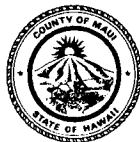


Council Chair  
Mike White



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Maria E. Zielinski

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COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

August 31, 2018

Mr. David Goode, Director  
Department of Public Works  
County of Maui  
Wailuku, Hawaii 96793

Dear Mr. Goode:

**SUBJECT: TRAFFIC SAFETY AND ENVIRONMENTAL CONCERNS (IEM-80)**

At its meeting of August 20, 2018, the Infrastructure and Environmental Management Committee discussed traffic safety and environmental concerns from development in the Mo`omuku ahupua`a of Makena, including lands identified for real property tax purposes as tax map keys (2) 2-1-005:026, and (2) 2-1-005:129 through (2) 2-1-005:139.

Attached is correspondence dated May 4, 2018 from the State of Hawaii Department of Land and Natural Resources, State Historic Preservation Division ("SHPD") to the Office of Hawaiian Affairs ("OHA"); and, correspondence dated May 7, 2018 from SHPD to the Department of Planning.

In the correspondence dated May 7, 2018, on which you were copied, Dr. Alan S. Downer states "**The SHPD requests Maui** County not issue any permits, including the three identified above (G2015/0117, G2016/0205, and G2017/0149), and that the County **place stop-work orders on all existing permits**, for the parcels indicated above (tax map keys (2) 2-1-005:134, 135, 136) until the historic preservation review process required prior to permit issuance are property conducted."

In the May 4, 2018 correspondence, SHPD specifies that the stop-work orders should be in place "until the required consultation with OHA is conducted and the agreed-upon mitigation requirements are met:

Mr. David Goode  
August 31, 2018  
Page 2

- a) The project proponent, and the contracted archaeology firm, engage OHA in consultation regarding the two sites slated for preservation (Site 50-50-14-7892 and Site 50-50-14-7917), and
- b) SHPD receives an addendum to the AIS that details the consultation effort and outcome.
- c) Data recovery of Sites 7891, 7908, 7911, and 7914, is completed, including SHPD's acceptance of a data recovery report meeting the requirements of HAR §13-278-4
- d) Data recovery of Site 7923 is completed, including SHPD's acceptance of a data recovery report meeting the requirements of HAR §13-278-4."

Given this information, may I please request you provide an update on the status of all permits for the parcels identified for real property tax purposes as tax map keys (2) 2-1-005:134, 135 and 136. If permits are not under a current stop-work order, please provide documentation that all the relevant requirements have been met as identified by SHPD.

May I please request your response no later than **September 13, 2018**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Maggie Clark at ext. 7661, or Stacey Vinoray at ext. 8006).

Sincerely,

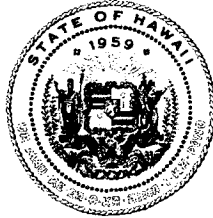


ELLE COCHRAN, Chair  
Infrastructure and Environmental  
Management Committee

iem:ltr:080apw03

cc: Mayor Alan M. Arakawa  
Michele McLean, Director, Department of Planning

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
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DEPUTY DIRECTOR - WATER

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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS


STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING  
601 KAMOKILA BLVD, STE 555  
KAPOLEI, HAWAII 96707

May 4, 2018

Kamana'opono M. Crabbe, Ph.D.  
Ka Pouhana, Chief Executive Officer  
Office of Hawaiian Affairs  
560 N. Nimitz Hwy., Suite 200  
Honolulu, Hawai'i 96817

Attachments to

  
Item: ltr: 080apw03

IN REPLY REFER TO:  
Log No. 2018.00964  
Doc. No. 1804MBF08  
Archaeology

Dear Dr. Crabbe,

SUBJECT: **Chapter 6E-42 Historic Preservation Review –  
Request to Re-open the Historic Preservation Review Process for an Archaeological  
Inventory Survey Report for Approximately 27 acres in Mākena, and a Data Recovery  
Plan for Sites 50-50-14-7891, -7908, -7911, -7914 and Preservation Plan for Sites 50-50-14-  
7892, -7917 on Approximately 27-Acres in Mākena  
Mo'omoku Ahupua'a, Makawao District, Maui  
TMK: (2) 2-1-005:134, 135, 136 (formerly part of TMK: (2) 2-1-005:026)**

Thank you for contacting the State Historic Preservation Division (SHPD) regarding the subject Evans Holdings project and the required Hawaii Revised Statutes (HRS) 6E historic preservation review process. The SHPD received this request on April 2, 2018. The Office of Hawaiian Affairs (OHA) recently contacted the SHPD regarding the subject construction project (Evans Holdings) in Makena and its potential to impact historic and cultural properties of significance to Native Hawaiians.

