faith efforts to comply; and
- (5) Such other matters as justice may require

(c) It is presumed that the violator's economic and financial conditions allow for the payment of the penalty, and burden of proof to the contrary is on the violator.

In addition to any civil and/or administrative penalties, SHPD recommends that an archaeological inventory survey (AIS) be completed for the cemetery to fully document this historic site and determine an appropriate course of mitigation.

ATTACHMENT 1

Edmund C. Olson Trust No. 2
P.O. Box 446
Papaikou, Hawaii 96781

April 12, 2016

Details on Grubbing Permit Application dated 4/8/2016

TMK's: 2-6-008-026, 027, 028, 029, & 031 at Puueo, South Hilo

Please accept this brief letter regarding our grubbing permit application on the above referenced TMK's

The intent of the application is remove invasive albizzia and other trees from the lower portion of the property and to allow for the cultivation of sweet potato on approximately 60 acres. Please see the attached maps that depict the areas. This is an after the fact grubbing action in regards to the albizzia trees. The sweet potato cultivation is soon the follow.

The entire area was previously in Sugarcane cultivation for over 150 years. After the cane company shut down in 1994 the site was used for ginger and taro for several years. After that the land was used for cattle pasturage until present. The Edmund C. Olson Trust No. 2 bought the property from the Greer Trust in February 2015. The parcels were under an NRCS soil conservation plan and all practices were being followed. All of the NRCS conservation ditches that were installed on the land are still intact and will be maintained and preserved moving forward.

While it was thought that the NRCS conservation plan was never cancelled the plan transferred with the land to the new owner, the Olson Trust. We recently received an opinion from NRCS that the plan is with the "cooperator" and as the land is sold to a new owner the plan is effectively cancelled with that previous owner/cooperator and the new owner (Olson Trust) would need to re-apply for a new plan covering the parcels. The Trust intends to do so, but in the interim is applying for this grubbing permit to facilitate the speedy resolution of the after the fact tree removal and pending sweet potato cultivation.

As far as Historic elements upon the parcels, none exist in the areas being considered for the tree removal or cultivation of sweet potato. An old plantation era cemetery exists upon a small portion of TMK 2-6-008-026 and no activity is being proposed for this area. An Archaeologic Inventory Study has been commissioned through Glenn Escott of Scientific Consultant Services for a portion of the subject properties with emphasis on the cemetery. The report will be shared with State DLNR- Historic Preservation Division when completed. Since no activity will be taking place in this cemetery area and the rest of the land has been in near constant agricultural use for many decades, we humbly ask that SHPD approve the grubbing permit action ahead of receipt of the AIS.

Please note the color coded TMK pages that depict the areas of work and the location of infield drains and NRCS ditches. Grassed un-grubbed buffers will be left in place at the edges of the infield drain and Pukihae Stream to the North.

Should you have any further questions on the property and grubbing or agricultural cultivation work please call me at 808-987-4229

Sincerely,



John C. Cross

Land Manager

Edmund C. Olson Trust No.2

EXHIBIT B

William P. Kenoi
Mayor

Randall Kurohara
Managing Director



Warren H. W. Lee
Director

Brandon A. K. Gonzalez
Deputy Director

County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
Aupuni Center
101 Pauahi Street, Suite 7 • Hilo, Hawaii 96720-4224
(808) 961-8321 • Fax (808) 961-8630
www.co.hawaii.hi.us

March 22, 2016

CERTIFIED MAIL

Edmund C. Olson Trust No. 2
26-238 Hawaii Belt Road
Hilo, HI 96720-2119

SUBJECT: GRUBBING VIOLATION
Location: Puueo, South Hilo, Hawaii
Tax Map Key: 2-6-08: 026

Our attention has been called to grubbing work recently performed on the subject property. A search of our records shows that neither a grubbing nor grading permit was issued for this work.

You are directed to submit a completed copy of the enclosed grubbing permit application within forty-five (45) days of the above date. Three (3) sets of grubbing plans, showing the limits of grubbing, shall accompany the application as required by Chapter 10 of the Hawaii County Code. The plans shall also include property lines, location of any structures, drainage patterns, and any required erosion and sedimentation control.

Should you have any questions concerning this matter, please contact Mr. Kelly Gomes, P.E. of our Engineering Division at (808) 961-8327.

Kelly Gomes
for BEN E. ISHII, Division Chief
Engineering Division

KG

Enclosure

EXHIBIT C

From: John Cross [<mailto:john@olsontrust.com>]
Sent: Tuesday, March 08, 2016 10:21 AM
To: Naleimaile, Sean P <sean.p.naleimaile@hawaii.gov>
Subject: Old Cemetery above Clem Akina Park

Sean,

Here is some of the stuff I found on that old cemetery above Clem Akina Park in Puueo.

We are in the process of trying to determine the physical limits of the cemetery by spraying the area with herbicide and removing some of the log and tree growth.

Could you assist us in the proper methodology that SHPD would like us to take with this site. If you would like an onsite visit, please call me at 987-4229 and we could meet up there.

A nearby resident, Donald Medeiros has some knowledge about the site, maybe we could get him to make a statement.

Thanks,

John C. Cross
Land Manager
Edmund C. Olson Trust No. 2

[illegible]

