

28

**Fact Sheet in Response to Questions from Various Council Meetings
Maui Lani Partners (MLP)* Permits and Archaeological Updates**

1. How does Maui Lani Partners (MLP) comply with State laws?

Maui Lani works closely with the Maui State Historic Preservation Division (SHPD) and Archaeological Services Hawaii to assure compliance with Chapter 6E, Hawaii Revised Statutes and Chapter 13-300, Hawaii Administrative Rules. Maui SHPD is staffed with archaeologists, cultural historians and a burials sites specialist. They are very thorough with reviewing applications, findings and reports related to Maui Lani projects, and their concurrence is required before Department of Public Works issues a permit to Maui Lani.

Although not required by law, Leslie Kuloloio has been the cultural advisor for Maui Lani since 1993. Under the guidance of Uncle Les, Maui Lani has taken a creative and proactive approach to preserving burials in place. The Maui Lani Community Association maintains and manages 7 preservation lots and easements. Maui Lani also created two preservation lots in the Island & Bluffs subdivision, which are maintained by the sub-association. In addition, burials have been preserved in the Sandhills subdivision, landscape areas of right-of-way's, the County-dedicated Maui Lani Regional Park, the golf course, and even in single family residential properties. With this proactive approach, Maui Lani has preserved-in-place **over 85%** of all burials discovered in the Project District.

Because the location of archaeological features cannot be predicted, preservation-in-place has often required re-designing roads, utilities and entire subdivisions. Maui Lani has re-routed utilities, raised the entire grade of a 200-lot subdivision, and created a new alignment for major roads like the Maui Lani Parkway after construction had commenced. It is not always an easy feat, but a dynamic team of engineers and contractors have been an integral part of these successes.

2. Does Maui Lani have archaeological monitors onsite during construction?

Maui Lani has always complied with the Archaeological Monitoring Plans as approved by the State Historic Preservation Division. We have documentation as well as the archaeological monitors and contractors that can confirm this statement. In general, the monitoring plans require one archaeological monitor per an earthmoving piece of equipment. In addition, our local labor force is very aware of the burial protection laws and Hawaiian culture, and they are key in helping to minimize and/or avoid disturbance to archaeological finds.

If an archaeological find is encountered, grading work is automatically stopped. The archaeologist immediately contacts SHPD, and interim protection measures are implemented under the guidance of SHPD and the project archaeologist.

3. Did the Battle of Kakanilua occur somewhere in the Maui Lani Project District?

No one can answer this question definitively. To date, there has been no archaeological evidence of a battle. No war implements have been found, and the burials

*MLP does not represent any other property owners within the project district, and are not authorized to speak on their behalf.

are not suggestive of a massive war. SHPD and Archaeological Services Hawaii have confirmed this statement at Burial Council meetings.

Several historical references even suggest that the battle occurred within two miles of the Haleki'i heiau and Waiehu Beach Park.

"In the Eastern dune series, on the site of the old battlefield of Kakanilua, **two miles from Halekii**, half a mandible and two leg bones of what may reasonably be referred to the native rat, were later picked from the surface of the sand." *Occasional Papers of Bishop Pauahi Museum, Notes on the Hawaiian Rat, John Stokes, 1917.*

"They slew the Alapa on the sandhills at the southeast of **Kalua**.* There the dead lay in heaps strewn like kukui branches; the corpses lay heaped in death; they were slain like fish enclosed in a net. This great slaughter was called Ahulau ka Pi'ipi'i i Kakanilua (Slaughter-of-the-Pi'ipi'i-at Kakanilua)." *Ruling chiefs of Hawaii, S. Kamakau, 1866.*

"***Kalua**. Beach, reef, Waiehu, Maui. Narrow calcareous sand beach and shallow reef fronting Waiehu Beach Park. Lit., the pit." *Hawai'i Place Names. John Clark.*

4. What communication does Maui Lani have with the Maui Lanai Burial Council and Office of Hawaiian Affairs (OHA)?

In the month of June, prior to the OHA meetings on Maui, OHA Compliance Officer Kai Markell was provided a site tour of Phase 9, which included the history of Maui Lani, an overview of the preservation areas in Maui Lani, and a description of the five burials found in the property. The locations of the two partial insitu burials protected by fencing within the Phase 9 parcel were pointed out to Mr. Markell. Similar site tours were provided to the Burial Council Chair Kapulani Antonio, Vice Chair Dane Maxwell, and Burial Council Member Johanna Kamaunu.

