

## IEM Committee

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**From:** Yukilei Sugimura  
**Sent:** Tuesday, October 03, 2017 11:54 AM  
**To:** IEM Committee  
**Subject:** FW: IEM Committee Meeting 10/2/2017

**From:** Corinne McKinnon [mailto:CMcKinnon@mills-group.com]  
**Sent:** Monday, October 2, 2017 1:44 PM  
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**Subject:** IEM Committee Meeting 10/2/2017

Dear Councilmembers,

In anticipation of testimony that may reference the Maui News Article, *"Judge halts Maui Lani earthmoving"*, the following clarification is provided.

1. The judge stated, "...there was testimony that the loader in question did while being used - not only did it scoop up previously graded soil but also cut into the bank of previously undisturbed soil and that there was no archaeological monitor present. I'm not suggesting that the loader operator was acting maliciously..."

The judge did not state that there was **"evidence"** as reported in the Maui News. The judge stated several times that there was **"testimony"** to the above. Maui Lani believes in the quality and skill of our Maui union equipment operators, and considers the plaintiff's testimony inaccurate and unqualified since none of the plaintiffs have experience in construction or civil engineering. In addition, the plaintiffs testified that they did not see a difference between undisturbed and unmonitored ground versus previously archaeologically-monitored stockpiled material left onsite for movement at a later date.

2. The judge stated, "... I am going to enjoin Maui Lani Partners, as it relates to the Phase 9 site, from engaging in activities that disturb previously undisturbed ground or the removal of soil from the site,... unless the following conditions are met: One, that there be full compliance with all terms and conditions of the archaeological monitoring plan... I will also require that Maui Lani Partners notify a representative designated by Plaintiffs, and that can be Plaintiffs' counsel, at least 48 hours between – before the disturbance of the ground or the removal of soil from the site... I am going to authorize the presence of a representative of Plaintiff on-site to observe the activities of – ground disturbing activities..."

The judge is allowing Maui Lani Phase 9 subdivision construction to continue as long as there is 1) full compliance with the archaeological monitoring plan, 2) Maui Lani provides 48 hours written notice via email to the Plaintiff that

construction activities will occur, and 3) one authorized representative of the plaintiff is allowed onsite to view construction from a safe distance.

Maui Lani does not believe that the lawsuit is relevant to the IEM Committee Agenda, but if the Chair continues to allow public testimony regarding Maui Lani, we feel strongly that the correct information should be available.

Sincerely,

**Leiane Paci**

Partner

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