

orig. ✓

MAUI COUNTY COUNCIL
MEETING OF
JUNE 22, 2017

Chair and Members of the Council

My name is Joyclynn Costa. I belong to the Aha Moku as Representative of Hamakualoa. I also belong to Hui Pono Ike Kanawai. We study Hawaiian Law and it's application. I identify these two affiliations in particular because it is the connection to the subject matter today natural resources and iwi kupuna.

Director Goode had mentioned they do not pull perimits they issue a stop work order. I did not hear him state he did or will issue such an order. I would like to ask, however, what if the case was gross non-compliance? What if this could be of a legal violation of which this council is a part of and may be viewed a conspiratorial. You may not view it as such, but if we now go down the road of ammended conditions, executive session, or any other conversation not viewed by the public to create compliance, it could be viewed as such. The question is then can a wrong be right? Councils in the past has made that happen time and time again with just the actions I have mentioned. Director Goode mentioned in his capacity the importance of the 6E's. Has anyone of you examined this law? Director mentioned it at least 4 times during his explanation of the process. Let us examine the 6E's 6E-43 (b) and 6E-43.6. provided in my written testimony. As written none of this has occured in the Maui Lani Project that I can find to date. This has to do with handing over of Jurisdiction. Maui Lani is in NONCOMPLINANT.

As for the resources, historically, we tend to ignore the complixety. In the Organic Act of 1900 they define Laws of Hawaii, and Hawaiian Law. It was adopted into the Statehood Act. I would employ the Council and thier

counsel to examine the limits and obligations as Officials of the State of Hawaii. There are Hawaiian Laws unlike your HRS derived from the "Laws of Hawaii", that are still in force. Without these laws your laws would not exist. HRS 1-1 Kingdom Laws 1892 Civil Code 1859 and Penal Code 1869. As law makers I would hope you would take the time to really understand this. Attachment provided.

My request is to stop all movent of sand and iwi until a full investigation can be done. Place the central plains under protective measure and put out a legal notice of all legal claimants to the kuleana and/or iwi kupuna.

Enough of making wrong right it is time to right a wrong. Do not be afraid the truth will set you free.

Joyclynn Costa

to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places.

(b) The department shall inform the public of any project proposals submitted to it under this section which are not otherwise subject to the requirement of a public hearing or other public notification. [L 1988, c 265, pt of §1; am L 1990, c 306, §12; am L 1995, c 187, §3; am L 1996, c 97, §10]

§6E-43 Prehistoric and historic burial sites. (a) At any site, other than a known, maintained, actively used cemetery where human skeletal remains are discovered or are known to be buried and appear to be over fifty years old, the remains and their associated burial goods shall not be moved without the department's approval.

(b) All burial sites are significant and shall be preserved in place until compliance with this section is met, except as provided in section 6E-43.6. The appropriate island burial council shall determine whether preservation in place or relocation of previously identified native Hawaiian burial sites is warranted, following criteria which shall include recognition that burial sites of high preservation value, such as areas with a concentration of skeletal remains, or prehistoric or historic burials associated with important individuals and events, or areas that are within a context of historic properties, or have known lineal descendants, shall receive greater consideration for preservation in place. The criteria shall be developed by the department in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, through rules adopted pursuant to chapter 91. A council's determination shall be rendered within forty-five days of referral by the department unless otherwise extended by agreement between the landowner and the department.

(c) Council determinations may be administratively appealed to a panel composed of three council chairpersons and three members from the board of land and natural resources as a contested case pursuant to chapter 91. In addition to the six members, the chairperson of the board of land and natural resources shall preside over the contested case and vote only in the event of a tie.

(d) Within ninety days following the final determination, a preservation or mitigation plan shall be approved by the department in consultation with any lineal descendants, the respective council, other appropriate Hawaiian organizations, and any affected property owner.

(e) Should the burial site prove to be other than Hawaiian, the department, within thirty days shall determine whether preservation in place or relocation is warranted, and within an additional ninety days a preservation or mitigation plan shall be approved by the department in consultation with any lineal descendants, appropriate ethnic organizations, and any affected property owner. [L 1988, c 265, pt of §1; am L 1990, c 306, §13; am L 1992, c 113, §4]

§6E-43.5 Island burial councils; creation; appointment; composition; duties. (a) The department shall establish island burial councils for Hawaii, Maui/Lanai, Molokai, Oahu, and Kauai/Niihau, to implement section 6E-43.

§6E-43.6 Inadvertent discovery of burial sites. (a) In the event human skeletal remains are inadvertently discovered, any activity in the immediate area that could damage the remains or the potential historic site shall cease until the requirements of subsections (b) to (d) have been met.

* (b) The discovery shall be reported as soon as possible to the department, the appropriate medical examiner or coroner, and the appropriate police department. As soon as practicable, the department shall notify the appropriate council and the office of Hawaiian affairs.

(c) After notification of the discovery of multiple skeletons, the following shall be done within two working days, if on Oahu, and three working days, if in other council jurisdictions:

(1) A representative of the medical examiner or coroner's office and a qualified archaeologist shall examine the remains to determine jurisdiction. If the remains are the responsibility of the medical examiner or coroner, the department's involvement shall end. If the remains are historic or prehistoric burials, then the remainder of this section shall apply;

(2) The department shall gather sufficient information, including oral tradition, to document the nature of the burial context and determine appropriate treatment of the remains. Members of the appropriate council shall be allowed to oversee the on-site examination and, if warranted, removal; and

(3) If removal of the remains is warranted, based on criteria developed by the department, in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, through rules adopted pursuant to chapter 91, the removal of the remains shall be overseen by a qualified archaeologist and a mitigation plan shall be prepared by the department or with the concurrence of the department.

(d) In cases involving the discovery of a single skeleton, the requirements of subsection (c) shall be fulfilled in one working day if on Oahu, and two working days if in other council jurisdictions.

(e) The mitigation plan developed by or with the concurrence of the department pursuant to subsection (c)(3) shall be carried out in accordance with the following:

(1) In discoveries related to development where land alteration project activities exist, the landowner, permittee, or developer shall be responsible for the execution of the mitigation plan including relocation of remains. Justifiable delays resulting from the discovery of burials shall not count against any contractor's completion date agreement;

✓ (2) Project activities shall resume once necessary archaeological excavations provided in the mitigation plan have been completed;

(3) In nonproject contexts, the department shall be responsible for the execution of the mitigation plan and the relocation of remains; and