

Appendix A

Initiation of Section 106 Consultation

- Letter from John D. Nickelson, Federal Highway Administration to William J. Aila Jr., State Historic Preservation Officer, dated October 28, 2011
- Memorandum from Glenn M. Okimoto, Department of Transportation to Pua Alaokalani Aiu, State Historic Preservation Division, dated February 9, 2012



U.S. Department
of Transportation
**Federal Highway
Administration**

Hawaii Federal-Aid Division

October 28, 2011

300 Ala Moana Blvd, Rm 3-306
Box 50206
Honolulu, Hawaii 96850
Phone: (808) 541-2700
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In Reply Refer To:
HDA-HI

Mr. William J. Aila, Jr.
State Historic Preservation Officer
Department of Land and Natural Resources
State of Hawai'i
Kakuhihewa Building, Suite 555
601 Kamokila Boulevard
Kapolei, Hawai'i 96707

Subject: National Historic Preservation Act (NHPA) Section 106 Consultation
Lydgate Park to Kapa'a Bicycle and Pedestrian Path Project Phases C&D
County of Kaua'i, Department of Public Works
Lihu'e, Island of Kaua'i, State of Hawaii

Dear Mr. Aila:

The Federal Highway Administration (FHWA) intends to fund the Lydgate Park to Kapa'a Bicycle and Pedestrian Path Project Phases C&D (Project) for the County of Kaua'i Department of Public Works (County of Kaua'i). FHWA and the State of Hawai'i Department of Transportation (HDOT) would like to inform SHPD that they are working cooperatively with the County of Kaua'i to advance the Project.

Section 106 of 36 CFR 800.2(c)(4) allows federal agencies to authorize an applicant or group of applicants to initiate consultation with the SHPO and other consulting parties, including Native Hawaiian Organizations. In order to accomplish the Project, FHWA is delegating Section 106 Consultation (106) activities to the HDOT; HDOT is in turn allowing the coordination of 106 activities to be administered by the County of Kaua'i. This letter is to formally advise you that the County of Kaua'i is acting on our behalf regarding the Project. The FHWA remains responsible for all findings and determinations charged to the agency in the review process.

In accordance with our agreements with HDOT, all official letters to SHPD and stakeholders shall be transmitted under HDOT letterhead; and all determinations regarding historical impacts will be transmitted under FHWA letterhead.

Please contact me at (808)541-2304 if you have any questions.

Sincerely,

John D. Nickelson, P.E.
Civil Engineer

cc: Doug Haigh, County of Kaua'i ✓
Chris Yamasaki, HDOT
Ray McCormick, HDOT

NEIL ABERCROMBIE
GOVERNOR



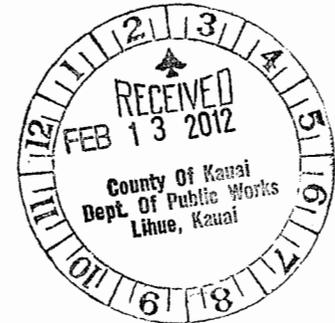
STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
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GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE T. BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:
HWY-DD 2.0804

FEB 14 2012



TO: THE HONORABLE WILLIAM J. AILA JR., CHAIRPERSON
DEPARTMENT OF LAND AND NATURAL RESOURCES

ATTN: PUA ALAOKALANI AIU, Ph.D.
ADMINISTRATOR
STATE HISTORIC PRESERVATION DIVISION

FROM: GLENN M. OKIMOTO, Ph.D.
DIRECTOR OF TRANSPORTATION

A handwritten signature in black ink, appearing to read "Glenn M. Okimoto".

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 CONSULTATION
LYDGATE PARK TO KAPAA BIKE/PEDESTRIAN PATH,
PHASES C & D
FEDERAL-AID PROJECT NO. CMAQ – 0700(49)

The County of Kauai, Department of Public Works is proceeding with environmental review for a bike and pedestrian path in Waipouli, Kauai, from Papaloa Road (north of Kauai Sands Hotel) to Waipouli Beach Resort on the north side of Uhelekawawa Canal, a distance of 6,100 to 6,500 feet, depending on the final alignment. The County will own and operate the bike/pedestrian path and will provide a portion of the project's funding. Because the U.S. Department of Transportation, Federal Highway Administration (FHWA) will also fund a portion of the path, the project is a federal undertaking requiring compliance with Section 106 of the National Historic Preservation Act, the National Environmental Policy Act, and the Department of Transportation Act.

This letter initiates the Section 106 consultation process. Detailed project information is provided in the enclosed supporting document. In addition to the path project itself, we are proposing a cultural resources (archaeological) inventory survey of the undertaking's area of potential effect (APE). This survey would assist in identifying historic properties and determining potentially adverse effects.

Your response to this letter- to acknowledge interest in participating in this undertaking as a consulting party, provide comments on the proposed project APE and any historic properties in the APE, and suggest additional key contacts - would be greatly appreciated. Please respond by March 30, 2012.

If you have any questions or require additional information, please contact Christine Yamasaki at 692-7572 or Holly Yamauchi at 692-7574, Design Section, Design Branch, Highways Division, and reference HWY-DD 2.0804 as noted above.

Enclosure

c: County of Kauai (Doug Haigh)
FHWA (John Nickelson)

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Supporting Documentation for Section 106 Consultation

Project Background and Purpose

In 2007, the Kaua'i Department of Public Works (DPW) completed an environmental assessment (EA) for a bike/pedestrian path from Lydgate Park to Kapa'a (Lihi Park) and made a finding of no significant impact. The preferred alignment identified in the original EA included a section located *mauka* of Kūhiō Highway and along the Waipouli drainage canal, shown as Phase E in Figure 1. The EA was followed by more detailed design studies which determined that crossing Kūhiō Highway and the temporary bypass road would not be optimal for path users. Because the bike/pedestrian path will extend as far north as Coconut Marketplace (via the Papaloa Road spur) and as far south as Uhelekawawa Canal, the County reexamined options to connect these two points. The most feasible option was a *makai* route that had been proposed and studied in the Draft Environmental Assessment for the original path project—to locate the path within portions of the County's existing beach reserve.

The purpose of this supplemental environmental assessment (SEA) is to reevaluate the "*makai* alternative." Referred to as Phases C and D or the "Waipouli connection," this section of the bike/pedestrian path will measure approximately 6,100 to 6,500 feet, depending on the final alignment.

The project's primary objectives are to provide a safe and inviting facility that will expand opportunities for non-motorized travel and recreation; provide connectivity to shopping, dining, and resort areas; and lateral coastal access.

Project Description and Location

Consistent with the overall facility, the bike/pedestrian path will be 10 to 12 feet wide and allow movement in both directions. It is intended to accommodate a wide variety of users; however, motorized vehicles will not be allowed with the exception of motorized wheelchairs, emergency vehicles, and maintenance vehicles. The path will be constructed from concrete with graded shoulders. Under some environmental conditions, the path's design and construction materials may vary to address issues of context sensitivity.

No new parking areas will be provided; however, the project may include rehabilitation of an existing County parking area located behind Kapa'a Missionary Church. A small comfort station may be included within Phases C and D, but a location has not been determined. One stream crossing will be needed at Uhelekawawa Canal, but the crossing will not require work in the water. Because the path will traverse developed areas, it may be necessary to relocate and/or replace existing facilities or plant life—actions that are covered in the project description. Other construction and design elements include grading, walls, railings, fencing, landscaping, signage, and amenities, such as trash receptacles, benches, water fountains, and shielded security lighting. The decision to incorporate specific features will be made during final design.

Figure 2 shows the project location. The SEA will focus on a preferred alternative that extends from Papaloa Road, between Kauai Sands Hotel and Islander on the Beach, then north through the County's beach reserve and along the coastal bench *makai* of three undeveloped parcels and Courtyard Kauai at Coconut Beach. The preferred alternative continues between Mokihana of Kaua'i/Bull Shed Restaurant and the Village Manor condominiums, then along the southern bank of Uhelekawawa Canal (currently a landscaped strip) to Kūhiō Highway.

The path will cross Uhelekawawa Canal as a cantilevered attachment to the existing highway bridge or an independent single-span bridge, where it will connect to the existing bike path at Waipouli Beach Resort. On the northern end of the Waipouli connection, the SEA will also assess the use of an existing beach access located south of Kapa'a Missionary Church and the right-of-way adjacent to and *makai* of Kūhiō Highway between the beach access and Uhelekawawa Canal (approximately 580 feet).

Project Area and Land Jurisdiction

The Waipouli connection passes through portions of three *ahupua'a*: South Olohena, North Olohena, and Waipouli.

The Waipouli coastal stretch today is largely composed of resort (hotel, condominium, timeshare) and commercial properties, including the Kauai Sands Hotel, Islander on the Beach, Kauai Coast Resort, Courtyard Kauai, Mokihana of Kauai, Village Manor condominiums, and Waipouli Beach Resort. The Coconut Marketplace shopping complex is on the south end, and the Waipouli Town Center and Kauai Village Shopping Center are just *mauka* of Kūhiō Highway on the north end. Three large, coastal properties are undeveloped, but they are zoned for resort development and have obtained Special Management Area (SMA) permits for resort-oriented development. In addition to the larger properties, there is a cluster of smaller parcels located south of Uhelekawawa Canal consisting of residences, small businesses along the highway, and the Kapa'a Missionary Church.

From the Papaloa Road "start" point, the County has an easement located between Kauai Sands and Islander on the Beach. The path will be located within this easement. As the path heads north along the coastline, it will be located within a County-owned beach reserve which extends as far as the Kauai Coast Resort. Although a beach reserve has not been set aside north of the Kauai Coast Resort, development conditions are in place requiring existing (in the case of Courtyard Kauai) and future resort development to provide lateral coastal access that would be satisfied by the proposed bike/pedestrian path. Along the southern boundary of Mokihana of Kauai, there is an existing *mauka-makai* beach access. The path will be located along the length of this access to Kūhiō Highway or, alternatively, take a jog parallel to the coastline then along the south bank of Uhelekawawa Canal. The latter alignment will require acquisition of privately owned land.

Figure 3a and 3b show the path alignment on tax maps for the area. Figure 4 identifies the TMKs and property owners in the County of Kaua'i tax assessment records as of January 2012.

Historic Preservation Regulatory Context

As a project that is partially funded by the County, this undertaking must comply with Hawai'i State laws for environmental review (Hawai'i Revised Statutes [HRS] Chapter 343) and historic preservation review (HRS Chapter 6E-8 and Hawai'i Administrative Rules [HAR] Chapter 13-13-275). Additionally, because the path is expected to receive funds from the Federal Highway Administration (FHWA), it is federal undertaking requiring compliance with Section 106 of the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), and Section 4(f) of the U.S. Department of Transportation Act.

Section 106 consultations were conducted as part of the original Lydgate Park-Kapaa Bike/Pedestrian Path project and resulted in the SHPD, the FHWA, and the County of Kaua'i being signatories to the Memorandum of Agreement (MOA). The MOA affirmed an "effect" to significant historic properties in the project area, including the Wailua Complex of Heiau, cultural deposits, and inadvertently discovered burial sites. Specific, mitigation measures are stipulated in the MOA and include the following, some of which have been implemented already.

- Archaeological monitoring plan appropriate for each path section to be implemented during construction. The archaeological monitoring plan is to be reviewed and approved by the SHPD before project implementation and a follow-up monitoring report submitted upon completion.
- Burial treatment plan to address the preservation of any burials or other human remains in the event of inadvertent discoveries of *iwi*
- Historic American Engineering Record (HAER) documentation for the Wailua Cane Haul (*maka'i*) Bridge—completed
- Preservation/interpretive plan addressing interpretive signage along the path—completed for the Wailua River crossing section.

The MOA will continue to remain in effect, but may be amended as a result of additional consultations related to project-related impacts in the Phases C and D.

Proposed Area of Potential Effect (APE)

The proposed APE, shown in Figure 5, includes a 50-foot wide corridor; 25 feet on either side of the center line. The exact placement of the path will not be determined until the final design phase. However, the path, including paved surface, shoulders, fencing, and landscaping is not expected to exceed a width of 20 feet. Based on a 50-foot wide corridor, and alignment ranging from 6,100 to 6,500 feet in length, the APE would include an area of 7.0 to 7.5 acres.

Historic Property in the APE Potentially Affected

Cultural Surveys Hawaii, Inc. conducted an archaeological assessment for the Lydgate to Kapa'a bike/pedestrian path (Hammatt and Shideler 2004) and a cultural impact assessment for Phases C & D of the path (Vogeler et al 2012). The information in this section is based on those studies. Figure 6 shows the locations of historic properties.

In previous archaeological work along the beach terrace of Waipouli, cultural layers and human burials have been uncovered both at the Coconut Plantation Resort area and the Uhelekawawa area (designated Sites 50-30-08-791, 1800, and 1801). Dates for the use of these sites are the 15th century for the former and the 16th century for the latter.

Archaeologists believe that the Coconut Plantation area was a recreational area due to its extensive layer, but paucity of artifacts. The Uhelekawawa area has a thick cultural layer with traditional artifacts representing activities such as tool manufacture for fishing and woodworking and for weapons. The abundance of these tools suggesting the area was a work site rather than a permanent habitation site.

During fieldwork for the original path project, a concrete WWII era military structure (designated Site 50-30-08-891) was located fronting the shoreline within a vacant lot adjacent to the southwest side of the Kauai Coconut Beach Hotel. The brick and reinforced concrete structure, measuring 3.4 by 3.8 m with four metal posts for mounting equipment, is believed to be a former military pillbox or machine-gun emplacement constructed to defend against coastal invasion by enemy forces.

Table 1: Summary of Archaeological and Historic Sites that May be Affected by the Undertaking

Site No.	General Location	Function	Site Constraints	Reference
50-30-08				
791	Northeast end of coastal South Olohena	Cultural layer and burials (2)	Extends inland approximately 150 ft. from the coast; archaeological monitoring in area proposed	Perzinski et al. 2001
891	Coast near North Olohena/Waipouli boundary	WWII bunker	Coast near North Olohena/Waipouli boundary; interpretive potential	Hammatt and Shideler 2004
1800	Northeast end of coastal North Olohena	Cultural layer and burials (2)	Extends inland approximately 120 ft. from the coast; archaeological monitoring in the area proposed	Rosendahl and Kai 1990
1801	Adjacent to coast, south central Waipouli, 200 m <i>makai</i> of Kūhiō Highway	Cultural layer and burials (5)	Archaeological monitoring in the area proposed	Rosendahl and Kai 1990; Hammatt 1991a, 1991b; Toenjes et al. 1991

Historic Property in the Vicinity of, but Outside the Proposed APE

Two historic sites are located in the vicinity of the project area, but outside the proposed APE. The bike/pedestrian path is not expected to adversely affect these sites.

Kukui Heiau. The *heiau*, located at Alakukui Point was placed on the Hawai'i Register of Historic Places on June 13, 1986, and was placed on the National Register on May 18, 1987. The site extends from high water up and into the Lae Nani Condominium parcel. The earlier planning effort for the bike/pedestrian path studied an alternative extending along the back of Kukui Heiau. However, based on public concerns about potential adverse effects on this significant historic property, any alternative transiting the coast at Alakukui Point was dismissed. The proposed alignment for the Waipouli connection veers inland from the coast approximately 360 feet from Kukui Heiau. Establishing a well-defined and signed bike and pedestrian route is expected to diminish undesired intrusions upon the *heiau*.

Central Waipouli Cultural Layers and Burials. Site 1836 is located on the north side of Uhelekawawa Canal. Referred to as the Golding property in earlier archaeological studies, a large portion of the property has been developed into the Waipouli Beach Resort. Hammatt (1992) and McCurdy and Hammatt (2008) report a total of 50 burials unearthed at the site and 396 artifacts recovered. A cultural preserve has been established within the resort area. The proposed path alignment would be physically separated from Site 1836 by Uhelekawawa Canal. And because the cultural preserve is located on private property with access is supervised by resort personnel, the path is not expected to adversely impact the site.

Table 2: Summary of Archaeological Sites in the Vicinity, but Outside the APE

Site No.	General Location	Function	Site Constraints	Reference
50-30-08				
108	Alakukui Point, central South Olohena on coast	Kukui Heiau	Extends from high water to Lae Nani Condo property; proposed path alignment avoids <i>heiau</i> and diverts foot and bicycle traffic away from the <i>heiau</i>	Thrum 1906; Bennett 1931; Davis and Bordner 1977; Kawachi 1993
1836	Central Waipouli, strongest expression at coast, extends to Kūhiō Highway	Waipouli cultural layer and burials (15)	Cultural preserve established on the Waipouli Beach Resort property	Folk et al. 1991; Folk and Hammatt 1991; Hammatt and Folk 1992; Hammatt et al. 2000; Ida et al. 2000; McCurdy and Hammatt 2008

Wailua Traditional Cultural Property (TCP)

Boundaries have been delineated for the TCP of Wailua (also known as Wailuanuiaho‘āno and Wailua Kai) extending *makai* of Mauna Kapu (Kālepa) and Nounou ridges and encompassing a portion of Wailua Bay. Given the extensive coverage of the TCP, the coastal path from Lydgate Park to Kapa‘a cannot avoid passage through the district. In the culturally rich Wailua Beach section, the footprint of the bike/pedestrian path was minimized to fit within a widened shoulder area immediately *makai* of the existing highway. Phase D of the bike/pedestrian path is located along the northern boundary of the TCP, which runs *mauka-makai* between Kauai Sands and Islander on the Beach (see Figure 7).

Proposed Cultural (Archaeological) Resource Inventory Survey

An archaeological inventory survey is proposed to assist in evaluating the undertaking's potential to affect National Register-eligible cultural resources. The effort will include a systematic pedestrian inspection to identify surface cultural deposits, but will primarily focus on identifying subsurface cultural deposits through a program that includes investigation with ground penetrating radar, as well as hand and mechanical (backhoe) excavation. Surface testing will focus on the areas of highest potential disturbance. Approximately twelve trenches, each approximately 6 m (20 ft) long by 0.8 m (2 ft) wide are proposed for excavation within the project APE. There will be additional consultation to determine the placement and final number of trenches. Standard archaeological methods will be used to document the investigation. The cultural resource survey will be based on the Secretary of the Interior's standards and guidelines for archaeological and historic preservation and will fulfill the State of Hawai'i's requirements for archaeological inventory survey (HAR Chapter 13-276). The cultural resources survey report will be reviewed by SHPD and the affected federal agencies.

Parties to Be Consulted

A preliminary list of consulting parties is shown below. This list includes Native Hawaiian Organizations and claimants who participated in the Section 106 consultation process for the Hawai'i Dept of Transportation's short-term highway improvement project in Wailua. Suggestions for other contacts are welcome.

Government Agencies

Advisory Council on Historic Preservation
County of Kaua'i, Planning Department
Kaua'i Historic Preservation Review Commission
Kaua'i-Ni'ihau Island Burial Council
Office of Hawaiian Affairs
State of Hawai'i, Division of State Parks

Native Hawaiian Organizations

Aha Kiolo Kaua'i
Hawaiian Kingdom Dept of Interior
Ho'okipa Network
Hui Malama I Na Kupuna O Hawai'i Nei
Hui Malamo o Kaneioulouma
Hui Na Makaiwa o Wailuanuiho'āno
Kaieie Foundation and Halau Palaihiwa o Kaepuuki
KNA/Malamamol
Makawalu Foundation
Na Kahu Hikinaakalā
Ni'ihau/Kaua'i Ahamoku Ahupua'a
Papa Ola Lokahi

Queen Deborah Kapule Hawaiian Civic Club
Other Native Hawaiian Organizations and individuals

Other Stakeholder Organizations

Kaua'i Historical Society
Historic Hawai'i Foundation
Share, Inc.
Sierra Club

Consultation Plan

Initial consultations about cultural resources in the project area began in 2011 during the course of individual interviews and group meetings related to a cultural impact assessment. Section 106 consultations will begin with written notification sent to all parties in the previous list. A public meeting will be held to inform the community about the NEPA and Section 106 processes. Progression through the major stages of the Section 106 process will be linked to NHO and stakeholder meetings, or other forms of communication and consensus building.

Stages in the Sec 106 Process	Meetings	Proposed Timeframe
Initial outreach; process and protocol	NHO/Stakeholders General public	Jan-Feb 2012
Identification of resources	NHO/Stakeholders	Mar 2012
Determination of effects	NHO/Stakeholders	Apr 2012
Mitigations	NHO/Stakeholders	May 2012
MOA amendment (if needed)		Jul 2012

References

- Bennett, Wendell C. 1931. The Archaeology of Kaua'i, Bishop Museum Bulletin 80, Honolulu, HI
- Davis, Bertell D. and R. M. Bordner. 1977. Archaeological Investigation at Kukui Heiau, South Olohena, Puna, Kaua'i Island. Unpublished Ms, Archaeological Research Center Hawai'i, Inc. ARCH 14-98, Honolulu, HI
- Folk, William H., Rodney Chiogioji, Matthew J. McDermott, Hallett H. Hammatt. 1991. Archaeological Survey and Subsurface Testing at Waipouli, Kaua'i, State of Hawai'i Site No. 50-30-08-1836, Cultural Surveys Hawai'i, Kailua, HI
- Folk, William H. and Hallett H. Hammatt. 1991. Addendum to Archaeological Survey and Subsurface testing at Waipouli Kaua'i, State of Hawai'i Site No. 50-80-08-1836. Cultural Surveys Hawai'i, Kailua, HI
- Hammatt, Hallett H. 1991a. Archaeological Testing Results for a 12-acre Property, Coconut Plantation, Waipouli, Kaua'i. Cultural Surveys Hawai'i, Kailua, HI
- Hammatt, Hallett H. 1991b. Archaeological Subsurface Testing for the Proposed Kapa'a Sewerline, Wailua, Olohena, Waipouli and Kapa'a, Kaua'i. Cultural Surveys Hawai'i, Kailua, HI
- Hammatt, Hallett H. and William H. Folk. 1992. Archaeological Subsurface Testing of a One-Acre Parcel: Waipouli, Kaua'i TMK 4-3-06:01. Cultural Surveys Hawai'i, Kailua, HI
- Hammatt, Hallett H. and David W. Shideler. 2004. Archaeological Assessment of Alternative Routes Proposed for the Lydgate to Kapa'a Bike and Pedestrian Pathway Project within the Ahupua'a of Wailua, South Olohena, North Olohena, Waipouli, and Kapa'a. Cultural Surveys Hawai'i, Kailua, HI
- Hammatt, Hallett H., David W. Shideler, John Winieski, and David Perzinski. 2000. Archaeological Data Recovery for a 12 Acre Parcel (The Golding Property) at Waipouli, Puna, Kaua'i, (TMK 4-3-08: 1), Volume 1. Cultural Surveys Hawai'i, Kailua, HI
- Ida, Gerald, David W. Shideler, and Hallett H. Hammatt. 2000. Documentation of Burial Disinterment and Re-interment at the "Golding Property," Waipouli, Kawaihau, Kaua'i (TMK 4-3-08:1). Cultural Surveys Hawai'i, Kailua, HI
- Kawachi, Carol T. 1993. Archaeological Monitoring of the Kūhiō Highway Widening Project, Wailua, Kawaihau, Kaua'i. State Historic Preservation Division, Department of Land and Natural Resources, Honolulu, HI

- McCurdy, Todd and Hallett H. Hammatt. 2008. Archaeological Monitoring Report for the Waipouli Beach Resort (SIHP #50-30-08-1836), Waipouli Ahupua'a, Kawaihau District, Kaua'i (TMK:[4]-4-3-08:1), Cultural Surveys Hawai'i, Kailua, HI
- Perzinski, David, David W. Shideler and Hallett H. Hammatt. 2001. An Archaeological Monitoring Report for Renovations at the Kaua'i Coast Resort, State Site #50-30-08-791, Ahupua'a of South Olohena, Kawaihau District, Island of Kaua'i (TMK 4-3-02:14). Cultural Surveys Hawai'i, Kailua, HI
- Rosendahl, Paul H. and Victoria K. Kai. 1990. Archaeological Inventory Survey Coconut Plantation Development Sites 4 and 6, Lands of Olohena and Waipouli, Kawaihau District, Island of Kaua'i (TMK: 4-4-3-02:16, 4-4-307:27), PHRI, Hilo, HI
- Thrum, Thomas G. 1906. Heiau and Heiau Sites Throughout the Hawaiian Islands, Kaua'i, in Hawaiian Almanac and Annual 1907, pp. 36-48, Honolulu, HI
- Toenjes, James H. Rodney Chiogioji, William H. Folk, and Hallett H. Hammatt. 1991. Results of Archaeological Data Recovery for a 12-acre Property at Coconut Plantation, Waipouli, Kaua'i, (TMK 4-3-07:27). Cultural Surveys Hawai'i, Kailua, HI
- Vogeler, Kūhiō, Margaret Magat, and Hallett H. Hammatt. 2012. Cultural Impact Assessment for Lydgate Park-Kapaa Bike & Pedestrian Path Phases C&D, CMAQ-0700(49), South Olohena, North Olohena and Waipouli Ahupua'a, Kawaihau District, Kaua'i Island, TMK: [4] 4-3-001, 002, and 007: Various. Cultural Surveys Hawai'i, Kailua, HI

Figures

1. Overall Bike/Pedestrian Path Alignment in Phases
2. Project Location
- 3a. Tax Map 4-3-002
- 3b. Tax Map 4-3-007
4. Land Ownership
5. Aerial with Proposed Area of Potential Effect (APE)
6. Historic Properties
7. Wailua Traditional Cultural Property (TCP)

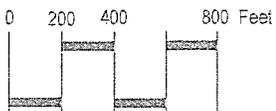
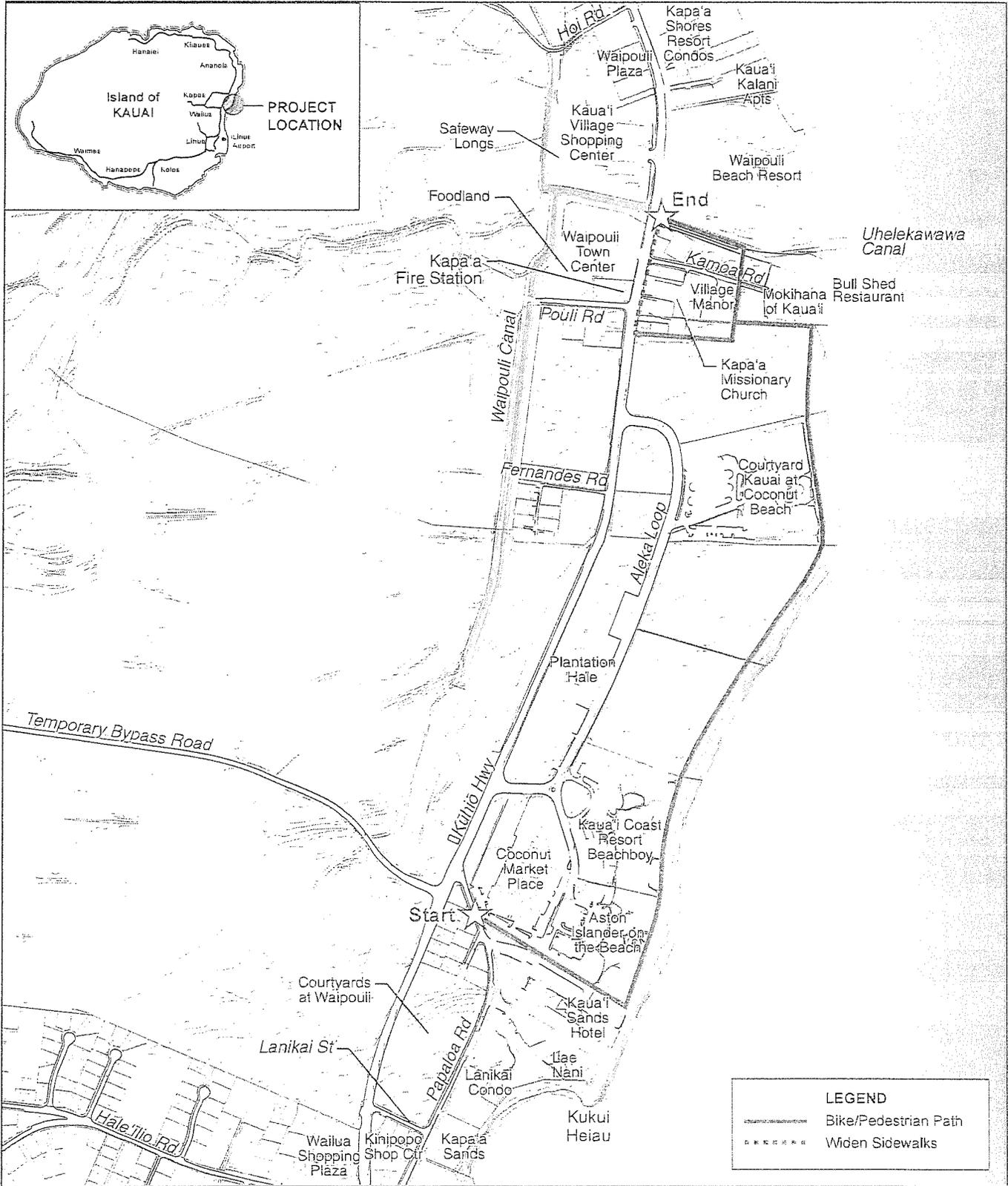


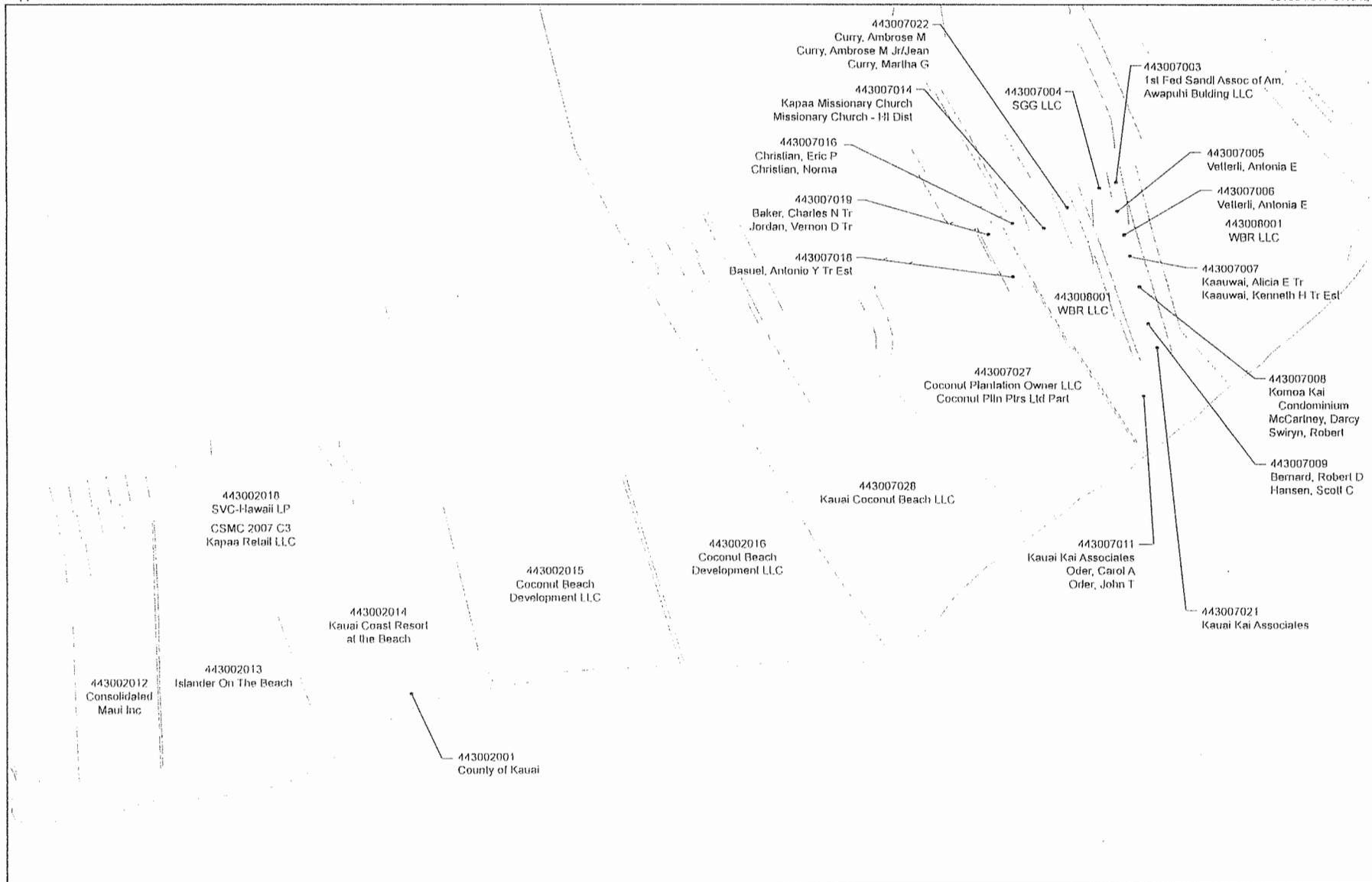
Figure 2
PROJECT LOCATION
 Lydgate Park - Kapa'a Bike/Pedestrian Path
 Waipouli Connection

Lydgate Park - Kapa'a Bike/Pedestrian Path
 Supplemental Environmental Assessment

031004/015 011912 13



Figure 3a
TAX MAP 4-3-002
 Lydgate Park - Kapa'a Bike/Pedestrian Path
 Waipouli Connection