Field Area 18.27
Dole " 1.08
Waste " 6.03

Field Area	52.43
Path "	3.31
Waste "	1.43

CEMETERY

L. C. A. 4659
Apr. 1

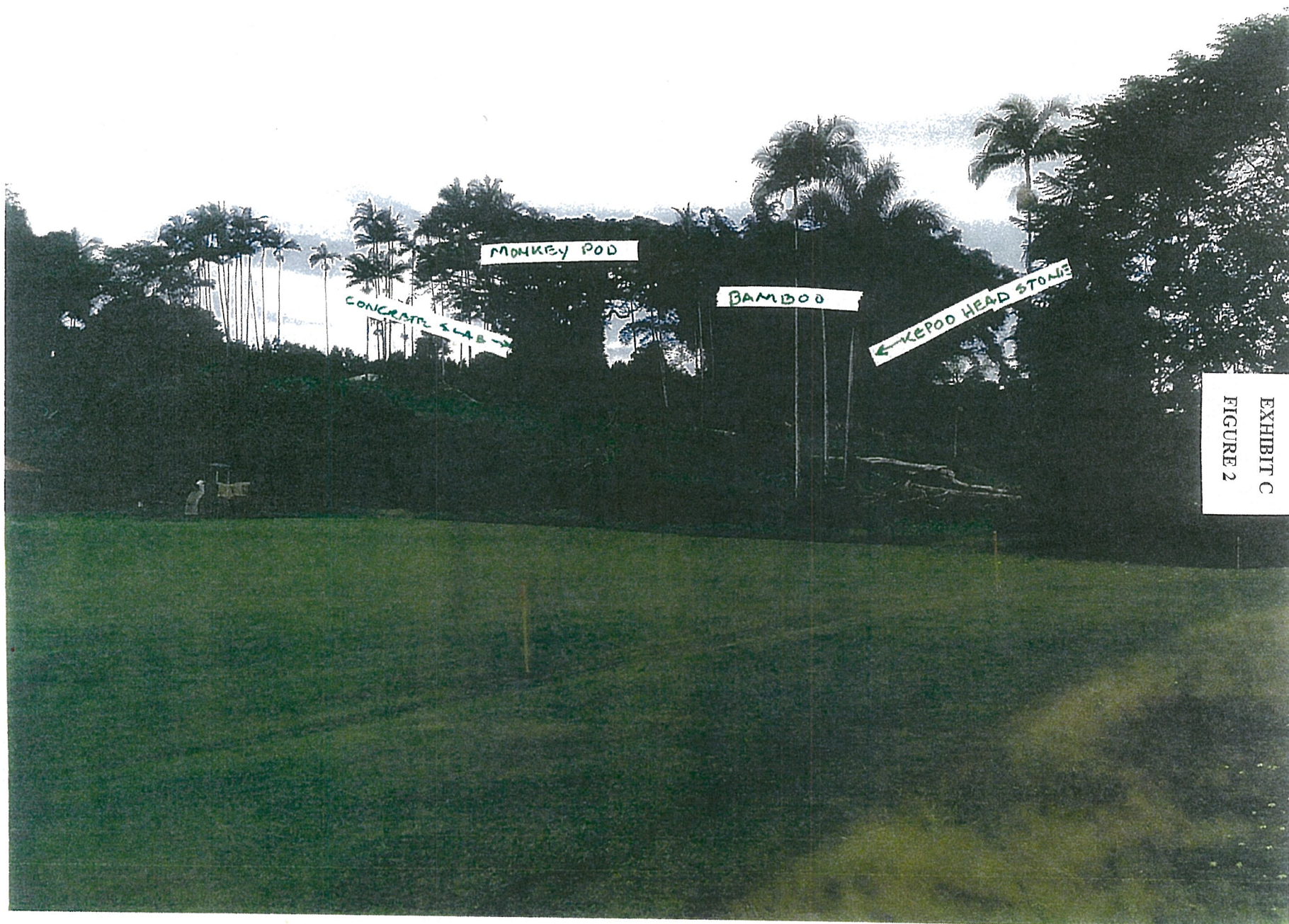


EXHIBIT C
FIGURE 2

FIGURE 3



MARY WAAHIA KAPOO
1870 - 1920

↑
glass found
nearby - placed in
this location by J. CROSS

5/4/2016

qpublic9.qpublic.net/hi_hawaii_display.php?county=hi_hawaii&KEY=260080260000

42116-870

HP: Possible 6E Violate

12/01/1993 \$ 357,709

CONVEYANCE
FEE
CONVEYANCE

Deed

Current Tax Bill Information**2015 Tax Payments****Show Historical Taxes**

Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due
									\$ 0.00

No Tax Information available on this parcel.

[Recent Sales in Area](#)[Previous Parcel](#)[Next Parcel](#)[Return to Main Search Page](#)[Hawaii Home](#)[Real Property Home](#)

The Hawaii County Tax Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. Website Updated: April 29, 2016