Maui Lani Representative Leiane Paci is also serving her second term as a Member of the Burial Council. Each council consists of nine members, except the Moloka'i council, which shall consists of five members. Membership consists of no more than three representatives of development and large land owner interests, except for the Moloka'i council which consists of no more than one representative of development and large land owner interests.

Maui Lani representatives and the project archaeologist Lisa Rotunno-Hazuka regularly attend and provide updates to the Burial Council. Updates and presentations at these meetings have been ongoing for close to twenty years. The following information is of record from the April 19, 2017 Burial Council Meeting.

[Council Member] Ms. [Kahele] Dukelow asked how many burials have been found in the areas that Ms. Hazuka [Lisa Rotunno-Hazuka of Archaeological Services Hawaii] worked in [Maui Lani]. Ms. Hazuka replied that is hard to give an exact number. Just by looking at the SIHP numbers,

it can be a bit misleading. The reason for that is that every time an iwi is found, a site number is given. Sometimes, multiple site numbers are given to iwi that are scattered, which the scatter may ultimately end up being MNI 1. At the Maui Lani development, 85% of the finds were preserved in place and the development plan was adjusted, readjusted. Ms. [Johanna] Kamaunu asked if the number of burials is closer to 1,000 or 500. Ms. Hazuka replied 500, but reiterated that she is not sure until she looks through her reports to verify.

It was clearly communicated to the Burial Council in April 2017 that 1,000 burials have NOT been found in Maui Lani. The Maui Lani Project District encompasses 1,069 acres, and therefore, 500 burials equate to 0.47 burials per an acre.

Most recently, discussion has revolved around the Maui Lani Phase 9 Residential Subdivision/Maui Lani Parkway Extension. In addition to approximately 200 homes, this Phase includes the final Maui Lani Parkway segment that will connect Kaahumanu Avenue, Onehee Avenue, and Kuihelani Highway. Five burials were found by the archaeological monitors during subdivision grading. Initial observations indicate that all five burials had been disturbed by previous land uses (ie. utilities, nature, dirt bikes, agriculture) prior to the commencement of construction.

	<u>Condition when Found</u>	<u>Current Status</u>
TS-1	Previously disturbed scatter	Curated offsite
TS-4	Previously disturbed scatter	Curated offsite.
TS-6	Previous/present day disturbance scatter	Curated offsite.
TS-2	Previous/present day disturbance partial insitu	Onsite w/ interim protection
TS-5	Previous/present day disturbance partial insitu	Onsite w/ interim protection

Two partially intact burials are now the center of this discussion.

5. What is the discussion about?

- a. **Maui's resources.** Keeping sand resources on Maui and available to Maui businesses and beach replenishment projects as a steady, long term resource is a community concern. Our understanding is that both Hawaiian Cement and HC&D have programs to provide sand at a reduced rate for these projects.
- b. **Preventing the potential desecration of burials.** County Council is now discussing drafting a burial protection law which is preempted by Chapter 6E, Hawaii Revised Statutes and Chapter 13-300, Hawaii Administrative Rules.
- c. **Stopping development.** Maui Lani is an infill development, and it fits the planning and community needs of Maui without effecting important agriculture lands or impacting areas with insufficient infrastructure capacity.

- d. **Resource extraction vs. grading.** Resource extraction is a land use defined as activities engaged in the **exploration, mining and processing** of natural deposits of rock, gravel, sand, and topsoil. (County Code Chapter 19.04)

[Maui Lani note: processing means to perform a series of mechanical or chemical operations on (something) in order to change or preserve it. *Source: Google*]

Grading is defined as the **temporary storage** of soil, sand, gravel, rock, or any similar material and **excavation** or **fill** or any combination thereof. (County Code Chapter 20.08)

6. What action triggered the interpretation of “resource extraction” at Maui Lani Phase 9 and a Notice of Warning from the Planning Director?