Source: Kauai County Tax Assessor Data 2012, Hawaii State GIS

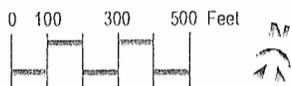


Figure 4
LAND OWNERSHIP

Lydgate Park - Kapa'a Bike/Pedestrian Path
Waipouli Connection

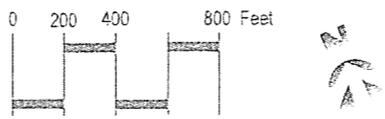
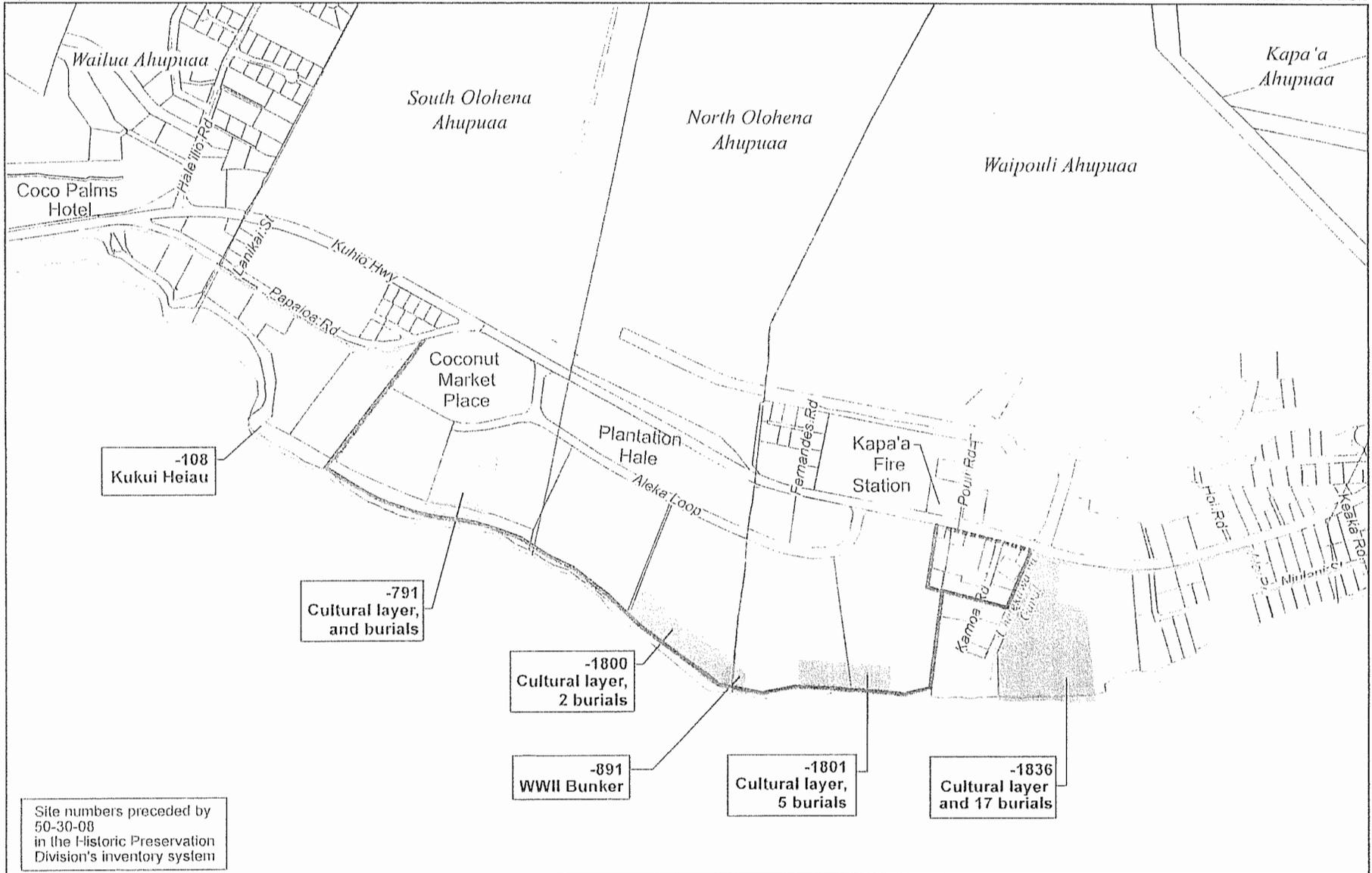


Figure 5

PROPOSED AREA OF POTENTIAL EFFECT (APE)

Lydgate Park - Kapaa Bike/Pedestrian Path
Waipouli Connection



Source: Cultural Surveys Hawaii, Hawaii State GIS

0 200 400 800 Feet



0 Mile

1 Mile

Figure 6
HISTORIC PROPERTIES

Lydgate Park – Kapa'a Bike/Pedestrian Path
Waipouli Connection

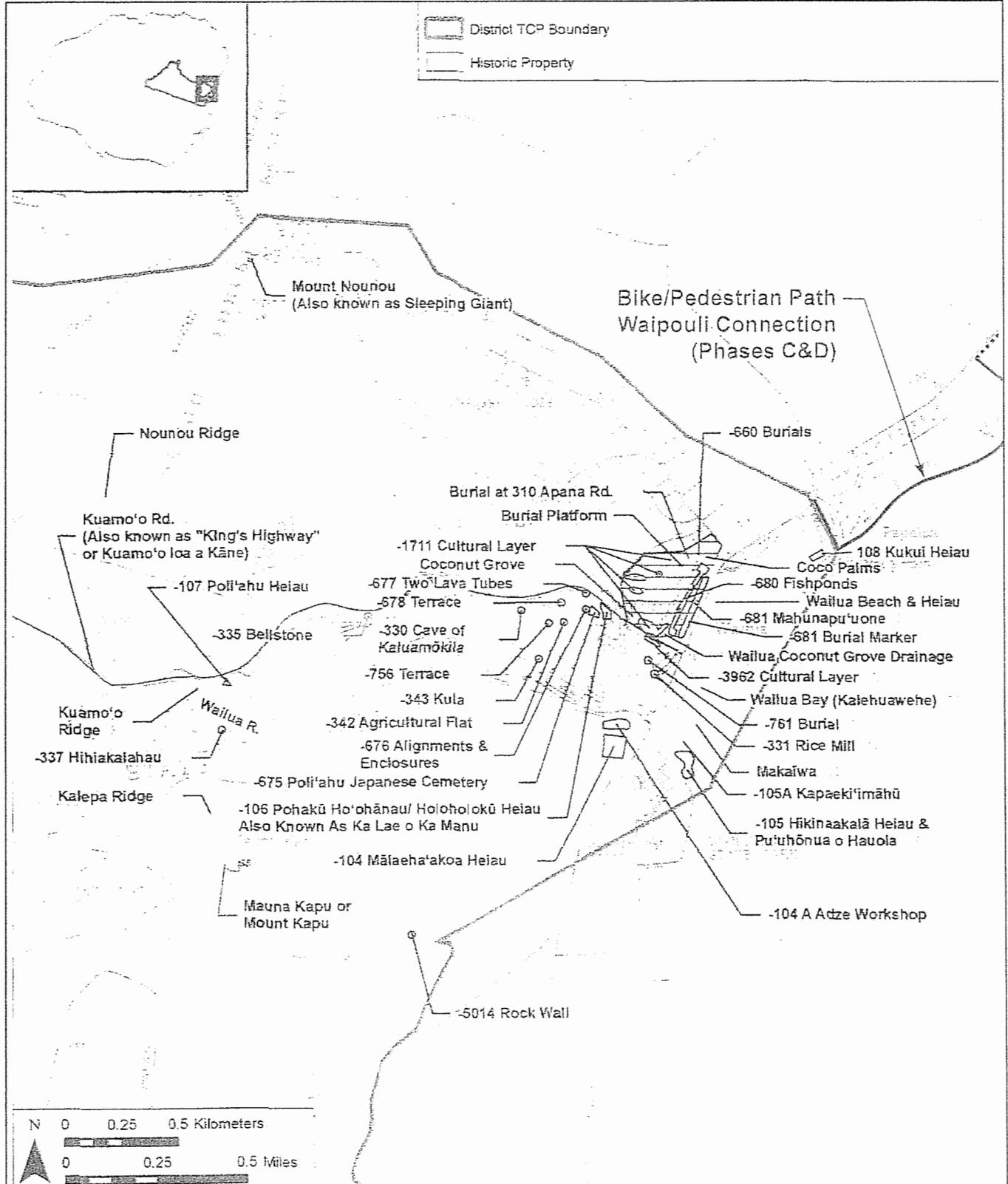


Figure 7
WAILUA TRADITIONAL CULTURAL PROPERTY (TCP)

Appendix B

Native Hawaiian Caucus, July 5, 2012

- Minutes of Meeting

Protocol & Preparation Committee Meeting called to order, 9:10am – July 5th.

Cheryl Lovell-Obatake: First thing, determine a meeting format. Does everyone have a copy of the Hawaiian Caucus Agenda? I'd like to ask Nathan Kalama if he could to do a *pule* for us before we begin.

Nathan Kalama: Pule.

Cheryl Lovell-Obatake: Assumed that you have the handouts on the table, is there any discussion or concerns that you may have? I know you just got it and may want to read it; I know Nathan is reviewing it right now. I would also like to have a roll call of this committee. From the May 31st meeting, there was a list of people that were present. As I call your name, please say "aye" for the record. Val Ako (present), Elizabeth Ako (present), Nathan Kalama (present), Kehaulani Kekua is absent, Cheryl Lovell-Obatake (present), Beverly Muraoka is absent, Kaliko Santos (aye), County of Kaua'i – Lenny Rapozo (present), Mauna Kea Trask (present). That's the roll call for the record.

Getting back to the agenda, for this meeting, as you know, 10:00am will be the next meeting for the invitations that have gone out. What we're going to do is discuss the presentation of the proposed process and if you look at the draft agenda, it says "Draft Section 106 Agenda for Native Hawaiian Consultation". May I ask that you review that before the 10:00am meeting. We are on the "Discussion/Decision making on *Ho'oponopono* based on 106 consultations", presentation of proposed process", Mauna Kea would you like to explain.

Mauna Kea Trask: When the protocol committee met on May 31st, with the consultation approval of Auntie Cheryl as interim *Po'o* for this process, this was a process that was decided on before the protocol committee. What it is essentially, a marriage of the *Ho'oponopono* process as described by Mary Kawena Kūkui (in this book), excerpts of which have been printed and included in the packet for today's meeting. What it does is follows the format being this 106 consultation process will be headed by somebody like Auntie Cheryl or somebody that would be appointed as a permanent *Po'o* and they will lead the entire discussion. So it will be a Native Hawaiian lead process. All questions and answers will be conducted by the *Po'o*, meaning for example in this case, Auntie Cheryl will order under 3A description of the 106 process, she will direct Kimura International, whoever is the appropriate persons to present. After the presentation is done she will ask everyone what they think about it. Their answers will all be directed back to her. No one is allowed to ask questions of each other, no one's allowed to yell, no one's allowed to argue, these are all traditional *Ho'oponopono* methods in ways to keep order. The Hawaiian *Po'o* will be running this process as both authority pursuant to Robert's Rules of Parliamentary Procedure as well as *Ho'oponopono* process to maintain order and decorum. The details all follow the Federal requirements under 36 CFR and as you can see as you go down the agenda under Section 4, every single item has a site attached to it.

As you go through 36 CFR §800.4, §800.5 and §800.6; what it does is it breaks up the process point to point, cultural appropriate sections that goes through the presentation of the project which is essentially lined here on the tables. The identification of historic properties, the assessment of their significance, determination of adverse effect and then ultimately avoidance and mitigation of the process through binding agreement. Again throughout this entire process we're looking at move away from a government lead process to a Native Hawaiian Community lead process. Hopefully that will be appropriate under again both traditional cultural values as well as under 36 CFR §800.2 (c), 1. ii(c), which requires a consultation of NHO's should be conducted in the matter sensitive to the concerns and needs of the Native Hawaiian organizations. To the idea being, that we use the *Ho'oponopono* process that would be a manner sensitive to the Native Hawaiian's concerns and it will be done appropriately.

Cheryl Lovell-Obatake: Any questions? No questions? Okay, I guess this is the consensus that we agreed of what has been said and what is on the paper. This meeting is adjourned, 9:30am. Thank you.

Hawaiian Caucus Meeting called to order 10:07am.

Cheryl Lovell-Obatake: Meeting will come to order, it is now 10:07 am for the Hawaiian Caucus. All of you have an agenda? Now I know some of you may have an agenda with the letter that was sent to you. Information is available on the table. We need another *pule* for this session. Mr. Kalama.

Nathan Kalama: Pule.

Cheryl Lovell-Obatake: Item 2, Overview of the Protocol Committee decided the process earlier, laying of ground rules, Mauna Kea do you want to do that again?

Mauna Kea Trask: For the purpose of this meeting today, the Hawaiian Protocol Committee has designated Auntie Cheryl Lovell-Obatake as the *Po'o* or *Alaka'i* of this process. This meeting's format will be held and controlled by her. The *Po'o* directs all discussion and all questions and answers shall be directed to her. Any participant for example has a question; they'll raise their hand and wait to be recognized by the *Po'o*. Question will be asked to the *Po'o*, the *Po'o* will either answer the question or if the question is directed to another, poise the question to the other individual. In answering, the individual will directly respond to the *Po'o*. According to the *Ho'oponopono* process you will not dispute one another. For this process today, there are two *kapus* that will be declared. All participants in today's process shall refrain from yelling, shouting, or arguing with each other and with the *Po'o*. Yelling, shouting or arguing with each other and the *Po'o* will now be declared *kapu*. All participants must respect and listen to the *Po'o*. The *Po'o* herself must be declared *kapu* throughout this process. We hope you all respect these rules and that will lead to further discussion.

Cheryl Lovell-Obatake: Thank you. I'd like to go around the table starting with Kaliko, state your name for the records.

Present: Kaliko Santos, Office of Hawaiian Affairs; Carol Lovell, Hale O Na Ali'i o Hawai'i; Soncy Tamashiro, Department of Parks and Recreation; Lenny Rapozo, Department of Parks and Recreation; Barbara Say; Nathan Kalama; Kunane Aipoalani; Beverly Muraoka, Kumu Hula; Ku'ulei Manini, Kanaka Hui Lands;

Joe Manini: I not Hawaiian, so all this stuff is Hawaiian. You folks are not recognizing the *Kanaka Hui*. Hui is part of the native people in the whole Polynesia, this includes Hawai'i. They all *Kanaka*. You ask the Samoans, are you Hawaiian or *Kanaka*, they tell you I'm Kanaka. You ask the Tongans same thing.

Cheryl Lovell-Obatake: Uncle can I stop right there for now. We need to go around introducing ourselves. And then we can go through the drill.

Joe Manini: I introduced myself, so I tell you what I stay here for. I disagree with that because it doesn't cover Kanaka, only covers the Hawaiian.

Cheryl Lovell-Obatake: We are in introductions and I wanted to get it on the records as to who is present.

Joe Manini: That is for the record, and the letter says, Native Hawaiian Caucus. I went to the Federal Court, you know who is considered the Native Hawaiian, the Hawaiian homesteader, that brought all this *palapala* to the State and he had get a pass so he could get a homestead, he is the Native Hawaiian, nobody else. That's what the Federal Court says. So, I'm wondering what this is covering.

Cheryl Lovell-Obatake: We'll get to that; I want to get everybody's name on the record that's present here today. Thank you.

Present: Rupert Rowe, *Ho'o Kaneiolouma*; Erna Kamibayashi, DHHL; Mauna Kea Trask, County of Kaua'i; Cheryl Lovell-Obatake.

Cheryl Lovell-Obatake: What we need to do next, a description of the 106 process, all of you have a book, 36 CFR, following page 228, Appendix B. If we were to look at the mandate, Protection of Historic Properties, 800.1 – The purpose... did anyone receive a book before this meeting or the link? Only a few? The reason why I asked that is because we were talking earlier about the 36 CFR mandate and these are the federal guidelines that are what we need to proceed on for the Section 106. I know it's a lot to indulge and I'm uncertain whether we'll do this agenda completely. We may have to cut it into sections, maybe four sections. Mauna Kea will clarify some of the items on the agenda.

Mauna Kea Trask: The purpose of today's meeting is to get your *mānā'o* of the proposed process. The County has gone through the 106 process for this project so far. We don't think that the Native Hawaiian Community has felt empowered by it, we don't think the Native Hawaiian Community has considered it their opportunity to give their *mānā'o* in the process. The process is often confusing to us even so what we wanted to do is approach the Native Hawaiian Community, and what I mean by the Native Hawaiian Community is Hawaiian people, indigenous, whatever we call ourselves. The people who have the right and the lineal connection to these areas should be involved and actually should have a process that they feel comfortable with. Not only fulfills their cultural traditional feelings of aloha, respect, and everything like that, but also complies with 36 CFR. With this process which we are going to talk about today, this is our attempt, the Protocol Committee's attempt to create such a process. It will be complete both legally and culturally, ascend both worlds, both the western and Hawaiian. And also, the meeting will be lead by someone within the community so it's not going to be a meeting where by everyone shows up and a consultant from O'ahu or a federal agent from Virginia, whoever it is, it would be someone that the people can trust. It was the thinking of the Protocol Committee being only the community can regulate itself, only the community respects itself. The process is as today; Auntie Cheryl will be conducting it. I hope everyone will agree with it and participate in good faith and come to some kind of resolve in that everyone's happy with.

Cheryl Lovell-Obatake: My feeling is that I am only an interim *Po'o*, it could be someone else.

Mauna Kea Trask: Also, Auntie Cheryl has made findings; I encourage you all to take. Findings which she detailed as we went through this process, it lays out her vision of this process whether shortcomings and hopefully what this process will solve.

Cheryl Lovell-Obatake: Just by looking at the agenda, do you think we are going to cover all of this today? (No)

Mauna Kea Trask: I want to clarify, there are two draft agendas, there's one that says "Draft 106 Agenda for Native Hawaiian Consultation" and there's another one that begins with "Draft 106 Agenda for Native Hawaiian Consultation Initial Meeting". The "Initial Meeting" one is four different agendas, contemplated to take place on four different meetings, whereby the "Draft 106" is one meeting. The purpose of today's agenda we will only be talking about these two processes; today's agenda is very short. We're not going to talk about consultation today, we're not going to talk about burials today, just getting your buy in. So we have here is that today you feel comfortable with the *Ho'oponopono* process that was proposed by Auntie Cheryl, then this is what it's going to look like. Further questions, would you like it all done in one meeting or do you feel more comfortable spanning it over four different meetings? The timing could be four months, could be within a week, depending. Reason why I'd like to talk about that is these maps (located in room) which illustrate where this project is, what boundaries it's going to affect and also the current understanding of where historic properties

exist. (Mauna Kea explaining maps) Maps based on what is already known, review of the historical record, everything written in previous studies, prior to beginning consultation from the community. Knowing this, knowing that there are burial areas, cultural areas, we are anticipating that it's highly likely that the Federal government will acknowledge there will be an adverse effect. Adverse effect meaning everything from destruction to changing the feeling of the area, changing the character of the area. Given that world standard we anticipate we will be finding adverse effect. The majority of that agenda in front of you is identification of historic properties and assessment of adverse effect. This upcoming meeting we're anticipating adverse effect, we're all going into this knowing there is going to be adverse effect given our previous 106 consultations. So knowing that it is possible, if you would like, to have one meeting, begin by saying we know there will be adverse effect, we've read the materials, we have this to add or we don't have this to add, it looks complete depending on your *mānā'o*. Then we move right into the mitigation process which will be whatever you want, as long as we negotiate in good faith and ultimately acknowledge the parameters of budget. Although we understand it could take more than one meeting, it also could take one if you want. I encourage all of you to review these maps that contain figures either exactly the same or similar as in your books. And if any of you have noticed, that's a draft document in front of you. If today's process works out, we're going to have our consultants change Section 7 which is their consultation plan to reflect the consultation plan you approve today. Any other questions?

Joe Manini: This is the same subject they talked about at the middle school at Kapa'a about a month ago. I was in that meeting talking about that same place and the people that disagreed with the development there, one person was real upset, a Hawaiian woman. She lived by the Bull Shed. I know Hepa family lived there and other Hawaiian families, something about the trees over there.

Mauna Kea Trask: That's one thing, if someone has a problem that's where mitigation comes in. And that's why today we're only going to talk about the process, because we're affording everyone equal opportunity to come by and familiarize themselves with the materials so they can share their *mānā'o*.

Kunane Aipoalani: Just for discussion purposes, is the County under some kind of time constraint to have all these meetings to take place?

Lenny Rapozo, Jr.: Actually, we move as fast as government will allow us. There's no drop dead-end date but we want to get it done.

Cheryl Lovell-Obatake: Well in all fairness to you two, we need to understand all of the literature that's in front of you so that you can appropriately address the historical properties. Any questions?

Beverly Muraoka: And I think what Mauna Kea said that there will be adverse effects because we all know that this particular subject, Kapa'a – Wailua, our *kupuna* arrived at Wailua Bay, besides Kōloa, they lived there. So we know we have *iwi*, and we know Uncle Val has testified that he himself knows that *iwi* there. So we will have to address those issues but I personally went to a couple meetings, the meeting I remembered was at the Courtyard Marriott. I was embarrassed because I heard our *kanaka lahui* just screaming at each other while the agents who have the *kala* were looking at us that's why I proposed this meeting where we can *kukakuka*.

Joe Manini: You see get some Hawaiians call themselves *Kanaka* but that doesn't mean they are *Kanaka*, that doesn't mean they belong to the *hui*. You have to look at the documents to see who the *hui* is. The United States recognizes the *hui*. There are only two people.

Cheryl Lovell-Obatake: Can we get back to order on what we're going to do today. Mauna Kea you want to give us direction?

Mauna Kea Trask: If you look at the agenda, does anyone else have questions regarding the proposed process? If not, we can move to the next point which is discussion/decision making about it. If everyone is comfortable with the more cultural process based upon *Ho'oponopono*, figure out whether we want to do one meeting or a series of four, then finally choosing the *Po'o* for the process.

Kunane Aipoalani: With that said, this is why we have two agendas in front of us.

Mauna Kea Trask: I didn't want you to be forced to make one decision, give you the option to decide.

Joe Manini: You know the part I was talking about Bull Shed, maybe if they made it go right across the canal; they want to make it go back out on the road and cross by the highway and then come back in again. If they just cross by the Bull Shed then maybe they wouldn't have a problem with the Hawaiian houses over there. Maybe that's better than you don't get people upset.

Mauna Kea Trask: Auntie Cheryl, in response to Uncle Joe's statement, I think as we move through the process that can be something to discuss in mitigation, sounds like an avoidance procedure also minimize having litigation. That's something that can be talked about and considered.

Cheryl Lovell-Obatake: So, getting back to what we want to do regarding the meeting format. Yes, Nathan...

Nathan Kalama: I prefer four separate meetings. I may not be present at all four but I would prefer it because it is a lot to consume in one day like today.

Beverly Muraoka: Rather than decide on a number can we see how far we can go then decide. We just go as far as we can then say 12:00 noon break, that's it?

Cheryl Lovell-Obatake: In all fairness, you have a book in front of you, looking at what is important. Would you like to review first, or do you have any information to add now?

Beverly Muraoka: No I don't have any information to add right now, except happy reading. I agree with Uncle, maybe four is a minimum, maybe we will need more until we can come to some conclusion. Let's see how far we can go with this.

Mauna Kea Trask: In response to that, if you look at the two agendas, one agenda is one meeting, all the other meetings contained in it. This other one is broken up into the CFR sections; four, five and six. What you could do is, you could do both, you could set the next meeting, the current proposal is early August and the agenda could be the entire one, then you only proceed as much as you can get through. The good thing about this project is that all the materials in front of you, if you're able to familiarize yourselves with them prior to the meeting, nothing will be told to you that's not contained there. Everything that you will be told about will be provided to you beforehand. So if we go through this one meeting, if you look at the first section, which is the entire second meeting of the four meeting proposal. All it talks about is the identification and that's the reason why I showed you that one map because we pretty much know where they're at right now. So again, it looks like a big process but actually it can be very fast if everyone's able to come prepared, but if not again, the presentation itself can be short. And the reason why it's long is because Auntie Cheryl wanted to make sure that the CFR's were followed and the appropriate titles and descriptions were used. Because if later on you have a problem with the process, we can check off this and say the government didn't do Section 8.4, for example.

Cheryl Lovell-Obatake: Then you can refer like it says 36CFR 800.4, then you go into the mandate that you have, then you can at least read.

Kunane Aipoalani: Again, getting back to the purpose of today's meeting, I concur with Nathan, whether it's four meetings or not, that's why I asked the question of a timeline. There is a lot to digest, I concur to whatever it takes. To digest all of this, to cross-reference all of this, it will take time.

Cheryl Lovell-Obatake: Is there a motion?

Kunane Aipoalani: I make the motion.

Carol Lovell: I second.

Cheryl Lovell-Obatake: All in favor?

Response: Aye (group).

Cheryl Lovell-Obatake: Any opposed? (No response)

Mauna Kea Trask: I just have a question, Auntie Cheryl do you want the four meetings to be set right now or do you want to set the first meeting with the understanding that there will be more later? Working out all the schedules at this point....

Cheryl Lovell-Obatake: Yes, we should set the first meeting.

Kaliko Santos: Okay, so these four meetings are prior to the official Section 106 Consultation? This would be the four meetings with that consultation meeting?

Mauna Kea Trask: These will be the Section 106 meetings, the County, the State, and the Feds all have to follow the Hawaiian process, Section 106. They will be led by the Hawaiian *Po'o*, so that will be the 106 process.

Beverly Muraoka: I disagree, because we will not have finished our cleaning up portion, because we would be wasting their time. We need to clean up our own act and if it takes four meetings to clean up our act I would not rather have them sit on those meetings yet. It may be time consuming but I think it's worth it in the end instead of trashing it out in public that's why this meeting exists.

Mauna Kea Trask: Auntie Cheryl, in response to that, if you look at the agenda, these agendas themselves are styled to be 106 consultation the reason why because in order for the Hawaiian community to be informed about the system, if you look at for instance, Section IV. Mahiki, A. 1., i.: in order to determine the scope of identification efforts under 36 CFR §800.4(a), the *Po'o* at that time would request the agency official/designee to describe the area of potential effect as defined. So that would be the Federal official there that day, the *Po'o* will direct them, you tell us where the area of potential effect is, that will be on the record. Everyone there can rely upon that statement by the appropriate official saying this is where it's going to be, and that needs to be done. They need to be present there; all these things are a requirement of the law. I think that in essence, this is the official 106 process.

Beverly Muraoka: But if we haven't cleaned up our act, when you come to Section B. The assessment of adverse effects, that's when it can turn embarrassing, because you know there will be adverse effects and people's blood pressure, will rise. And this is where we need to control ourselves, by this meeting settled, how we will approach it so that it doesn't become, where we cannot even pass the *pule*.

Mauna Kea Trask: And that's where the point of the process will be that the *Po'o* will direct everything. Under the *Ho'oponopono* process, should there be *pilikia* within the family, the *kupuna* talks to every individual family member. If the brother and sister have a fight, the

brother and sister does not talk to each other in the *Ho'oponopono* process, everything is to the *kupuna*. Given that, it's the only way that anyone will respect this process, because it's a Hawaiian process. You don't have respect for that process, you break the *kapu*, law aside, you don't have respect for the culture. I think that's infinitely worse than some Federal regulation.

Beverly Muraoka: Exactly, that's why I'm saying, we should do our laundry ourselves before we step in front of these people. Coming forward to talk about this, Auntie Cheryl says she concurs to be the *Po'o* at that time, if she hasn't settled us here; poor thing has to settle us over there. I disagree with that; I don't have that kind of time. She needs to settle us here before we go there.

Mauna Kea Trask: Unfortunately today was supposed to be that, I'm glad that everyone here came, there's a lot of other people that needed to come here that were invited and I don't know at what point do we continue to accommodate them will detriment both the community as well as the process.

Beverly Muraoka: I say better late than never.

Kunane Aipoalani: I noticed some people that I thought would be here are not here, so if we make the decision; it's our decision as a whole, excluding those that I thought would be here, so we are making that decision about the agenda and our next meeting.

Beverly Muraoka: Did we afford everyone the notice of the meeting?

Kaliko Santos: Yes. And they received a link through email.

Mauna Kea Trask: These booklets were made available for pick-up at the Office of Hawaiian Affairs.

Beverly Muraoka: Was it printed in the Garden Island? It was not? I only see the letter.

Nathan Kalama: It was on KKCR yesterday.

Beverly Muraoka: Sometimes the media takes a different twist. If we feel that everybody had an opportunity.

Mauna Kea Trask: Also, I think part of the reason why it wasn't included in the newspaper as of yet is because this specifically isn't a legal requirement (this meeting) and the Protocol Committee thought it was more appropriate to send out the invitations to the community versus putting it in the paper and everybody showing up and it wouldn't be necessary or appropriate at this time.

Cheryl Lovell-Obatake: Everybody reconsidering? You think we can set a date?

Mauna Kea Trask: According to my understanding, we've looked at schedules of the Federal officials and we're looking at August 8th and 9th as what's available at this point.

Kaliko Santos: Auntie Cheryl, this means we start the 106 process, I'm hearing Auntie say this is where we're airing our disagreements, it's not that we just set the meetings; this is where we go to the public. So today, we're still convening with our agenda and see if we can, or is this where we say we like the process, we don't like the process?

Beverly Muraoka: I don't know if we can finish today. Uncle can you clarify why you said four meetings and why did you choose four?

Nathan Kalama: It's a lot to take in one day. Maybe today we can handle two out of the four.

Mauna Kea Trask: Today's agenda and I apologize to some of you, is the Hawaiian Caucus Agenda (7-5-12), so that's all we're doing today. Part of the decision making will be the next meeting, if you agree with the process is to take place (inaudible).

Joe Manini: I have a suggestion; you know this area the one you showed on the map, maybe you should investigate what Hawaiians live in that area. Because somebody in that area missed the newspaper and they never found out, they going get pissed off. Hawaiians have so much to do, no time to pick up the newspaper and read it. What we should do is if they live in this area; call to their attention going get a meeting and it concerns their place, see if they agree or not.

Cheryl Lovell-Obatake: I think the list of names, Kaliko got the organizations and that's where we started from.

Kunane Aipoalani: Which included those people?

Joe Manini: You know that lady was upset who spoke by the school (previous meeting).

Mauna Kea Trask: If you look on page 181 to 183....

Beverly Muraoka: Erna, excuse me, are any lands that you're father's addressing belonging to Hawaiian Homeland Department? Or are they all privately owned properties?

Erna Kamibayashi: From what I see on the map, the lands that we're responsible for are on the west side of Wailua River.

Beverly Muraoka: So not the properties that are affected belong to the department?

Erna Kamibayashi: Not that I see on the map.

Beverly Muraoka: So we would have to go to the TMK's, the Tax Map Keys to insure that the last known owner is informed.

Mauna Kea Trask: For the record, the land owners in the area starting from south point north; SPC Hawai'i LLP, Consolidated Maui Inc., Islander on the Beach, Hawai'i Coast Resort, Coconut Beach Development LLC, Coconut Plantation LLC, and finally the various subdivision lot owners which include various LLC's and also individuals.

Beverly Muraoka: So, *Po'o*, would you assign someone to assist Kaliko, maybe her workload is heavy at OHA? To find the TMK's and proper addresses and they may be given official notices, one more opportunity and they cannot say they didn't know because here is an opportunity again for you to know that these are the affected properties. Public hearings you need to give them 500 feet radius notice. Who wants to volunteer?

Cheryl Lovell-Obatake: I think the consultant can do that. Kimura Associates, the ones that came down. Mauna Kea talked about pages 181 and 182.....

Joe Manini: The hotel parts no need worry, they all agree, I was in that meeting. You know by the Bull Shed that was different already.

Cheryl Lovell-Obatake: There is a list of people that participated through this book.

Beverly Muraoka: Were we assured they were all given notices; we cannot rely only on Kaliko to insure that they get it. We need to come in and help in any way.

Kaliko Santos: That would be the consultants to help. The only thing for today's meeting is just for Native Hawaiian Organizations who participated.

Lenny Rapozo, Jr.: Just for clarification, the five hundred feet or radius is a Planning Commission requirement, this is not required for us. But if that is the pleasure of this group, to make known to the consultant that is the notification we want, then that can be followed.

Mauna Kea Trask: Lenny's correct, the requirements for the 106 are actually bigger, and it's anyone who attaches significance.

Lenny Rapozo, Jr.: Yes, so it doesn't have to be just in that area.

Beverly Muraoka: But if we play safe and five hundred is a real *manini* amount, we're going to have bad blood caused because they will have at least been notified and the consultants are an excellent way to start.

Kaliko Santos: (Inaudible)

(Inaudible conversation)

Sharon Pomroy: My apologies for being late, we were moving the seal from Anahola this morning and I just got out of the ocean. *Kalamai.*

Cheryl Lovell-Obatake: For the record, Sharon Pomroy has arrived. Did you get all the information on the table?

Sharon Pomroy: Yes I did. *Mahalo.*

Cheryl Lovell-Obatake: We are at the Hawaiian Caucus Agenda, number three: discussion/decision making on *Ho'oponopono* based 106 and we're looking at the meetings coming forward in early August. Rather than doing the whole thing today with so much to indulge, many of us are considering four meetings. What we're doing now, we're not discussing anything within the book but just planning the meetings. We're going to try this, **A. Identification of historic properties 36 CFR §800.4**, as an example, the mandate 800.4(a) determine scope of identification efforts in consultation with the State Historic Preservation Officer. The State Historic Preservation Officer is William Aila. He will be, at the end of this process, will be signing the Memorandum of Agreement. If you look down, determine and document the area of potential effects (APE), which has been explained as to finding §800.16. What I'm saying is that I'm giving you examples of what to refer to in the 36 CFR mandate because it is an important document that we will have to follow. As Mauna Kea mentioned, if you have questions, address them to me and I will address it to the agencies to keep it in order and better recording.

Beverly Muraoka: Excuse me, what does "THPO" stand for?

Mauna Kea: That's the Tribal Historic Preservation Officer.

Cheryl Lovell-Obatake: That does not apply to us, we're not Indians.

Kaliko Santos: And they'll mention "SHPO" which is the State Historic Preservation Officer which is William Aila. They'll also refer in the document refers to "THPO" which is Tribal Historic Preservation Officer which refers to American Indians, so they follow the same rules.

Cheryl Lovell-Obatake: And then again, it refers to §800.16, if you go down the list, so you can better understand the mandate. There's a lot of things that are in here, again §800.4(a) 2., you would look for 800.4, then you would look for (a), and then you would look for 2.

Kunane Aipoalani: It's a lot of cross-referencing.

Cheryl Lovell-Obatake: Yes, it's a lot of cross-referencing exactly. So that you can comprehend what the Feds are looking at and even the knowledgeable agencies; the County,.....

Beverly Muraoka: Where is this advisory council that they continuously mention? Who sits on that board?

Mauna Kea Trask: The purpose of this, the Advisory Council of Historic Properties is a federal council and I don't know where they exist, Washington D.C., and the whole point of this is throughout the past thirty, forty years, indigenous communities all over the country have gotten tired of not being involved in any federal planning processes, or any processes involving federal dollars. In 1966, they pass the original National Historic Preservation Act and it has to be constantly amended. Around 2001, in order to more clearly describe the consultation process under Section 106, the Federal government passed this 36 CFR accordingly. And what this is essentially is the recipe, a very detailed recipe on how to get consultation. For instance, how do you bake a cake? You need eggs, flour, sugar, water. But if you really take time to describe it, you need two cups of flour, you need three eggs, crack the eggs, separate the yolk, and that's where a short process gets long and detailed because you want to describe it accurately, point by point. In making it easier for all it almost becomes harder to follow. That's essentially what this document is, 36 CFR §800, is a total of fifteen pages, a lot of legal terms, but if you look at the basic process, if you first just read the titles, §800.1 - .16, generally prior to the meeting the agency official has to create this document, this is their document. They give it to the community prior to the meeting; the community reads it then comes. The agency official, if you look according to the agenda Auntie Cheryl will say, "*under (a) 1. i. – The Po'o requests Agency official to describe the area of potential effects*", they stand up, they'll tell you where the area of potential effect is, they sit down. Then she says, "*now describe the present review of existing information, how did you get that?*" We'll go through that, which is already in the (inaudible). And then under (a) 1. iii., the Po'o will lead the gathering of information, she'll say, "*Auntie Barbara what do you have to share on this issue, what do you have to add?*" And then anytime a federal agency official has a question, raise their hand, wait to be recognized, Auntie Cheryl says, "*Mr. Nicholson what's your question?*" "*I have a question about what Uncle Nathan said, what does he mean by that?*" "*(Auntie Cheryl) Uncle Nathan can you please explain?*" And that's the whole process, very orderly, very normal; she controls everything or whoever it's going to be. And then once that happens, we have to describe particularly in that process, that's why it's long, but it can be very quick. Actually, it's going to be quicker than the ones that have gone on in the past. And if you look through the CFR's, once we identify, we assess adverse effects. Usually, that's the long process, in case you're wondering, but in this specific case it's going to be easier because we know it's there and we acknowledge there will be adverse effect, so that can be a relatively short process. The more you read it; you'll get familiar with it fast.