OHA Requests:

- (1) **Request 1.** The OHA requests that the SHPD re-open the historic preservation review process for the subject archaeological inventory surveys (AIS) and the two agreed-upon project mitigation commitments, archaeological data recovery and archaeological preservation, due to non-compliance with HRS 6E-42 and with Hawai'i Administrative Rules (HAR) §13-284 and HAR §13-276.

OHA's letter indicates that on March 6, 2016, OHA staff participated in a phone meeting with Dr. Fariss. This must be a typographical error, as Dr. Fariss was not employed by the SHPD at that time. Regardless, your letter clarifies issues discussed during a meeting with SHPD and formalizes your request to re-open the historic preservation review process and to facilitate additional consultation with OHA-identified stakeholders.

Additionally, OHA's letter correctly identifies that pursuant to HAR §13-276-5(g), the "[AIS] report shall contain information on the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals." In two SHPD reviews of early draft reports of the AIS conducted for the 27 acres of concern in Makena, SHPD requested revisions including discussion of consultation with OHA (August 4, 2014, Log No. 2014. 01667, Doc No. 1408MD05; and December 8, 2014, Log No. 2014.05598, Doc No. 1502MD42).

OHA's letter indicates that although SHPD's third review letter (February 26, 2015; Log No. 2014.05598, Doc No. 1502MD42), which is the basis for the current request, does not explicitly include a request for revision to address consultation with OHA. As Site 50-50-14-7892 and Site 50-50-14-7917 are identified as significant under "e;" **consultation with OHA is obligatory**, as stated in the other two SHPD letters. This is true even though they are slated for preservation. In the subject report, the archaeological contractor indicates (see, Significance and Recommendations, p. 113) that a copy of the report was submitted to the OHA in September, 2014, and no response was received. However, no date for submittal to the OHA is provided, and the OHA contends consultation never took place.

A review of SHPD records indicates:

- (1) Two archaeological inventory surveys were conducted within the current subject properties: a 27-acre survey (Perzinski and Dega 2015) within TMK: (2) 2-1-005:134, 135, and 136, and a 7.2-acre survey (Perzinski and Dega, 2014) within TMK: (2) 2-1-005:135.
- (2) **Survey 1.** The Perzinski and Dega (2015) 27-acre AIS documented 36 archaeological historic properties (Sites 50-50-14-7885 through 50-50-14-7920). Four sites (Sites 7891, 7908, 7911 and 7914) were recommended for data recovery, two (Sites 7892 and 7917) were recommended for preservation, and the remaining 30 for no further work. All sites were assessed as significant under criterion "d" for their information content, with two sites (Sites 7892 and 7917) were also considered significant under criterion "e" for their possible ceremonial function. SHPD concurred with these recommendations and that data recovery and preservation plans would be submitted to the SHPD for review and approval pursuant to HAR §13-278 and HAR §13-277, respectively.

The SHPD accepted these recommendations and the final AIS on March 2, 2015 (Log No. 2015.00802, Doc. No. 1503MD02). The SHPD reviewed a combined plan titled *Data Recovery Plan for Sites 50-50-14-7891, -7908, -7911, -7914 and Preservation Plan for Sites 50-50-14-7892, -7917 on Approximately 27-acres in Mākena, Mo'omuku Ahupua'a, Makawao District, Island of Maui, Hawai'i [TMK: (2) 2-1-005:134, 135 por., and 136] (Perzinski and Dega, May 2015)* which was accepted on June 16, 2015 (Log No. 2015.02343, Doc. No. 1506MD19).