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5/4/2016

Bing Maps - Directions, trip planning, traffic cameras & more

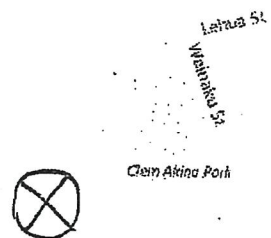
4A 16-870
HP: Possible 6E Violations

bing maps

Notes

area circled is the location of old cemetery and gravesites

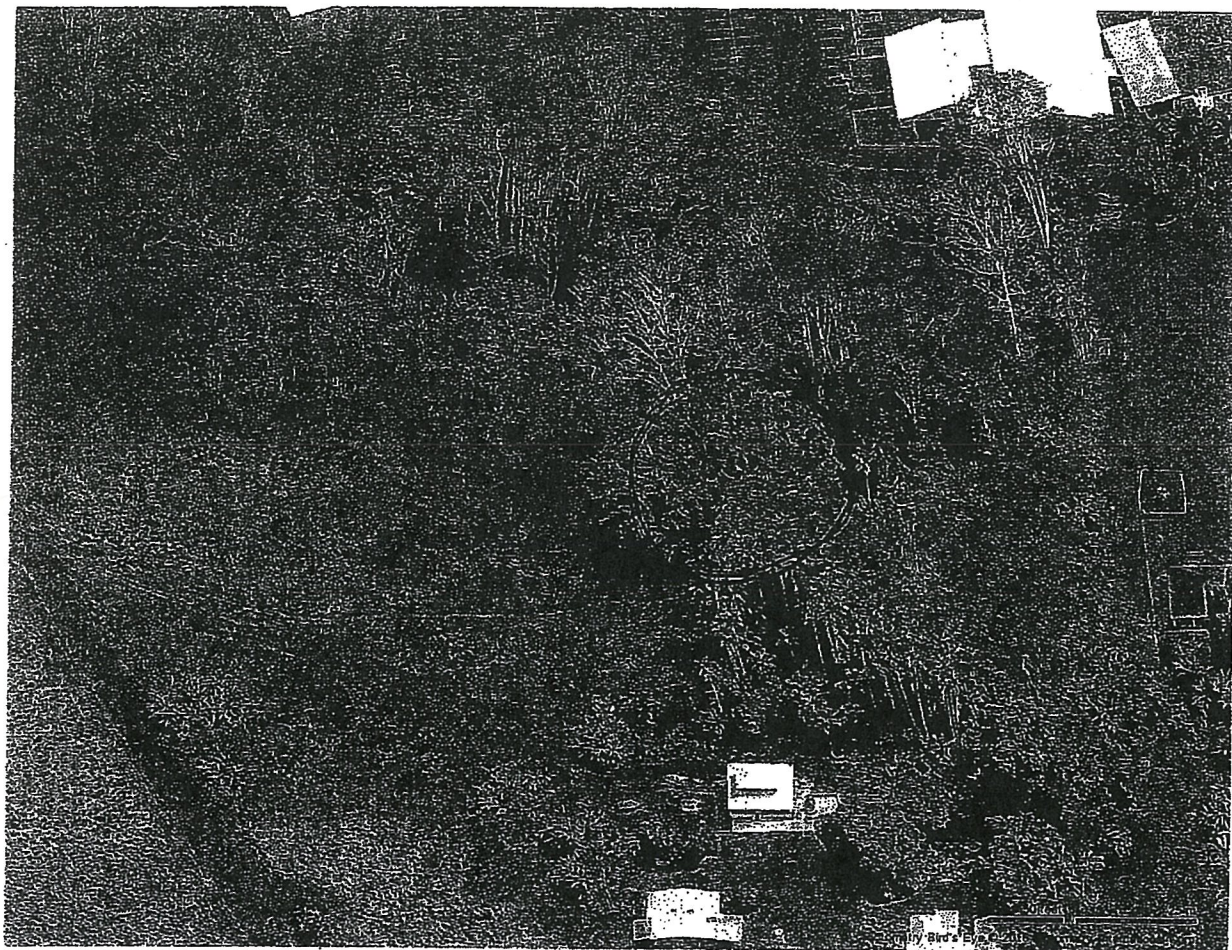
photo taken google earth early 2016



Anaolu Rd

bing

© 2016 Microsoft Corporation © 2016 HERE



HA 16-870
HP: Possible GE Violations

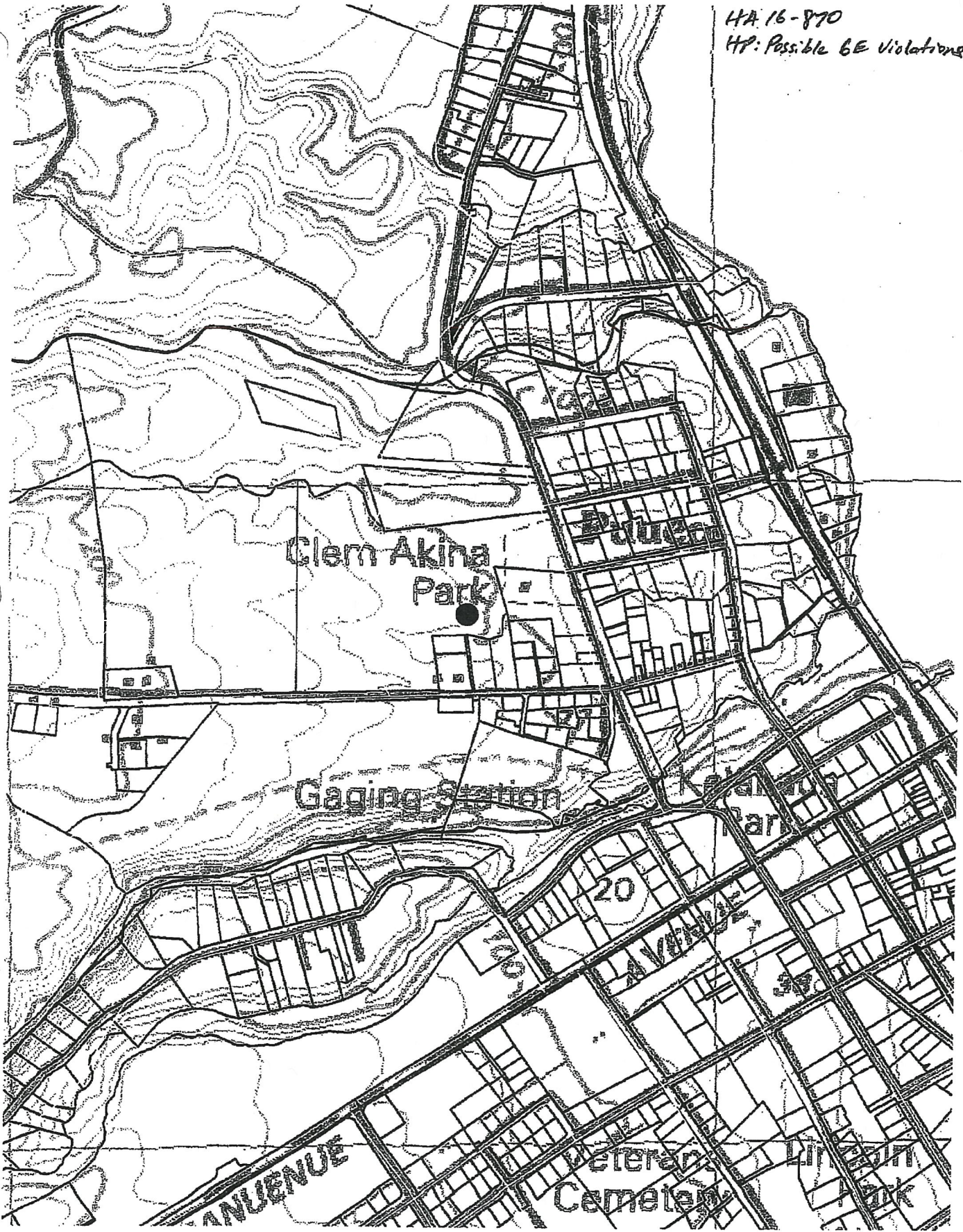


EXHIBIT D

State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION # 16-870 HA	District East Hawaii	Lead Investigator Shishido, Edwin	Report Status In Progress	Key Report <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Date/Time Reported 05/03/2016 12:30PM	Location South Hilo	Classification HP : Possible 6E Violations	Connecting Reports	