Beverly Muraoka: Do we know who sits on this Council?

Mauna Kea Trask: No, but we can find out. I will find out.

Kaliko Santos: They're regional appointees and I think Hawai'i's last appointee just got off so I think the region is represented by someone from San Francisco.

Lenny Rapozo, Jr.: Do you remember Carol from the meeting we had at Makaiwa, (Carol Legard), she's part of the ACH (she represents that Council). They've been part of this process with us.

Kaliko Santos: We sit in the western region, they're like a board and then there are employees and Carol Legard is an employee that represents the Historic Board that was assigned to us.

Lenny Rapozo, Jr.: Point is they have been part of the process. (The last meeting at Makaiwa) she was more of an observer making sure the process was done properly.

Kaliko Santos: Their comments to the Federal agencies are important.

Cheryl Lovell-Obatake: That's why it's important to following the mandate in its order because you're being evaluated, and you're being listened to in how we proceed. This mandate in the book §800.7, if it gets very frustrated with a lot of arguments, failure to resolve adverse effects, termination of consultation. *Pau*, and we won't even get in the door. This is the tone that we need to look at, that we need to address and protect historic properties that are valuable for our culture. I'm saying this because it is what it is. And so I wanted to go on the identification of historic properties on *iii*. This is an important point to really look at I think, *Po'o leads the gathering of information from any NHO identified per §800.3(f) to assist in identifying properties which may be religious and cultural significance to them and may be eligible for the national register*. Kaneioulouma's *Po'o* is here and he is aware of this type of permission. Look at your text, your graph, and acknowledge even the *kupuna* of the religious and cultural practices. *Recognizing that an NHO may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The Po'o should address concerns raised about confidentiality*. So you have that opportunity not to disclose in public but in confidentiality with the proper agency. Just to validate it, §800.11(c) and the following. *iv. Po'o seeks information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties*. So you refer, 36 CFR §800.4(a)(3), so that you can understand what you should be, looking at the mandate. **2. Identify Historic Properties §800.4(b)**, *i. Based upon the information gathered under part (A)(1) above and paragraph (a) of 36 CFR 800.4, and in consultation with the SHPO (Bill Aila) and any NHO that might attach religious and cultural significance to properties within the APE, the agency official shall take the steps necessary to identify historic properties within the APE. ii. Po'o shall request that agency official shall take the steps to identify historic properties as described above as described in 36 CFR 800.4(b)(1) and (2)*. So you refer again to the mandate so you get clear definitions of what you need to address. Then, **3. Evaluate historic significance 36 CFR §800.4(c)**, *i. Po'o shall request that the agency official/designee shall, in consultation*

with the SHPO/THPO and any Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. (36 CFR §800.4(c)(1)). ii. Po'o shall request that the agency official determine whether or not the property shall be considered eligible for the National Register for Section 106 purposes. (36 CFR §800.4(c)(2)). So the agency is Federal Highways Division. 4. Results of identification and Evaluation (36 CFR §800.4(d)), i. If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in 800.16(i) then Po'o shall request that the agency official take the necessary step as required under 36 CFR 800.4(d)(1). ii. If the agency official finds that there are historic properties which may be affected by the undertaking, the Po'o shall request the agency official take the necessary steps pursuant to 36 CFR part 800.4(d)(2) and 800.5. **B. Assessment of Adverse Effects (36 CFR §800.5)**, 1. Po'o directs agency official to apply criteria of adverse effect (36 CFR §800.5(a)). i. Criteria of adverse effect is explained in (36 CFR §800.5(a)(1)). ii. Examples of adverse effects (36 CFR §800.5(a)(2)). iii. Phased application of criteria (36 CFR §800.5(a)(3)). 2. Finding of no adverse effect, Po'o request agency official take steps required in (36 CFR §800.5(b)). 3. If the agency official proposes a finding of no adverse effect, Po'o requests agency official to take action of further consulting party review pursuant to (36 CFR §800.5(c)). 4. Po'o shall request that agency official take steps consistent with Results of Assesment section whether or not adverse effect is found. (36 CFR §800.5(d)). **C. Resolution of adverse effects (36 CFR §800.6)**. 1. Continue Consultation (36 CFR §800.6(a)), i. Po'o shall request agency official to consult with SHPO and other consulting parties, to develop and evaluate alternatives of modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historical properties per 800.6(a). 2. Resolve adverse effects (36 CFR §800.6(b)). i. Po'o shall request that agency official to take the appropriate steps to resolve any and all adverse effects either with or without the Advisory Council on Historic Preservation as appropriate and required pursuant to (36 CFR §800.6(b)(1) & (2)). 3. Memorandum of Agreement (36 CFR §800.6(c)). i. Po'o shall request that a Memorandum of Agreement be executed pursuant to (36 CFR §800.6 (c)). Please read that one carefully too, it is a Memorandum of Agreement and it is compliant. **Pani**. So, you have plenty to think about and early August we all can be ready. Mauna Kea will explain something to us all.

Mauna Kea Trask: I just wanted to offer, throughout this process next month, all of you are going to read this document and familiarize yourselves with all these laws and rules, I just wanted to let you know I will give you all my card. If you have any questions about this, I can't give you legal advice, I'm the attorney for the County, but I can provide legal information. I know Lenny wants us to be available to everybody, so I can give you my contact number, if you have a question, by all means call me.

Cheryl Lovell-Obatake: I really appreciate all of your patience.

Kunane Aipoalani: Following up on what Auntie just said, I see we're choosing a *Po'o*. And with all due respect, I do believe I have the floor madam, I'd like to suggest that Cheryl remain the *Po'o*, because of her experiences, because of her knowledge of the Hawaiian way, I can go on, and your list is long. I know we had our disagreements at times, I feel that she would be a good person for the *Po'o*, just expressing my *mānā'o*.

Barbara Say: I second that.

Mauna Kea Trask: I'd like to concur with the appointment and the reason being that this is a very distinguished role; all of you know very well what you do, Hawaiian art, history and background; I agree that Auntie Cheryl in this respect according to these processes with the administrative law, with litigation, she is the most *ma'a*, she is the most *akamai* and I think she has the appropriate kind and quality of *mānā* to preside over this process.

Sharon Pomroy: Everybody in this room, it's been said, we all know what we doing. I've been here longer than some, others have been here longer than me, but we all doing the same thing, we all going the same place. I have to concur with the *mānā'o* that has come forth so far, you don't need to explain anything to me Cheryl, just say *hikino*.

Cheryl Lovell-Obatake: Thank you very much, however though, I have some responsibilities, I'm a cultural monitor for the Department of Water and I'm working under Koga Engineering, and that project is not over in Wailua. I'm also the cultural monitor for the Department of Transportation for Kūhiō Highway and Kuamo'o Road. When the call comes, I need to go, so what I'm suggesting is when I cannot be at a meeting, I'm looking for someone else to conduct the meeting. What do you guys think?

Kunane Aipoalani: I think that would be a good idea so that the meetings don't come to a complete stop as we go through this process, I do believe we need an *alaka'i* and I do have someone to suggest, Sharon Pomroy. Again, we've been on opposite sides of the fences but I'm coming from the Hawaiian point of view and we need somebody who can do the *Ho'oponopono* and makes sure it works right because of the fact that we will have outsiders looking at this process, how we go through this and if we can conduct a meeting with everybody there, I would suggest Sharon Pomroy as your *alaka'i*.

Beverly Muraoka: Is there a motion on the floor? I think we can discuss. I think the names that have been presented but maybe we can take it one step further and maybe not burden them. Because Section 106 affords us so many processes and that we ask *Po'o* Cheryl Obatake with assistant Sharon Pomroy maybe serve us for this and if there should be another big project we can select another *Po'o* and you rest from your labors. But if you want to continue serving us by all means continue. Because this could be a heavy undertaking, maybe the next Section 106 may afford another project to get involved we could select another like Uncle Nathan for example or Uncle Joe for that matter. Aside from Lenny or Mauna Kea because of their positions in the County. So for now I agree with Kunane, you've guided us along very nicely.

Sharon Pomroy: I appreciate your trust and your support for me in this position and I would like to agree to it but you all need to know a couple things before I can say yes. I work with a lot of kids in Anahola and Kapa'a High School in the Hawaiian Immersion Programs and our programs runs from 8:00 in the morning to late in the afternoon. I'm taking them to the ocean and we're going according to tides. There are projects in Anahola that I'm working on and other than myself there are two other candidates for OHA that I recognize and I know they all busy working on that. I will be more than happy to support you in this position and if I'm available I'm more than willing to step up. You need to know that on Monday our *Aha Moku* Bill is being signed into legislative law by the Governor and this will give us an office in DLNR and we will be a consultation arm to DLNR. So every island will have their own representative giving DLNR *mānā'o*.

Beverly Muraoka: What revised statutes allow that? And the office will follow just like that.

Sharon Pomroy: We hope. It will be signed into law Monday afternoon. Basically, the biggest thing that will need to happen is the establishment of *ahapua'a* councils to be the consultation people for what's going on within your *ahapua'a*. Your information gets passed to DLNR through me as a representative at this point. We're looking towards electing more permanent representatives in place.

Beverly Muraoka: Congratulations.

Nathan Kalama: Based on the information that Cheryl shared and Sharon shared, I move that Cheryl be the *Po'o* and Sharon be the *alaka'i*.

Kunane Aipoalani: Recognizing how busy both of your schedules are if for some reason both of you cannot make the meeting we can always reschedule.

Mauna Kea Trask: And also, to Auntie Cheryl and Auntie Sharon you will be supported by County, by OHA throughout this process. You're not going to have to do all the heavy lifting yourselves as far as documenting, writing out stuff, whatever you need we'll support.

Beverly Muraoka: Would it be fair to say that if the first two can't do it then a third one could conduct the meetings?

Kunane Aipoalani: Well we have others that are not here that I wish were here that could serve in that capacity. I second the motion on the floor, Cheryl as *Po'o* and Sharon as *alaka'i*.

Lenny Rapozo, Jr.: Call for the question.

Response: Aye.

Beverly Muraoka: Congratulations. As Kunane suggested that and I'm sure you will have consulted all of us, the majority that is able to make these meetings and if for some reason we can't, cancel it and try to find another date. Let the record reflect a clearer answer, please.

Cheryl Lovell-Obatake: *Hikino.*

Mauna Kea Trask: One of the requirements under the State's Statute 16, which is Historical Preservation and Review, under those Hawai'i administrative rules, an archeological inventory survey needs to be done by our consultants in order to further bring in more information. They are licensed to do it; they have the permission to, what Hal wanted me to ask the group is that to have a discussion in guidance as to where to do a sub-surface investigation. And so again if I may, using the map, we know right now by our consultants these purple areas are currently existing and known historic properties. They want your *mānā'o* prior to doing any sub-surfacing which is going under the ground. They want to consult you first; my understanding is that if for example you know of an area and are familiar with these cultural areas, then you would tell Mr. Hammond we want you to do a sub-surface investigation in the purple areas to confirm or maybe you're familiar with this area here, they could check out that area. It's my understanding that you would like to see investigation in at least the purple areas so you could have information about that.

Cheryl Lovell-Obatake: Mauna Kea that was the map on what page?

Mauna Kea Trask: Page 60 of your books has a map that's similar to this, it's not the exact same thing but it's a map of the area of the path and it shows the triangles where these sites are.

Cheryl Lovell-Obatake: Okay, page 60 is the map that Mauna Kea was holding up on historic sites.

Mauna Kea Trask: So if you look at for example 791, it's indicated right here, so it's generally the same.

Beverly Muraoka: Excuse me, does the *Ala Kuku'i* warrant any AIS studies. Oh, it's outside the area, it's not being affected. I see the path going inward, how could we insure that we preserve that *heiau*.

Nathan Kalama: Is that the one by Kaua'i Sands?

Lenny Rapozo, Jr.: No, I think its Lae Nani.

Mauna Kea Trask: The path originally, procedurally to the 106 rule consultation (inaudible), but then after that consultation process the Mayor decided to go along Papaloa Road and just

totally avoid it. Again this is the resort areas over here I think its rock walls but you can't gain access. So that's what we did in that process.

Beverly Muraoka: The first purple area suggests?

Mauna Kea Trask: This is cultural layers and burials.

Beverly Muraoka: And Dr. Hammond already investigated those areas?

Mauna Kea Trask: My understanding is that they haven't done sub-surface testing yet, they need to do it. I think that these identification marks are based upon review of the records which is previous to these areas being developed. For instance, you look at this Waipouli one, this is across Waipouli one, so when they built the hotel they had to do their investigation in which they found burials there.

Beverly Muraoka: When you say "sub-surface" can you clarify that?

Mauna Kea Trask: Sub-surface can be physical excavation, according to best management practices in the archeological field. So, it's usually done with shovel, brush, very delicately so as not to disturb anything, break anything. Sometimes the invasiveness of just digging is not *pono*, so what they do have are machines that can identify things without physically digging. So if you prefer, they can do that.

Cheryl Lovell-Obatake: Bev, page 60 is sort of the map in the book because you don't have a map, the historic sites.

Beverly Muraoka: I do know that my brother-in-law Kahea White was asked to excavate some at Coco Palms and it was interesting for him to report that where he did dig he didn't find anything. For that matter, you'd have to take that whole place apart to find, but it is there. So, I'm not too sure that the purple areas have all been done by Dr. Hammond or not? Well, Uncle Nathan, what say you, allows them to do this sub-surface investigation or pick and choose or what? And if pick and choose, where you would pick and choose to really confirm it does exist.

Sharon Pomroy: Instead of us sit together and say, pick here and here, we should ask Hal because he's the one with the forty years experience. He would know generally that's the areas that he wants to look at that he would feel has the most potential. And I'm sure he would personally know what spot in those areas he might find the most potential. You may want to ask his recommendation.

Beverly Muraoka: I got the gist that Mauna Kea was asking us on the agenda because he wants to know from us. Unless Uncle Joe, do you have anything specific?

Joe Manini: I'm looking at the plan where get the bicycle path, it passes all through that purple part. It's important that they check every one.

Mauna Kea Trask: Personally, I think they should check every one. No sense do one and not the other.

(All in agreement)

Kunane Aipoalani: Like Uncle Joe said, we're only concerned with the areas involved in the path. We don't want to go any further in to go find something. We should stay along the area of the development, if there's nothing then *maika'i*.

Lenny Rapozo, Jr.: But I think also like Uncle Nathan said, aside from the purple (areas on the map), if anybody knows of anywhere else along the path so that we can identify that.

Mauna Kea Trask: As we get more information, we can do more surveys if they need to. We need to do the initial one to get everybody the information they need. Is there a motion to do it all?

Cheryl Lovell-Obatake: Is there a motion? (reply: yes) Is there a second?

Beverly Muraoka: Second.

Cheryl Lovell-Obatake: All in favor? (reply: aye) Ayes have it, no opposition. Are there any more questions?

Beverly Muraoka: I'm sorry, and I don't mean to upset anyone there's something I would like to clarify and he started earlier, if Uncle could explain why he brought up the subject you did about Hawaiians and non-Hawaiians. If *Po'o* feels you're going off the subject then she can cut you off, but I'm interested, could you explain?

Joe Manini: Kamehameha III he wrote the *mahele*, he wrote the *mahele* deed. In the first two lines (speaking Hawaiian), Kamehameha is deeding the lands to the *kanaka* people, not to the Hawaiians, not to the foreigners. This is the one that has all the lands on every island, it's warranted. The deed is to the *kanaka* and it's not to *ahapuni* as government (speaking Hawaiian). Took me thirty-seven years of research, it's not the book of Mormon, it's the *kanaka* book. Plenty people get misunderstanding, they say it's the Hawaiian, it's the book of Mormon with everything in Hawaiian, it's not. If you can find the Hawaiian word in this book, it's not. I was taught by my father that I was not Hawaiian, that I was *kanaka*. If anybody feel they Hawaiian, that's fine. The people that call themselves *kanaka* are the Samoans, Tongans, etc. The Hawaiians came 150 years after the original people. That's why the Hawaiian cannot be *kanaka maoli*, cannot be Maori because they are aboriginal. (inaudible)

The research is *pono*. This is my genealogy, because it goes right down. It's very important to track the genealogy then you know who you are, because the land was given by God to the *kanaka* people. It wasn't given to the Hawaiian people. (inaudible)

In 1826, the foreigners that were in the islands made the pact with the United States government, that they wanted to be called the "Native Hawaiians", not us. The reason why the other natives say they native Hawaiian cause they related to Kamehameha. Kamehameha is the foreigners' king. (inaudible)

We have to agree with the genealogy, because you cannot change it. I was with the Hawaiian groups, we sued the State and Hawaiian Homes. (inaudible)

Now I have to defend it, the Hawaiians had 20 years to claim back the lands because they said they own it, they cannot claim it. So what make the Hawaiians think they have jurisdiction to decide what they going to with the land. The only way they can is say they *kanaka*. (inaudible)
Are we going to be Hawaiians or are we going to be *kanaka*?

Cheryl Lovell-Obatake: Pani.

Appendix C

Public Meeting 1, August 9, 2012

- Legal notice for Section 106 Review and First Public Meeting, published in *The Garden Island*, July 26, 2012
- News release by the County of Kaua'i, Department of Public Works on August 1, 2012
- Agenda
- Attendance Sheet
- Minutes of Meeting

Public Notice regarding Section 106 Review of the proposed Lydgate Park-Kapa'a Bike/Pedestrian Path Phases C & D ("Waipouli Connection")

The Kaua'i Department of Public Works (DPW), is issuing this public notice as part of its responsibilities under 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended.

Federal funding from the Federal Highway Administration (FHWA), and administered by the Hawaii Department of Transportation (HDOT), is being sought to facilitate design and construction of a bike/pedestrian path through Waipouli, on the east side of Kaua'i.

Project Background and Purpose

The Section 106 consultation process is being conducted in conjunction with a supplemental environmental assessment.

In 2007, the DPW completed an environmental assessment (EA) for the bike/pedestrian path from Lydgate Park to Kapa'a (Lihi Park) and made a finding of no significant impact. The preferred alignment identified in that original

EA included a section located mauka of Kuhio Highway and along the Waipouli drainage canal. The EA was followed by more detailed design studies which determined that crossing Kuhio Highway and the temporary bypass road would not be optimal for path users. Because the bike/pedestrian path will extend as far north as Coconut Marketplace (via Papaloa Road) and as far south as Uhelekawawa Canal, the County reexamined options to connect these two points. The most feasible option was one that had been proposed and studied in the Draft Environmental Assessment for the original path project—to locate the path within portions of the County's existing beach reserve.

The purpose of the current planning effort is to reevaluate the "makai alternative." The bike/pedestrian path's Waipouli connection will measure approximately 6,000 to 6,300 feet, depending on the final alignment. The project's primary objectives are to provide a safe and inviting facility that will expand opportunities for non-motorized travel and recreation; provide connectivity to shopping, dining, and resort areas; and lateral coastal access.

places; to assess any direct or indirect effects the proposed construction would have; and to seek ways to avoid, minimize, or mitigate any adverse effects.

Request for Information

The DPW is seeking public input on the project, and would appreciate comments reflecting any knowledge of, or concerns with, historic properties in the proposed Area of Potential Effects (APE), including any issues related to the project's potential effects on historic properties.

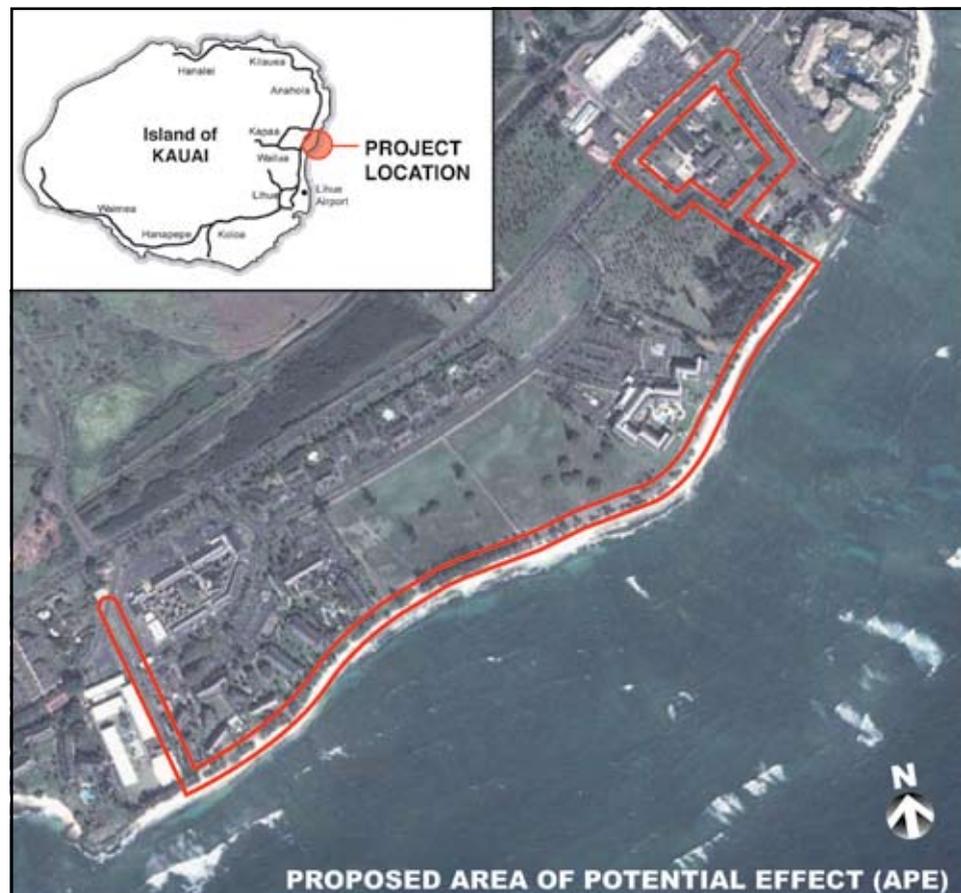
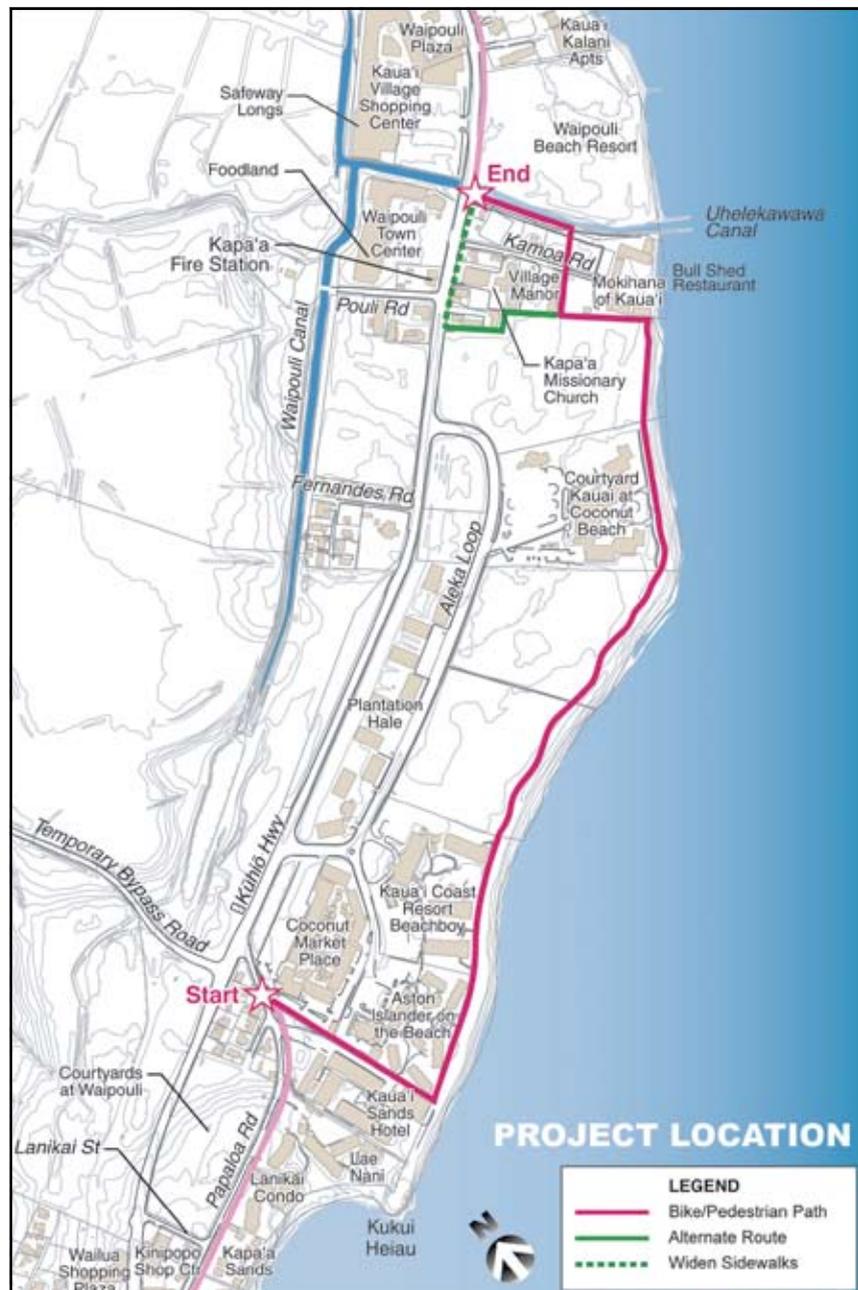
Any member of the public may submit comments by September 15, 2012 via e-mail to the project consultants at projects@kimurainternational.com or by regular mail to: Nancy Nishikawa, Kimura International, 1600 Kapiolani Boulevard, Suite 1610, Honolulu, HI 96814.

A public meeting to initiate the Section 106 review will be held on Thursday, August 9, 2012 beginning at 9:00 AM at the Lihu'e Civic Center, 4444 Rice Street, Pi'ikoi Building, Meeting Room A/B

Anyone with special needs requiring an American Sign Language interpreter or an auxiliary aid to participate in the meeting should contact the Department of Public Works at Ph. 241-4849 at least five days prior to the meeting.

Section 106 Consultations

The regulations at 36 CFR Part 800 require the funding agency to identify historic properties that are listed or eligible for listing on the National Register of Historic



For a complete definition of "historic property" under the NHPA, you may access the following website: www.achp.gov/citizensguide.html

Background information about this project is available at the following website: <http://www.culturalsurveys.com/incoming/WAIPOLI6%20Draft%20May%202012.pdf>

BERNARD P. CARVALHO, JR.
Mayor



GARY K. HEU
Managing Director

COUNTY OF KAUAI

DEPARTMENT OF PUBLIC WORKS

News Release

For Immediate Release: August 1, 2012

LARRY DILL, COUNTY ENGINEER
Tel (808) 241-4996
Fax (808) 241-6604

Meeting regarding shared use path set for Aug. 9

LĪHU'E – The potential effects on historic properties in the area of the proposed “Waipouli Connection” of the county’s shared use path will be discussed at a public meeting next week.

The meeting is scheduled on Thursday, Aug. 9 at the Līhu'e Civic Center, Pi'ikoi Building, conference rooms A and B, starting at 9 a.m.

The meeting is being held in accordance with section 106 of the National Historic Preservation Act, and is also part of a supplemental environmental assessment.

The primary purpose of the current planning effort is to re-evaluate the makai alternative for the Waipouli segment, which would run mostly along the ocean in the county’s existing beach reserve from the Uhelekawawa Canal to Papaloa Road. The alternate route is now being considered after detailed design studies indicated that crossing Kūhiō Highway and the temporary bypass road would not be optimal for path users.

To date, 6.8 miles of *Ke Ala Hele Makalae* have been completed, including the Lihi Park to Keālia Beach Park and Lydgate Beach Park segments.

The first phase of the Kawaihau spur of the shared use path is currently underway, and is expected to be completed this fall. Work on the elevated boardwalk section, which will be built to accommodate people with disabilities, is set to begin later this year.

In June, a notice to proceed was issued to Earthworks Pacific Inc. for a segment of the path that will run from Lihi Park in Kapa'a to the Foodland/Safeway pedestrian bridge in Waipouli. The \$3.38 million project is targeted for completion next summer.

During his inaugural speech titled *Holo Holo 2020*, Mayor Carvalho spoke about his vision for Kaua'i in the year 2020, which includes constructing as many segments of the shared –use path, *Ke Ala Hele Makalae*, as possible.

The shared-use path is one of 38 projects that are part of the mayor's Holo Holo 2020 vision for Kaua'i, which calls for all organizations, businesses, residents and visitors on Kaua'i to be part of creating an island that is sustainable, values the native culture, has a thriving and healthy economy, cares for all – keiki to kupuna – and has a responsible and user-friendly local government.

Anyone requiring special assistance or an auxiliary aid for the meeting should call the Department of Public Works at 241-4849 at least five days before the Aug. 9 meeting.

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Section 106 Agenda for Native Hawaiian Consultation Initial Meeting

I. Opening Pule.

II. Overview of Protocol Committee decided process/ laying of ground rules.

a. Auntie Cheryl Presents her findings:

I Cheryl Lovell-Obatake, acting as interim Po'o of the Section 106 Lydgate Park-Kapa'a Bike and Pedestrian Path Phase C&D Native Hawaiian Protocol and Preparation Committee hereby make the following findings;

1. The lack of formal recognition of a native Hawaiian government puts native Hawaiians at a disadvantage in regards to the section 106 consultation process.
2. Members of Native Hawaiian organizations have many other duties and obligations and unlike their native American tribal counterparts, native Hawaiians commonly do not hold paid positions in their respective native Hawaiian organizations.
3. Native Hawaiians voluntarily avail themselves to the federal 106 consultation process out of love and aloha for their 'aina, their culture and their traditions and therefore should be treated with the utmost deference and respect.
4. Pursuant to the National Historic Preservation Act (NHPA) section 106 ("section 106"), as amended, "[t]he head of any federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking."
5. The Lydgate Park-Kapa'a Bike and Pedestrian Path Phase C&D project is an undertaking as described under section 106 and as such the agency official shall consult with native Hawaiian organizations (NHOs), lineal descendants and members of the public in order to comply with the aforementioned mandate to, "take into account the effect of the project on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."
6. The procedures outlined in 36 CFR part 800 define how Federal agencies meet their statutory responsibilities under section 106.
7. Pursuant to 36 CFR, 800.2 (c)(1)(ii)(C), "[c]onsultation with NHOs should be conducted in a manner sensitive to the concerns and needs of the native Hawaiian organization."
8. 36 CFR 800.16 (f) defines consultation as, "the process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them regarding matter arising in the section 106 process."

9. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.
10. A section 106 process conducted within the traditional native Hawaiian rubric of Ho'oponopono and led by an Alaka'i or Po'o appointed by the NHOs would be a process that is sensitive to the concerns and needs of the native Hawaiian organizations.
11. This Ho'oponopono process is a distinctly native Hawaiian process and was developed with the concurrence of respected pillars of the native Hawaiian community of Kaua'i. The purpose of this process is to ensure that native Hawaiians may more effectively participate in the section 106 consultation process. Furthermore, this process is one that native Hawaiians understand, respect and are comfortable with so that they may maximize their legal right to be consulted regarding projects that fall under section 106's purview.
12. This Ho'oponopono process also demonstrates that native Hawaiians do understand federal regulatory processes and can not only effectively participate in them but can also lead them more effectively through traditional cultural means.
13. This process successfully marries the traditional Ho'oponopono ceremony with NHPA section 106 and 36 CFR part 800 procedures for County of Kauai FHWA funded projects.
14. This process brings uniformity to all 106 consultation projects so that native Hawaiians can be assured continuity between projects and are not subject to the whims of government agencies or their hired consultants.
15. In order to maximize the impact and effectiveness of consultation with NHOs and Lineal descendants the agency official should coordinate the steps of the section 106 Ho'oponopono process with the overall planning schedule for the undertaking and with any other reviews required under other Federal, State or County requirements.

b. Laying of Ground Rules.

1. This process will be a round table discussion with the Po'o ("head" "leader", currently Cheryl Lovell-Obatake) asking all the questions of both NHO's, individuals and government agencies. If participants have questions for each other they may ask the Po'o to ask the question to the other. There will be certain definite "legal" questions that must be asked per section 106 and 36 CFR part 800. These questions will be pre-prepared in a script form and asked by the Po'o of all participants, but further questions may be asked in order to better understand the answers given if needed, either by the Po'o, or the participants and government agencies through the Po'o. This way the procedure will be orderly. The Po'o will have the right to act according to both Hawaiian principles as well as rules of parliamentary procedure (which in fact are very similar) to ensure maintenance of order and decorum.
2. If a person/party wishes to answer questions/make disclosures privately this request can be accommodated.

3. All participants shall refrain from yelling, shouting, and arguing with each other and or the Po'o. Yelling, shouting and arguing with each other and or the Po'o is declared **kapu**.
4. All participants must respect and listen to the Po'o. Po'o is declared **kapu**.
5. the consultation meeting(s) will be open to all interested parties and can cover more than just native Hawaiian issues

III. Kulukulu Kumuhana (statement of the obvious problem to be solved or prevented from getting worse.)

A. Description of 106 process (utilizing NHPA, section 106 Consultation Procedures for Kaua'i County FHWA Funded Projects and 36 CFR part 800, section 800.1).

- i. Po'o requests Agency Official to describe the process up until now including past 106 processes and any moa's that have been signed.
- ii. Poo requests that Agency Official state what the purpose is for this particular 106 process and any effect it has on prior determinations.
- iii. Po'o requests Agency official/ designee to describe area of potential effects (APE) as defined in 36 CFR §800.16(d).
- iv. Po'o requests agency official/designee to present review of existing information on historic properties within the APE, including any data concerning possible historic properties not yet identified. (36 CFR §800.4(a)(2))

B. Identify participants and Initiate Consultation.

- i. Auntie Cheryl goes around the room and leads the introductions by asking everyone to state their name for the record and whom they represent.
- ii. Auntie Cheryl declares when the next date and time will be for the second 106 consultation meeting.

IV. Pani

Attendance Sheet

Meeting: Phases C & D, Lydgate-Kapa'a Bike/Pedestrian Path, Sec 106 Meeting 1

Date/Time: Thursday, August 9, 2012, 9:00 AM

Location: Lihu'e Civic Center, Pi'ikoi Building, Rooms A/B

Name	Contact Information—CONFIDENTIAL, Not for Public Release	
	Mailing Address	E-mail Address
Janice Fujjuchi		
Doug Haigh		
John Nickelson		
Daryl Date		
Keola Lindsey		
Missy Kamai		
Nancy McMahon		
John Petteason		
Tim Brown		
Tommy Noyes		
Dana Bekeart		
TROBEL STORCH		
MAHELANI SYLVIA		
Lelan Nishek		

Attendance Sheet

Meeting: Phases C & D, Lydgate-Kapa'a Bike/Pedestrian Path, Sec 106 Meeting 1

Date/Time: Thursday, August 9, 2012, 9:00 AM

Location: Lihu'e Civic Center, Pi'ikoi Building, Rooms A/B

Name	Contact Information—CONFIDENTIAL, Not for Public Release	
	Mailing Address	E-mail Address
D. Kaliko Santos		
ALI'CI'AE, KAKAUWA		
Keith Yap		
Tom & Lisa Godbey		
John Fenehee		
BS Norton		
Shaun Pouroy		
Valentine Ake		
Elizabeth Ake		
Pharrah Rogers		
Beverly Muraoka		
Leah Proulx		
Kenn Miyashiro		
Gerald Ida		
Gilbert Kahale		
Leah Proulx		

Meeting called to order, 9:10am – August 9th.