**Outstanding mitigation required to be completed prior to construction consists of:**

- (a) Data recovery of Sites 7891, 7908, 7911, and 7914, and
  - (b) SHPD's acceptance of a data recovery report meeting the requirements of HAR §13-278-4
- (3) **Survey 2.** The Perzinski and Dega (2014) 7.2-acre archaeological inventory survey identified 14 archaeological historic properties. The AIS pertained to permits B T2014/1691, SMX 2015/0030, and/or G 2014/0187. The AIS was accepted by the SHPD in a letter dated February 23, 2015 (Log No. 2014.05637, Doc No. 1502MD37). Of the 14 sites, 12 were recommended for no further work and mitigation commitments were agreed to for two sites, Site 50-50-14-7923 [artifact/midden scatter] would be subject to data recovery and Site 50-50-14-7932 [pre-contact habitation terrace] would be preserved in accordance with an existing approved preservation plan. The data recovery/preservation plan (Perzinski and Dega, May 2015) was accepted by the SHPD in a letter dated June 5, 2015 (Log No. 2015.02187, Doc. No. 1506MD06).

**Outstanding mitigation required to be completed prior to construction consists of:**

- (c) Data recovery of Site 7923, and
  - (d) SHPD's acceptance of a data recovery report meeting the requirements of HAR §13-278-4
- (2) **Request 2.** On March 27, 2018, the OHA sent a letter to the County of Maui Department of Planning requesting a stop-work order be placed on Building Permit B T2014/1691 and Grading Permit G T2015/0017 due to non-compliance with HRS §6E-42, HAR §13-284, and HAR §13-276 regarding consultation, as described above. The letter was copied to the SHPD.

A review of SHPD records indicates:

- (1) No permit application for D 2015/0072 was submitted by the County to the SHPD for review. Nonetheless, the County of Maui granted the permit prior to receiving a letter from the SHPD indicating that the agreed-upon mitigation had been completed, i.e. SHPD acceptance of a data recovery report for Site 50-50-14-7923. As stated in HAR §13-284-1, this chapter is to promote the use and conservation of historic properties...by articulating a historic preservation review process for projects requiring the approval of a state or county agency for a permit, license, certificate, land use change, subdivision, or other entitlement to use.

Section 6E-42(a), Hawaii Revised Statutes (HRS) states that:

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 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.

The D 2015/0072 permit for construction of a “driveway” was closed on April 11, 2018. It is no longer possible for the County to satisfy the statutory requirement that the activity subject to permit requirements be reviewed and commented upon by the SHPD prior to issuance of the permit by the County. Consequently, the applicant has foreclosed the State’s opportunity to comment on the permitted activity. It is impossible for the SHPD to provide meaningful comments regarding this permit under these circumstances.

- (2) A search of Maui County’s *KiviNet* system on April 12, 2018 indicated that several permits are open for the project located at TMK: (2) 2-1-005:135, including G 2015/0117, G 2016/0205, and G 2017/0149.

**SHPD will request the following of the County of Maui:**

- (1) The County issue stop-work order(s) for all project-related construction on the subject parcels until the required consultation with OHA is conducted and the agreed-upon mitigation requirements are met:
  - a) The project proponent, and the contracted archaeology firm, engage OHA in consultation regarding the two sites slated for preservation (Site 50-50-14-7892 and Site50-50-14-7917), and
  - b) SHPD receives an addendum to the AIS that details the consultation effort and outcome.
  - c) Data recovery of Sites 7891, 7908, 7911, and 7914, is completed, including SHPD’s acceptance of a data recovery report meeting the requirements of HAR §13-278-4
  - d) Data recovery of Site 7923 is completed, including SHPD’s acceptance of a data recovery report meeting the requirements of HAR §13-278-4
- (2) The County not issue permits or, if already issued, to issue stop-work orders on each of the open permits (including G 2015/0117, G 2016/0205, and G 2017/0149) until the historic preservation review process is properly concluded for the outstanding AIS requirement of consultation with OHA and until the outstanding mitigation data recovery requirements are met.

You may contact Dr. Matthew Barker Fariss at [matthew.b.fariss@hawaii.gov](mailto:matthew.b.fariss@hawaii.gov), or at (808) 243-4626, for any questions regarding this letter.