In mid-April of this year, an email was sent to the Mayor which was printed in the “Ask the Mayor” column of the Maui News. As a reactive measure, the Planning Director filed a Request for Services with his own Department and issued a Notice of Warning letter dated April 28, 2017. The letter identified Maui Lani’s residential subdivision grading activities as “resource extraction” and an unpermitted use within Maui Lani, and therefore stated Maui Lani must correct the violation by May 1, 2017.

Maui Lani sent an email to John Rapacz, ZAED Administrator requesting clarification on the County’s interpretation of “resource extraction”. No response has been received to date.

The same question was asked of Kai Wright, the Zoning Inspector, but he was unable to respond.

On May 18, 2017, a letter prepared on behalf of Maui Lani disputing the Notice of Warning was sent to the County – Planning Director, Public Works Director, Mayor and Corp Counsel. No response has been received to date.

Follow up communications with State Historic Preservation Division and Department of Public Works have provided confirmation that Maui Lani permits and archaeological monitoring is current and in compliance.

Maui Lani surmises that the Planning Director is identifying a land use violation because a Contractor is utilizing net export material generated by the subdivision grading other projects on various islands including Maui and Oahu. A land use is determined by *use of the property* and not the subsequent actions that occur off the property.

Unfortunately, since the County has not responded to our verbal and written inquiries, we do not have a definitive answer.

7. What was the basis for the 2006 Inland Sand Quantity Study?

The study quantified Hawaiian Cement’s and Ameron’s existing sand contracts in 2006, and was not a geological study of inland sand as the title may suggest. Business

contracts were quantified and not actual sand on Maui. Furthermore, it focused solely on "Grade A" quality sand; "Grade A" is a common term in the concrete industry.

8. The net export of sand generated by the urban development of Maui Lani is clearly referenced in the 2006 Inland Sand Quantity Study commissioned by the County of Maui. Why didn't the County review the validity of Maui Lani's permits when the study was prepared?

In fact, the permits that generated a net export in Maui Lani around 2006 and earlier were reviewed by the various County Departments, County Council and Corp Counsel and found to be in order and in compliance with County ordinances. Segments of these discussions can be reviewed in the County Council Parks and Economic Development Committee meeting minutes from 2006.

9. What steps were involved in the permit process?

- a. Warren S. Unemori Engineering prepared a conceptual plan of the residential subdivision layout and the Maui Lani Parkway and Onehee Avenue extension. Based on this layout a mass grading plan was prepared.
- b. An Archaeological Assessment of the Phase 9 subdivision area was originally conducted in 2007 as part of the construction of three potable wells that provide water to the County's central Maui water system. There were no archaeological finds during the original assessment and the well construction. Archaeological Services Hawaii (ASH) then performed a second assessment of the property in 2010. This assessment included twenty-two trenches to investigate for potential sub-surface features. There were no archaeological findings during this second assessment. A report was prepared in May 2010 based on the assessment and submitted to State Historic Preservation Division for review.
- c. ASH prepared an Archaeological Monitoring Plan in December 2013, which detailed how archaeological monitors would be present during construction work and interim protection measures that would be implemented should an archaeological find be encountered. The Monitoring Plan was approved by SHPD in November 2014.
- d. A grading permit application was submitted to the Department of Public Works in 2014.
- e. The Archaeological Assessment Report was approved by SHPD in November 2014 and the grading permit was subsequently issued by the County in December 2014.
- f. Archaeological monitoring was implemented in compliance with the plan and state law.

The appropriate due diligence and archaeological reviews were conducted in the area called Phase 9 between 2007 and 2014 prior to the current grading permit being issued. Furthermore, compliance with the Monitoring Plan is evidenced by the archaeological features that were identified during construction and the implementation of the interim protection measures described in the Monitoring Plan.