Cheryl Lovell-Obatake: Let's start off this morning, for the record my name is Cheryl Lovell-Obatake. Today's meeting, this is just one of the four meetings that we're going to be having, specifically you're here for the Lydgate Park – Kapa'a Bike/Pedestrian Path Phases C & D. I'm going to do an overview of the Protocol Committee decided the process; we're going to lay out the ground rules in this first meeting. So that we can keep on track, keep focused on the federal mandate 36 CFR and what is required. You have copies of my findings, there should be fifteen findings. And I'm going to go over it with you for the record as well. Aloha everyone, for the record my name is Cheryl Lovell-Obatake and I've been appointed as *Po'o* for this *Ho'oponopono*, Section 106 Consultation process by the Lydgate Park – Kapa'a Bike/Pedestrian Path Phase C & D, Native Hawaiian Protocol and Preparation Committee. At this time I would like to read into the records the findings that I've previously made as interim *Po'o* of the Native Hawaiian Protocol and Preparation Committee. These findings will explain to everyone how we got to where we are today and why the Native Hawaiian Protocol and Preparation Committee felt it necessary and desirable to conduct this 106 consultation process according to traditional native Hawaiian cultural procedures. The hard copy you got of my findings have been made available and I hope everybody has a copy. I will read it into the record and for you:

I, Cheryl Lovell-Obatake acting as the interim *Po'o* of the Section 106 Lydgate Park – Kapa'a Bike/Pedestrian Path Phase C & D, Native Hawaiian Protocol and Preparation Committee hereby make the following findings;

- 1) The lack of formal recognition of a native Hawaiian government puts native Hawaiians at a disadvantage in regards to the Section 106 consultation process.
- 2) Members of native Hawaiian organizations have many other duties and obligations and unlike their Native American tribal counterparts, native Hawaiians commonly do not hold paid positions in their respective native Hawaiian organizations.
- 3) Native Hawaiians voluntarily avail themselves to the federal 106 consultation process out of love and aloha for their *'aina*, their culture and their traditions and therefore should be treated with the utmost deference and respect.
- 4) Pursuant to the National Historic Preservation Act (NHPA) Section 106 as amended, "[t]he head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any State and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking."

- 5) The Lydgate Park – Kapa'a Bike and Pedestrian Path Phase C & D project is an undertaking as described under Section 106 and as such the agency official shall consult with native Hawaiian organizations (NHOs), lineal descendants and members of the public in order to comply with the aforementioned mandate to, "take into account the effect of the project on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."
- 6) The procedures outlined in 36 CFR parts 800 define how federal agencies meet their statutory responsibilities under Section 106.
- 7) Pursuant to 36 CFR, 800.2 (c)(1)(ii)(c), "[c]onsultation with NHOs should be conducted in a manner sensitive to the concerns and needs of the native Hawaiian organization".
- 8) 36 CFR 800.16 (f) defines consultation as, "the process of seeking, discussing and considering the views of other participants, and where feasible, seeking agreement with them regarding matter arising in the Section 106 process."
- 9) The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.
- 10) A Section 106 process conducted within the traditional native Hawaiian rubric of *Ho'oponopono* and led by an *Alaka'i* or *Po'o* appointed by the NHOs would be a process that is sensitive to the concerns and needs of the native Hawaiian organizations.
- 11) This *Ho'oponopono* process is a distinctly native Hawaiian process and was developed with the concurrence of respected pillars of the native Hawaiian community of Kaua'i. The purpose of this is to ensure that native Hawaiians may more effectively participate in the Section 106 consultation process. Furthermore, this process is one that native Hawaiians understand, respect and are comfortable with so that they may maximize their legal right to be consulted regarding projects that fall under Section 106's purview.
- 12) This *Ho'oponopono* process also demonstrates that native Hawaiians do understand federal regulatory processes and can not only effectively participate in them but can also lead them more effectively through traditional cultural means.
- 13) This process successfully marries the traditional *Ho'oponopono* ceremony with NHPA Section 106 and 36 CFR part 800 procedures for County of Kaua'i FHWA funded projects.
- 14) This process brings uniformity to all 106 consultation projects so that native Hawaiians can be assured continuity between projects and are not subject to the whims of government agencies or their hired consultants.
- 15) In order to maximize the impact and effectiveness of consultation with NHOs and lineal descendants the agency official should coordinate the steps of the Section 106 *Ho'oponopono* process with the overall planning schedule for the undertaking and with any other reviews required under Federal, State or County requirements. Any questions regarding these findings?

Next I'm going to be laying the ground rules:

- 1) This process will be a roundtable discussion with the *Po'o* (myself) asking all the questions of NHOs (Native Hawaiian Organizations), individuals and government agencies. If participants have questions for each other they shall ask the *Po'o* to ask the question to others. No one shall speak unless allowed by me (the *Po'o*).

- 2) There will be certain definite legal questions that must be asked by the *Po'o* per Section 106 and 36 CFR part 800, but further questions may be asked in order to better understand the answers given if needed, either by the *Po'o* or the participants in government agencies through the *Po'o*. This way the procedure will be orderly.
- 3) The *Po'o* will have the right to act according to both Hawaiian cultural principles as well as rules of parliamentary procedures which in fact are very similar to ensure maintenance of order and decorum.
- 4) If a person and/or party wishes to answer questions and/or make disclosures privately this request can be accommodated.
- 5) All participants shall refrain from speaking, yelling, shouting and arguing with each other and/or I (the *Po'o*). Speaking, yelling, shouting and arguing with each other and/or the *Po'o* is now declared *kapu*.
- 6) All participants must respect and listen to the *Po'o*. *Po'o* is now declared *kapu*.
- 7) These consultation meeting(s) will be open to all interested parties and can cover more than just native Hawaiian issues.

Kulukulu Kumuhana (statement of the obvious problems to be solved or prevented from getting worse). Start off with the description of the 106 process (utilizing NHPA, Section 106 Consultation Procedures for Kaua'i County FHWA Funded Projects and 36 CFR part 800, Section 800.1). At this time, I would like to request the agency official to describe; I'll have Mauna Kea Trask, Deputy County Attorney, to read *Kulukulu Kumuhana*.

Mauna Kea Trask: Aloha everyone, for the record, Deputy County Attorney Mauna Kea Trask on behalf of the County of Kaua'i and pursuant to the request of the *Po'o* today, currently the County of Kaua'i is in the process of planning the construction of Phase C & D of its Lydgate Park – Kapa'a Bike and Pedestrian Path. Phase C & D traverses through the *makai* boundary of the properties that border the coastline between *Papaloa* Road and *Kamoo* Road. We have charts and diagrams on both sides of the room that are available for you to look at. It is anticipated that this project will have an adverse effect on this district and any sites, buildings, structures or objects that are included in or are eligible for inclusion in the National Register. It is acknowledged that Section 106 Consultation Process is not a process that can be utilized to stop any project but that the goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects the project would have on historic properties. With this in mind, the County in working with the *Po'o* today, the *Po'o* has requested of the County and all parties present today to participate in this consultation process in good faith with the aim to work collaboratively to seek ways to avoid, minimize or mitigate any adverse effects on historic properties. *Mahalo*.

Cheryl Lovell-Obatake: Do you have any questions to that?

(Inaudible request from audience)

Mauna Kea Trask: What I read was based upon the draft consultation plan that's available. We also have more copies of those if anyone else would want; this book here is an entire compilation of the entire project up until this point. It is a draft and this has the regulations, maps, etc.

Cheryl Lovell-Obatake: Okay, moving on, description of 106 process, NHPA Section 106 Consultation Procedures for Kaua'i County FHWA; 1) the description of today's meeting and the upcoming meetings, today's meeting is the initial meeting of the *Ho'oponopono* process which is estimated to take four meetings to complete. There are four primary goals for today's initial meeting: 1) setting the tone and building trust, 2) making introductions, 3) establishing and clarifying the goals of Section 106 Consultation, and 4) presenting an overview of the complete Section 106 Consultation Process. Today all participants will be informed of the Section 106 *Ho'oponopono* based process, what has occurred until this point and what to expect in the future. No questions will be asked of the participants today because today you will all be apprised of the current situation. At the second meeting, after you have all had an opportunity to further review all the materials and visit the site, if you choose to, you will be consulted about the presence of historical sites. The projects affected on those sites and any and all other *mana'o* you may have regarding the Section 106 process and 36 CFR 800. The goal of the second meeting is to determine the scope of identification efforts, identify historic properties and evaluate their historic significance. Furthermore, the agency official will be requested to present the results of identification and evaluation efforts. The third meeting will address the agency officials' assessment of adverse effects as described in 36 CFR 800.5(a-d), and the presentation of proposed mitigation measures pursuant to 36 CFR part 800.6. I'm giving you all these numbers and I'm referring to the mandate (36 CFR Section 106) and that is important. We need to protect these historical sites and we need to pay attention on what we should be doing. The goal of the third meeting is to allow all parties to work toward measures that avoid, minimize or mitigate the proposed projects effects on the historical sites in the APE (Area of Potential Effect). Finally, resolution of adverse effects through the execution of a Memorandum of Agreement (MOA) signed by the participants. This is the culmination of the *Ho'oponopono* based Section 106 Consultation Process. At this time, I would request that the agency official, Mr. John Nickelson is here and Doug Haigh from the County is here, Ian Costa and Mauna Kea Trask from the County are here. Mr. Nickelson, either you or a designee, describe the project's process up until now including the past 106 process, if any MOA's had been signed.

John Nickelson: My name is John Nickelson, I'm with the Federal Highway Administration. The Federal Highway Administration as the funding agency, is responsible to insure that we follow Section 106 of the National Historic Preservation Act which is actually spelled out in detail on how to do that per federal regulations part 36, section 800. Under 36 CFR 800, the code of federal regulations process is really a 4-step process, and we'll cover the 4 steps. The first is initiation of the project or undertaking. That means either the federal agency is willing to participate in the funding of the project, building something, or it's going to execute a license that will allow someone else to do something. Federal Highways is providing a good deal of

money to pay for this project and as a result we are responsible to ensure we follow the (Section) 106, and that part is done, we have identified the project, Lydgate – Kapa'a Shared Use Path. The next step would be to identify historical, archeological, in other cases maybe architectural, or cultural properties that may be on or may be eligible for the National Register for Historical Places. And with that you identify point of interest and whether they are old buildings, old structures, bridges, archeological findings, burial sites, and places of worship or ceremonial places that are important and with the determination whether or not their eligible for the National Register, a distingue process for that. Whether it is a person or property and what the significance is, but we don't have to get into that right now. Once you've identified historic properties that are on or may be eligible for the National Register you'll do a determination of effect and make a certificate assessment of adverse effect. So you take a look and see if this undertaking will adversely effect the historical property, which has been identified, and if it's an adverse effect, we would try to avoid it, we'd try to minimize the impact, we'll try to mitigate. And that's the third step, the adverse effect and determine what it is. The fourth, is resolution, if it remains an adverse effect, the resolution of the adverse effect is actually spelled out in the MOA, which is the Memorandum of Agreement, which will be signed by the Federal agency, the Historic Preservation Office, if it gets to that level it would be the Advisory Council for Historic Preservation (if they have an interest in the project), any time we have an MOA, it's their option and they act as kind of a mediator through the problem. There may be other invited participants as signatories on the agreement that will probably include the County or HDOT. There will be concurring parties that also may be involved in that. Signatories on the agreement to acknowledge that we have discussed it and that we're going forward. It's a collaborative process, we're here to consult, listen and try to do the best we can with the information that we find. So, that's kind of an issue with the process, the description. The process for much of the bike path is already, has been done previously and we do have an existing MOA which was signed in 2006, it looked to me like much of the consultation for the two years or so before starting around 2004, we have correspondence and identification of areas where there was adverse effects so it did result in an MOA. Because it's been six years, and because of the multi-use path alignment has been changed a little bit, and some of the path has already been built, we're going to go through this 106 process again, I guess for a couple of reasons, 1) we're slightly changing the alignment, the location where the path might be, we'll want to talk about that, but also because it's been some time since we've been involved in this project and this process has actually evolved and changed a little bit. We're having, I think a better discourse with those who may be involved, we're required by the regulations to consult with Native Hawaiian Organizations, those who are interested in the culture, and I think in the past we may have forgot, with being better at it, we've come here today, have a good turn-out which is good and we would like to listen, so yes we have an existing MOA that will be amended.

Beverly Muraoka: *Po'o* excuse me, I'm Beverly Muraoka, I'd like to request, since the group is not moving to the convention hall, we take the advantage of finding out who's talking on the floor, introduce themselves.

Cheryl Lovell-Obatake: We're getting to that. Mr. Nickelson, can either you or a designee describe the area of potential effect as defined in 36 CFR.

John Nickelson: And the first part to that is to state what the Area of Potential Effect is, and that's really the APE, you take a look at where you think the project will be and you take a look at some distances, some areas to determine what you may effect. So, you probably don't want to look to the entire island of Kaua'i but you want to take a look at within several hundred feet of the project, or maybe even bigger, whatever you may think will impact the view or the activity or have some effect on the cultural properties. And really the first step is to identify an Area of Potential Effect and then you can refine the process to identify properties within that APE. And I think for this I would ask that the County, talk about what has been identified.

Cheryl Lovell-Obatake: Doug, who's going to do that?

Doug Haigh: I will ask Hal Hammatt to address that description of the Area of Potential Effect at this time.

Cheryl Lovell-Obatake: This is Hal Hammatt, Cultural Surveys Hawai'i, the archeology firm that's doing the testing of this project, he'll explain.

Hal Hammatt: I will be referring to the maps here and also we have some handouts, two handouts and also the maps on the other side of the room. Basically, this is Kaua'i Sands right here, this is the Courtyard area and this is the Waipouli Beach Resort. So the southern extent of the property, we have made a red (inaudible) for the proposed route of the bike path. Starts at Papaloa Road and goes a little over a mile right along the shoreline and then it heads up to the tennis courts here and at that point it breaks up into two possible pathways. One follows the County right-of-way up to Kūhi'ō Highway the other crosses grass area and goes to the road that's right next to (inaudible). So that's basically the footprint of the project and then if we consider the APE (Area of Potential Effect), it's probably a little bit bigger than the actual footprint of the project because of the need to avoid certain historic properties which we have identified, which we will get to later.

Unidentified Speaker: Cheryl, could you explain what we're up against, the area he just discussed, how many areas of contention are there? How big of a mountain are we looking at, as far as defending the Hawaiian culture and to be by-pass the whole mess so to speak, if you guys are really offended by what's going on here? How many little issues are we going to be fighting along the way?

Cheryl Lovell-Obatake: Like I said, this is the first meeting, you probably seen the public notice, did you see the legal notice in the newspaper? Its site specific, this is only one project, we're not including the entire bike path that's along the coast. It tells you where it starts, if you didn't see the legal notice, and Hal described it. It's along the shoreline where the Marriott, Kaua'i Sands,

Unidentified Speaker: I get a sense that the Hawaiian people are adverse to this bike path coming this route and would rather have it go somewhere else?

Cheryl Lovell-Obatake: I won't answer that question that we are because we're having this meeting and we need to find out and identifying historical properties, which Dr. Hammatt has done some archeological inventory tests, you know that it has changed, from what was before of ancient times, you have hotels there, etc. This is what the process is with Mr. Hammatt, he's an archeologist, and he's just testing the ground.

Unidentified Speaker: I'm just trying to get a sense of the mountain we're trying to climb here, how big of a mountain is it, we can just go around the mountain, we're going to have four meetings and it sounds like this is going to go on, a lot of people using a lot of time.

Cheryl Lovell-Obatake: The committee, Hawaiian Protocol Committee has suggested that we break it up in four segments, the meetings because they felt that a lot of material.

Unidentified Speaker: Yeah, it's a lot and I think we need a walking tour or something, the big picture for me is this is all going to all be under water in a number of centuries or so and (inaudible) so I'm giving that perspective. I can understand that your Hawaiian culture, if my parents were dead there I'd probably say, put your bike path and enjoy it because it's going to be under water in a while. Or if your most famous king, would probably say don't fight it, just let life live and that is my point of view, yes its four meetings of pain-staking process, then let's just go inland somewhere.

Cheryl Lovell-Obatake: Well, it was suggested by the Native Hawaiian Organizations to better understand it because we're faced with a lot of 106 projects and each one is different. Like I said this is a site specific area, so it's giving the NHO that time to review, to understand, you may know it better and I can understand what you're saying but that was the recommendations given to me that they would like to break it up into four meetings. So there will be like maybe two in a month and another two in another month.

Unidentified Speaker: It just seems like if there were ten point contentions in one of these phases here and you're going to agree on five but the five you're not going to agree on, it going to mess up the whole project.

Cheryl Lovell-Obatake: You know what I'll do; I'll have Hal Hammatt review the existing information on the historic properties, etc. For you to understand what we're now being faced with after his testing of what's there.

Unidentified Speaker: How many points of contention do we have on these areas that we're talking about?

Hal Hammatt: Yes, I think that was the next step, this map right here, if I'd known there were going to be this many people here I would have brought four times as many handouts, but areas of contention we have, take a look at this map, basically we have three that we knew about before we started work on this project, before we started the field investigation. We have archeological site 791, while they were building the swimming pool at that resort (can't remember name), in this condo area they found sub-surface cultural layer and they also found burials. Then we move north up the coast, we have site 1801, that's a shoreline cultural layer visible right along the cut-bank, right in the shoreline set-back and also they are associated *iwi kupuna*, Hawaiian burials in this site. The third area of concern is site 1800 which is at the northern end of the project, that site has two components, the *makai* component is of major concern for this project, it also has burials previously identified along the shoreline and it also has cultural layer occurs along the shoreline. So those are the three areas of concern, we also have in our recent findings, we have identified two *iwi kupuna*, one at the northern end right by the tennis courts and other at the southern end just *mauka* of Kaua'i Sands.

Unidentified Speaker: So, instead of having three points of contention, you now have how many points?

Hal Hammatt: Well, I wouldn't call them point of contention; I would call them areas of concern or historic properties that need to be dealt with.

Unidentified Speaker: And if we try and circumvent those areas, is it possible to circumvent, to go around those areas?

Hal Hammatt: I think you address your questions to.....

Cheryl Lovell-Obatake: I'm going to have Mr. Nickelson address that.

John Nickelson: The 106 process takes into account the feelings of all the parties that have an interest in the project, so I think that it has to really, we certainly want to identify the historic or archeological sites and maybe cultural sites out there that don't have anything to do with whether archeologists might find, there may be just place where celebration or religious significance, things that may not be visible to those just out there walking around. The process really takes the time to take the input from whoever has interest, the law specifically talks to us about input from, on the mainland Native Americans, in Hawai'i Native Hawaiian Organizations so we have a requirement to listen to whoever wants to come forward and offer their input. I think to try to pin Dr. Hammatt to say these are archeological sites and these are points of contention is not fair. What we're doing is trying to listen to everybody that may provide input on whatever sites we want to talk about. And the process may take time I think it's premature to talk about avoidance because we haven't talked about what's really affected yet. So we want to identify the sites then we'll talk about, we want to identify that may be some of the archeological, then we'll talk about adverse effect and whether it's adverse effect of the

project, then we'll talk about avoidance and then we'll talk about minimization and mitigation. So it's really premature in the process to try to identify points of contention.

Unidentified Speaker: Thank you Cheryl. I use the bike path everyday from the Houselots and go north so that's why I'm here to see what's going on, it looks like you got a long process here and I don't think I'm going to become educated on all your sites and become directly involve in this, I appreciate and understand what you're trying to do but I think I'll withdraw from this.

Cheryl Lovell-Obatake: I'd like to know your name and I'd like to identify the participants today. Maybe I'll start with you if you're going to leave, you are going to leave? So for the records what is your name?

John Ferrebee: John Ferrebee, from Wailua Houselots.

Cheryl Lovell-Obatake: Thank you very much and thank you for your input. I'm going to go around the room; I'll start from my left.

Introductions: Sharon Pomroy, Keith Yap, Vice-Chair, Kaua'i – Ni'ihau Burial Council; James Alalem; Puanani Rogers; Janice Fujiuchi; Beverly Muraoka, Kumu Hula; Liberta Albao; Alicia Ka'auwai; Val & Elizabeth Ako; Tim Bynum; Tommy Noyes; Tom & Elise Godfrey; John Patterson; Nancy McMann; Jenny Victorino; Leland Nishek; Kaliko Santos, OHA; Missy Kamai; Dana Beckhart; Keola Lindsey, OHA; John Nickelson, FHWA; Douglas Haigh, County of Kaua'i – Project Manager; Ian Costa, Deputy Director – Dept. of Parks and Recreation; Nancy Nishikawa, Consultant – Kimura International; Herb Lee, Consultant – Kimura International; Glenn Kimura, Kimura International; Hal Hammatt, Cultural Surveys Hawai'i; Haven, Cultural Surveys Hawai'i; Soncy Tamashiro, Dept. of Parks and Recreation; Mauna Kea Trask, Deputy County Attorney – County of Kaua'i; Ray Catania; Isabelle Stewart; Dilbert Kahele; Lea Perreira; Ken Miyashiro; Cheryl Lovell-Obatake.

Cheryl Lovell-Obatake: I'm going to announce the meetings that are coming up, this is the first meeting August 9th; the second meeting will be August 23rd, 9:00am – 4:30pm, Conference Room, Department of Transportation, Puhi; third meeting will be September 6th, 9:00am, here, Piikoi A/B, Civic Center; meeting four September 20th, 9:00am – 4:30pm at the Department of Transportation, Puhi Conference Room. Any questions?

Liberta Albao: I was very concerned about this meeting and when I got the letter from Kimura International I felt that I wanted to go to the hotels along this corridor, I thought it was important that they be present here, and I'm disappointed, I went to Islander on the Beach and gave them a copy of the letter to Sandi Kato-Klutke, I went to Lāwa'i Beachboy and Makaiwa. I'm very disappointed that they're not here at the table. I just wanted that for the record.

Cheryl Lovell-Obatake: For this meeting? Well thank you for making those efforts for us.

Liberta Albao: Yes, because of the impact of that area and they're not here, it shows that they're not concerned, it's sad.

Cheryl Lovell-Obatake: And you know folks, I just wanted to remind you, the meetings that are coming up that I announced, we had a discussion, Mr. Nickelson, Mauna Kea and Doug Haigh, there's going to be, for you to know, there's going to be legal notice in the newspaper. For the next three meetings, so that, we're not missing anybody, people will say, well I never know there was a meeting. So I had recommended that and agreed with Mr. Nickelson. Yes, Doug.

Doug Haigh: I'd just like to make a few comments, 1) we will be publishing legal notices, they may not be quite as colorful as that one or large, but they will be in the paper and will definitely be contacting everybody that participated in the first meeting. Also, I would like to answer the concerns a little bit, about other parties participating in the project, the Section 106 process is a part of the Environmental Planning process. And there's much more to the Environmental Planning process than just the Section 106. So it's very possible that the concerns of hotels and nearby property owners may not be historical property Section 106 related issues. We will be taking their comments and concerns and really the next step where we will be doing a larger outreach is in the Draft Environmental Assessment process which is a State process and we will be going through the formal Draft Environmental process and that's where we do a much broader net to bring in more concerns about the project.

Alicia Ka`auwai: *Po'o*, I would like to know if the gentleman includes, and walking the neighborhood with me and learning from me what is my concern? How will it look? How wide will these pathways be? Why not use the already right-of-way? I have questions; nobody has contacted me all these years. I live there, I own that house and property and I love my community, why box us in like this?

Cheryl Lovell-Obatake: Okay, I know that there is going to be a site visit, we discussed that. The entire site visit will be site specific, where this bike path is going and thank you for bringing that up, because I forgot.

Liberta Albao: Cheryl, I would like to commend you on this written document, because I'll share this with the Native Hawaiians, I sit on several boards and my concern is these remarks, because many of them only use (inaudible), this very important process. So we have to reach out beyond this circle and the impact for the native Hawaiians working at these hotels, they're very concerned. My son is a supervisor at the hotel, he realizes the impact, and when you block off access to surfing and fishing, that is their concern. And I worked at Coco Palms thirty years, as a native Hawaiian we have to educate our people about this process, too long overdue.

Cheryl Lovell-Obatake: Thank you Liberta. I wouldn't have accepted the *Po'o* position because needing to understand the 36 CFR. Keith knows about 36 CFR Section 106 at the Burial Council as well and that's the way it is. There's got to be order and understanding, our ways and

traditions and cultures for historic properties to be protected and that is the focus and that is why I accepted this position. Yes. Could you state your name?

Kupuna Hannah Reeves: I missed my flight, I'm late, but I want you folks to know that my job is preserving old Hawai'i. I come from Hawai'i, I respect every island including here. The reason why I say that, procedures that people like us have to go to the Burial Council, they take our authority for our ancestors buried in the land. People that are new, I'm not coming against you, I am to protect old Hawai'i, and no joking, you do something wrong, watch out, I going take your equipment and everything. But I'm saying that we need to come together as one, running with all our might, preserving old Hawai'i. Because a lot of damaged has already been done to every site. We need to preserve old Hawai'i because our children, our grandchildren, our great-grandchildren coming up. When we put all of our *mana'o* in the wind, all of you guys, including me, there's only one way to preserve old Hawai'i. Thank you.

Cheryl Lovell-Obatake: Thank you Auntie, I remembered you from the Department of Transportation 106 down at the old Marriott. And so, yes Mauna Kea.

Mauna Kea Trask: Po'o, thank you, I've just been informed by our consultants that lunch is on the way for everybody, so if you'd like to stay around and look at the materials that we have today or speak to us individually, you can do that while we wait for the lunch to come. Also, there will be a site visit today after this meeting, we can go walk the site from the southerly boundary up north where it's going to be including near the end point by Auntie's house, we can walk the alternative paths and see what we're talking about, so that will be done today after we eat and that will probably take about an hour, I think. So next meeting when you come to get your *mana'o* and everything you'll be able to know where the site is and having talk to County, State, Federal and our consultants and archeologist.

Kupuna Hannah Reeves: I would recommend that all of us (inaudible)...sacred sites so we know what we doing. If you have a *heiau* over here you cannot bring in any heavy equipment 100 feet on each side.

Cheryl Lovell-Obatake: Okay, Auntie can I clarify something, this project here is site specific, this is by, where we had our meeting, the Marriott along the shoreline, it's for a multi-use bike way. If someone will give Auntie if there's extra, information of where we're talking about, that could better help her.

Nancy McMann: So your agenda today was the usual consultation with the Native Hawaiian Organizations article 106, and your consultants, there are named in the Federal 106 process the two other organizations that you have a member right here, Kaua'i – Ni'ihau Island Burial Council, then consultations will also take place with the Kaua'i Historic Preservation, is that correct, maybe you can verify that for the public, so perhaps if there are not Native Hawaiian and have other concerns they might want to participate.

Cheryl Lovell-Obatake: Thank you Nancy.

Doug Haigh: *Po'o*, what exactly was the question? I have a little trouble hearing.

Cheryl Lovell-Obatake: She just said the Kaua'i Historic Preservation Review Commission, this project will be going there right?

Doug Haigh: Absolutely, it will be going there during the environmental process and then also this project will require an SMA permit and it will be going to them during the SMA process.

Cheryl Lovell-Obatake: And what about Keith?

Doug Haigh: It will go to the Burial Council, definitely will be going to the Burial Council because we have recently discovered burials. Absolutely we'll be going to the Burial Council.

Beverly Muraoka: *Po'o*, exactly where do we meet and what time?

Cheryl Lovell-Obatake: Where we going to meet?

Doug Haigh: For today's, would it be appropriate to meet maybe at 2:00pm to avoid the traffic? Or we can meet at, okay, so we'll meet 1:00pm at the Kaua'i Sands parking lot. Which is right next to the Coconut Marketplace?

Hal Hammatt: I would like to make a statement please. Kind of logistics, as I described the project there it is a mile, for some people a short walk, for some people a long walk. So, there probably is an alternative, if you have a vehicle to go to the north end, and meet up with us there if you don't want to walk all the way.

Beverly Muraoka: *Po'o*, I would like to know where is the beginning of this project, I think that's where we should start and then if we can walk that mile or half a mile, if not, jump in our cars and follow.

Cheryl Lovell-Obatake: Hal, where does it start? If they want to walk today.

Hal Hammatt: The project starts, the southern end of the project is the parking lot for Kaua'i Sands. I would suggest that is probably the best places to go, then we walk through this, and then most of the areas of concern are at the northern end. But it is going to be a walk, concrete path part of the way, but it's going to be a walk for some people.

Alicia Ka`auwai: *Po'o*, may I ask are you coming up Kamoo Road?

Hal Hammatt: You mean is the bike path coming up that road? We'll end up there and whoever wants to drive, can drive up to this area here and meet people who have walked.

Cheryl Lovell-Obatake: *Po'o* will *pani* this meeting, adjourned, 11:30am.

Appendix D

Public Meeting 2, August 23, 2012

- Legal notice for Section 106 Review and First Public Meeting, published in *The Garden Island*, August 16, 2012
- Agenda
- Attendance Sheet
- Minutes of Meeting

THE GARDEN ISLAND

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INTERNATIONAL
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Sheri Cole

and sworn to me this 17th day of
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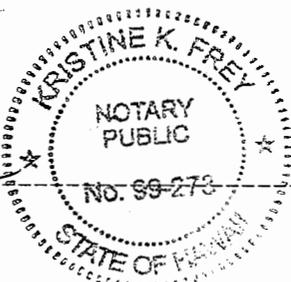
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**Public Notice for Second Public Meeting
Section 106 Review of the proposed Lydgate Park-Kapa'a Bike/Pedestrian Path
Phases C & D ("Waipouli Connection")**

The Kauai Department of Public Works (DPW), is issuing this public notice for a second meeting under 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended.

Phases C & D of the proposed bike/pedestrian path is a largely coastal alignment from Papaloa Road to Uhelekawawa Canal. This section will connect portions of the path that are already built or currently under construction.

The regulations at 36 CFR Part 800 require the funding agency—the Federal Highway Administration—to identify historic properties that are listed or eligible for listing on the National Register of Historic places; to assess any direct or indirect effects the proposed construction would have; and to seek ways to avoid, minimize, or mitigate any adverse effects.

Request for Information

The DPW is seeking public input on the project, and would appreciate comments reflecting any knowledge of, or concerns with, historic properties in the proposed Area of Potential Effects (APE), including any issues related to the project's potential effects on historic properties.

Any member of the public may submit comments by September 12, 2012 via e-mail to the project consultants at projects@kimurainternational.com or by regular mail to: Nancy Nishikawa, Kimura International, 1600 Kapiolani Boulevard, Suite 1610, Honolulu, HI 96814.

A second public meeting for Section 106 review will be held on Thursday, August 23, 2012 beginning at 9:00 AM at the State Department of Transportation Conference Room 1720 Haleukana Street in Puhi

Anyone with special needs requiring an American Sign Language interpreter or an auxiliary aid to participate in any of the meetings should contact the Department of Public Works at Ph: 241-4849 at least five days prior to the meeting

Additional information about this project is available at the following website:
<http://www.culturalsurveys.com/incoming/WAIPOUL16%20Draft%20May%202012.pdf>

(August 16, 2012)

Lydgate Park-Kapa‘a Bike/Pedestrian Path, Phases C&D
Meeting for Section 106 Consultation, National Historic Preservation Act
Thursday, August 23, 2012, 9:00 AM
Hawai‘i Department of Transportation Conference Room
1720 Haleukana Street, Lihu‘e, HI 96766

AGENDA

Identification of Historic properties contained in the Area of Potential Effect (APE)

- I. Opening Pule**
- II. Brief summary of Meeting 1 and field visit**
- III. Overview of Protocol Committee decided process/ laying of ground rules**
- IV. Mahiki (The “setting to rights” of each successive problem that becomes apparent during the course of ho‘oponopono, even though this might make a series of ho‘oponopono’s necessary.)**

Identification of Historic Properties (36 CFR § 800.4)

- 1. Determine Scope of Identification efforts (36 CFR §800.4(a))**
 - i. Po‘o requests Agency official/ designee to describe area of potential effects (APE) as defined in 36 CFR §800.16(d).
 - ii. Po‘o requests agency official/designee to present review of existing information on historic properties within the APE, including any data concerning possible historic properties not yet identified. (36 CFR §800.4(a)(2)).
 - iii. Po‘o requests agency official to present proposed significance of each historic property (along with the basis for their assessment) per 36 CFR part 800.4 (c) and the proposed effect assessment per 36 CFR part 800.5 (a).
 - iv. Po‘o leads the gathering of information from any NHO identified per § 800.3(f) to assist in identifying properties which may be religious and cultural significance to them and may be eligible for the National Register. Recognizing that an NHO may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites, the Po‘o should address concerns raised about confidentiality pursuant to § 800.11(c). (36 CFR §800.4(a)(4))

- v. Po’o seeks information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of or concerns with, historic properties in the area, and identify issues relating to the undertaking’s potential effects on historic properties. (36 CFR §800.4(a)(3))
2. Identify Historic Properties. (36 CFR §800.4(b))
 - i. Based upon the information gathered under part (A) (1) above and paragraph (a) of 36 CFR 800.4, and in consultation with the SHPO and any NHO that might attach religious and cultural significance to properties within the APE, the agency official shall take the steps necessary to identify historic properties within the APE.
 - ii. Po’o shall request that agency official shall take the steps to identify historic properties as described above as described in 36 CFR 800.4 (b) (1) and (2).
 3. Evaluate historic significance (36 CFR §800.4(c))
 - i. Po’o shall request that the agency official/designee shall, in consultation with the SHPO/THPO and any Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. (36 CFR §800.4(c) (1)).
 - ii. Po’o shall request that the agency official determine whether or not the property shall be considered eligible for the National Register for section 106 purposes. (36 CFR §800.4(c) (2)).
 4. Results of identification and Evaluation. (36 CFR §800.4(d))
 - i. If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in 800.16(i) then Po’o shall request that the agency official take the necessary step as required under 36 CFR 800.4 (d)(1).
 - ii. If the agency official finds that there are historic properties which may be affected by the undertaking, the Po’o shall request the agency official take the necessary steps pursuant to 36 CFR part 800.4(d)(2) and 800.5.

V. Pani

Attendance Sheet

Meeting: Phases C & D, Lydgate-Kapa'a Bike/Pedestrian Path, Sec 106 Meeting 2
 Date/Time: Thursday, August 23, 2012, 9:00 AM
 Location: Hawaii Department of Transportation Conference Room

Name	Contact Information—CONFIDENTIAL, Not for Public Release	
	Mailing Address	E-mail Address
Keith Yap		
M. Magno		
Kupuna Hannah Wa		
Kelama Kane Reiner		
NEELANI JOSEPH		
Rayne Regush		
Cheryl Lovell-Ovatake		
Wendy Raebach		
Leslie Pool		
Tommy Noyes		
Ray Catania		
Waldeen K. Palmera		
Doug Haigh		

Meeting called to order, 9:20am – August 23, 2012. Pule.