Aloha,  
*Alan Downer*

Alan S. Downer, PhD  
Administrator, State Historic Preservation Division  
Deputy State Historic Preservation Officer

Mr. Crabbe  
May 4, 2018  
Page 2

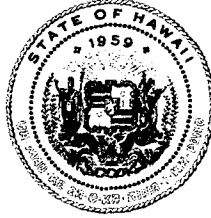
cc: William Spence, Director  
County of Maui  
Department of Planning  
[planning@mauicounty.gov](mailto:planning@mauicounty.gov)

Lauren Morawski, Compliance Archaeologist  
Office of Hawaiian Affairs  
[laurenm@oha.org](mailto:laurenm@oha.org)

Michael Dega, Senior Archaeologist  
Scientific Consultant Services, Inc. (SCS)  
[mike@scshawaii.com](mailto:mike@scshawaii.com)

Suzanne D. Case, Chair  
Department of Land and Natural Resources  
[Suzanne.case@hawaii.gov](mailto:Suzanne.case@hawaii.gov)

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

ROBERT K. MASUDA  
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AQUATIC RESOURCES  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING  
601 KAMOKILA BLVD, STE 555  
KAPOLEI, HAWAII 96707

May 7, 2018

Keith Scott, Staff Planner  
County of Maui, Department of Planning  
[Keith.scott@mauicounty.gov](mailto:Keith.scott@mauicounty.gov)

IN REPLY REFER TO:  
Log No. 2018.00964  
Doc. No. 1805MBF02  
Archaeology

Dear Mr. Scott,

SUBJECT: **Chapter 6E-42 Historic Preservation Review –  
Data Recovery Plan for Sites 50-50-14-7891, 50-50-14-7908, 50-50-14-7911, and  
50-50-14-7914 and Preservation Plan for Sites 50-50-14-7892 and 50-50-14-7917 on  
Approximately 27-Acres in Mākena  
Mo‘omoku Ahupua‘a, Makawao District, Maui  
TMK: (2) 2-1-005:134, 135, 136 (formerly part of TMK: (2) 2-1-005:026)**

On March 27, 2018, the Office of Hawaiian Affairs (OHA) sent a letter to the County of Maui Department of Planning to request a stop-work order be placed on County permits BT2014/1691 and GT2015/0017. The letter was copied to the State Historic Preservation Division (SHPD). In that letter, OHA also requested that SHPD re-review the subject AIS, based on lack of compliance with HRS §6E-42, regarding consultation. The SHPD's response to the OHA was provided in a letter dated May 4, 2018; it was cc'd to William Spence, Director, County of Maui, Department of Planning (Doc. No. 1804MBF08).

A search of Maui County's *KiviNet* system on April 12, 2018 indicated that several permits are open for TMK: (2) 2-1-005:135, including G2015/0117, G2016/0205, and G2017/0149. The SHPD has not received several requested documents, including the above-mentioned data recovery plans; nor has the SHPD reviewed and accepted any of the submitted documents for the project areas associated with this parcel. Accordingly, the Chapter 6E review process has not been completed as required by HAR §13-284 and HAR §13-276.

**The SHPD requests Maui County not issue any permits, including the three identified above, and that the County place stop-work orders on all existing permits, for the parcels indicated above until the historic preservation review process required prior to permit issuance are properly conducted.**

You may contact Dr. Matthew Barker Fariss at [matthew.b.fariss@hawaii.gov](mailto:matthew.b.fariss@hawaii.gov), or at (808) 243-4626, for any questions regarding this letter.

Aloha,

*Alan Downer*

Alan S. Downer, PhD  
Administrator, State Historic Preservation Division  
Deputy State Historic Preservation Officer

cc: David Goode, Director  
County of Maui, Department of Public Works  
[David.Goode@co.maui.hi.us](mailto:David.Goode@co.maui.hi.us)

Michael Dega, Senior Archaeologist  
Scientific Consultant Services, Inc. (SCS)  
[mike@scshawaii.com](mailto:mike@scshawaii.com)

Mr. Spence  
May 7, 2018  
Page 2

Lauren Morawski, Compliance Archaeologist  
Office of Hawaiian Affairs  
[laurenm@oha.org](mailto:laurenm@oha.org)

Suzanne D. Case, Chair  
Department of Land and Natural Resources  
[Suzanne.case@hawaii.gov](mailto:Suzanne.case@hawaii.gov)