Investigation Report

BASIC	1. CLASSIFICATION HP : Possible 6E Violations						2. SOURCE Phone		
	3. COMPLAINANT'S NAME Sean NALEIMAILE			4. SEX	5. RACE	6. AGE	7. BIRTH DATE	8. OCCUPATION	
	9. ADDRESS 50 Pookela St, Hilo, HI, 96720			10. PLACE EMPLOYED/SCHOOL ATTENDING DLNR/SHPD		11. HOME	12. WORK 808-933-7853	13. CELL	
	14. LOCATION OF INCIDENT/INTERSECTING STREET Amauulu Rd/Wainaku Dr, behind Clem Akina Park				15. DATE/TIME OCCURRED 01/01/2016 12:00AM		16. DATE/TIME REPORTED 05/03/2016 12:30PM		
VEHICLES	17. TYPE	18. YEAR	19. MAKE	20. MODEL	21. COLOR	22. LICENSE / HA No.	23. LENGTH	24. STOLEN	
	25. REGISTERED OWNER		26. ADDRESS			27. HOME	28. WORK	29. CELL	
	30. NOTES								
	31. TYPE	32. YEAR	33. MAKE	34. MODEL	35. COLOR	36. LICENSE / HA No.	37. LENGTH	38. STOLEN	
PEOPLE	39. REGISTERED OWNER		40. ADDRESS			41. HOME	42. WORK	43. CELL	
	44. NOTES								
	45. NAME		46. SEX	47. RACE	48. AGE	49. BIRTH DATE	50. OCCUPATION		
	51. CATEGORY		52. ADDRESS			53. HOME	54. WORK	55. CELL	
SYNOPSIS	56. NAME		57. SEX	58. RACE	59. AGE	60. BIRTH DATE	61. OCCUPATION		
	62. CATEGORY		63. ADDRESS			64. HOME	65. WORK	66. CELL	
	67. NAME		68. SEX	69. RACE	70. AGE	71. BIRTH DATE	72. OCCUPATION		
	73. CATEGORY		74. ADDRESS			75. HOME	76. WORK	77. CELL	
WRITER	78. SYNOPSIS On May 3, 2016/1230, Wednesday, Officer SHISHIDO received a call from Sean NALEI-MAILE of possible 6E violations in the South Hilo area. Located off of Amauulu Rd. TMK 3-2-6-008, area known as Puueo. Further located behind Clem Akina Park, land boundary next to Dodo Mortuary on Wainaku St. Site visit conducted. Land clearing noted. REFER TO REPORT CONTINUATION FOR MORE INFORMATION. DISPOSITION : INV CONTINUING.								
	<div style="text-align: center; font-size: 2em; opacity: 0.5;">COPY</div>								
	79. REPORT WRITTEN BY Shishido, Edwin		80. BADGE No. 188	81. DATE/TIME WRITTEN 05/14/2016 08:49AM	82. SUPERVISOR APPROVING Waller, James		83. DATE/TIME APPROVED 5/19/16	84. BADGE No. 19	
	85. DISPOSITION								

EXHIBIT D, PART 2**State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement**

INVESTIGATION # 16-870 HA	DISTRICT East Hawaii	LEAD INVESTIGATOR Edwin Shishido	KEY REPORT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
DATE / TIME REPORTED 5/3/2016 12:30:00 PM	LOCATION South Hilo	CLASSIFICATION HP : Possible 6E Violations	CONNECTING REPORT(S)

Report Type: ☒ Continuation of Report ☐ Supplemental ☐ Follow Up
Date/Time Written: 05-14-16/0900
Written By: Shishido, Edwin

Report**SYNOPSIS :**

On May 3, 2016/1230, Wednesday, Officer SHISHIDO received a call from Sean NALEI-MAILE of possible 6E violations in the South Hilo area. Located off of Amaulu Rd. TMK 3-2-6-008, area known as Puueo. Further located behind Clem Akina Park, land boundary next to Dodo Mortuary on Wainaku St.

SITE VISIT :

On May 3, 2016/1300, Wednesday, Officer SHISHIDO along with DLNR/SHPD NALEIMAILE conducted a site visit to the area. It was noted that the area has been cleared and Officer SHISHIDO did observe grave sites and head stones of the graves. REFER TO PHOTO LOG FOR MORE VISUAL DETAILS.

INVESTIGATION INITIATED :

Area in question was grubbed without a grubbing permit. Per Cy ALICUBEN, CoH Inspector, did conduct an inspection of the area sometime in early March. Per Kelly GOMES, CoH Public Works Engineer, a certified letter of grubbing violation was sent to Edmund C. OLSON Trust #2 dated 22MAR16. Per GOMES, a return receipt was received 24MAR16.

On 07APR16, CoH Public received a phone call from a John CROSS, Land Manager, Olson Trust, stated that they have a conservation plan for the area.

WITNESSES & NEIGHBORS CONTACTED :

- Mitchel DODO, Proprietor Dodo Mortuary
- Gavin KAISEN, Manager Dodo Mortuary
- Diane FORNIER, Amaulu resident neighboring TMK 3-2-6-008
- Cy ALICUBEN, CoH Planning, Inspector
- Kelly GOMES, CoH Public Works, Engineer
- Michael PHAN, Leasee of Ag land behind Dodo Mortuary
- Alvin MIHARA Sr, Mortuary Attendant, Dodo Mortuary
- Dustin LUCERO, Mortuary Maintenance, Dodo Mortuary
- Scott OUNE, Recreation Director, CoH Parks & Recreation
- John CROSS, Land Manager, Olson Trust
- Tommy MEDERIOS, Heavy Equipment Operator, Olson Trust
- Donald MEDERIOS, neighboring resident, Ohai Street

LAND CLEARING TIME FRAME ESTABLISHED :

Upon contact of witnesses and neighbors information received, on approximate when the land clearing occurred, it can be estimated to be about beginning of the year, 2016, more closely to late January to early March 2016.


Shishido, Edwin
Officer

188
Badge No.

05-14-16/0900
Date / Time

INVESTIGATION # 16-870 HA	DISTRICT East Hawaii	LEAD INVESTIGATOR Edwin Shishido	KEY REPORT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
DATE / TIME REPORTED 5/3/2016 12:30:00 PM	LOCATION South Hilo	CLASSIFICATION HP : Possible 6E Violations	CONNECTING REPORT(S)

Report (Continued)

OLSON TRUST LAND MANAGER INTERVIEW :

On 05-11-16/1300, Wednesday, Officer SHISHIDO met with the Land Manager of Olson Trust.

John CROSS (M) 59Y

Per CROSS interview

- Property bought February 2015
- Land cleared to be income generating and used for agriculture
- Land clearing began sometime in March
- Claims to have sprayed poison and hand cleared area prior to land clearing
- Claims that bottle hunters went through area after 09MAY16
- Claims that a staked down bull got loose and drug a vehicle axle through cemetery and broke headstones in the area
- After discovery of gravesites on hillside, AIS was conducted
- Hired Scientific Consultant Services, Glen Escott Archaeologist, hired 03-16-16
- Admitted having knowledge of graves in the area around December 2015 – January 2016

After Officer SHISHIDO reconfirmed with CROSS on his knowledge of known graves in the area to be before any land clearing began, Officer SHISHIDO did not ask any more questions. CROSS' spontaneously uttered his admittance of his knowledge of gravesites in the area.