Cheryl Lovell-Obatake: Today is August 23rd; we are here today for the Lydgate Park – Kapa'a Bike/Pedestrian Path, Phase C & D Meeting for Section 106 Consultation, National Historic Preservation Act of the Hawai'i Department of Transportation. Aloha everyone. My name is Cheryl Lovell-Obatake and I am the *Po'o* for this Section 106 *Ho'oponopono* based consultation process. At the first 106 meeting on August 9th, the new 106 *Ho'oponopono* consultation process was introduced to the Native Hawaiian Community and the public at large. Pursuant to the work of the Native Hawaiian Protocol Committee, and my Findings, as *Po'o* this culturally based process was developed to make the Federal 106 Consultation Process more accessible to the Native Hawaiian community and thus it makes the process more effective. After the process was introduced, the agency official, Mr. John Nickelson of the Federal Highway Administration and his consultants described the current undertaking which is the Lydgate Park – Kapa'a Bike/Pedestrian Path, Phases C & D. The participants in this process were then identified and we conducted a site visit. I ask you all to continue working together and to follow the rules and *kapu* contained in this process. The overview of Protocol Committee decided the process and there are some ground rules. Some of you were not here, for those, what it is: 1) this process will be a round-table discussion with me, the *Po'o*, asking all the questions of both the NHO's, individuals, and government agencies. If participants have questions for each other, they shall ask the *Po'o*, meaning ask "me", to ask the question to the other. No one shall speak unless allowed to by me. 2) There will be certain definite, legal questions that must be asked by the *Po'o*, per Section 106 & CFR § 800. But further questions may be asked in order to better understand the answers given if needed either by me (*Po'o*) or the participants and government agencies through the *Po'o*, this way the procedure will be orderly. 3) I, the *Po'o*, will have the right to act according to both Hawaiian culture principles as well as rules of Parliamentary Procedures, which in fact are very similar to insure maintenance of order and decorum. 4) If a person and/or party wish to answer questions and/or make disclosures privately, this request can be accommodated. 5) All participants shall refrain from speaking, yelling, shouting, and arguing with each other and/or the *Po'o* (me). Speaking, yelling, shouting, and arguing with each other and/or me, is now declared *kapu*. 6) All participants must respect and listen to the *Po'o*. *Po'o* is now declared *kapu*. 7) These consultation meetings will be open to all interested parties and can cover more than just Native Hawaiian issues.

We are on #4 of the agenda, ***Mahiki*** ("setting the rights" of each successive problem that becomes apparent during the course of *ho'oponopono*, even though this might make a series of *ho'oponopono*'s necessary.)

Identification of Historic Properties (36 CFR § 800.4):

1) Determine Scope of Identification efforts (36 CFR § 800.4(a)). Mr. Nickelson, can you or a designee describe the area of potential effects (APE) as defined in 36 CFR § 800.16(d). [*Po'o* acknowledges Mr. Tommy Noyes], Mr. Nickelson, please be specific.

John Nickelson: I guess the first thing to do is talk about the area of potential effect and what it means.....(inaudible).

Cheryl Lovell-Obatake: Let me get this straight so that everyone understands the order, for the record the area of potential effect is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of the historic property. If any such properties exist, the area of potential effects is influenced by the scale and nature of an undertaking and may be different from different kinds of effects caused by the undertaking. Mr. Nickelson, do you have a designee to present the review of existing information?

John Nickelson: I would suggest that either the County or their consultant describe the actual limits of the area of potential effect for their project.

Cheryl Lovell-Obatake: Who do we have from the County, Doug Haigh will you be doing that?

Doug Haigh: I will defer to our consultant, Hal.

Hal Hammatt: Aloha everybody, my name is Hal Hammatt, Cultural Surveys Hawai'i. Last time we were short on the displays, this time we are kind of over-doing it. You have some handouts there, to describe the project on the APE. The first one is actually the one with the two insets, that one describes the previously identified sites as well as what we consider the APE for the project. It's a strip of shoreline that goes from the Bull Shed area south along the coast and then goes just on the north side of Kapa'a Sands, through a County easement up to Papalooa Road. The north end gets a little complicated, there are two alternatives, one goes to the road that's fronting the canal and the other one goes straight down another County right-of-way back to the highway. Now, we are not necessarily concerned with the actual highway route that I think has pretty much been eliminated. Now the second part of this presentation is to talk about what we know of historic properties. Look at the map, we start at the north end, we have site 1801, previously identified by Rosendahl back in the '90's. It's typical of many of these shoreline sites on this area of Kapa'a, it has cultural layer, it also has associated with the cultural layer, it has human burials.

[Unidentified speaker ask to speak, *Po'o* expresses, not at this time]

So, there were three burials identified right along the shoreline, as you can see the bike path goes along that route. Because, and I understand there's some flexibility in the APE can be adjusted, what we did was and we'll get into that, anyways, that's the first site at 1801. The second one, site 1800, which is about midway south, another site identified by Rosendahl. It also has human burials associated with the cultural layer. And more to the south, a third one is site 791, which was identified during the construction of improvements of these two properties in that area. Again, the same pattern, human burials associated with cultural layer. These two northern ones are of particular concern; the southern one is not of immediate concern because all the components were identified *mauka* of the area of potential effect. I think that's it.

Cheryl Lovell-Obatake: Mr. Nickelson, can you or your designee present your review of existing information on historic properties within the APE including any data concerning possible historic properties not yet identified.

John Nickelson: Again, I would suggest deferring to Hal Hammatt, consultant, who has just gone over the known-historical properties and has also done some research to see if there are any other sites that were not previously known.

Cheryl Lovell-Obatake: Can I have a point of order please? No talking because it disturbs everybody that's listening. We all want to get it clear and in order. (Out of order discussion) I see more people coming in, come in Ray Catania, and gather all the information.

John Nickelson: Well, if I understand the question correctly, I know that Cultural Surveys Hawai'i has done some additional review but then again part of the 106 process is to invite individuals with some knowledge of the area who may also have insight into either cultural or religious activities, known historic properties that may not be known yet to Cultural Surveys Hawai'i. That's part of the 106 process, that's part of why we're here now.

Cheryl Lovell-Obatake: Can your designee present your position regarding the proposed significance of each historic property?

John Nickelson: That would be something that Cultural Surveys....

Cheryl Lovell-Obatake: Along with the basis for their assessment with the 36 CFR part 800.4 mandate (c), and the proposed effect assessment for 36 CFR 800.5(a).

John Nickelson: We would be looking first at the historic properties to make a determination whether they are or may be eligible for the National Registry for Historic Places. With that then we would take a look at the action which would be the proposed multi-use path to see if that has an impact on the historic properties. So I would suggest first that Cultural Surveys can provide input into the assessment, the significance of the historic properties and then again as part of the 106 process we would ask for input from native Hawaiian individuals or organizations, that's anybody with an interest in the culture that wishes to come forward to offer reasons, including religious or cultural significance to sites that have been identified or that we don't know about. I would let Dr. Hammatt discuss first those sites that we do have what the significance is and then at some point we would want to open it up to allow individuals to offer other input we may not have yet.

Cheryl Lovell-Obatake: Hal, I'm going to let you do that, and then I'm going to get questions.

Hal Hammatt: So this time, I will refer to this map here and I'll go through what we've done recently in the last month in the project area. We started at the north end, and you'll notice we've on this map the test-trenches or the back-hoe assisted trenches are shown in blue and

then we also have some yellow dots, these are shovel tests and back-hoe assisted shovel tests. We actually used three methods. Generally we use a back-hoe to take off the upper layer and then when we hit the sand, because there are potential for findings we slow down dramatically and we generally test by hand. And the back-hoe is only used to remove the part that we've already examined by hand. In this particular case, we have compressed the strategy because we have known historic properties, we pretty much knew there was a cultural layer, and we wanted to minimize the disturbance. We made small trenches, varying from just a shovel in the ground, maybe a foot in diameter, digging down until we hit the cultural layer, testing it, screening it for contents and digging through it so we could evaluate the depth. The other method was to use a back-hoe to remove the upper layer then shovel the rest by hand. We did a whole series of these, actually 23 back-hoe assisted shovel test and 24 regular shovel test. All focused in on, not all but most of them focused in on these two known site areas, 1801 & 1800. Also we wanted to cover the entire area for the sake of thoroughness to evaluate whether we would encounter any more historic properties. We did testing in front of the Marriott Courtyard and also in front of these two empty properties here all the way down the coast to the Kua'i Sands and also up the County easement. Generally, we confirmed the previous work of the cultural material/activity is focused in these two areas related directly to the footprint of the bike path. Particularly in this area we were concerned because we realized that there was some flexibility in the location of the bike path so we did a series of transects going up *makai*, we got *mauka* far enough that we could determine the *mauka* extent of the cultural layer. I think there is flexibility, the obvious purpose of that is to provide information to the designers of the bike path so that they can avoid disturbed properties. It's always preferable to avoid rather than to impact and that's our goal here. The other thing, our findings confirming the location and the density of these two cultural layers, also somewhat of a surprise, not associated with a cultural layer, in the County easement right at the boundary between these two alternatives, we found a burial, down little more than 3 ½ feet deep. That burial was left in place, we did perform, and most of these trenches we did ground penetrating radar before we excavated the trenches, which is now pretty much our routine for field work and we have a display in the back, which I can go into later in more detail, showing the results of that ground penetrating radar. You can present it graphically with slices down going to varies depths and we've encountered what we called "anomalies", those are the different colored yellow, red, green spots with the purple background. Sometimes, you can confirm a location of cultural contents, sometimes you can't. It's a work in progress, but our goal ultimately in use of this kind of technology is to be able to predict what's underneath the ground before we excavate, before we disturb it. We're not there yet, but we keep trying. So, we confirmed the location of these two cultural layers and pretty much could define their limits along the shoreline as well as the next quarter mile. We believe that most cases the footprint or the alignment can be adjusted to avoid these sites. Also, we keep in mind the actual depth footprint of the bike path is pretty shallow, so we're hopeful about that. At the southern end, towards the end of our testing, we found burial #2, just about the same depth or a little shallower, in a trench right *makai* of *Papaloa* Road. And again, that burial was left in place undisturbed. Obviously, these are previously identified burials because they were identified during the course of an Inventory Survey, they will go to the Burial Council as previously identified, there will be a legal

advertisement and a quick faith search for lineal and cultural descendents and there will be a burial treatment plan ready for these burials and brought to the Kaua'i – Ni'ihau Islands Burial Council. Finally, I'd like to talk about significance, we have multiple criteria for National Register, many of you are probably familiar with, I won't go through all of them but the ones that are relevant here are significance criteria (d) significant for information content. Almost automatically, any cultural layer is considered significant for under the National Register criteria significance (d) because of its information content. There's much that can be learned from this particularly the chronology of the ancients living here; when they came, what they did here, how long they were here. The other criteria are criteria (e), and since these sites, the burial component of the sites and the cultural layer component of the sites, they all have the same number. So the site includes the burial and cultural layers. Because of the burials, the site is considered significant under State criteria (e), which is significant for cultural reasons. There are no criteria for the Federal system but there is in the rules consideration of cultural significance although there is not a separate distinction there. Both of these sites and the burial site, each burial site will be given a separate number. They are all considered significant under criteria (e) and the cultural layers 1801 & 1800 are considered significant under criteria (d). All this is subject to as Nancy fully knows, there will be a report written, we're working on that report right now, and we will be submitting it to SHPD for their review.

Cheryl Lovell-Obatake: I have one question, is there anyone from SHPD here? That needs to be on the record that State Historic Preservation Division representative, no one is here from that department, and I want it so noted. Sophie had a question earlier.

Noelani Josselin (Sophie): I just wanted to ask, whose decision was it to eliminate the road route and knowing that the beach route is rich in density of cultural layers, why are we targeting the beach route, why don't we just go straight through on the highway because this is funded by Department of Transportation? Whose decision was it to eliminate the route along road, why was that decision made, and why are we targeting these known cultural areas?

Cheryl Lovell-Obatake: I'm the *Po'o* and I'm going to look for that agency that can answer that question, Mr. Doug Haigh from the County of Kaua'i.

Doug Haigh: Yes, thank you *Po'o*, the original Environmental Assessment for Lydgate – Kapa'a Bike Pedestrian Path evaluated and determined and commented on the alternatives and during that stage which is when the road route was considered. We are now doing a Supplemental Environmental Assessment looking at extending the spur which was this spur here that went from Waipouli Beach Resort to the south end of the two vacant lots and terminated there. And that was all covered under the original Environmental Assessment. So, we've opened up this Supplemental Environmental Assessment to look at now making the connection from that spur to the Papaloa extension of the path. And so that's what we're studying now is this route. So the determination not to go with the road route was part of the original Environmental Assessment and studying that document you should find your answers for the considerations.

Cheryl Lovell-Obatake: Do you understand that?

Noelani Josselin: No, I'm sorry I don't understand I don't see the big picture.

(Unrecognized discussion)

Doug Haigh: *Po'o* would you like me to repeat?

Cheryl Lovell-Obatake: Please.

Noelani Josselin: I'm sorry, I'm not familiar with that Environmental Study so if you can emphasize on that because when you're talking about "spurs" it seems like every time we turn our back they changing the plan so is there a big picture of what they intend to do with their Environmental Impact Study or whatever, there's no big picture, every time the picture change, I like see it on the wall so that I can understand what he saying, cause right now I'm lost.

Cheryl Lovell-Obatake: Did you understand the question?

Doug Haigh: I understand the original question, yes, the question I heard was why are we not discussing the road route option at this time and how was it decided not to be looking at that at this time? That is the question that I heard, *Po'o*.

Noelani Josselin: That's correct. And who made that decision?

Doug Haigh: The decision was made as part of the original Environmental Assessment that was done for the Lydgate – Kapa'a Bike Pedestrian Path. We are now doing a Supplemental Environmental Assessment to look at the project we're discussing today, Lydgate – Kapa'a Phase C & D. So, in this Supplemental Environmental Assessment we are building on the original Environmental Assessment that's been completed and in that original Environmental Assessment we did consider the road route. It was part of the APE of the original Environmental Assessment, so we did review that and it was discussed and determined that was not a preferred route.

Cheryl Lovell-Obatake: I have a question for you Doug, is there any reference in the library regarding the Supplemental or a previous....

Doug Haigh: I believe there should be copies of the original Environmental Assessment at the Lihu'e Library and also I believe it's posted on the County of Kaua'i website and can be downloaded for review.

Cheryl Lovell-Obatake: Before you leave, if you have that site....

Doug Haigh: www.kaua'i.gov

Noelani Josselin: Can you brief us on that because I work so many jobs; I'm not hire by the County to go do this kind research, so if you are familiar with that can you share that with us? Why was the decision made based on that EIS Supplement?

Doug Haigh: *Po'o?* I have not memorized that document and so I have not prepared to address that issue today, I would be making assumptions that aren't necessarily based on facts.

Cheryl Lovell-Obatake: Understood. I'm going to have to ask for other questions? Auntie Hannah Reeves.

Hannah Reeves: Mahalo, I'm really happy to be here today, I look forward to meet everyone here and I know that this project is so beautiful, something that been bothering me. I wanted to share with all of you, I look at this, from one end to the other end and I see all this over here. All sacred sites of old Hawai'i, I *Kupuna* Hannah Reeves, I am from the royalty line, Kamehameha I. My job is to protect old Hawai'i. Thank you the man that stood up, but I have many things that I want to tell you, I am of old Hawai'i. I can see whatever is going on with this land, it's not only here, our ancestors in the thousands of years, you understand, where's the archeologist here? I'm going to express myself to you, I didn't want to tell anybody on the phone last night cause I wanted to speak to everybody. My job is to protect old Hawai'i from the mountain to the sea and around Kaua'i, Ni'ihau and all the islands. I weep, a lot of times cause I was talking about this place and not very much people understand. I going share with you, in thousands of years our ancestors' layers and layers and layers, from the top to the bottom. Our ancestors are buried there. You have your knowledge of today, but you don't have my knowledge of many years behind. If you look at the whole thing, this is cultural, this is not, cannot do that with us Hawaiians. Our people cover all the islands and they go layers from the top, down, down, in the thousands. Today's knowledge cannot understand, even if you use your instruments and everything, cannot reach to where we are. And believe me, I have no fear in speaking, because I am pure Hawaiian, I cannot help it. I know everybody has different *mana'o*, but I cover all the islands. When you have a site here, anybody who is heavy-equipment operating here, where there is a sacred site, I tell you, NO HEAVY EQUIPMENT OPERATING from this and hundred feet right around. You know why, no I don't think so, from the mountain to the sea, it's not straight down like that, it goes all over. If you put one heavy-equipment here, I going over there and sit down and I tell you where to go. You folks don't invite the living descendants; I never went on the sacred sites to see how much damage they do. I want to help you, but you already put it in, you never invite me to come here. The heavy-equipment is the problem, if I had my way I give you a fine.

Cheryl Lovell-Obatake: Auntie, I'm very intrigued and I know how sensitive it is, it is to me too, and this process is what it is in the Hawaiian protocol, but if you'd like, because you have much knowledge, form other islands as well, the matter of confidentiality if you are comfortable in speaking to these agencies or archeologist, it would be most appropriate, so that you can explain that and it will be on their record and it will be part of this process that you have

contributed. I'm not saying that I'm for this; I'm just the *Po'o* in doing this meeting to get all information from the NHO's. I'd like to, and please don't get me wrong, my feelings and my emotions are with you as well, but what I'd like to do right now is to start on my list and go around the table for questions so that we can get it on record. I want to ask Kaliko?

Kaliko Santos: No questions at present.

Cheryl Lovell-Obatake: Could you state your name?

Wendy Raebeck: Yes, my name is Wendy Raebeck, I have a question for Doug Haigh. There were two things that seem to imply to me that the highway route wasn't really conclusively nixed as an option and Hal said, "the highway route I think it's been pretty much eliminated". Now to me that didn't sound definite at all. And then when Doug was talking a minute ago, he also said, "it was determined that the highway route was not the preferred route". I don't see how this route could be preferable to that, so I'm just wondering, it just doesn't seem that the highway would not be the preferred route and this would be. I can't quite understand that.

Joe Manini: I didn't hear who she was speaking for? So I cannot understand what she saying, who she talking for?

Wendy Raebeck: Myself.

Joe Manini: She not one organization...

Cheryl Lovell-Obatake: Okay, wait, we're going to go right around...

Joe Manini: No, but wait, we put our hand up...she's one nobody, you understand?

Cheryl Lovell-Obatake: I call *kapu*, we need to go right around. Yes I do Uncle. Are you done (Wendy Raebeck)?

Wendy Raebeck: Yes.

Cheryl Lovell-Obatake: It has been recorded and well noted of your comments. Next, Kai'opua, will you state your name?

Kai'opua Faye: Kai'opua Faye, here in the absence of Victoria Wickman (organization stated), I don't have any question, I have a comment, if I recall the road route was not preferable for the County's findings because they were considering that to be a tourist attraction and the tourist would rather be on the *makai* side as opposed to the highway, that's what I recall. So, if nobody else recalls that maybe I had a nightmare, that's what I recall.

Ray Catania: Nothing right now. Thank you.

Joe Manini: For the record, so that you know who I am, I am the *puni* of this era that represents the *Kanaka Hui*, and is *Po'o* of the Polynesian tribe. Now, the first thing is this, you must understand, you are the *Po'o* of the Hawaiians, the *kanaka* came here 200 B.C. The Hawaiians came here 54 B.C. Because you came later how come you taking all the responsibility of the bones that come up out of the ground? You are representing the fee simple owners, I am representing the legal owner of the land and the legal of the land says we have rights to the bones too. We have a man in charge, Alalem, he's in charge of the *heiau*. He's the caretaker, he also looks at what bones come up because it's under his jurisdiction for us, for the *Kanaka Hui*. I know you not *Kanaka Hui*, now; we supposed to get right to look at the bones also, not only the burial committee. Because the bones might be *kanaka* from way before. If you heard Mr. Ako speak, he said you can tell the bones all big, the people were bigger before than now. He had a point there. This property over here belongs to the *Kanaka Hui*, we claim this property, and we have an attorney to defend us in court if we have to prove that we are the owner. We are going to charge the County for putting this over here because the County is doing it. Between \$500,000 and one million dollars for use this place, to put that walkway. If you folks think it's impossible, well talk with my attorney. We already talked this morning, right out here. We have an attorney for the *Kanaka Hui*.

Cheryl Lovell-Obatake: It is noted on the records.

Joe Manini: So when it comes to that, the attorney will speak to that. And I think this business about the Hawaiian, Hawaiian, Hawaiian, should stop because get the *Kanaka* too. You must recognize the *Kanaka* and the Hawaiian. Remember the Hawaiian came way after, 150 years after the *Kanaka*. You folks migrated over here you want to call yourself a Hawaiian. 150 years after. And if Mr. Trask wants to call himself a Hawaiian, well he came 150 years after, so remember, we get the 150 years left and we don't agree with you folks saying the *menehunes* made one wall or whatever, because the *Kanaka* made them. And we don't have any *menehunes* in our cultural background which is connected to us. The *haole's* might have dwarfs, the African-Americans might have dwarfs, but we don't. I hope you know your culture. Because you the *Po'o* for what you saying, I acknowledge you. I am the *Po'o* for the *Kanaka Hui*. It has nothing to do with the Hawaiians, but I'm telling you that we going charge you folks rent for over here. And if we got to do it in court, we'll do it in court.

Cheryl Lovell-Obatake: Okay, well noted. We have to go on.

Joe Manini: So whatever you do in their concerns us too. We are concerned because we are the legal owners of the property. You folks are the fee simple owners.

Cheryl Lovell-Obatake: It is noted on the record. Jim Alalem. I'm going to go right around because everyone needs to speak.

James Alalem: For the record, my name is James Alalem and I am the caretaker for Uncle Joe. This has been coming a long time ago, that is why I got arrested for test the waters. But it's okay because now I know. And I've been telling a lot of people before about the *iwi*, leave it alone. And number one question to me was that the bike path, where was it originally built for Lydgate from what I understand, nothing more than that. How in the world did we end up on the east side of Kaua'i? I do not know, but be very aware I'm Uncle Joe's caretaker and again you have to take Uncle Joe very seriously, because he's serious, and we talked to the lawyer this morning. Thank you.

Cheryl Lovell-Obatake: The point of order is that I'm going to let everybody speak.

Noelani Josselin: I was skipped.

Cheryl Lovell-Obatake: Well you spoke first, I gave you that opportunity.

Noelani Josselin: I have a question.

Cheryl Lovell-Obatake: We need to go around. Here's Waldeen, good morning. Leslie, could you state your name and if you have an organization or just yourself?

Leslie Pool: Good morning Auntie Cheryl and I'm here just to observe. No questions at this time.

Cheryl Lovell-Obatake: Waldeen?

Waldeen Palmeira: Aloha, Waldeen Palmeira, I actually have a series of questions, I'm not sure I'm allowed one, and then come back again? To begin with, just wanted to clarify that this is a Section 106 Meeting for the Lydgate – Kapa'a Bike Path?

Cheryl Lovell-Obatake: Yes it is.

Waldeen Palmeira: And on the letter that we received, I just wanted to clarify that this is not exactly or is it a Native Hawaiian Organization Section 106 Meeting because nowhere on the letter was it stated that it's a Native Hawaiian Organization Section 106 Meeting, so this would be more like a public Section 106 meeting?

Cheryl Lovell-Obatake: Could you answer that? (Mauna Kea Trask)

Mauna Kea Trask: Yes, *Po'o*, this is a Section 106 Consultation Meeting and at the Section 106 Meetings 36 CFR part 800 makes it clear that not only can Native Hawaiians or Native Hawaiian Organizations avail themselves to this process, however also under 36 CFR part 800.2 (d) the public 1. The views of the public are essential to inform Federal decision making process in the Section 106 process. The agency official shall seek and consider the views of the public in any

manner that reflects the nature and complexity of the undertaking and its effect on historic properties, the likely interest of the public in the effects of historic properties, confidentiality concerns of private individuals and businesses and the relationship of federal involvement in the undertaking. So for those reasons, 36 CFR part 800 explains that the public also has the right to be involved in this process, however this process was pursuant to a request of the Native Hawaiian Protocol Committee as well as both Cheryl Lovell-Obatake, that the process itself be modeled on the *Ho'oponopono* as described by Mary Kawena Pukui. The public cannot be excluded and that's why they have been afforded an opportunity to participate.

Waldeen Palmeira: I received a letter from Kimura International, when you request Section 106 you have to do it in writing. Everybody should be aware of that because we requested under Section 106 for the Lydgate Act earlier this year or last year and they started to send us letters this past year to identify, this is for the Section A, I believe, what they're calling Section C. So, I responded within 30 days of the comments that we wanted to meet Section 106 regarding Wailua Beach, that portion. They sent a letter back and said that since there was no information sent they will not have it; they will not have the Section 106 for Wailua Beach. I wanted to know that when this agreement went out and that this project under the federal aid project number is one entire project, they segmented into A, B, C, and D to Z. This is one project with a federal aid number and that being here and since they denied our opportunity to have Section 106 that we wrote by letter, because if they let any Native Hawaiian Organization's request for anybody, and I'm not against other people being here, I'm just trying to clarify because Native Hawaiians have a particular right, the whole Section 106 was created for Native Americans and Native Hawaiians whose lands are affected, whose historic properties are affected. We have a special role, responsibility written into the National Historic Preservation Act. And so when they denied the consultation, the new information that we wanted to raise and other people has for Wailua Beach. As this first part is for clarification, I believe, I mean I know under the National Historic Preservation Act, this is a federal aid project, we are able to provide information on any part of this whole project and not to be excluded, not to have information excluded under C/D, and before I leave this meeting I'm writing a letter requesting Section 106 again because I want to make sure Kimura International, Federal government understands that this is Section 106, Native Hawaiian Organizations Section 106. Even though Mauna Kea read the statute, I want to make sure that we are engaged in Section 106 Native Hawaiian Consultation because on their letter from Kimura International it doesn't say Native Hawaiian Consultation; I need to clarify that, if we're going to engage in this we have to know who and they have to know we are engaged as a Native Hawaiian Organization.

Cheryl Lovell-Obatake: Well noted for the records. There are two more meetings and I'm glad you're raising concerns and that's why we're all here and that's why it's being recorded so that there should be some answers for you and I would really appreciate we have more people and if you're going to write that letter, thank you very much then you could address everything in writing and that way will be thorough.

Waldeen Palmeira: May be I'll be able to raise more questions...

Cheryl Lovell-Obatake: And another thing, I don't think that questions can be answered today, and I would prefer you writing them so that you'll be, get all your questions down...

Waldeen Palmeira: Well I do have them and I do have some documents that I want to actually raise, these particular documents, if we go around...

Cheryl Lovell-Obatake: I understand that, I appreciate that because this is the process, we got many people need to address their concerns.

Waldeen Palmeira: I just want to make sure that we're here as Native Hawaiian Organizations and that you folks understand that as we are engaged in the Kūhiō Highway 106, as a Native Hawaiian Organization that is how we expect to be a consulting party.

Cheryl Lovell-Obatake: Well you know I went to real estate school and the teacher told me put it in writing, so if you have it in writing.

Waldeen Palmeira: Well, it's also advice for everybody here because I believe that on their letterhead, they should address this as a Native Hawaiian Organization.

Cheryl Lovell-Obatake: It is so noted for the record. Thank you very much. Rayne? State your name and who you're with.

Rayne Regush: Rayne Regush, I serve on the Executive Committee of the Sierra Club for the Kaua'i group and the Hawai'i project and also chair of the Wailua-Kapa'a Neighborhood Association and I wanted to voice the opinion that it's critical that the path stay off of the sandy areas along our coastlines. And every effort should be made to place the path *mauka* of the beaches and the sandy areas so that the character of the shoreline is protected, that we preserve the historic scenic qualities of old Hawai'i and that the shoreline and the viability of traditional activities that take place at the shoreline are guaranteed and the preservation of the areas around the cultural sites. I would like clarity also on whether the path will displace the stand of ironwood trees that are along the shoreline, just *makai* of site 1800 and in Chapter 3 of the EA there is a photograph of the existing footpath there in Waipouli and again I'm asking for clarity on if the path will be *mauka* of the stand of ironwood trees?

Cheryl Lovell-Obatake: It's well noted on the record. Thank you Rayne. Keola?

Keola Lindsey: Keola Lindsey, Office of Hawaiian Affairs, if the coastal alternative alignment is chosen, I was wondering what the maximum depth of ground disturbance is going to be required? And the second question is, as far as the APE goes, is that inclusive of contractor staging areas for equipment and material? I was wondering for the portions of the bike path between the two connections *mauka*, how will, I'm imagining it's going to be cement, how will they get equipment in along the coast for the cement? The third question, during our site visit on August 9th, on the northern alignment or alternative route, where trench one is on the map,

there was talk about a comfort station may be put in that area? I just wanted to confirm that the comfort station isn't a part of this consultation or supplemental EA.

Cheryl Lovell-Obatake: I'm going to Hal, you want to remember that question or Mr. Nickelson? You're writing this question down? Are you ready to answer them? Or Doug?

Doug Haigh: Yes *Po'o*, Doug Haigh, County of Kaua'i, the first question I heard, what would be the maximum excavation of the path? Most likely one foot would be the maximum excavation and we'd be looking at more likely being six-inch. It's also our understanding that the developer of the two vacant lots is looking at bringing fill-in in that area of the path, so actually we may be elevated above the existing ground on newly brought in fill.

Cheryl Lovell-Obatake: When you say the vacant lots is it that two coconut hotels?

Doug Haigh: Yes, they are looking at doing, bringing in fill to add contours and it is very possible in that area we would be on top of existing ground. That's to answer the depth question, the second question I heard, I may have missed one, was concerning the comfort station. Actually, the comfort station is potentially part of this project, and it is within the APE that's been identified. If there is an existing parking lot on the north side of the whole Coconut Plantation area adjacent to, I believe it's the church right there, and so there is an existing parking lot which is a public access way.

Cheryl Lovell-Obatake: That's right behind Boswell? That blue building?

Doug Haigh: Yes, and so we have heard from the public that people are interested in a comfort station and we look at that as a potential place so that should be considered today as part of this 106 process and should be considered as part of the Environmental Assessment for Lydgate – Kapa'a Phase C & D. The last question I heard was the construction staging process, since this is not a large civil project we do not designate a construction staging area, we leave it up to the contractor to secure their staging area separate from the project. As far as access for equipment in this path it certainly won't be no different than the access that has been used in building the hotels and facilities along this corridor because we have to, this is a fairly well-developed area as far as there are quite a few large hotels, so we would be accessing along our corridor, possibly working with property owners to gain access ways to bring concrete trucks in or whatever through their property. And as also, where there is a narrow corridor, and I'm looking at, we call it the easement on the north-side of Kaua'i Sands, and I believe that is actually a County separate parcel, not an easement but that's my reading of the map. Anyhow, something like that we may have to come in with concrete pumps, that we bring from the road, the concrete so that, if there isn't a wide way to easily bring a concrete truck along the side. In situations like that, frequently the contractor would choose to use a concrete pump so that he is just working within the ten foot wide or fifteen foot wide corridor. Those are largely decisions by the contractor. Now clearly within the Environmental process, within the 106

process if there are concerns about that we do need to acknowledge and to consider those issues as part of the process. *Po'o*, those are the questions that I remembered.

Cheryl Lovell-Obatake: Well noted. Keith?

Keith Yap: For the record, Keith Yap, Vice-Chair of the Kaua'i – Ni'ihau Burial Council, I have a couple of comments and I have a question about the north end, I just want to make sure, I know this is the area that's affected but this is not actually the planned route, one of this is the alternative, the other is the initial one? Or are you going to build this entire circle out? That's the question, just to clarify.

Doug Haigh: *Po'o* did you want me to respond?

Cheryl Lovell-Obatake: Please.

Doug Haigh: Okay, it's interesting, the job on the north side, that is an alternative connection, where it comes down along the north side of the canal and then cuts across and connects to the easement, that's an alternative. We have not selected the preferred alternative. The section from the highway to the existing easement, so the piece just along the highway from the south side of Hualele Kalawa Canal, to the existing easement access point, that section there is an alternative that's being considered. Then the section that comes on the north side of the Coconut Plantation properties that is an existing beach access. No, I'm sorry, north side of the properties, the south side..... (approaches maps) this is an existing easement that the County already has allowing access to the coastline....

Cheryl Lovell-Obatake: Doug, can you come on this map? Can I have order please, everybody like listen to this guy and what he has to say.

Doug Haigh: I want to clarify that this is an existing easement that is in the name of the County of Kaua'i, there is a driveway that comes to here, there's a parking lot here and then there is a path that goes to the beach, that is existing. So the alternatives we're looking at, we're looking at an alternative that comes along the canal, cuts across and then goes to the beach, that's an alternative we're looking at. Another alternative is coming along the highway and then following this existing easement. Another alternative that we'll be considering since we've had input from the public on this, is using this as a trail head, this existing road and easement and providing a comfort station at that location to support the path. *Po'o*, I believe that answers the question.

Cheryl Lovell-Obatake: Well noted for the record.

Waldeen Palmeira: Some clarification on the location, I just wanted to know where that was. Is that by Waipouli where the resort is?

Doug Haigh: This is the Mokihana Property, this is the Bull Shed, this is the church, this is Waipouli Beach Resort, this is Kūhiō Highway.

Keith Yap: So the answer to the question basically is that possibly all of that will be affected, not just picking one side over the other side? In reference to my esteemed colleague there, I want to reiterate that the Kaua'i – Ni'ihau Burial Council is in agreement with her to have that question answered as to why, we want the reason why that route was chosen, not the highway route, because it is the feeling of the Burial Council to try to avoid sites at all possible, if we cannot avoid the sites for whatever reason, then we try to leave the burials in place and then the last alternative is to move the burials so they are not impacted by what happens. So, we want to know the reason why that route was not chosen, it could be anything, I don't know what if for safety, whatever, give us an answer not just say this was the process, we had an original plan, that is not the reason why it was chosen. If it's not at this meeting I think you need to come back and answer that question why that path was chosen. On the beach side, I know there is sort of an existing path, that foot-worn path. Is the path plan sort of in that footprint or is it planned outside of the footprint? That's my last question.

Cheryl Lovell-Obatake: Thank you, so noted for the record.

Mauna Kea Trask: For the record, Deputy County Attorney Mauna Kea Trask on behalf of the County of Kaua'i, for everyone's information we weren't prepared today to answer these questions regarding the other phases of the bike path and/or what happened with the higher routes, so the County of Kaua'i will do a short presentation, short but comprehensive presentation at the next meeting regarding the highway route, why it wasn't chosen and a summary of the processes up till now. We went over briefly at the first meeting; however some people present today were not present at that time. We will do that at the next meeting.

Cheryl Lovell-Obatake: Thank you very much.

Joe Manini: *Po'o*, this meeting is kind of screwball, you want me to tell you why? He has the floor, when he speaks something we supposed to be able to ask him questions, you not giving us chance for ask. Only you ask, in other words, everybody's only hear to listen to the County. The County is the people, the people is the County. Who are you folks? We are the people of the County. When he speaks we want to be able to question what he saying. When the next person speaks, and she speaking about the archeologist stuff, we want to ask her questions if it's possible. Not just keep quiet like dodos, cause we not dodos. Use the parliamentary procedure not only you can speak to everybody but nobody else can speak.