DOZER OPERATOR INTERVIEW :

On 05-11-16/1445, Officer SHISHIDO spoke with a Tommy MEDERIOS, Olson Trust Heavy Equipment Operator, via phone. Per MEDERIOS conversation :

- Mederios was aware of cemetery
- Used a D3 bulldozer
- Said area was marked off with surveyors tape to identify areas not to go near with his tractor
- Has witnessed other workers around clearing brush by hand and with weed whacker
- Did notice area was spray poisoned
- Did see grave sites and headstones

OTHER WITNESS INTERVIEW :

On 05-11-16/0800, Officer SHISHIDO contacted two individuals from the neighboring Dodo Mortuary working outside of the establishment. Contacted a Dustin LUCERO & Alvin MIHARA Sr. Both workers were asked if they could remember seeing any cattle in the neighboring property, specifically the area of the bamboo stand, whether free range or staked down. MIHARA Sr stated he worked at Dodo Mortuary for 8 years and never saw any cattle in the area.

On 05-11-16/1215, Officer SHISHIDO contacted a Scott OUNE, CoH Parks & Recreation, Recreation Director at Clem Akina Park, who also stated that there were never any cattle, whether staked down or free ranged behind his park. OUNE stated that he has worked at the park since 1997.

Edwin Shishido

Shishido, Edwin
Officer

188
Badge No.

05-14-16/0900
Date / Time

State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION # 16-870 HA	DISTRICT East Hawaii	LEAD INVESTIGATOR Edwin Shishido	KEY REPORT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
DATE / TIME REPORTED 5/3/2016 12:30:00 PM	LOCATION South Hilo	CLASSIFICATION HP : Possible 6E Violations	CONNECTING REPORT(S)

Report (Continued)

BULL OWNER WITNESS INTERVIEWED :

On 05-12-16/1300, Officer SHISHIDO contacted a Donald MEDERIOS, via phone, in regards to his bull that ran through the cemetery. MEDERIOS (M) 76Y, dob [REDACTED] who lives at [REDACTED], stated that, 65 years ago he remembers his family having animals in the area. A bull that was staked down with a vehicle axle came loose and ran through the cemetery and "busted up the place." "Never found the bull after that."

SCIENTIFIC CONSULTANT REPORT :

On 05-11-16/1415, met with Glen Escott, Archaeologist, Scientific Consultant Service who was hired by CROSS to do an AIS for the area in question. REFER TO EMAIL ATTACHMENT FOR MORE DETAILED INFORMATION.

CONCLUSION :

Officer SHISHIDO concludes that Olson Trust, John CROSS, knew of the grave sites/cemetery on the eastern edge of the property, near Clem Akina Park and that despite the knowledge, land clearing activity still took place and that DLNR/SHPD was not notified till after violations occurred.

OFFICER RECOMMENDATION :

Officer SHISHIDO recommends that this case be referred to DLNR/SHPD for their review and final disposition.

ATTACHMENTS :

- CoH Real Property Tax, TMK
- Google map photo of area
- GPS coordinate map location
- Email statement from Glen ESCOTT, Archaeologist, Scientific Consultant Services

PHOTOGRAPHS :

REFER TO PHOTO LOG FOR MORE INFORMATION.

DISPOSITION :

CASE REFERRED TO DLNR/SHPD FOR THEIR REVIEW AND DISPOSITION.

PLEASE SEND A COPY OF THIS REPORT TO SEAN NALEIMAILE DLNR/SHPD FOR HIS REVIEW.

Edwin A. Shishido #188
Shishido, Edwin
Officer

188
Badge No.

05-14-16/0900
Date / Time

COUNTY OF HAWAII

Real Property Tax Office


[Recent Sales In Area](#)
[Previous Parcel](#)
[Next Parcel](#)
[Return to Main Search Page](#)
[Hawaii Home](#)
[Real Property Home](#)

Owner and Parcel Information

Owner Name	OLSON, EDMUND C TRST NO 2 Fee Owner	Today's Date	May 4, 2016
Mailing Address	26-238 HAWAII BELT RD HILO, HI 96720-2119	Parcel Number	260080260000
Location Address		Project Name	
Property Class	AGRICULTURAL	Parcel Map	Show Parcel Map Plat (TMK) Maps
Neighborhood Code	2669D-5	Land Area (acres)	18.57
Legal Information	LOT 2 18.57 AC DES POR RPGR 185:2 & 23 PUUEO FARM LOTS	Land Area (approximate sq ft)	808,909

Assessment Information

Show Historical Assessments

Year	Property Class	Market Land Value	Dedicated Use Value	Land Exemption	Net Taxable Land Value	Market Building Value	Assessed Building Value	Building Exemption	Net Taxable Building Value	Total Taxable Value
2016	AGRICULTURAL	\$ 292,000	\$ 5,900	\$ 0	\$ 5,900	\$ 0	\$ 0	\$ 0	\$ 0	\$ 5,900

Appeal Information

No appeal information on parcel.

Land Information

Property Class	Square Footage	Acreage	Agricultural Usage
AGRICULTURAL	209,524	4.81	
AGRICULTURAL	599,386	13.76	Yes

Agricultural Assessment Information

Acres in Production

13.76
4.81

Agricultural Type

Soil: 8 Use: A
Soil: Use:

Agricultural Value

\$5,779
\$100

This parcel has land in agricultural usage and therefore agricultural usage assessments have been made.

Improvement Information

No improvement information available for this parcel.

Other Building and Yard Improvements

Description	Quantity	Year Built	Area	Gross Building Value
No information associated with this parcel.				

Permit Information

Date	Permit Number	Reason	Permit Amount
No permit information associated with this parcel.			

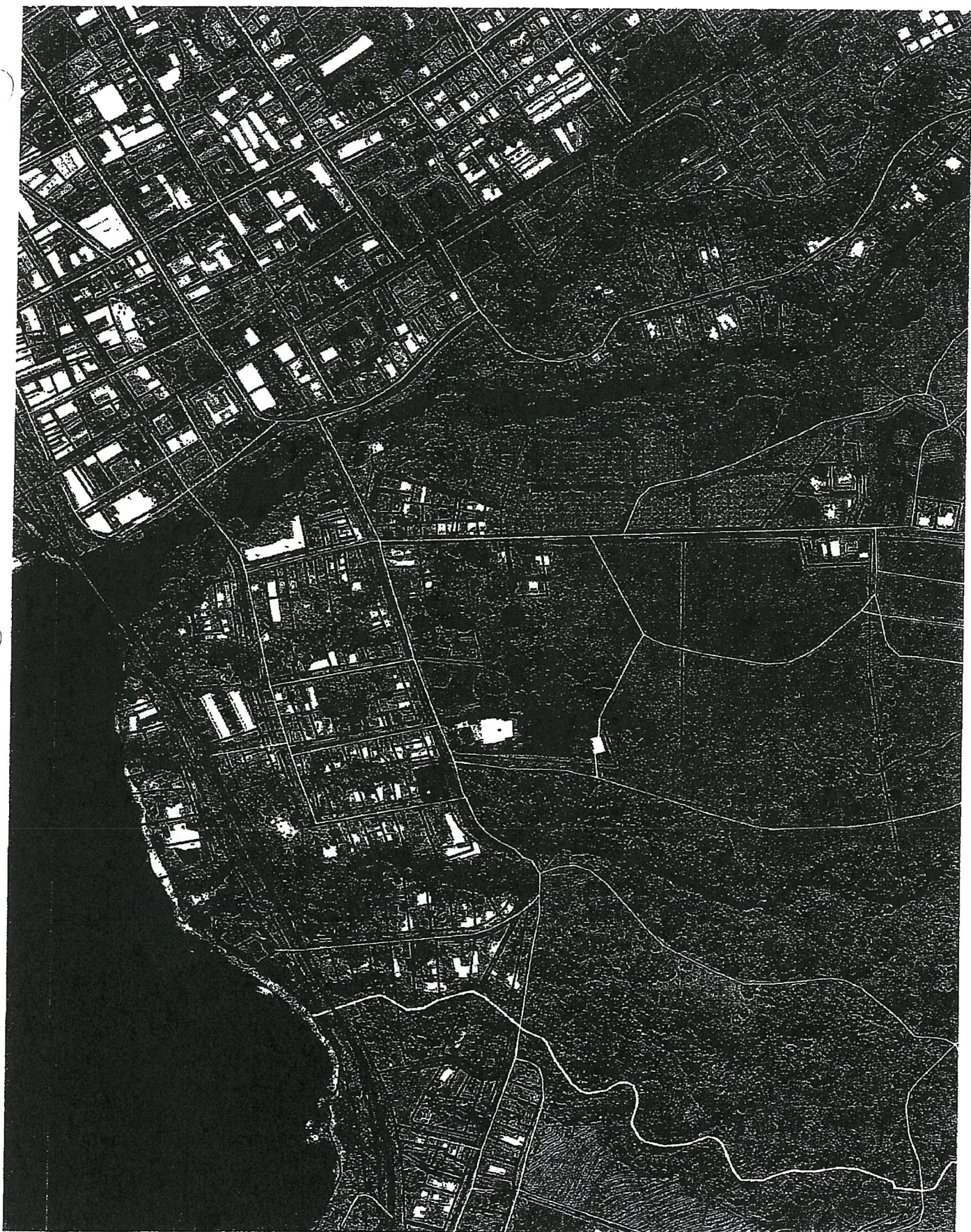
Dept of Public Works Bldg Division Permit and Inspections Information

Permit Date	Permit Type	Permit Number	Permit Reason	Permit Description	Estimated Cost	Inspection Date	Inspection Status
No permit and inspections information associated with this parcel.							

As a courtesy to the public, we provide building permit data as supplied by the Department of Public Works. As such, no warranties, expressed or implied, are provided for the data herein, its use or its interpretation, and accuracy.

Sales Information

Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Date of Recording	Land Court Document Number	Cert #	Book/Page	Conveyance Tax	Document Type
02/02/2015	\$ 6,250,000	55150483	FEE CONVEYANCE	Warranty Deed	02/06/2015				68750	Warranty Deed
06/15/2009	\$ 8,448,961	09-097032	FEE CONVEYANCE	Warranty Deed	06/24/2009				29571.4	Warranty Deed
06/15/2009	\$ 84,489	09-097031	FEE CONVEYANCE	Warranty Deed	06/24/2009				126.7	Warranty Deed
09/16/1999	\$ 0	9900157447	FEE CONVEYANCE		09/30/1999				2200.00	
06/16/1994	\$ 0	0000000000								
12/15/1993	\$ 0	9300208056	FEE	Warranty Deed	12/15/1993				16710.00	Warranty



NY 16-87D HP. POSSIBLE DE VIOLATIONS

HA 16-870
HP: Possible 6E Violations

Shishido, Edwin A

From: Glenn Escott <ggescott@yahoo.com>
Sent: Monday, May 16, 2016 10:33 AM
To: Naleimaile, Sean P; Shishido, Edwin A
Cc: Bob Spear
Subject: Olson Trust Amau'ulu St. Pu'u'eo Ahupua'a South Hilo

Aloha e Edwin and Sean,

Please see below for the summary you requested concerning the Olson Trust Amau'ulu St. cemetery.

John Cross of Olson Trust contacted me by phone on or around October 20, 2015 concerning his need for an archaeological inventory survey (AIS) study on 39.68-acres [TMK: (3) 2-6-008:026 & 027] along Amau'ulu Road in Pu'u'eo Ahupua'a, South Hilo District. John mentioned there were graves in an overgrown area along the eastern edge of the property, near Clem Akina Park. I emailed John the AIS cost proposal on 10/22/2015. John replied on 10/23/2015 with an offer to assist SCS in clearing the vegetation from the graves. I revised the proposal to show that Olson Trust would "provide personnel to help clear vegetation at the old cemetery." SCS archaeologists would hand-clear the vegetation with the help of Olson Trust personnel. The revised AIS cost proposal was emailed to John on 10/27/2015.

John Olson next contacted me 3/16/2016 to confirm that the revised AIS proposal was still valid. I responded that it was. John signed the proposal and gave us notice to proceed. He mentioned that they had sprayed herbicide in the cemetery area and it was much easier to see the ground surface.

I met with John at the property on or around 3/18/2016 to get the gate key and to look over the property. At that time, the area to the east of cemetery, the slope between the cemetery and Clem Akina Park, had been recently grubbed. Vegetation at the cemetery was primarily dead grass and bamboo.