Cheryl Lovell-Obatake: That was part of the rules; I'm not chasing anybody out of here but those are part of the rules to keep it orderly and its tone, so that we don't stay here for the whole day. But I'm giving people equal amount of time by going around the table.

Joe Manini: Yeah, but we cannot ask him a question.

Cheryl Lovell-Obatake: Well, I think he got his answer, at the next meeting right? Keith, are you satisfied with that?

Keith Yap: Yes, I'm satisfied.

Cheryl Lovell-Obatake: And that will be the next meeting that they have to come back with an answer. And it's noted for the record.

Joe Manini: I understand what you're saying.

Cheryl Lovell-Obatake: Nancy? I call him my grandpa.

Nancy McMahan: I'm Nancy McMahan and I was brought on by the NHO's to help provide *mana'o* on my experience here and I was also part of the bike path at least three Mayors ago, so I'm also here as an interested person to see what happens here. I'll give you some background, after Hurricane Iwa, the Planning Department was very instrumental in making a lot of these hotels along the shoreline put sidewalks in, so most of these when they were renovating some of the hotels started to put sidewalks along the ocean side. At that time also, probably in 1988 when I started with the State, I started pushing the County to do archeology, they weren't doing it before, they didn't know they had to comply with SIGSI, let alone 106. Pushing that process with the County was probably my biggest role including the bike path, which when they started they didn't know they had to do 106. Including when the County had to do the sewer lines through Kapa'a, so it has come a long way because they basically followed the basics of the law in which three organizations: the Burial Councils, the KHPRC which is local certified governments, and they mentioned Native Hawaiians and that now has turned into Native Hawaiian Organizations. So that's just a little bit, the background of where the Section 106 has changed, where the County now understands about federal money and how federal money gets applied and how that process has really looked at what was going on at the Planning Department. Then Hurricane Iniki comes and they were still trying to build sidewalks and pushing all the hotels to put sidewalks along there and of course, where is most of the archeological sites, unfortunately though sometimes they disappeared. If we looked for those early dates that we wanted, we were going to find them in the shoreline, we probably lost some of those early sites the *kanaka* came to, and I can't help that, that's just mother-nature. What I wanted to tell everybody, and I'm glad OHA asked this question, how deep is the excavation going to be, which has always been my question about the bike path, they're actually very minimum to what the hotel does and what a highway might do, except for comfort stations. Here is my comfort station information, Keālia comfort station, the far end, actually had a burial there, had a couple. I don't know if the excavation work that they have done for the inventory covers the excavation for comfort stations, I don't think so from what I just saw. So I would tell the rest of you, maybe they need to do more excavation there, that's good information to tell this group of people. The second thing is, when these projects started coming up, new ones, these vacant lots at the Coco Palms area, when Rosendahl did this there was a burial preserve set aside that the Burial Council agreed on when these burials started

showing up here. They did some further testing and found two outside burials. Couple years ago, another firm, scientific consultants came to look at these two burials, because part of the agreement was, this was looking like it was going to get developed again a few years ago, and this was a preserve with a burial preserve. It has the cultural deposit which I wanted to be preserved because you still have this remnant cultural deposits throughout Kapa'a, and in Kapa'a Town you actually have two historical deposits, which is the plantation era and then you have the previous deposits which is the Kanaka/Hawaiian deposits that come in here. So this is preserved, this deposit and these burials are preserved. They also agreed that when they started doing the testing out here for these two, to preserve, there's a burial preserve here and I think Cheryl was involved in that one, that was set up. And again, the bigger picture was sometimes prior developments have disturbed bones, they are not complete, they are not intact, they're fragmented and the better way, and this is where to respectfully treat them but keep them in their homeland, to rebury them and reinter them in these locations. That's why the internment spots, ideally if you get an intact burial and can preserve them in place you try to. What has happened sometimes, again and here is my own concerns, is people lose information, people forget where burials are, so when they try to find these two burials out here, the information that Rosendahl firm provided and he had gotten sick, so they brought me out trying to find these two burials but we couldn't find them, because the agreement was to relocate them. So they came back in to relocate them, to protect them in this shoreline preserve that we had, because that information isn't there. I don't know if SHPD, if they even know that there's commitments to present preservation. If they don't look in the files to find those letters or find those reports, they won't know. So who carries the importance of continuity, and knowing sort of what the background of the Planning Department was and so when the bike path committee came in to they started looking at the fact there were already sidewalks on the shoreline. And part of it was while pushing to preserve, we knew that at some point we might have a sidewalk over it. And you want to preserve it, it actually caps it, it is a preservation technique, so there is no disturbance. And if they are going to provide fill, and then put a cap on it, it actually protects the sites better.

Cheryl Lovell-Obatake: Now, you brought up something that Hal, first burial by the sidewalk, I'm just wondering, that sidewalk and the burial located there, at the north end. Is there any recordation? SHPD would have that recordation.

Nancy McMahan: There was a burial file in my containers that was sort of my issues with what was happening to that information, so every burial site that has a number has a burial file to it, had one.

Cheryl Lovell-Obatake: Well, Nancy I really appreciate your comments, you just happened to be more resourceful of the SHPD and the burials and it should be noted on the record that SHPD is not here today and of course we would need those records for such as this development. But I really appreciate your comments. Thank you. Mr. Noyes or you want to say something, you may.

Hal Hammatt: Nancy, I really appreciate your comments and we did research all the existing reports, of course we don't have access to the files it is stated fairly clear in the reports that that site 1801 is a preserve site along with the burials. It was done back in the period when there was no GPS, so it was compass and tape, so we have dots on a map. We did not specifically look for the existing burials; we also talked to the archeologists who were involved besides reviewing the reports of these two sites, 1801 & 1800. And are aware that there's a preserve area which is actually well defined with PVC pipes, that was SCS we had them out there and also the intention to relocate them, burials on the *makai* area into that preserve. Thank you.

Tommy Noyes: My name is Tommy Noyes, I work with the Hawai'i State Department of Health and my question is in regards to the balance of this work session that we're going through that we focus on the future to some degree of balance with the focus that we adhere to the past. Looking to the future the health of our next generation should be a factor in our deliberations and our perspective. I would imagine that everybody came to this meeting in a car that we drove on a roadway, that's the built environment that we live with today. The decisions that we're making now will impact the shape of our built environment for our future years and our coming generations. I think its incumbent on us to provide safe and attractive means for our citizens to get the exercise to essential to good health. To be out and enjoying the coastal assets that we have, *mauka* assets that we have, to be using their muscles for transportation the way cultures have done throughout history up to this day and age where we rely on fossil fuels that dirty the air.....

Cheryl Lovell-Obatake: Mr. Noyes, point of order, this meeting today is specifically identification of historic properties contained in the area of potential effects. I understand health; we need to concentrate on the historical properties in this meeting and its important. And it's also important regarding health and riding a bike on the bike path, I realize what you're saying and I appreciate that. But today, we're talking about historical properties and we need to focus on that. And I would appreciate you have an understanding of what I just said, okay. You have any anything to say about identifying historical properties?

Tommy Noyes: If I may conclude, we get around on the basis of fossil fuels which are shown to add carbon dioxide to the atmosphere shown to cause global warming. Our cultural asset will be under water if we continue on this path.

Cheryl Lovell-Obatake: When you say continue on this path, what are you saying, on the bike path? Or what path? Could you clarify that?

Tommy Noyes: The path of consumption for convenience, that path of taking all the fossil fuels that are available to us and burning them up in short order.

Cheryl Lovell-Obatake: I think that this discussion is specifically about culture, historical properties and we got to get through this. Like I said, I respect what you just said, your comments and I'd like to go on and it is well noted for the records. Thank you.

Tommy Noyes: Thank you *Po'o*.

Judy Dalton: My name is Judy Dalton and I'm with the Sierra Club, Executive Committee on Kaua'i and our concerns is always protection of the environment and of the beaches. It is equally important that the cultural and spiritual concerns of the Native Hawaiians and the Kanaka are considered and this process is going to be correctly finalized and it will take into consideration protection of the beach, protection of artifacts or any cultural sites and put it on the highway where it's supposed to be. Before it was planned, the bike path was planned, right on top of Wailua Beach. It was also proposed to be from Wailua Beach all the way to Nukoli'i along the golf course that was right on top of the sand, drilling into the sand, not *pono*. And so again this is not *pono*, for environmental reasons we need to protect the beach which is also a cultural concern, protect the *aina*. Why are we even considering that when you have a bike path that can go right along the highway, why is that not considered?

Cheryl Lovell-Obatake: I think at the next meeting we'll be discussing that and I really appreciate your comments, you have any specific questions regarding historical properties?

Judy Dalton: No, thank you.

Missy Kamai: Missy Kamai of Cultural Surveys Hawai'i. (no comment)

Nancy Nishikawa: Nancy Nishikawa, Kimura International.

Glenn Kimura: Glenn Kimura, Kimura International.

Margaret Magat: Margaret Magat, Cultural Surveys Hawai'i.

Beverly Muraoka: Beverley Muraoka, Kumu Hula, citizen and resident of Wailua *ahapua'a*. All of Wailua is significant, we know that, but we also need to be reasonable. We, as Mr. Noyes indicated, couldn't come here today if we didn't have highways and roads, but we plead to those who are going to go ahead with this project with or without us you might say, cause where were we when Kaua'i Sands was being built. Where were we when Kaua'i Beach Boy was being built, Island on the Beach and the whole coastline. We didn't have this Section 106 process, so we're thankful for that but we need to be reasonable with one another. If we can't provide this bike path for health of whatever, it says here: shopping, dining, connectivity, non-motorized travel and recreation; that we can compromise. And if we do, and we know we will find *iwi* that we do render as Auntie Hannah says, all the due respect given to our people. Yesterday's meeting I was totally surprised that there are some *iwi* still not reinterred yet. Maybe that's why so many of our projects have an adverse impact. Let's go back to Waldeen,

this came (dear) about because we felt like as NHO's sometimes when we *inau* or *pani* we become *ha kaka*, so I say was kind of *hilahila* for all the others to listen so I just wanted to let you know, you may be confused why Cheryl is the *Po'o* is because it came out of that mind-set our protocols would be different. So I think Mr. Kimura was assigned to do the *palapala* and I guess in line with Mauna Kea then everybody should be invited, that's why Cheryl is taking the lead as *Po'o*. So, Uncle Joe or any one of us, I think we are entitled to ask questions but as *Po'o* is conducting it, we can be like Judge Judy, the plaintiff going talk first, then the defendant then back to the plaintiff, so if we have any *inau*, we get *palapala* and we ride down. If we have *inau* for Keith, after *Po'o* lets all of us *kuka* then go. I'd like to just maybe make that answer for us as NHO's. Mahalo.

Cheryl Lovell-Obatake: It is noted for the record.

Joe Manini: I watching the State how they conduct their meeting and I watch the County how they conduct their meeting. Yesterday, we were in the State meeting, today we stay in the County meeting, its way different. We are going grammar school, not following the parliamentary. The State up to par, they conduct the meeting how supposed to be conducted. They give everybody chance to talk. And they all get mic for talk, not where you cannot hear one person. And they were recording everything that is being spoken. This is government, we talking about government, just the County government is different from the State government. Now, we all get rights, we all tax payers, regardless what ethnic background, so they supposed to be conducting, if we cannot ask questions, and then tell us in the beginning. The State when they conduct, they make everybody introduce themselves, so we know....

Cheryl Lovell-Obatake: We are going to call a recess for now; I think we need one now.

Beverly Muraoka: Uncle, I don't think you were at the meeting when we set the protocols as our own *lahui*, and this portion that is taking place is part of that *lahui*. That's why *Po'o* is conducting and a little differently from yesterday and from any other meeting. This is part of a 4-part protocol, this is the second one, there's going to be two more.

Cheryl Lovell-Obatake: We are at recess.

RECESS

Cheryl Lovell-Obatake: The meeting is called back to order. Doug you have the floor.

Doug Haigh: Thank you *Po'o*, we've all been working together in the neighborhood for a long time, most of us, this is a new process that we're following here and I really, to be honest with you all I struggled with it a little bit and I was the resistant one to some of this, but I really want to thank *Po'o* and the *kupuna* who worked together to get to this protocol. And it's a joint; because the 106 has been discussed earlier are both Native Hawaiian and any other consulting interested parties. Our intent is to do this together and I just want, we're all kind of jumping

ahead, let's mitigate, let's move the path, all that stuff is mitigation that we'll get into later in the process, today hopefully we will identify the historic properties that are within this APE. That's our goal, one of our major goals today is identify that, so we really want to hear are there more historic properties or is there something different we should do to try to identify the historic properties. That information will really help us for the next step. But we do understand the concerns and a lot of these questions and the highway route, so we will come back and provide a summary of that decision and how that was made. Toward our last meeting what we're really want to focus on mitigation measures because I believe we will come to a conclusion that there is adverse impact to existing historic properties. I think that's probably going to occur and so really it's in our last meeting that we're going to be focusing on how to mitigate that. The questions on the actual location of the path, starting from the seven point; we're locked in an existing property that's only ten-feet wide. Not a lot of flexibility in there unless we acquire new property and that is a potential. Coming across the existing hotel properties, there is an existing County Park Plan and there is an existing pedestrian path within the hotel properties. Most likely, and that existing path is about five-feet wide, the hotels are pushing us to only do the path ten-feet wide. Other people have talked about a twelve-foot path would be much more appropriate for an area where there is a lot of, anticipated a lot of traffic. And I think path users who are using the current path from Kapa'a – Keālia should experience that and gives us input as we move farther along because we have both a twelve-foot section and we have a ten-foot section. What the path experience on these two different widths is important to document and get from the community what's important. So most likely the corridor along those existing hotels will be adjacent to the existing five-foot path and most likely we will be widening it five-feet in the County property, so you have five-feet in the hotel property and five-foot in the County property. Now once you hit the two vacant lots, there is a current project approved to be built on those two properties and they have a set-back and I believe it's at least a hundred feet from the certified shoreline which has not been formally identified at this point. As most likely, the path, we try to go as far *mauka* as we can and certainly what we want to do is identify any historical properties within that area to make sure that we avoid them, we want to identify those so when we move into mitigation, one of the mitigation things to avoid and if we have an opportunity to avoid is certainly what we'd like to do. Then we come back to the Marriot property which has an existing path, that one again most likely we would add on to that path and additional five-feet, either *mauka* or *makai* of that existing path so that's probably how it will end up. Then we hit another property which also has an approved SMA permit to develop that property with the new resort property. So most likely, and it's a balance, we want to be as far *mauka* as we can and we don't want to, and the hotel property wants us away from their guest rooms so we're not negatively impacting their ability for their guests, so that's the balance that we try for us, we want to be as far *mauka* as we can and they're going to want us a comfortable distance from their hotel rooms so we're not negatively impacting the hotel rooms. So that's kind of the idea of where this path goes in there, now this process that we're going through, the 106, will help us further delineate where the path should go once we've identified the historic properties. So I ask *Po'o* that we can make sure we get this focus of identifying the historic properties and if there's any new information available on historic properties we get that today, or if there's something people

feel we should do more to identify those historic properties are different, please let us know. I've heard the expression concerned about the comfort station and did we do testing in there? We did some minor testing, but from this meeting here from what I heard, that's smart, we should do more. So I've already discussed it with our archeologist and we're probably going to go back there and try to identify roughly where that comfort station would be and do some testing more specific to the comfort station to answer that concern. So, what you give us today we can act upon if you give us information of about a historical property that we're not aware of or where we should be looking and looking more closely for historical properties, we can act on that so that by the time we get to the next meeting and then the following meeting we'll have a response ready. *Po'o* that's what I have to add.

Cheryl Lovell-Obatake: Thank you. It's certainly noted for the records. I want to also indicate or say that if we were to have other people besides people that are here already, that comment or comments that you just made are available in the minutes and so that we don't have to repeat ourselves. Therefore I would ask that your minutes reflect on all that you have made your comments to. Is that all right?

Doug Haigh: That is okay, *Po'o* we're having a little challenge getting the minutes completed but we will commit to having the first meeting minutes and this meeting's minutes completed by the time we have the next meeting. These types of minutes are I mean we can have summary minutes very easily but to have these detailed minutes is a process.

Cheryl Lovell-Obatake: Well you said enough important things that are detailed and I really cherish them at the moment.

Doug Haigh: Thank you *Po'o*.

Cheryl Lovell-Obatake: Thank you. Our recorder, you have any comments? Mr. John Nickelson?

John Nickelson: Yes, thank you *Po'o*, one of the things I just wanted to clarify, one of the issues we're here to talk about the implementation of Section 106 to the National Historic Preservation Act and I guess one of the things we need to recognize the Act doesn't just talk about Native Hawaiians or Native Americans, it's really to protect the history on the national level. So if we're working in Boston or Chicago or some place in Texas, you're always going to follow the National Historic Preservation Act and you're always going to follow Section 106. If you determine that the federal action has a potential to affect historic properties the difference we have here in Hawai'i is the CFR 800 talks about the cultural knowledge and religious knowledge of the Native Hawaiian people and how someone without that knowledge might misinterpret or miss some historic significance on the property. So, when we have 106 issues in Hawai'i and we ask Native Hawaiian Organizations to come forward is to provide their knowledge of cultural or religious significance that may otherwise be missed. Just so we know what we're looking for is items that might be missed, the process is inclusive, it does provide for

confidentiality. I understand that sometimes burial sites or religious issues may preclude discussion in open forum and whether that's individually or as a group if it's one Native Hawaiian that has information concerning a particular burials or family or something they're concerned with any of the options even amongst the Native Hawaiian Organizations that come forth and ask for just a confidential consultation. We're required to do that and we're happy to do it, but just to say it's open to everybody, it talks about all historical activities or sites and is not particular to Hawai'i but it does address Hawaiian concerns.

Cheryl Lovell-Obatake: Thank you. Your comments are noted. Mr. Hammatt.

Hal Hammatt: I just want to point out one thing that I said or did that made, if you look at the map with the red lines on this is what we call the APE and we talked about two alternatives. This line up here is actually along with the other orange...

Cheryl Lovell-Obatake: Hal, will you explain what the APE is? The Area of Potential Effect?

Hal Hammatt: The Area of Potential Effect, yes, in other words basically the corridor in which the bike path will wind its way through, this line up here is actually an archeological site, Site 886 that was identified through our testing along the *makai* edge of the Kūhi'ō Highway. So it's not one of the alternatives. This orange line here that follows the present highway is not one of the alternatives of the bike path that we examined or that was being considered. It shows an archeological site, it's the rough boundaries of the archeological site identified during testing along the edge of the highway.

Cheryl Lovell-Obatake: And that was with the Department of Transportation on Kūhi'ō Highway and Kuamo'o Road right?

Hal Hammatt: Different project, older project. Just to clarify, the interpretation of the map.

Cheryl Lovell-Obatake: Thank you Hal. Mauna Kea.

Mauna Kea Trask: For the record, Mauna Kea Trask on behalf of the County of Kaua'i, I'd just like to state today, again, to clarify some issues, like has been stated multiple times, the County is here today to seek everyone's *mana'o* both Native Hawaiian Organizations, individual, members of the public as well as government agencies and stake-holders, regarding the historical properties that they know of in the Area of Potential Effect currently within the Lydgate – Kapa'a Phase C & D Bike Path. Now, today the County of Kaua'i wanted to, and the Federal Highway Administration want to present to you the sites that we know about. And we know about those sites because our consultants went down there, they used the latest technology, ground penetrating radar as well as older techniques to identify these historic properties. Now, we acknowledge that there may be more and most likely more historic properties and we're asking you today for your *mana'o* regarding that. Once we find that out, we're going to go back to our respective offices and identify all of them and prepare further

maps, write further reports and amend our consultation plan and our consultation product to reflect your *mana'o* today. So your knowledge will be preserved forever to be available and it will be utilized in the future. At the next meeting, we're going to present to you those new documents and the new maps so that you can all be assured that they're in the record. And we're going to ask you for your *mana'o* again regarding three very important issues and that is avoidance, minimization and/or mitigation. And I think that there's a very important thing to remember about these meetings, prior to 2001, this 36 CFR part 800 wasn't available. It was a very general statement under Section 106 of the National Historic Preservation Act. It said you need to consult and no one knew what that meant. We've used that for a little bit, it's been difficult to work with so the County sought the *mana'o* of Protocol Committee and decided this *Ho'oponopono* process was to be used. We hope that it works in this phase and it will be implemented if it is successful in other County projects and hopefully the State and Federal government picks it up as well. Unlike in mainlandia, with the Native Americans who have sovereign governments who are recognized, who have casino money, who get federal interior money, Native Hawaiians don't benefit from that. No one is here from the Native Hawaiian community, they're getting paid by the Native Hawaiian Organizations, and everyone does this out of *Aloha* of the *aina* and the culture. We respect that and we acknowledge that. We hope to inform you throughout this process that you are able to avail yourself to a benefit through the avoidance, minimization and mitigation procedure. If you don't want the path to go where we are saying it's going to go, or we're proposing it going to go, tell us. We want you avoid it; we want you to go *mauka*, we want it to go along the road. We don't want it, that's the record that we lay. If you want minimization, say instead of the bike path being in these areas, hypothetical example, if you don't want the bike path to be a foot deep, then tell us you want it six inches. Tell us you don't want it made of concrete, you want something else, that's what we're asking from you. How would you like us to minimize the impact? Like Doug said, most likely there will be an adverse effect. Furthermore, what mitigation? Mitigation itself is the one term that's not defined within 36 CFR 500. The County believes that it's not defined precisely so you are allowed to ask and/or discuss any type of mitigation you would want. Some of the examples could be monetary compensation to off-set, setting aside of an area for cultural practices, special treatment of certain people being allowed access, whatever it may be because again it's undefined. Please tell us. Prior to these laws coming into effect, you all know, you're *kupuna*, these hotels were built in the past without your *mana'o*. They came in and they did it. They wouldn't let the *kanaka maoli* go to the beach, they wouldn't let these things, those practices, and law has stopped that. The law has not progressed to a place currently where if Hawaiian burials or Kanaka burials are found that any project can be stopped. Members of the Kaua'i-Ni'ihau Burial Council know that if a project is going to go over burials legally they're only allowed to options: preserve in place or reinter/rebury. That doesn't necessarily stop any given project and if you want that to be changed I can assure you these meetings aren't where it's done. Those are political questions; you need to talk to your representatives where those laws can be changed from the State and Federal level. Today, and in all due respect to my colleagues, they are engineers, archeologists, scientists; they don't have the authority or the ability to recognize sovereign governments. They don't have the authority or ability to do anything else but offer avoidance, minimization and mitigation efforts. And for

that we ask you to participate in this process with the end in mind that you can get something out of this. Everyone from Kaua'i knows, when the hurricane comes all these buildings, they look like they're here forever, it's like as if you've lost a part of Kaua'i. We all know once the rain comes, once the wind comes it's all done. When the ocean rises, when the tsunami comes, all Kapa'a is gone. We're all temporary here we know that, we're humbled in the eyes of God and we know that we're all going to go, but this is an opportunity for the Native Hawaiian culture to get resources to be preserved. For hula halau to be supported, to participate in their activities, for activists to get something out of these processes. To participate and ensure that their organizations are perpetuated in perpetuity because currently Native Hawaiians aren't afforded that benefit. Because we're unrecognized, and furthermore today I don't want you to go away as if you have nothing to talk about, no way to address those concerns, the bigger concerns. For the record my number is 241-4930, on behalf of the County I deal with Native Hawaiian issues, if any of you would like to discuss these with me, whether they be land claims, issues related to recognition of any and all sovereign governments, please let me know after this meeting I'll be happy to arrange a meeting with you in my office at the County Attorney's Office. We can discuss these, you can show me what maps you have, you can show me what deeds you have and we can discuss this. If you want to make quiet title action land claims, get an attorney, go to court, we can discuss that. Land titles are beyond the jurisdiction of these gentlemen here today from both the State, County and Federal officials. The fifth-circuit court addresses all land title claims, you want to talk about that, we can talk about that. If you want to talk about recognition claims, Native Hawaiian entities, sovereign governments, that's a political question, the courts may be able to address it but most likely you have to go to legislature and the case law's clear about that, for both US Supreme Court and Hawai'i Supreme Court. I'd also be happy to talk to you about that, I'd be happy to share with you the resources I have to show you what cases and we can have that discussion. I'm just telling you that for today, if you want to talk about those larger issues you're going to be unsatisfied because these ladies and gentlemen won't be able to address them. Nonetheless, I'm offering myself here today to talk with you about that so that can progress in the appropriate venue. I just hope that everyone takes our efforts in good faith; we're not trying to hood-wink anybody, we're not trying to hide anything, we're showing you clearly on the map what we know, please help us understand the area better and hopefully we all can benefit out of this project whatever the outcome is. Even if it doesn't go our way and that's all I have to say. Mahalo.

Cheryl Lovell-Obatake: Thank you Mauna Kea. Keith?

Keith Yap: Thank you for those comments, I think those comments are very germane to what we're trying to discuss, I think you can get the jest of the issue, I think some of us here are of the opinion that during the avoidance portion of the mitigation we do not explore alternative routes. This is very important, I'm going to press upon the County come with, prepare to talk about these alternative routes. I noticed that along Kūhiō Highway there was an (inaudible) so that has historical property. The internal road by Wahoo's that goes passed Coco Beach and goes to Beach Boy, there's a sidewalk already there. And you probably want to look at that too, and it will keep it off of the beach, the beach has high concentration of sites. Some point in

time we feel like it's too much, in all of my dealings in the Burial Council when we have to move the graves sites, *iwi*, it's with great trepidation on every single member. We don't make that decision lightly; we don't make it without thought of why we are doing it and where we're going to put it. We try not to do that, but in this case we get very nervous, as was the Brescia case, when there's a high concentration of burials, we feel there's almost too much conflict within our own mind even to address these situations. So, please be prepared to talk about alternatives because I think that is the key to some satisfaction, and I'm not talking about the entire path but part of it or something to try to address and that's all I'm going to say.

Cheryl Lovell-Obatake: Waldeen, I think you wanted to say something?

Waldeen Palmeira: Okay, well are we going around then?

Cheryl Lovell-Obatake: No, I'm giving you special privilege and after this we're going to eat lunch.

Waldeen Palmeira: And are we going to come back and have more time to identify historic properties?

Cheryl Lovell-Obatake: Yeah, I think during the lunch break the staff or the agencies will be discussing or what has been discussed today.

Waldeen Palmeira: And one more question, when is the deadline to submit information in writing on historic properties?

Cheryl Lovell-Obatake: Any agency can answer? Well, there are two more meetings yeah...

Waldeen Palmeira: Well, if you're going to take it into consideration for your next meeting when can our organization submit it besides today?

Mauna Kea Trask: Currently, the next meeting is September 6th, in order, during the lunch break if anyone would like to speak the consultants regarding historic properties you will have the opportunity to do that. In order to insure that your *mana'o* is considered, would a week before, the 30th? If you can have all written submissions in by the 30th, that's next week Thursday. That way it can be considered and included in the product that will be available on the 6th, which is the following Thursday.

Rayne Regush: Clarification what was sent out by the consultants as any member of the public may submit comments by September 12th, confusing.

Mauna Kea Trask: No, it's true, however in order for it to be presented and considered regarding adverse effects for the next meeting we would suggest that you do submit it by the 30th and you can further do it by the 12th, but again at the next meeting we will be presenting

our findings regarding adverse effects, etc. I think it behoove everyone to be included within that who is present today that way we're not going to refuse to accept anything later but it will be that the product can be folded in.

Keith Yap: Does that mean the next meeting is to discuss mitigation? The next meeting is not to discuss mitigation? Is it to finalize the adverse effects or to discuss mitigation?

Mauna Kea Trask: It's to finalize adverse effects, present the findings of adverse effect as well as begin the discuss mitigation. However, at meeting four is when the Memorandum of Agreement will be signed by everybody who is participating mitigation discussions if we get that far.

Waldeen Palmeira: Will there be any other letter notification of adverse effects besides this meeting from the Federal Highways? Or will it just be presented that day? Federal Highways is actually responsible for that.

Mauna Kea Trask: It's anticipated that at the next meeting there will be a finding of adverse effects, both presented orally and written. My understanding that once a finding of adverse effect is made, it's understood that adverse effect was made and there is no need for any further finding of adverse effect, once the initial finding is made. I don't really understand the question.

Waldeen Palmeira: In the 106 laws, you have procedures of process to follow regarding notification of adverse effects; a letter must be sent out by Federal Highways and at least 30 days after that to respond and get information, you don't just go into mitigation, we get notification of adverse effects, that's 800.4, we get to look at this information and we get to respond. The agency official or the Federal Highways gets to respond and so do other Native Hawaiian Organizations, which is what we did, our organization filed to have ACHP review in case of Kūhi'ō Highway short-term agreement based on resolution of adverse effects. So there is a procedure in Section 106 for adverse effects.

Mauna Kea Trask: And that's correct, I understand the question now, under 800.4, I see the identification of historic properties, that's the section....

Waldeen Palmeira: Maybe it's a different one but it is called adverse effects, we receive the notification for Kūhi'ō Highway short-term agreement project on July 17th, we responded on August 16th with our disagreement of adverse effects, in other words there is a process and I just wanted to find out whether we are following the Section 106 or notification of adverse effects?

Cheryl Lovell-Obatake: Let him finish on this mandate.

Mauna Kea Trask: This is for everyone so they can follow along with the appropriate legal sites, 800.4 is the identification of historic properties, that's what we're doing right now, after the historic properties are identified, 800.5 which is assessment of adverse effects. 800.5 deals with two scenarios, either finding of no adverse effect and/or finding of adverse effect. Under 800.5(b) finding of no adverse effects, then moving on to (c) if the agency official proposes a finding of no adverse effects, the agency official shall notify all consulting parties of the finding, providing them with the documentation specified in Section 800.11(e) the SHPO/THPO, who is the State Historic Preservation Officer and/or the Tribal Historic Preservation Officer, Tribal Historic Preservation Officers are found in Native American Indian tribes in Hawai'i, shall have 30 days from receipt to review the findings, so those are the 30 days that have been discussed. However, again because we anticipated of adverse effects due to cultural layers with the associated burials, what we are anticipating is that under 800.5(d) 2. Adverse effects – if an adverse effect is found, which again we anticipate one will be, the agency officials are to consult further to resolve the adverse effect pursuant to Section 800.6. So again, after we get your *mana'o* we're going to historic properties with an understanding that we will most likely find an adverse effect, what we are anticipating is that the next meeting we will present to you those findings of adverse effect and then furthermore, consult further with everyone present today. How to resolve those adverse effects, the resolution of said adverse effects will be done under 800.6. So we will follow the process, you will be notified and again we anticipate a finding of adverse effect, so we kind of identified the process we're going to go through. So given that, you will all be notified pursuant to 36 CFR 800, and we will move to the resolution state.

Keith Yap: *Po'o*, I think Waldeen's question is germane, I think that the schedule of meetings is kind of tight and so I don't know if there is enough time for us to abide by the 30 day rule in order to make sure, I think it's pretty obvious we're going to have adverse effect, there should be ample time for us to review it.

Waldeen Palmeira: I noticed the criteria for the evaluation of historic properties, where does that take place? Where do we get to put in our input, applying the criteria of significance of the historic properties that are identified?

Cheryl Lovell-Obatake: I'm going to let Mauna Kea answer your question.

Mauna Kea Trask: Thank you *Po'o*, under the 36 CFR part 800, the 30 day notification comment section comes under a finding of no adverse effect. So again, we're not anticipating that, if for some reason there is a finding of no adverse effect we will do the appropriate notice and allow the 30 days to comment, we'll change the schedule. However again, we acknowledge that there will be an adverse effect so the next stage is if there is a finding of no adverse effect, everyone is notified and there's really no need for, the only review will be saying, Federal agency there is no adverse effect and try to roll it back. We don't anticipate will happen, we understand there will be a finding and we'll move to present those findings and begin discussions regarding resolution, how to resolve those. So, we understand that if you

need more time, we can accommodate for that however the Protocol Committee did want to make sure that, the reason why for the tight timeline and success of the meetings is precisely so everything remain fresh in everyone's mind and we can proceed and there's not huge gaps of months, half a year, a year between the meetings like it occurred previously and then everyone will have to be brought up to speed again. So again, under the 36 CFR 800.5(d) 2, everyone will be notified and consulted.

Waldeen Palmeira: Okay, well I just wanted to say it's not true that there are no other options after the notification of adverse effects, which you're already telling us there is adverse effects and we will be notified or advise of material to that, and it is moving too, fast and we're not so dumb that we cannot recall information that's spaced out over 30 days, instead of one week or two weeks. I appreciate whomever has written, I believe it was CHS who wrote this plan, if you are attempting to, what you have created to use the Section 106 process in this manner, I will however be responding in writing regarding the process because I believe, I know that in this example that we're attempting to remove the actual process of saying that we are mentioned, we need information, the adverse effect finding in writing from Federal Highways and then the organizations can decide their next, what they plan to do. And what we did in this case, was to ask the Advisory Council of Historic Preservation to respond because for example one of the criteria is that there are multiple adverse effects on multiple locations and even in this case multiple projects where there are three, four, so the accumulative adverse effects is what we're asking of you folks as well as the Kūhiō Highway short-term improvement project. But because we are looking at, we're looking for resolution of adverse effects, but first of all we don't receive that information, what are the accumulative adverse effects of this Lydgate – Kapa'a Bike Path from, I guess it would be from Aloha Beach Resort over to Gore Field, that is the whole project. And so, that is the information that we need is, in other words the segmentation of this project in little bits and pieces when you say, this is the adverse effects for C, but really that's not true, the truth is there is something called significant impact and significant accumulative adverse effects. And that's what we need to be brought to light in a way that is forthcoming and not hidden.

Cheryl Lovell-Obatake: Okay, Waldeen your comments are well noted for the records, if you please will you state your name, your organization and your members so that it be directed what you're saying is to your organization because there are other people in here that don't belong to your organization, so that we can distinguish that in the records.

Waldeen Palmeira: Waldeen Palmeira, and my group is Mr. Liko Martin and Noelani Josslein and we also represent some others including our families, we also represent our *kupuna*.

Cheryl Lovell-Obatake: Done? I was just asking because you were silent right there.