SCS archaeologists began work at the cemetery on 3/24/2016. I walked the grubbed area to see if any archaeological sites or features had been disturbed by the grubbing. There were no remains of sites, features, or graves within the recently grubbed area.

The cemetery area consisted primarily of dead grass that had been sprayed with herbicide. There was an area of disturbance along the south edge of the cemetery. The disturbance did not look as recent as the grubbed area east of the cemetery. The disturbance did not look like bulldozing, but looked like depressions created by the tracks or tires of a large vehicle, or might have been made by dragging felled trees. It was hard to tell what caused the disturbance and how long ago the disturbance occurred. It looked older than the recently grubbed area to the east.

Many of the grave markers were knocked over and broken. It looked like the damage might have been the result of more than one event that took place over some time.

SCS archaeologists hand-cleared the grass at the cemetery and mapped, photographed, and recorded the graves at the cemetery. Olson Trust provided three individuals to help hand-clear vegetation from the remainder of the cemetery. I supervised the hand-clearing.

HA 16-870

HP: Possible 6E Violations

Please feel free to contact me if you have additional questions.

Mahalo,
Glenn G. Escott, MA
Senior Archaeologist
Scientific Consultant Services, Inc.
Office: 808/959-5956
Cell: 808/938-0968

State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION #
16-370 HA

DISTRICT
East Hawaii

LEAD INVESTIGATOR
Edwin Shishido

KEY REPORT
☒ Yes ☐ No

DATE / TIME REPORTED
5/3/2016 12:30:00 PM

LOCATION
South Hilo

CLASSIFICATION
HP : Possible 6E Violations

CONNECTING REPORT(S)

Report Description: Old cemetery run over by bulldozer/excavator

Date/Time Taken: 05-03-16/1330

Taken By: Shishido, Edwin

Scene: Area behind Clem Akina Park

Equipment: Olympus Stylus 1030 SW digital

Weather Conditions: Clear/sunny

Lighting:

Focus: auto

1 Depicts grubbed land, hill where graves located.



Note : Photo taken facing NW direction. Location of cemetery is in and around the bamboo stand.

2 Depicts grubbed area facing NE.



Note : Bulldozed trees and top soil pushed towards Dodo Mortuary Building.

3 Depicts pushed trees and soil away from bamboo,



Note : Grubbed trees and topsoil pushed away from bamboo stand.
Note that exposed soil recently bulldozed.

4 Depicts recently grubbed land facing NE.



Note : Signs of topsoil recently grubbed. Newly sprouting greenery.

INVESTIGATION #
16-870 HA

DISTRICT
East Hawaii

LEAD INVESTIGATOR
Edwin Shishido

KEY REPORT
☒ Yes ☐

DATE / TIME REPORTED
5/3/2016 12:30:00 PM

LOCATION
South Hilo

CLASSIFICATION
HP : Possible 6E Violations

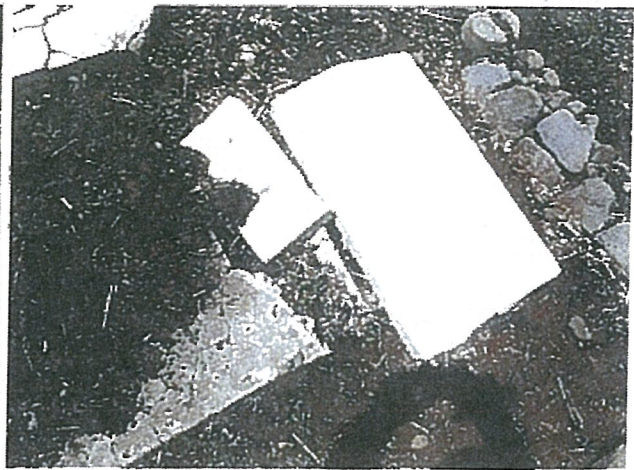
CONNECTING REPORT(S)

5 Depicts photo of an area with damaged gravesite.



Note : Recently damaged cement stone and grubbed soil. Note newly sprouting weeds in close proximity to grave.

6 Depicts damaged gravesite headstone.



Note : Down headstone. Name on stone HAKAU AKAI 1849-1891.

7 Depicts photo of possible fencing around gravesite.



8 Depicts photo of recently damaged gravesite.



State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION #
16-870 HA

DISTRICT
East Hawaii

LEAD INVESTIGATOR
Edwin Shishido

KEY REPORT
☒ Yes ☐ No

DATE / TIME REPORTED
5/3/2016 12:30:00 PM

LOCATION
South Hilo

CLASSIFICATION
HP : Possible 6E Violations

CONNECTING REPORT(S)

9 Depicts recently disturbed cement gravesite.



10 Depicts numerous unearthed cement gravesite.



11 Depicts closer view of photo 9 & 10.



12 Depicts closer view of cement headstones in area.



State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION #
16-870 HA

DISTRICT
East Hawaii

LEAD INVESTIGATOR
Edwin Shishido

KEY REPORT
☒ Yes ☐ No

DATE / TIME REPORTED
5/3/2016 12:30:00 PM

LOCATION
South Hilo

CLASSIFICATION
HP : Possible 6E Violations

CONNECTING REPORT(S)

13 Depicts photo of large cement headstone.



14 Depicts headstone of grave in bamboo stand.



15 Depicts closer view of headstone in bamboo stand.



16 Depicts decorative cement ornament in cemetery.



Note : Name on gravestone Mary Waahia KEPOO 1870-1920.

EXHIBIT E

State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION # 17-175 HA	District East Hawaii	Lead Investigator Shishido, Edwin	Report Status In Progress	Key Report <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Date/Time Reported 09/12/2016 12:00AM	Location South Hilo	Classification HP: Site Visit; Possible 6E Violations		Connecting Reports 16-870 HA