Waldeen Palmeira: I'm not done. I wanted to emphasize that we do represent our *kupuna* of our own individual families (group name mentioned) which is very spiritual, it would have been, this road and this path would have been a lot smoother if this Section 106 and the identification

of historic properties came in 2004, and there were a lot of, there's too much action that has taken place and I believe and I know that the right outcome will and is going to occur and we hope (our organization) that and give the invitation to you folks and to come into a type of understanding and collaboration towards what the vision of this area is for the future. I think that differs from what the County, State, Federal, if you folks were present at these meetings of these past two days, we were involved in Section 106 and so rather than actually taking all the time basically what you folks have done was incorrect from the beginning. When Section 4(f) took place without the identification of historic properties, you have an archeological assessment rather than an archeological inventory survey. You didn't allow consultation to identify historic properties and you segmented these three projects under this National Historic Landmark which requires it to be observed and evaluated for significance under NEPA (National Environmental Protection Act) which you folks never did. This project was a categorically exemption from NEPA, or the bridge, categorically exemption, there's no NEPA for the Kūhiō Highway project and you know what NEPA/EIS covers is that a place like this, Wailua and Kapa'a and the Waipouli area but definitely Wailua, is that an EIS takes into account the cultural, historical and environmental resources, actually with the intention of actually trying to prevent further degradation, but as the project gets segmented, certain portions get adversely effected. Mr. Kimura started with looking at the Kapa'a relief route probably before 2000, they identified the route on Kūhiō Highway as one of the routes for the EIS and then they put it on the burner and then they came upon developing these three projects separately instead of as an EIS. Whereas you go through a place that is sacred, religious, spiritual, you actually are supposed to do the EIS, so for our organization, I know Liko has some other *mana'o* that he presented yesterday, but and we're wanting to see and do the Section 106 for the Kapa'a relief route so that we can see all of the accumulative adverse effects, rather than you do this project now, that project and then you got a ton of adverse effects and they are able to do the Kapa'a relief route because you have a lot of adverse effects. And I think that you're not pulling any blinds over us, our organization, we're pretty clear.

Cheryl Lovell-Obatake: Okay, can we stop, if you could put that all in writing, it is noted for the records and September 6th is the next meeting, 2012, at the County building, Piikoi A & B. And I have a special announcement, Keola I hope you're taking all the notes in your compliance to the Office of Hawaiian Affairs, at this time we're going to have lunch, that's the special and I will call this meeting adjourned. I think we have a lot to do, a lot of homework and we discussed it and identifying historic properties. Do you have something to identify?

Waldeen Palmeira: I have something to say about that area, on and we identified it to CHS in consultation, I'm not aware where that report is. That area on Waipouli between the, before Makaiwa, that is one of the....

Cheryl Lovell-Obatake: I guess the meeting is back in order, recorder. But you need to keep it short, I know you going be handing in some comments.

Waldeen Palmeira: Well, basically an area highly significant as a cultural area for fishing, and its relation to (inaudible). It is also significant today because as people try to, our people, our culture and our historical resources that are there at the shoreline including burials, there is an essence, spiritual essence in the land. That is what sustains us as a people, our attachment to the beach is not inviting us on the cement and getting there and also the bike path interferes with cultural practices. Do not separate culture and historic properties because you always try to talk about historic properties but they're actually traditional cultural properties, are historic, cultural, spiritual, and religious. This beach area there and at Wailua Beach are two of the remaining beaches that our people, and I'm not excluding anybody else, but for our health, our health, our health, meaning body, mind and spirit, which is the way our people relate to the ocean and to the shoreline and to have our *kupuna* there in the ground, not built over makes a huge difference in our health. Our connection to our land, there at the beach is important for the survival, I'll take that back, in the old paradigm, it still is important in the new paradigm, which is an enlightened paradigm, it is still important but it will not be destroyed and it will not be destroyed. We're inviting you to find ways to make this an enlightening experience and outcomes. It will be anyway but if you want the path, let's do it together in a way that does not step all over our culture and also before we adjourn, we identified to Carol Legard of ACHP when she came here last year, Wailua Beach is a significant historic property and I will say that too for that other area because there are very few areas along that coast that are significant historic properties, cultural properties, environmental properties for our children and our *kupuna* to take their throw net and go and be ourselves. We always have *aloha*, we invite the people to be there but we don't need to have it compounded by a path because that throws off the whole essence of the area. On Wailua Beach we informed Carol Legard and she has said at the time also that there is no reason why Wailua Beach cannot qualify as a, for National Historic Register. We already have a National Historic Landmark.....

Cheryl Lovell-Obatake: I think that's a problem, not a problem, the issue is with the State Historic Preservation Division and we're going to the same problem with every 106, every review and even with this.

Waldeen Palmeira: Even Native Hawaiian Organizations took on that, but to notify you folks that that process is what we're looking for is the Wailua Beach, and the bike path right now in which you have a faulty SMA, you didn't go back and do the SMA after you made construction plan changes in 2010 and we lost a lot of shoreline, you actually have to do the SMA again for Wailua Beach. You do not have a shoreline setback, so in addition to that we are nominating Wailua Beach to the National Historic as part of the mitigation for the Kūhiō Highway project, on the list is the nomination of the properties. And a lot of times these things were supposed to take place ahead of you even doing your assessments as so forth. You're supposed to identify the places that should be avoided, nominated and so forth and not avoid that process. So, we're just notifying you now that that is what's going to happen and we are also notifying you that the SMA is invalid because you don't have a shoreline setback. On the original shoreline setback that you had for 2007, these pictures are outdated. You don't have shoreline setback because you don't have a shoreline and where you changed it to be on the road.....

Cheryl Lovell-Obatake: I think we need a point of order; we are in a project site that's in Waipouli, well that's the meeting that I'm running. Can we adjourn this meeting please?

Waldeen Palmeira: Well the last thing what I asked you in the beginning that even though they're looking at C/D, this project, federal aid project under the Lydgate – Kapa'a Bike Path is one project. And not only that there needs to be an EIS because we have this project spread out throughout the island of Kaua'i and that is called segmentation, it's also called significant impact, thank you.

Cheryl Lovell-Obatake: So noted for the record.

Keith Yap: Are we reconvening today?

Cheryl Lovell-Obatake: Pau already, adjourned, PAU.

Meeting adjourned at 12:20pm.

Appendix E

Public Meeting 3, November 27, 2012

- Legal notice for Section 106 Review and First Public Meeting, published in *The Garden Island*, November 14, 2012
- Agenda
- Handout: Historic and Cultural Sites Matrix (Draft)
- Attendance Sheet
- Minutes of Meeting

NANCY NISHIKAWA
KIMURA INTERNATIONAL
1600 KAPIOLANI BLVD STE 1610
HONOLULU HI 96814

REFERENCE: 111253
7747526 LYDGATE PARK THIRD
MEETING NOTICE

Cheri Bagain, being duly sworn, deposes and says, that she is an employee of "The Garden Island," a newspaper published in Lihue, County of Kauai, State of Hawaii; that the NOTICE in the above entitled matter of which the annexed is a true and correct copy, was published 1 time(s) in "The Garden Island" aforesaid and that this affiant is not a party to or in any way interested in the above entitled matter.

Cheri S. Bagain

Subscribed and sworn to me this 14th day of November, 2012.

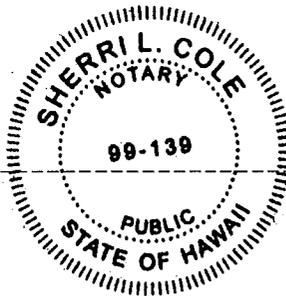
Sherri L Cole

Notary Public, Fifth Judicial Circuit
State of Hawaii *County of Kauai*
My Commission Expires: 04-05-15

Document Description: Affidavit of Publication
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**Public Notice for RESCHEDULED Third Public Meeting
Section 106 Review of
the proposed Lydgate Park-Kapa'a Bike/Pedestrian Path
Phases C & D ("Waipouli Connection")**

The Kaua'i Department of Public Works (DPW) is issuing this public notice for the rescheduled third meeting under 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. This meeting is open to Native Hawaiian Organizations and members of the public.

Phases C & D of the proposed bike/pedestrian path is a largely coastal alignment from Papaloa Road to Uhelekawawa Canal. This section will connect portions of the path that are already built or currently under construction.

The regulations at 36 CFR Part 800 require the funding agency—the Federal Highway Administration—to identify historic properties that are listed or eligible for listing on the National Register of Historic Places; to assess any direct or indirect effects the proposed construction would have; and to seek ways to avoid, minimize, or mitigate any adverse effects.

A third public meeting for Section 106 review will be held on Tuesday, November 27, 2012 beginning at 9:00 AM at the State Department of Transportation-Highways, Conference Room 1720 Haleukana Street in Puhi

Anyone with special needs requiring an American Sign Language interpreter or an auxiliary aid to participate in any of the meetings should contact the Department of Public Works at Ph. 241-4849 at least five days prior to the meeting

Information about this project is available at the following websites:

Draft Consultation Plan:
<http://www.culturalsurveys.com/incoming/WAIPOULI6%20Draft%20May%202012.pdf>

Cultural Impact Assessment:
http://www.culturalsurveys.com/incoming/Waipouli_4_FINAL%20draft%20Jan%202012.pdf

Draft Archaeological Inventory Survey Report:
<http://www.culturalsurveys.com/incoming/Waipouli%203%20Draft%20AIS%20to%20SHPD.pdf>

(November 14, 2012)

Lydgate Park-Kapa‘a Bike/Pedestrian Path, Phases C&D
Meeting for Section 106 Consultation, National Historic Preservation Act
Tuesday, November 27, 2012, 9:00 AM
State Department of Transportation-Highways Conference Room
1720 Haleukana Street, Puhi

REVISED AGENDA

Assessment of Adverse Effects and Resolution of Adverse Effects

- I. Opening Pule**
- II. Overview of Protocol Committee decided process/ laying of ground rules**
- III. Mahiki (The “setting to rights” of each successive problem that becomes apparent during the course of ho‘oponopono, even though this might make a series of ho‘oponopono’s necessary.)**
- IV. Overview of Phases C&D in the context of the overall Lydgate Park to Kapaa bike/pedestrian path project and development of project alternative**

Powerpoint presentation by Glenn Kimura

- V. Continuation of Section 106 process**

Review of Archaeological Inventory Survey (AIS) report and findings by Hal Hammatt, Cultural Surveys Hawaii

A. Assessment of Adverse Effects (36 CFR § 800.5)

1. Po‘o directs agency official to apply criteria of adverse effect per (36 CFR § 800.5(a)) and present results to NHOs and other interested parties.
 - i. Criteria of adverse effect (36 CFR § 800.5(a)(1)).
 - ii. Examples of adverse effects (36 CFR § 800.5(a)(2))
 - iii. Phased application of criteria (36 CFR § 800.5(a)(3))
2. Finding of no adverse effect, Po‘o requests agency official take steps required in (36 CFR § 800.5(b)).
3. If the agency official proposes a finding of no adverse effect, Po‘o requests agency official to take action of further consulting party review pursuant to (36 CFR § 800.5(c)).

4. Po'ō shall request that agency official take steps consistent with “Results of assessment section whether or not adverse effect is found” (36 CFR § 800.5(d)).

B. Resolution of adverse effects (36 CFR § 800.6)

1. Continue Consultation. (36 CFR § 800.6(a))
 - i. Po'ō shall request agency official to present proposed mitigation measures.
 - ii. Po'ō asks NHOs and other interested parties to provide input on proposed mitigation measures and if they have any mitigation measures to propose.

Items B.2 and B.3 (below) to be deferred pending completion of the draft supplemental environmental assessment and public review. This document will include input obtained through the Section 106 process to date: findings of historic resources, determination of adverse effects, and proposed mitigation measures.

2. Resolve adverse effects (36 CFR § 800.6 (b)).
 - i. Po'ō shall request that agency official to take the appropriate steps to resolve any and all adverse effects either with or without the Advisory Council on Historic Preservation as appropriate and required pursuant to (36 CFR § 800.6 (b)(1)&(2)).
3. Memorandum of Agreement (36 CFR § 800.6(c)).
 - i. Po'ō shall appoint a committee to work with the agency to draft a Memorandum of Agreement to be executed at the next meeting pursuant to (36 CFR § 800.6 (c)).

VI. Pani

**Lydgate Park-Kapaa Bike/Pedestrian Path
Phases C&D
DRAFT**

Historic and Cultural Sites

	Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/ National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
1	SIHP 50-30-08-108 Kukui Heiau	Navigational heiau with at least two stone lamps that guided canoes on the ocean	Associated with historic and legendary events and figures	Good condition, well maintained	South Olohena Ahupua'a, Alakukui Point, located about 300 feet southwest of the project area	Placed on Hawaii Register in 1986 and the National Register in 1987	Already listed in NR and HR	To be determined by consultation
2	SIHP 50-30-08-791 Cultural layer and burials	Cultural layer with relatively high concentration of marine midden suggestive of substantial fishing activity; radiocarbon dating to A.D. 1275 to 1645; two burials	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Continuous. The cultural layer mainly extant in makai or eastern portion of property (Perzinski et al. 2001:36)	South Olohena Ahupua'a, northeast coast; cultural layer extends into the project area	D for NR D and E for HR	Yes	To be determined by consultation
3	SIHP 50-30-08-886 Cultural layer and burials	Cultural layer with hearth remnant, 'auwai, and two sets of previously disturbed disarticulated human remains (SIHP 50-30-08-886A)	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Cultural layer intact, continuous. Burial condition unknown	Waipouli Ahupua'a, along Kuhio Highway near Coconut Market Place; cultural layer is located within the project area	D for NR D and E for HR	Yes	To be determined by consultation

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/ National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
4	SIHP 50-30-08-891 WWII pillbox Concrete WWII-era military structure, likely a military pillbox or machine gun emplacement	Associated with historic events	Unknown	North Olohena Ahupua'a, southeast corner of Lot 16 on the coast, located within the project area	D for NR D for HR	Yes	To be determined by consultation
5	SIHP 50-30-08-1800 Cultural layer and burials Two cultural layers in the shoreline sand berm; an upper deposit extends 25-80 feet inland from the shore; a lower deposit extends 40-100 feet inland from the shore; three burials uncovered and left in place; probably occupied about A.D. 1500; the extensive nature of deposits and relative lack of artifacts suggests that the area was used for recreation or social gatherings	Valued by living community for their cultural attachment to <i>iwi kupauna</i> and historically and culturally significant	Cultural layer continuous and intact	North Olohena Ahupua'a, northeast coast, Coconut Plantation; cultural layer extends into the project area	D for NR D and E for HR	Yes	To be determined by consultation
6	SIHP 50-30-08-1801 Cultural layers and burials Two cultural layers and five burials are located in the shoreline sand berm; radiocarbon dated to approx. A.D. 1500;	Valued by living community for their cultural attachment to <i>iwi kupauna</i> and historically and	Cultural layer continuous and intact. Condition of burials is	Waipouli Ahupua'a, Coconut Plantation, 200 meters makai of Kuhio Highway;	D for NR D and E for HR	Yes	To be determined by consultation

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
	numerous indigenous artifacts suggest a development sequence from a limited workshop area to a site of permanent occupation	culturally significant	unknown	cultural layer extends into the project area			
7 SIHP 50-30-08-1836 Cultural layer and burials	Cultural layer with numerous features. Data suggest this site was a moderate permanent settlement that may have been a staging area for fishing events and associated feasting and religious activities, a location for canoe construction, repair, and storage, a location for manufacture of shell tools and slingstone, and special place for tattooing	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Cultural layer continuous and intact. Condition of burials is unknown	Waipouli Ahupua'a, from coast to Kuhio Highway, located north of Uhelekawawa Canal (Waipouli Beach Resort)	D for NR D and E for HR	Yes	To be determined by consultation
8 Burial 1, SIHP To be determined	Likely pre-Contact to early post-Contact in age	Valued by living community for their cultural ties to <i>iwi kāpuna</i> . Historically and culturally significant	Well-maintained, intact	Within County beach access, near Mokihana of Kauai tennis court	D for NR D and E for HR	Yes	To be determined by consultation

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
9	A previously disturbed human burial located adjacent to an old utility line. A partial, disturbed burial pit was also observed. This burial is likely pre-Contact to early post-Contact	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Partially disturbed	Within landscaped area off Papaloa Road and south of Coconut Market Place	D for NR D and E for HR	Yes	To be determined by consultation
10	A pit feature with charcoal and fire-cracked rocks was recorded. The radiocarbon dating result for this feature, dated to AD 1690-1775, was first reported in a subsequent monitoring report for the property	Valued by living community and historically and culturally significant	Unknown	Beach portion in Waipouli and North Olohena Ahupua'a	D for NR D and E for HR	Yes	To be determined by consultation
11	Two pre-Contact/early historic Hawaiian burials	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Unknown	Beach portion in Waipouli and North Olohena Ahupua'a	D for NR D and E for HR	Yes	To be determined by consultation

National Register Significance Criteria:

- A that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B that are associated with the lives of persons significant in our past; or
- C that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D that have yielded, or may be likely to yield, information important in prehistory or history (from <http://www.achp.gov/nrcriteria.html>).

Hawaii Register Significance Criteria:

- A reflects major trends or events in the history of the state or nation;
- B is associated with the lives of persons significant in our past;
- C is an excellent example of a site type/work of a master;
- D That have yielded, or may be likely to yield, information important in prehistory or history;
- E has traditional cultural significance to an ethnic group, includes religious structures and/or burials and traditional cultural properties.

(for more information, see http://www.state.hi.us/dlnr/hpd/hphar13_8_198.htm)

Meeting called to order, 9:15am – November 27th, 2012.

Mauna Kea Trask (Po`o): Everybody, let's start this meeting, for the record today is Tuesday, November 27th, 2012; 9:00am. We are here for the Lydgate Park-Kapa'a Bike/Pedestrian Path, Phases C & D Meeting for Section 106 Consultation under the National Historic Preservation Act. For the record my name is Mauna Kea Trask, before we start the meeting today I would like to read to you all for the record a note I received from the Po'o of this process, Auntie Cheryl Lovell-Obatake that was sent to me yesterday, Monday, November 26th. It states, *"Aloha e Mauna Kea, due to medical appointments I need to attend tomorrow Nov. 27, 2012, Tuesday, I am unable to conduct the 3rd Section 106 meeting for Waipouli multi-use path. However, I would recommend that you fulfill my absence and conduct the meeting accordingly with my authorization as Po'o. My apology for this late notice. Mahalo & Aloha, Cheryl Lovell-Obatake.* So pursuant to the agreed upon process, and the request of our Po'o in her time of need, I would ask you all to follow her request and allow me to conduct today's meeting and do that with the understanding that this is only temporary and that we all send our best regards to Auntie Cheryl at this time. I'd like to begin right now with the pule, if we could all stand. Pule. Today we have, we're continuing where we left off at our last meeting, just to re-orient everyone, at the last meeting there was a presentation done. The scope of the identification efforts and the APE was made at the last meeting. The agency official, Mr. Nickelson through the County's consultant, Hal Hammatt described the area of potential effects as defined in 36 CFR §800.16(d). At the last meeting, the Po'o also requested the agency official review the existing information of historic properties within the APE including any data concerning the possible historic properties not yet identified pursuant to 36 CFR §800.4(a)(2). Mr. Hammatt presented to everyone the existing information of historic properties; the agency official also through Mr. Hammatt presented a proposed significance of each historic property along with the basis of that assessment. This was done by Mr. Hammatt per the meeting minutes that were circulated on page 5 for the record. Mr. Hammatt talked about significance and he found that the most relevance, any cultural layers considered significant under the National Register criteria because of its information content, because of the burials within the APE, the site is considered significant under State criteria (e), which is significant for cultural reasons. Auntie Cheryl led the gathering of information from Native Hawaiian organizations, cultural practitioners, as well as members of the public, including but not limited to consulting parties and other individuals likely to have knowledge or concerns with the historic properties in the area. During this presentation, questions were raised regarding the 2007 final EA and also information pertaining to, or the lack of information regarding the AIS. The meeting was continued to September 20th I believe was the first meeting date and it was subsequently postponed in order for the Native Hawaiian organizations and the public to review the AIS as well as to accommodate schedules as well as illnesses that came up. So, today we are going to continue where we left off, first however we will do a PowerPoint presentation by Glenn Kimura of Kimura International in order to provide everyone with an overview of Phases C & D in the context of the overall Lydgate Park – Kapa'a Bike/Pedestrian Path Project and

development of the project alternatives. Also, after that we will have a presentation from Mr. Hammatt regarding the AIS and I'm going to do another round table and get your mānā'o on that. At this point, I'd request pursuant to Auntie Cheryl's authority, Mr. Kimura present his PowerPoint presentation please.

Herb Lee: Mauna Kea, should we go around the room and introduce ourselves?

Mauna Kea Trask (Po`o): I think we're going proceed with the presentation first.

PRESENTATION – Kimura International

Glenn Kimura: What we're going to do is an overview of the Lydgate Park – Kapa'a Bike/Pedestrian Path Project that we conducted. We had a final EA done, a FONSI in 2007. Our project area, what we studied here between 2003 and 2007, included these areas, went from Lydgate Park to Waika`ea Canal. We went up to Wailua Houselots Park and Sleeping Giant trailhead. We added another area called the Kawaihau Path that was trying to connect the Kapa'a/Keālia Bike Path, it was a way to get up to that community. This is how we defined the project limits; we're satisfying three general Federal Highway principles: the first is connecting logical termini that are sufficient lengths addressing environmental matters. All of them have independent utility or independent significance meaning that they're usable even if no other transportation in the area are made and that finally they do not restrict consideration of alternatives for other foreseeable transportation improvements. The project purpose and need: we're extending and connecting existing and new near term paths this from Lydgate Park and we're connecting up to Kapa'a – Keālia, the north-south end of it. Also, we talked about connecting up to Kawaihau Road. Our objectives which improved safety for pedestrians, bicyclists and others using non-motorized modes of transportation and this would be separate from vehicular traffic as much as practicable. We wanted to increase choices among alternative modes of transportation, provide greater connection among destination and activity nodes; these would be from shopping centers, parks, community facilities. We wanted to enhance public and ADA access to natural areas and then also wanted to increase opportunities for recreation and physical fitness.

These are the alternatives that we considered in the draft EA in 2004: We have three alternatives: one was a Shoreline Path, another was Inland Roads that parallel the coastline and the third was a Canal Path. The DEA stated that final alignment may combine sections from these three different alternatives. So our first alternative – the "Shoreline Alternative" goes from Lydgate Park all the way along the shoreline and connecting up to Waika`ea Canal in that fashion. It's located along the County beach reserve for the most part between Wailua Beach Park and Kaua'i Coast Resort. And the path along Kūhiō Highway to the town would need special treatment. Second alternative looked at "Inland Roads" and this one went this way, so we found that this path would require routing through Coconut Martkplace parking lot and along Aleka Loop and that land acquisition would be required. And this route is adjacent to existing roads along Kūhiō Highway. The third alternative is the "Canal" alternative, and this one went in this fashion, so it's mainly along the canal on Midler's property and behind Coco

Palms. One of the problems associated with that was this requires a mid-block crossing along the temporary by-pass road. So the Build Alternative that concluded the EA in the Final Environmental Assessment and the FONSI that was granted for this project in 2007 looked like this. The alternatives were evaluated and we had community meetings, based on its community and agency concerns this alternative was selected. With public feedback, technical feasibility studies and operational issues were considered and that we had specific evaluation criteria. Location factors: we looked at whether or not the route went along the coast and was this consistent with the original vision for the project? Mayor Bryan Baptiste's tenure, even as a council member, he was the one that spear-headed this project. Does the alternative offer scenic views and what kinds of impacts on archeological or cultural sites were involved? The design factors: is the alternative separate from vehicular traffic? Can the path be designed in compliance with ADA requirements? Will the alternative require crossing major roadways? Some of the implementation factors: will the alternative require above-average costs? Is land acquisition required? Will the alternative require special maintenance efforts? So the build alternative in the Final EA looked like this, it went along the roadway and along Waipouli Canal area through Midler's property and then came on back down to the shoreline near Baby Beach. One part of the segment, one part of the alternative was a Papalooa Road Spur, so we looked at that as an addition to the alignment. And this path will extend from Lanikai Street to the Coconut Marketplace. And then currently there's no sidewalk along this area, it's not continuous. And then we looked at the Waipouli Spur, it went along the shoreline, much along the County beach reserve area and then on up to Kūhiō Highway. This would provide lateral access which is actually a condition of an SMA approval for the development projects that are going to be occurring down in those empty sites right now. And it also provides a mauka-makai access via County easement; the County owns the piece of property that goes along that alignment. And it would require a path along Kūhiō Highway and this may require land acquisition because it is in a tight area. And then a new span would be needed across Uhelekawawa Canal. Why was this alignment selected? It minimizes potential environmental impacts, it's compatible with sound path design, it serves high traffic corridors for pedestrians and bicyclists, and it provides users with a mix of makai and mauka landscapes and views. So what I'll turn to now is Phases C & D which is the subject of what we're doing here today and that's for the Supplemental EA. Phases C & D are all part of the Build Alternative that we're trying to make connections to. With that, we have Hal for the Archeological Inventory Survey and this is one part of the map that shows all of the trenching that was done and there was one new identified burial site in this area right here, right along the County owned easement. And on the makai side, a newly identified burial was found here. We had a surveyor go out and look at that property and determined that it's not within the County easement but actually on the Kaua'i Resort property. With that it's a very quick overview, thank you for your time, Po`o.

Mauna Kea Trask (Po`o): I'd just like to note regarding what Mr. Kimura said about the SMA permits and the proposed developments that are over there, I did some research myself and looking at the Planning Department's records and according to what I found the parcels on either side of the Resort Quest Kaua'i are proposed and effect the permits have been approved for future development. On those two parcels together, the projects are expected to add

approximately 525 multi-family units and hotel rooms and nearly 1000 parking stalls. As a condition of this development permit, the Planning Commission in the past mandated a bicycle and pedestrian access along the makai frontage of the proposed resort development. That's for all your own personal information.

Glenn Kimura: Excuse me Po`o, these are the outlines of those future developments.

Mauna Kea Trask (Po`o): That's correct. And that was brought up at the last meeting, so all you know that that's what we're specifically talking about. Thank you Mr. Kimura, next we'll go to the review of the Archeological Inventory Survey and report and findings by Mr. Hammatt, Cultural Surveys Hawai'i.

Hal Hammatt: I don't have a slide show but we do have maps, three of them. Basically, we focused on this coastal portion stretching from just south of the canal, Waipouli Beach Resort here and going all the way down to Kaua'i Sands Hotel here. This stretch of beach and also the two accesses from Kaua'i Sands and also this County access that Glenn referred to. This is County land and it's on beach access all the way down. We also did this alternative right here and goes up to Uhelekawawa Canal. Let me start with the test trenches, we had a back hoe, we did 10 back hoe trenches in the areas where we had access with the back hoe. The process there is that we dig off the upper layer that is generally a filled deposit or a top-soil deposit and then we do lots of hand digging with back hoe moving the sand. If we hit something, we see it before back hoe damages it and we can study it and keep it intact. In this process of doing these 10 trenches most of which were concentrated in the northern end, we did discover a burial in this trench right here which is right on the edge of the County right-of-way and its right along the edge of the proposed bike path and extends mauka. We did, knowing full well that we had previously identified cultural layers here Site 1801, 1800 and also 791, three separate, well documented cultural layers from previous projects. We did not want to take a back hoe in there, so we decided we would do a shovel test which is a lot less intrusive, knowing full well that we were probably going to hit cultural layers along most of the length of the shoreline stretching along the bike path. We did 48 shovel tests, we confirmed that along most of the route of the bike path we have a cultural layer extending down probably from as much as a foot or foot and a half from the present surface extending down to sometimes 3 or 4 feet. Its variable, sometimes very loose, sometimes it will express generally without a lot of artifacts in it, we call it a habitation layer and it's generally the Hawaiians pre-contact living along this coastline. Generally, occupying the area for fishing, whatever and leaving these deposits behind. In the great bulk of these 48 shovel trenches we found this cultural layer, with the exception of and I think one of these maps shows where we found the cultural layer and where we didn't. Basically along here: Site 1801, 1800, 1791, south of 1791 towards the Kaua'i Sands, it gets weaker but generally it's in this area along, I'd say three-quarters of the entire stretch of the bike path. In all of these shovel test, 48 of them and also the ten back hoe trenches we also did ground penetrating radar. Some people think that it's a questionable usefulness but we do it generally because every time we do it we learn something. In some cases we're able to correlate the resistance of the machine; this is a machine that allows us to see what's

underneath the ground without digging. If we use it and if we interpret the information properly in some instances we were able to identify the cultural layer before we actually did the excavation, so it is a useful tool. Generally we have previous archeology, Site 1801 we had couple burials identified along the beach in previous studies. We also had a cluster burials here in Site 1800 designated as a preserve area. We also had in a previous study going back to the late '90's, two burials identified here along the beach. So it's not surprising we did identify additional burials here. Shoreline areas as many people are aware were places where Hawaiians buried their dead on a regular basis because of the sand. I guess mainly the bike path footprint is fairly shallow; we're think there are ways to design the footprint so that it does not impact the cultural layer. In addition to that there's placement of the bike path, with certain flexibility. We would recommend that the bike path be routed a little bit more mauka, still staying within the shoreline setback. In this area of Site 1801 to avoid this cluster of burials that we cannot exactly identify where those burials are. Back in the '90's, people didn't have GPS, the site location was pretty rough, the person who did this study past away, so we'd rather just designate this area and avoid it rather than trying to find burials again. Now, the major issue here for us is the finds of two burials and let me talk about that a bit. This burial in trench #2 is right in the right-of-way. There's not very much room for the bike path to avoid this burial. The case is a little different than the southern burial, this turns out to be off the bike path route, in fact it's in the adjacent property of Kapa'a Sands so it can easily be avoided. This burial was also slightly damaged in the insulation of the utility some years back. We actually identified that utility with the forming of the trench. There is some flexibility here, a lot less flexibility out here. As far as the treatment of the burials, we've followed the State rules. There will be a burial treatment plan prepared and that plan will be presented to the Kapa'a-Ni'ihau Island Burial Council and they will make the decision on the treatment of the iwi kupuna. A late addition to the archeology was the excavation of three trenches here. We excavated the entire footprint of the proposed comfort station, Missy did that work. The finds were negative and we also excavated two trenches along the route of a sewer line that connects to the sewer line along the highway back to the comfort station that's part of this project. I think that's it and we've turned in a draft of this report to the County. I guess the last thing is evaluation of that adverse effect to historic properties. We already talked about the significance; these properties containing the burials are significant under criterion E, which is cultural significance and all of the sites are significant under criterion D, which is for information purposes. The last thing is the evaluation of effect; I think there would possibly be effect on Site 1801 & 1800. 1801, specifically the burial, but also 1801, the cultural layer it would probably effect, and this is open to discussion, the location setting and association of this particular site. I don't think it could be entirely avoided, although the impact may be minimized by moving that section of the bike path, moving it mauka. Since the footprint is fairly small, I think 3 or 4" of the bike path itself, I think the direct impact could be avoided. Site 1800 similarly, it would be the setting and the association impact the site and we obviously have an impact here with the burial.

Mauna Kea Trask (Po'o): Thank you Mr. Hammatt. At this time I'm going to go around the room and ask if anyone has any questions for Mr. Hammatt regarding the information presented. I'd like to remind you that per the rules of this meeting, as agreed to by the Native

Hawaiian Protocol Committee, all questions will be directed to the Po`o and then I will relay those questions to Mr. Hammatt. I'd also like to state that, please keep all your questions at this time relevant to what Mr. Hammatt just presented. After we go around asking questions, I will go around again and seek all your mānā`o regarding what you individually all know regarding the historic, any presented historic sites or any historic sites that you may know that may not have been presented. Then after that, I will seek your mānā`o on significance as well as your mānā`o on adverse effect. So at this point, I understand many of you may be against this path on a matter of principle and passion and that can be put in the record, but as far as right now, I'd just like to keep the questions germane to what Mr. Hammatt has presented. If you could state your name for the record only if you have any questions for Mr. Hammatt.

Ken Miyashiro: Ken Miyahsiro, no questions.

Mauna Kea Trask (Po`o): Thank you Mr. Miyashiro.

Meesa Otani: Meesa Otani, from FHWA, no questions.

Keith Yap: Keith Yap, Vice-chair of the Kaua'i-Ni'ihau Burial Council, I have a few questions, wanted to clarify; those three projects are already closed?

Mauna Kea Trask (Po`o): Yes.

Keith Yap: On the north end, wanted to ask this question again, I asked it last night, the path is going to be both of these, or is it going to be one and two alternatives?

Mauna Kea Trask (Po`o): Mr. Hammatt, do you have information?

Hal Hammatt: As I remember, mirroring what Doug Haigh has said in the past, this alternative necessitates the route to be along the highway which, and I don't want to quote the County here but according to Doug Haigh there's some challenges because some of the buildings are fairly close to the highway. It's really a challenge as far as being moved and safety considerations. If I quote Doug again, I think the preferred alternative would be this one.

Mauna Kea Trask (Po`o): And Mr. Kimura if you could confirm.

Glenn Kimura: Can I get Nancy to respond to that, I'm not up-to-date on that, about which the preferred alternative is. Nancy.

Nancy Nishikawa (Kimura International): The mauka-makai easement already exists. The alternatives would be either to use that mauka-makai easement and then the highway connection to the canal. Phase B already comes down here and as you know Kaua'i Beach Resort when it was constructed put in a wide sidewalk and that's part of the path system. It's

Appendix F

Public Meeting 4, February 20, 2013

- Legal notice for Section 106 Review and First Public Meeting, published in *The Garden Island*, February 7, 2013
- Agenda
- Handout: Historic and Cultural Sites Matrix with Proposed Effects (Revised Draft)
- Attendance Sheet
- Minutes of Meeting

THE GARDEN ISLAND

NANCY NISHIKAWA
KIMURA INTERNATIONAL
1600 KAPIOLANI BLVD STE 1610
HONOLULU HI 96814

REFERENCE: 111253
752356 FOURTH PUBLIC MEETIN

Sherri Cole, being duly sworn, deposes and says, that she is an employee of "The Garden Island," a newspaper published in Lihue, County of Kauai, State of Hawaii; that the NOTICE in the above entitled matter of which the annexed is a true and correct copy, was published 1 time(s) in "The Garden Island" aforesaid and that this affiant is not a party to or in any way interested in the above entitled matter.

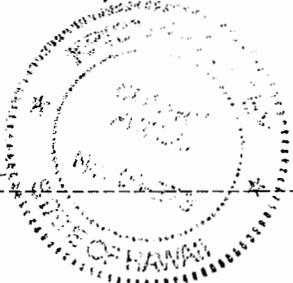
Sherri Cole
Subscribed and sworn to me this 17th day of February, 2013 SC
KK NP

Notary Public, Fifth Judicial Circuit
State of Hawaii
My Commission Expires: 5/26/2015

Document Description: Affidavit of Publication
No. of pages: 1 Document Date: 2/7/13

PUBLISHED ON: 02/07/2013

FILED ON: 02/07/13 *SC*



**Public Notice for Fourth Public Meeting
Section 106 Review of
the proposed Lydgate Park-Kapa'a Bike/Pedestrian Path,
Phases C&D**

The Kaua'i Department of Public Works (DPW) is issuing this public notice for the fourth meeting under 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. This meeting is open to Native Hawaiian Organizations and members of the public.

Phases C & D of the proposed bike/pedestrian path is a largely coastal alignment from Papalooa Road to Uhelekawawa Canal in Waipouli. This section will connect portions of the path that are already built or currently under construction.

The meeting will be held on Wednesday, February 20, 2013 at 9:00 AM in the State Department of Transportation-Highways, Conference Room at 1720 Haleukana Street in Puhi.

Anyone with special needs requiring an American Sign Language interpreter or an auxiliary aid to participate in any of the meetings should contact the Department of Public Works at Ph. 241-4849 at least five days prior to the meeting.