Investigation Report

BASIC	1. CLASSIFICATION HP: Site Visit; Possible 6E Violations						2. SOURCE Phone		
	3. COMPLAINANT'S NAME Sean NALEI MAILE			4. SEX	5. RACE	6. AGE	7. BIRTH DATE	8. OCCUPATION Archaeologist	
	9. ADDRESS HI			10. PLACE EMPLOYED/SCHOOL ATTENDING DLNR/SHPD		11. HOME	12. WORK 808-933-0482	13. CELL	
	14. LOCATION OF INCIDENT/INTERSECTING STREET Wainaku/Amauulu Rd, behind Clem Akina Park				15. DATE/TIME OCCURRED		16. DATE/TIME REPORTED 09/12/2016 12:00AM		
VEHICLES	17. TYPE	18. YEAR	19. MAKE	20. MODEL	21. COLOR	22. LICENSE / HA No.	23. LENGTH	24. STOLEN	
	25. REGISTERED OWNER		26. ADDRESS			27. HOME	28. WORK	29. CELL	
	30. NOTES								
	31. TYPE	32. YEAR	33. MAKE	34. MODEL	35. COLOR	36. LICENSE / HA No.	37. LENGTH	38. STOLEN	
PEOPLE	39. REGISTERED OWNER		40. ADDRESS			41. HOME	42. WORK	43. CELL	
	44. NOTES								
	45. NAME		46. SEX	47. RACE	48. AGE	49. BIRTH DATE	50. OCCUPATION		
	51. CATEGORY		52. ADDRESS			53. HOME	54. WORK	55. CELL	
SYNOPSIS	56. NAME		57. SEX	58. RACE	59. AGE	60. BIRTH DATE	61. OCCUPATION		
	62. CATEGORY		63. ADDRESS			64. HOME	65. WORK	66. CELL	
	67. NAME		68. SEX	69. RACE	70. AGE	71. BIRTH DATE	72. OCCUPATION		
	73. CATEGORY		74. ADDRESS			75. HOME	76. WORK	77. CELL	
<p>78. SYNOPSIS</p> <p>On 09-12-16/1300, Monday, Officer SHISHIDO and DLNR/SHPD Archaeologist revisited a previous area to reassess graves, over 50+ years old, known to have been recently damaged by land clearing activity. Located off of Wainaku/Amauulu Rd, above Clem Akina Park, TMK 3-2-6:008. On this day, site visit conducted with HP staff which included a Susan LEBO, DLNR/SHPD BC. This report is connected to 16-870 HA dated 05-03-16. This site visit shows recent land clearing activity and a newly discovered damaged gravesite. Case is being referred to HP for their review from original case report. LEBO is aware of original case. Officer SHISHIDO's recommendations is sent to HP via email which includes an Cease & Desist, AIS, Preservation Plan and a Preservation Boundary Line and some sort of mitigation plan. All should be required, reviewed and approved before permits issued and work continued.</p> <p>Also it should be noted that Olsen Trust plans to subdivide and sell acreage for profit. Note photos of real estate signage and application to subdivide sign with grubbed, bulldozed lands in the background.</p> <p>PHOTOGRAPHS: REFER TO PHOTO PAGE FOR VISUAL DETAILS.</p> <p>DISPOSITION: CASE REFERRED TO HP. SEND A COPY OF THIS REPORT TO HP FOR THEIR REVIEW.</p>									
WRITER	79. REPORT WRITTEN BY Shishido, Edwin		80. BADGE No. 188	81. DATE/TIME WRITTEN 09/18/2016 10:42 AM		82. SUPERVISOR APPROVING James J. Weller #10		83. DATE/TIME APPROVED 09/19/16	84. BADGE No. 19
	85. DISPOSITION								

State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION #
17-175 HA

DISTRICT
East Hawaii

LEAD INVESTIGATOR
Edwin Shishido

KEY REPORT
☒ Yes ☐ No

DATE / TIME REPORTED
9/12/2016 12:00:00 AM

LOCATION
South Hilo

CLASSIFICATION
HP: Site Visit; Possible 6E Violations

CONNECTING REPORT(S)
16-870 HA

Report Description: Recent grave damage

Date/Time Taken: 09-12/1320

Taken By: Shishido, Edwin

Scene: TMK 3-2-6-008

Equipment: Olympus Stylus 1030 SW digital

Weather Conditions: Clear/sunny

Lighting:

Focus: auto

1 Photo depicts land acreage for sale.



Note: cemetery is located in the distance in the bamboo stand on the hill in the distance of this photo.

2 Photo depicts rezoning application for said property.



3 Depicts view of recent damaged grave site.



4 Depicts close up view of recently damaged grave site.



State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION #
17-175 HA

DISTRICT
East Hawaii

LEAD INVESTIGATOR
Edwin Shishido

KEY REPORT
☒ Yes ☐ No

DATE / TIME REPORTED
9/12/2016 12:00:00 AM

LOCATION
South Hiko

CLASSIFICATION
HP: Site Visit; Possible 6E Violations

CONNECTING REPORT(S)
16-870 HA

5 Depicts view of recent grubbing activity.



Note: damaged grave site is in the weeds to the bushes on the left in the tall weeds in this photo.

6 Depicts view of recent grubbing activity facing NE.



7 Depicts view taken from the NE facing East.



8 Depicts view taken from the East facing NE.



State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION #
16-870 HA

DISTRICT
East Hawaii

LEAD INVESTIGATOR
Edwin Shishido

KEY REPORT
☒ Yes ☐ No

DATE / TIME REPORTED
5/3/2016 12:30:00 PM

LOCATION
South Hilo

CLASSIFICATION
HP : Possible 6E Violations

CONNECTING REPORT(S)

Report Description: Old cemetery run over by bulldozer/excavator

Date/Time Taken: 05-03-16/1330

Taken By: Shishido, Edwin

Scene: Area behind Clem Akina Park

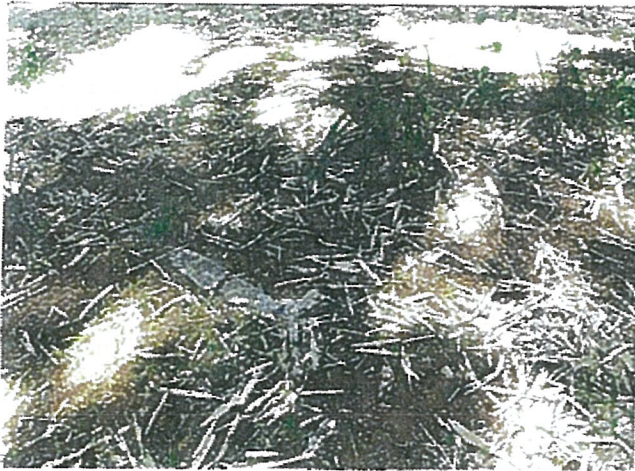
Equipment: Olympus Stylus 1030SW digital

Weather Conditions: Clear/sunny

Lighting:

Focus: auto

17 Depicts photo of remnant of grave.



18 Depicts photo of recently disturbed gravesite.



19 Depicts area where heavy machinery went through.