For further information, please contact Nancy Nishikawa at Kimura International, Inc. Ph. (808) 944-8848

(February 7, 2013)

Lydgate Park-Kapa‘a Bike/Pedestrian Path, Phases C&D
Meeting for Section 106 Consultation, National Historic Preservation Act
Wednesday, February 20, 2013, 9:00 AM
State Department of Transportation-Highways Conference Room
1720 Haleukana Street, Puhi

AGENDA

Assessment of Adverse Effects

- I. **Opening Pule**
- II. **Overview of Protocol Committee decided process/ laying of ground rules**
- III. **Mahiki (The “setting to rights” of each successive problem that becomes apparent during the course of ho‘oponopono, even though this might make a series of ho‘oponopono’s necessary.)**
 - A. **Assessment of Adverse Effects (36 CFR § 800.5)**
 1. Po‘o directs agency official to apply criteria of adverse effect per (36 CFR § 800.5(a)) and present results to NHOs and other interested parties.
 - i. Criteria of adverse effect (36 CFR § 800.5(a)(1)).
 - ii. Examples of adverse effects (36 CFR § 800.5(a)(2))
 - iii. Phased application of criteria (36 CFR § 800.5(a)(3))
 2. Finding of no adverse effect, Po‘o requests agency official take steps required in (36 CFR § 800.5(b)).
 3. If the agency official proposes a finding of no adverse effect, Po‘o requests agency official to take action of further consulting party review pursuant to (36 CFR § 800.5(c)).
 4. Po‘o shall request that agency official take steps consistent with “Results of assessment section whether or not adverse effect is found” (36 CFR § 800.5(d)).
 - B. **Resolution of adverse effects (36 CFR § 800.6)**
 1. Continue Consultation. (36 CFR § 800.6(a))
 - i. Po‘o shall request agency official to present proposed mitigation measures.

- ii. Po'o asks NHOs and other interested parties to provide input on proposed mitigation measures and if they have any mitigation measures to propose.
- 2. Resolve adverse effects (36 CFR § 800.6 (b)).
 - i. Po'o shall request that agency official to take the appropriate steps to resolve any and all adverse effects either with or without the Advisory Council on Historic Preservation as appropriate and required pursuant to (36 CFR § 800.6 (b)(1)&(2)).

IV. Pani

**Lydgate Park-Kapaa Bike/Pedestrian Path
Phases C&D
REVISED DRAFT
Historic and Cultural Sites**

	Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/ National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
1	SIHP 50-30-08-108 Kukui Heiau	Navigational heiau with at least two stone lamps that guided canoes on the ocean	Associated with historic and legendary events and figures	Good condition, well maintained	South Olohena Ahupua'a, Alakukui Point, located about 300 feet southwest of the project area	Placed on Hawaii Register in 1986 and the National Register in 1987	Already listed in NR and HR	To be determined by consultation Proposed determination: Path alignment is approx. 300 feet away from the heiau and will guide path users to Papaloa Road; therefore, no adverse effect is anticipated
2	SIHP 50-30-08-791 Cultural layer and burials	Cultural layer with relatively high concentration of marine midden suggestive of substantial fishing activity; radiocarbon dating to A.D. 1275 to 1645; two burials	Valued by living community for their cultural attachment to <i>īwi kūpuna</i> and historically and culturally significant	Continuous. The cultural layer mainly extant in makai or eastern portion of property (Perzinski et al. 2001:36)	South Olohena Ahupua'a, northeast coast; cultural layer extends into the project area	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Because this historic site is located within developed hotel property, the path alignment is expected to have a limited potential for adverse effect. Mitigation to be included in MOA.

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/ National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
3	SIHP 50-30-08-886 Cultural layer and burials	Cultural layer with hearth remnant, 'auwai, and two sets of previously disturbed disarticulated human remains (SIHP 50-30-08-886A)	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Cultural layer intact, continuous. Burial condition unknown	Waipouli Ahupua'a, along Kuhio Highway near Coconut Market Place; cultural layer is located within the project area	D for NR D and E for HR	Yes To be determined by consultation Proposed determination: Potential adverse effect if Kuhio Hwy alignment option is selected. Mitigation to be included in MOA.
4	SIHP 50-30-08-891 WWII pillbox	Concrete WWII-era military structure, likely a military pillbox or machine gun emplacement	Associated with historic events	Unknown	North Olohena Ahupua'a, southeast corner of Lot 16 on the coast, located within the project area	D for NR D for HR	Yes To be determined by consultation Proposed determination: Pillbox to be retained as a historic feature along the path alignment. Opportunity for historic marker.
5	SIHP 50-30-08-1800 Cultural layer and burials	Two cultural layers in the shoreline sand berm; an upper deposit extends 25-80 feet inland from the shore; a lower deposit extends 40-100 feet inland from the shore; three burials uncovered and left in place; probably	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Cultural layer continuous and intact	North Olohena Ahupua'a, northeast coast, Coconut Plantation; cultural layer extends into the project area	D for NR D and E for HR	Yes To be determined by consultation Proposed determination: Potential adverse effect on subsurface cultural layer. Mitigation to be included in MOA.

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/ National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
6	<p>occupied about A.D. 1500; the extensive nature of deposits and relative lack of artifacts suggests that the area was used for recreation or social gatherings</p> <p>Two cultural layers and five burials are located in the shoreline sand berm; radiocarbon dated to approx. A.D. 1500; numerous indigenous artifacts suggest a development sequence from a limited workshop area to a site of permanent occupation</p>	<p>Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant</p>	<p>Cultural layer continuous and intact. Condition of burials is unknown</p>	<p>Waipouli Ahupua'a, Coconut Plantation, 200 meters makai of Kuhio Highway; cultural layer extends into the project area</p>	<p>D for NR D and E for HR</p>	<p>Yes</p>	<p>To be determined by consultation Proposed determination: Potential adverse effect on subsurface cultural layer. Alignment avoids known burial sites. Mitigation to be included in MOA.</p>

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
7	Cultural layer with numerous features. Data suggest this site was a moderate permanent settlement that may have been a staging area for fishing events and associated feasting and religious activities, a location for canoe construction, repair, and storage, a location for manufacture of shell tools and slingstone, and special place for tattooing	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Cultural layer continuous and intact. Condition of burials is unknown	Waipouli Ahupua'a, from coast to Kuhio Highway, located north of Uhelekawawa Canal (Waipouli Beach Resort)	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Historic site is located within private property (Waipouli Beach Resort) and separated from the path alignment by Uhelekawawa Canal; therefore, no adverse effect is anticipated.
8	Likely pre-Contact to early post-Contact in age	Valued by living community for their cultural ties to <i>iwi kāpuna</i> . Historically and culturally significant	Well-maintained, intact	Within County beach access, near Mokihana of Kauai tennis court	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Given the existing easement, adverse effect is unavoidable. Mitigation to be included in MOA.

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
9	Burial 2, SIHP to be determined	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Partially disturbed	Within landscaped area off Papaloa Road and south of Coconut Market Place	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Path alignment will not directly affect this burial site.
10	SIHP # 50-30-08-3938, cultural layer	Valued by living community and historically and culturally significant	Unknown	Beach portion in Waipouli and North Olohena Ahupua'a	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Two trenches were dug in the vicinity of this historic site during the Archaeological Inventory Survey and found no cultural material. Limited potential for adverse effect.
11	SIHP # 50-30-08-3939, two Hawaiian burials	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Unknown	Beach portion in Waipouli and North Olohena Ahupua'a	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Path alignment will not directly affect this burial site.

National Register Significance Criteria:

- A that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B that are associated with the lives of persons significant in our past; or
- C that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D that have yielded, or may be likely to yield, information important in prehistory or history (from <http://www.achp.gov/nrcriteria.html>).

Hawaii Register Significance Criteria:

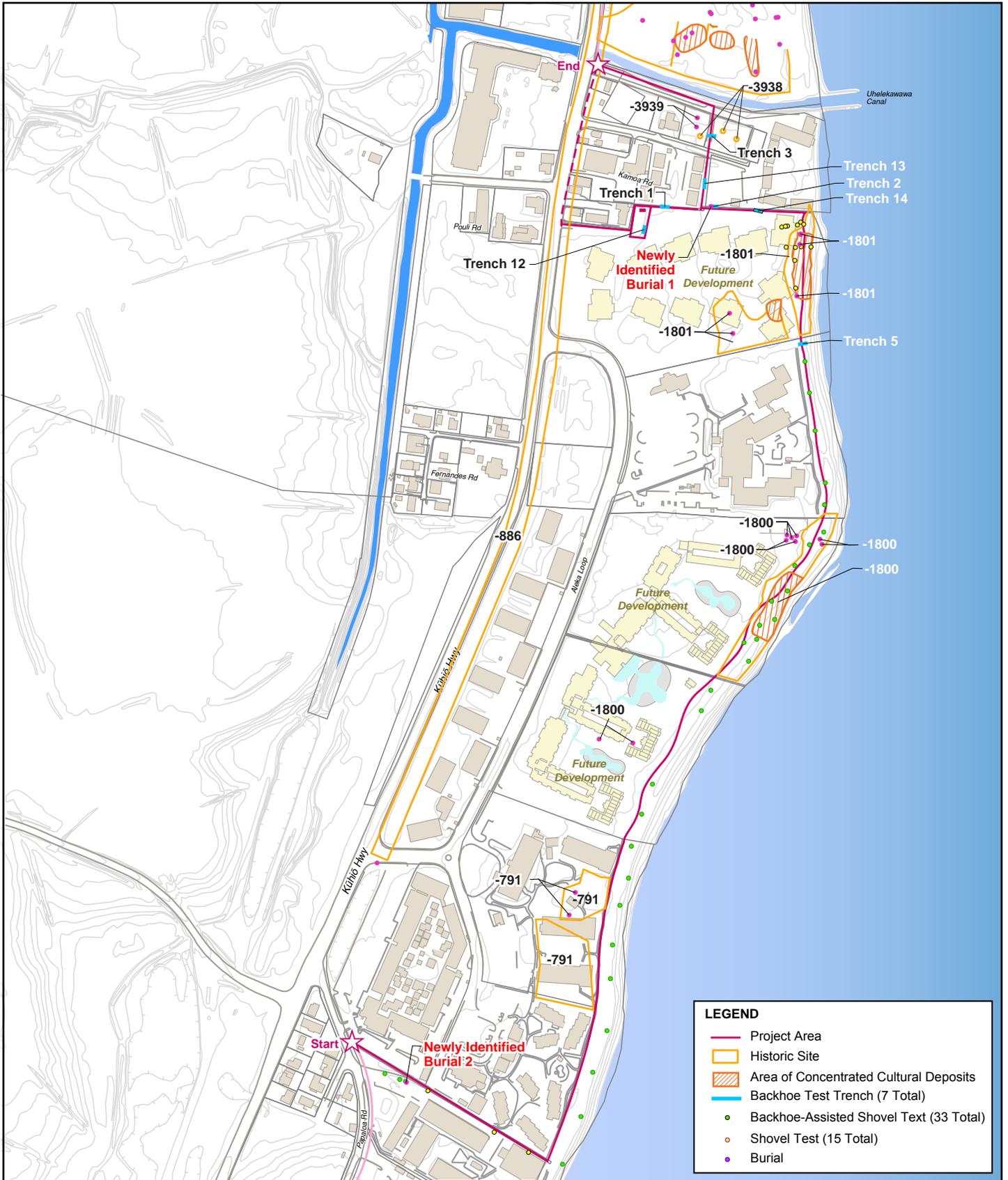
- A reflects major trends or events in the history of the state or nation;
- B is associated with the lives of persons significant in our past;
- C is an excellent example of a site type/work of a master;
- D That have yielded, or may be likely to yield, information important in prehistory or history;
- E has traditional cultural significance to an ethnic group, includes religious structures and/or burials and traditional cultural properties.

(for more information, see http://www.state.hi.us/dlnr/hpd/hphar13_8_198.htm)

Lydgate Park - Kapa'a Bike/Pedestrian Path

Draft Environmental Assessment

031004/032 020713 r1



Future resort development based on preliminary plans, subject to change.

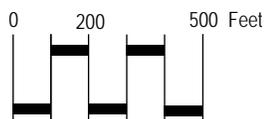


Figure _
HISTORIC PROPERTIES

Lydgate Park - Kapa'a Bike/Pedestrian Path
Waipouli Connection

Attendance Sheet

Meeting: Phases C & D, Lydgate-Kapa'a Bike/Pedestrian Path, Sec 106 Meeting 4

Date/Time: Wednesday, February 20, 2013, 9:00 AM

Location: Hawaii Department of Transportation Conference Room

Name	Contact Information—CONFIDENTIAL, Not for Public Release	
	Mailing Address	E-mail Address
Keith Yap		
Gerald Ika		
D. Kaliko Santos		
HERB LEE, JR.		
^{Patrick Q. DKHCC} Leah Perlin		
Ray McCombs		
Mauna Kea Trust		
James Alam (refused)		
Rayne Regush		
JUDY DALTON		
Pua Nani Rogers		
K. Hannah W. R. Reeves		
Missy Kamai		
Cheryl Lovell-Obatake (by telephone)		
Doug Haigh		
Glenn Kimura		

Nancy Nishikawa

Meeting called to order, 9:10am – February 20th, 2013.

Mauna Kea Trask (Po`o): Everyone, if I could ask you to stand please, we'll start with the pule. Pule. Aloha everybody, for the record my name is Mauna Kea Trask. I'm going to conduct this meeting today on behalf of and per the request of Auntie Cheryl Lovell-Obatake, who is at home; she is today present via speaker phone, so thank you for technology. Pursuant to Auntie Cheryl's authority, I will be acting as the Po`o for today's Section 106 Ho`oponopono based Consultation Process. Now it's been a long time since our last meeting, I believe the last meeting convened was in November of 2012, November 27th I believe. I'm just going to go through an overview of where we've been, to re-orient all our past participants who are here today and also to provide a context for those who are joining us for the first time. Our first 106 Meeting was on August 9th, and at that meeting this Section 106 Ho`oponopono Consultation Process was introduced to the Native Hawaiian community and the public at large. This process was formulated pursuant to the work of the Native Hawaiian Protocol Committee and Auntie Cheryl's findings as Po`o. This culture-based 106 process was developed to make federal 106 consultations more accessible to the Native Hawaiian community and thus makes the process more effective. After the process was introduced, the agency official, Mr. Nickelson of the Federal Highways Administration and his consultants described the current undertaking which is today's project, the Lydgate Park to Kapa'a Bike Pedestrian Path Phases C & D. Again, today's meeting is in respect to Phase C & D, not any other phase of this project. The participants in this process were then identified and a site visit was conducted. The second meeting was held August 23rd, 2012, at that time the agency official through their consultants, Kimura International and Cultural Surveys Hawai'i, first they determined the scope of the identification efforts and identified the historic properties within the Area of Potential Effect, also referred to by the acronym 'APE'. During that meeting the agency official presented a review of existing information on historic properties within the APE including any data concerning possible historic properties not yet identified. If I could orient you to the map presented by Kimura International, and on that map are site numbers, and those numbers identify the known historical sites in the area. After the information was presented, the agency official presented their position regarding the proposed significance of each property. After the agency official finished his presentation, all of the participants including Native Hawaiian organizations and individuals, kupuna and people also from the preservation community, presented their mānā`o regarding any and all properties within the APE, which according to their knowledge may be religious and may have cultural significance to them and may also be eligible for the National Register. It was noted for the record that if anyone was reluctant to divulge specific information regarding the location, nature and activities associated with such sites they would be able to speak with our consultants in private, and that information was made known. Consultation was had regarding the historical significance and I believe the record does accurately reflect that everybody consulted stated that it was their position that all those sites were historically significant and the area at large was historically significant itself. Then we moved on to the third meeting which occurred again November 27th, 2012; the Section 106

process was continued and Mr. Hammatt from Cultural Surveys Hawai'i presented the information contained in the Archeological Inventory Survey. At that time, consultation was lead and information was gathered from any and all NHO's present to assist in identifying properties which may be of religious and cultural significance and also may be eligible for National Register. After the information was presented at meeting 2, at meeting 3 everyone consulted and provided their mānā`o regarding historical significance and at that meeting everything was deemed to be historically significant. Today, what we're going to do is go over and breach into the Assessment of Adverse Effects. Now this really is the most, one of the most important steps that we're going to do today, to seek your information, your mānā`o regarding whether or not this project will have an adverse effect according to your own evaluation, whether it's on yours personally, yours on behalf of your kupuna and/or any organizations you may represent. So, that's what we are going to get into today, the Assessment of Adverse Effects. I'd like to remind you just as far as the process goes, this process will be a round-table discussion, with myself on behalf of the Po`o asking all the questions of both NHO's, individuals and government agencies. If participants have questions for each other, they shall ask me to ask the questions to the others. No one shall speak unless allowed to by myself on behalf of the Po`o. During today's process there will be certain definite legal questions that must be asked by myself on behalf of the Po`o per Section 106 and 36 CFR § 800 which again is the federal implementation statute of Section 106 of the National Historic Preservation Act. However, further questions may be asked by myself in order to better understand the answers given if needed either by myself on behalf of the Po`o or the participants and government agencies through myself on behalf of the Po`o, this way the procedure will be orderly. Pursuant to the authority of the Po`o as described in this process, I will have the right to act according to both Hawaiian cultural principles as well as rules of parliamentary procedure, which in fact are very similar. This will ensure again maintenance of order and decorum. Everyone will have an opportunity to speak today and provide their mānā`o for the record and the reason why we need orderly procedure is to ensure that. If a person or party wishes to answer questions in private and/or make disclosures in private, this request can be accommodated. We do have kapu during this process. All participants shall refrain from the following: speaking, yelling, shouting and arguing with each other and/or myself on behalf of the Po`o. Speaking, yelling, shouting and arguing with each other is now declared kapu. All participants must respect and listen to myself on behalf of the Po`o. The Po`o is now declared kapu. These consultation meetings will be open to all interested parties and can cover more than just Native Hawaiian issues. And I'd just like to close briefly, in preparing for today's meeting, I'd just like to share that I've been doing a lot of reading, Native Hawaiian cultural books and treatises mainly by David Malo, Samuel Kamakau, Mary Kawena Pukui. But mostly just looking at a lot of the books I have and one of the books that I looked at recently was entitled, "Ho`i Ho`i Hou", a short book in memoriam of George Helm and Kimo Mitchell, I don't know if any of you are familiar with it, it's a very good book and if you are, please do read it. It just discusses the important parts, in life, are varied to essentially martyrs in the Native Hawaiian cause. And one of the interesting things that was said in that book, I'm just going to site it for the record, it comes from page 14 of Ho`i Ho`i Hou and it states, after it describes George Helm being raised and when he used to perform with and for the Lakes in O'ahu, and Kahohano Lake taught him not only to learn the

chants and the songs but also to delve into them and find out their meaning, the kauna and their ike, etc. And later on George Helm, this is from the book; *George is later known for his meticulousness and for his thorough probing into all aspects of the Hawaiian experience.* Quote: "Do your homework", George would say repeatedly to his friends and acquaintances. Implicit in his way of stating this, was that he had done his. I think that is a very important statement because this is very important work that we're doing, all of us. I think everyone in this room can agree that iwi is one of the most important things you can do, as far as your kuleana as a Native Hawaiian. It does entail a lot of reading and it entails a lot of homework, and I think that it's appropriate that not only agency officials but members of the public, members of the organizations do their homework so that these meetings can be productive. I think that it was very prophetic that George Helm would say that because in order to do our jobs today and in the future, we're going to have to do a lot of homework, with that, I think we can begin today. Everyone have a meeting agenda 4 for today's meeting? And everyone has their matrix that was provided too, if you can look at agenda item 3a; currently we are in the Assessment of Adverse Effects under 36 CFR § 800.5. At this stage in the process, according to the CFR's, in consultation with the State Historic Preservation Officer and any Native Hawaiian organization that attaches religious and cultural significance to identify historic properties, the agency official shall apply the criteria of Adverse Effect to historic properties within the Area of Potential Effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public. Today, Mr. McCormick is here on behalf of the FHWA, Federal Highways, and he will be the person that is charged with complying with 800.5(a). Are you okay with that Mr. McCormick?

Ray McCormick: Yes.

Mauna Kea Trask (Po`o): Thank you. For everyone's edification today, as far as under 800.5(a) 1, Criteria of Adverse Effects: an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register, in the manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of a historic property including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse Effects may also include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

800.5(a) 2, Examples of Adverse Effects: adverse effects on historic properties include but are not limited to physical destruction of or damage to all or part of the property, alteration of a property including restoration, rehabilitation, repair maintenance, stabilization, hazardous material remediation and provision of handicap access that is not consistent with the secretary standards for treatment of historic properties under 36 CFR § 68 and the applicable guidelines. Removal of the property from the location, change in character of the property's use or physical features, introduction of visual atmospheric or audible elements that diminish the integrity of the property's significant historic features, neglect of a property which causes its

deterioration, transfer lease or sale of property out of federal ownership or control. For the record, these properties aren't within federal ownership or control. That's where we are today.

Judy Dalton: Do we have a copy of this anywhere, where is it available?

Mauna Kea Trask (Po`o): This is available, if you type in 36 CFR § 800, it's on the Federal Register, it will come right up. The citations are noted on the agenda, so if any of you have any questions regarding the specific cites, it was decided that the actual quotes, the cites from the CFR will be used so you can follow-up. If you look at items 2, 3, & 4; these were taken straight from the CFR themselves and they really deal with contingencies. So example, if you look at 2: Finding of no adverse effect, currently we're not at that stage, but if there is a finding of no adverse effect, whether this process or any other process, that is the steps that will be taken. Again, 3: If the agency official proposes a finding of no adverse effect, no such proposal has been made at this time, we are going to go through consultation first, but this is the verbatim tracking of the statute itself. The Po`o shall request the agency official; this is 4, take steps consistent with "results assessment section whether or not adverse effect is found". So at this time I'd like to get right into it, you all have been told what adverse effects are including again anything that would change the site's feeling or association, really in any manner. So if you look at this matrix that's provided to you, this is the second of the two documents, on the back is a map that you can look at, eleven historical sites have been identified. At our past meeting, meeting #3, it's my recollection of the record that no one provided any more sites that was known to them. It's generally understood that those are the known sites that people are familiar with, and of course encapsulating everything though, everyone felt that the area itself, the entire area was important. So, there's really an overlay of, if there are no other specific sites known or identified at this point, nonetheless the entire leg of the proposed Phase C & D would itself be recognized as historically significant. So that would mean then if this whole place is a tribute to historical significance, anything that would effect, as described in 800.5, the area maybe considered an adverse effect by the participants today. I just want you all to be clear about that. Included in this area, well the area does not include Kukui Heiau, but Kukui Heiau is close to the southern portion of Phase C & D, close enough that it was deemed to be included, correct, Mr. Kimura?

Glenn Kimura: (inaudible).

Mauna Kea Trask (Po`o): There's also cultural layers and burials, a World War II pill box, but the majority of the sites are cultural layers and Hawaiian burials that have been previously identified in the record. So what I would like to do at this time is go around the room, consult with everybody, Auntie Reeves has just joined us, welcome from Big Island. I'll start with my left, and if any of the agency officials, you'll be asked too for the record, just for completeness, but if any agency official would like, doesn't feel comfortable responding or has nothing to add, just indicate so for the record. Starting from my left, can you please state your name for the record, who you represent and what your position is regarding whether or not this project will have an adverse effect on any specific historic sites or the site in general, the APE in general.

Kaliko Santos: My name is Kaliko Santos and I represent the Office of Hawaiian Affairs.

Mauna Kea Trask (Po`o): What's your feeling on adverse effect?

Kaliko Santos: I agree that the APE will be an adverse effect.

Mauna Kea Trask (Po`o): The project will have an adverse effect?

Kaliko Santos: Yes.

Puanani Rogers: Puanani Rogers, Hookipa Network Kaua'i. I would like to have a discussion on the adverse effects cause there are some, let's talk about it; we can really make up our minds, whether it will affect us spiritually or culturally.

Mauna Kea Trask (Po`o): At this time Auntie Puanani, I'd like you to know that we are here today to hear from you, to be told whether or not there's adverse effect. Even if in your opinion there is and no one else agrees with you, you are entitled to say so, whether or not there is discussion, what you think. So at this time, if I may, I'd like to request that you state your opinion on it, irrespective of anyone's.

Puanani Rogers: Okay, I'll say yes and I'll give you my reason, there are cultural sites there. There are burials and whether it's a hundred feet away or two hundred feet away from the burials, it still affects the burial. It's the spiritual emanation, our thoughts of what spirituality is, does not mean it's just contained in that area, it's also wide. Landscaping is a spiritual thing. You understand, so that's why.

Mauna Kea Trask (Po`o): Thank you very much, next, for the record.

Herb Lee: Herb Lee, Lee Communications, sub-consultant to Kimura International, I don't have anything to add at this time.

Glenn Kimura: Glenn Kimura, Kimura International, we're the planning consultants, I have no comment.

Ray McCormick: Ray McCormick, Hawai'i Department of Transportation, Kaua'i District Engineer, I have no comments at this time.

Hannah Reeves: I agree with you, in preserving the old Hawai'i, from the mountains to the sea. I would like to say my opinion, #1: there are many people here that need the ramp. They need the ramp for many reasons. For me, I am for protect old Hawai'i, from the mountain to the sea. I understand what she saying. One day, in the future we will have to make a plan, even if so many feet going into the grave out and right around. One day we will have to think that the

people that living today and the future, we need to come up with a plan to preserve old Hawai'i the same time open up the ramp for the future. There are many kupunas, much older than I am, but I would like to share with you, my job in Hawai'i the same thing like you have. Like many of you, we sit down and talk, we share our plan and we come up with a plan. Do you have a plan here?

Mauna Kea Trask (Po`o): Currently, we are consulting you in order to formulate that plan and prior to doing that we need to know what adverse effects will be from you and then what if any mitigation measures you would require, if this path is to go through.

Hannah Reeves: Okay, can I say my point of view?

Mauna Kea Trask (Po`o): Please.

Hannah Reeves: It would benefit our people in the future, I hope you guys understand that, because I have the same situation in Kona on the 106. Many things are going on today and I want to say on this round-table and every table that I sit, they are supposed to have a plan that connects to all the sacred sites, the iwi and everything on a big map, the archeologist need to say how the measurement (inaudible) go out, okay. His job is to set-up a plan so everybody look at the plan and see how much we can take that to benefit everyone in the future, okay. What we do, we come up with a plan and we sit and we put it on the table, everybody from each person, put it into a bowl and we draw one plan to benefit everybody. Now, kupuna, kalamai, but mine is to fix to benefit everybody in the island, every island that I travel, I am on the 106 too. My job, and this is something that we should all understand that, my job is if there is something that blocking the ramp, we not going to destroy anything, we going to make a plan so we can be able to have the ramp but move some of the iwi on the same ahapuaa with everybody else and move on. That's what we do in Kona, I carry the iwi, everywhere that I go I carry the iwi for all the different Hawaiian people, all who connected to the area. For me, I don't even think like that (inaudible), so we don't fight each other, I just want to tell you folks that's what I do, to preserve them, the ones that blocking the way, move them with the others. You understand what I talking about?

Puanani Rogers: Auntie, we on the same page, I don't know why you think I'm not agreeing with you.

Hannah Reeves: I carry and I move the iwi on the side, with our iwi that still on the land and open up the way for everybody to use. It will benefit everybody, and I'm talking about me, from the mountain to the sea, I carry the iwi and everything into the water. I don't want to make fight or anything, but I want to show you what we do, so I carry the iwi, in Kona, everywhere that I go, so I am for preserve old Hawai'i, I not destroying them, I moving them on the side. Where Uncle stay?

Mauna Kea Trask (Po`o): He's not here today Auntie, but I think you raised some very good points, but I'd just like to note that currently, and for the record, when you addressing, when you refer to "she", it's Auntie Nani Rogers, and I just want the record to reflect that so it's clear. However, in order to avoid arguments between people, even friendly discussions, we have to refrain from them, and I please ask that in respect to the process that when you speak, you speak to me, because I'm sitting here on behalf of Auntie Cheryl who is the Po`o today. I really appreciate your mānā`o and if I can I'd like to stop you now, I think you're getting into mitigation which is the proposed mitigation measures which is we're going to talk about today. I just want to be clear, it is your opinion that even though the path or the ramp as you described it, will be there and there's ways to mitigate its effect, nonetheless, you do think that it will have an adverse effect on the area and on the bones, correct?

Hannah Reeves: Well, I want to let you know that Uncle is my family, we direct from Kamehameha I and the kahuna line, and I just want to say that we not destroying, either mauka or makai, they can move them on the side and make ceremony and everything before we move them, okay, if everybody agree. If you have a better idea, there's one place that everybody never come to an agreement, okay, no joking Auntie, we are going to make a ramp over the iwi because nobody agreed to move them in Kona. I want you to know that there is two ways we can make a ramp over them and don't touch them or you can move them. It's not destroying, its preserving old Hawai'i, make it easier for everybody to come in agreement, we must come in agreement to fix the problem, how many times I come fly over here and I bet the 106 getting tired of me taking their money. I just want to tell you I hope that we agree, okay.

Mauna Kea Trask (Po`o): Thank you Auntie. I'd just like to note for the record everybody, Auntie Hannah Reeves brings up some very important issues regarding the treatment of na iwi kupuna that can be found both in this area, any area. But just for clarity, the Federal Highways, State DOT, County of Kaua'i, Kimura International, Cultural Surveys, none of these organizations have the authority to make that call. The power under HRS 6E-43.5(f), the Burial Council specifically, the Kaua'i-Ni'ihau Island Burial Council shall 1) determine the preservation and relocation of previously identified Native Hawaiian burial sites, assist the DLNR in inventory and identification of Native Hawaiian burial sites, make recommendations regarding the appropriate treatment, management and protection of Native Hawaiian burial sites, etc. So all these mitigation statements that you may have, please put them on the record, this is your opportunity, however you have to understand, we don't make that call, it would be Mr. Yap who I believe is here today, both personally and on behalf of the Burial Council. Just so you know as far as jurisdiction and venue, please let it be known today but understand we are not going to be making those calls because it is not within our legal rights. We'll move on now, next person please for the record, your name and the organization you may represent.

Judy Dalton: Judy Dalton, Sierra Club, what you had mention adverse effects that would alter any of the properties of the area which for me would be physical would be my focus. I am regretful that this process wasn't used to consider the physical alteration of Wailua Beach and the effects that you mentioned that could happen later on time, we see the possibility because

the compromising and undermining of the land where the bike path is being constructed right now is very fragile. Because it undermines the integrity that there's a very real possibility in the future that it will compromise not only the bike path but the existence of the highway and that we can see clearly that a seawall could very well be happening to preserve both path and the highway which would mean the destruction of the beach. It would be a total loss of one of the most significant culturally and historically areas throughout all of Hawai'i. Very regretful and sad to see that this process wasn't carried out more carefully for the 106 process. Residents of that area, direct descendants of Wailua area were not consulted during the 106 process of Wailua Beach. As a result we see the possibility of losing that beach. And yes I do see adverse effects to answer your question.

Mauna Kea Trask (Po`o): Definitely, and that's not only potential shoreline hardening and erosion issues, but just environment in general in that area, is that correct?

Judy Dalton: That's correct.

Mauna Kea Trask (Po`o): Thank you very much, next please.

Rayne Regush: Good Morning, my name is Rayne Regush, I'm also with the Sierra Club, Kaua'i Group. I'm also in agreement, there will be an adverse effect in this area and diminish the integrity of this coastline. The coastal corridor is both environmentally sensitive and culturally sensitive; there are water resources there, traditional cultural practices along the coastline. Cultural Surveys Hawai'i noted that Waipouli was also known as the travel district, so with regards to traditional access and access in this time, we'd look to see that the bike path is unencumbered, and that the bike path should be as mauka as possible so that the width of the beach remains as natural as possible, as a natural environment. Looking at the historic properties map and I'm most concerned with the undeveloped portion where it shows for future development. The historic properties map, where it shows the shovel tests and the trenching tests, appear to be on the makai side of the path delineation. But when we look at other identified sites, I'm wondering whether the likelihood of finds would be on the mauka side of that path, so that would also increase our overall knowledge of the historic significance of that corridor, but we don't have that information. One last reference, historic reference that might, maybe it doesn't raise the level of the cultural sites listed on this inventory, but I'd like to see it be considered that the stand of ironwoods that do go through these two parcels that are designated for future development, that being fifty years old or more, that they should also be considered perhaps to be added to the list and reference that Cultural Surveys Hawai'i notes, and they quote Clark 1990 about the long rows of tall ironwood trees where the shoreline pedestrian trail. I hope Hal Hammatt can clarify and I think he's been on the site visit, that pedestrian trail weaves through the historic ironwoods, so that's an additional historic resource that can be added to the list, that might be appropriate.

Mauna Kea Trask (Po`o): Thank you and just for clarification, regarding the trees first off, although they're not delineated on this map that's attached to the matrix today, those are the

same trees that I believe you mentioned in the past for the record, correct? They're noted in photographs, etc.

Rayne Regush: Yes, and I'm sorry not to see more detail given in the CIA and such.

Mauna Kea Trask (Po`o): And also, for everyone's information, when the Native Hawaiian Protocol Committee was consulted regarding the scope of identification efforts and what would be done in the APE, it was discussed, what was currently known in the record and of course there's a lot of unknowns throughout Hawai'i, especially in this area. We can all assume that there's a lot that's there that hasn't been touched, that's not yet discovered, may or may not be discovered if this project goes through but most likely in the future if there's any disturbance to the ground. The Native Hawaiian Protocol Committee decided that it would be best not to look for, actively look for and dig willy-nilly to try to find places that haven't been identified yet, because they don't want them to be disturbed. In identifying that, I just want you all to know that for the record there was some thought put into this and we deferred to, isn't that correct Mr. Kimura? We deferred to, but nonetheless, thank you for letting it be known, please let whatever opinions you have or assertions you want to make today.

Rayne Regush: In fact, one final concern that the map does not indicate the 100 foot open district.

Mauna Kea Trask (Po`o): Is that the zoning district?

Rayne Regush: Yeah, cause I understand that there are agreements that the path would be within that 100 foot open district and I don't know if that can actually be calculated until a current certified shoreline has been done. So again not understanding how far mauka this proposed path is, I don't have an idea if it's going to, I don't have an idea of its alignment from here and if somebody could just clarify where it is in relationship to that, perhaps at least along the corridor there that's been undeveloped by the ironwood trees. How far mauka of the trees it might be?

Mauna Kea Trask (Po`o): Does anyone have that information today? Okay, Mr. Kimura if you can note that and get that information for the next meeting, please. Thank you.

Rayne Regush: And the trees certainly have a scenic and cultural quality for that area that I'd like to see preserved.

Mauna Kea Trask (Po`o): Thank you, next person please.

Keith Yap: My name is Keith Yap; I'm the Vice-Chair for the Kaua'i-Ni'ihau Burial Council. My kuleana today is to make sure that we are going to be treating the burials with respect. They are identified, assuming there will be a burial treatment plan that will be put together but we're also concerned with the unknown and the inadvertent stuff also. We believe that this area is

ripe and rich with possible burials that may come up. It's the Burial Council's wish that we don't go looking for that needle in the haystack. We don't go disturbing something we don't have to. We want to make sure that it's done right; so we would like to have a protocol, possibly with the MOA indicating how those burials will be consulted with us in order to insure, in order to take care of it. SHPD has been very good about calling us when things have come up around the island so we feel that we're working closely with them now to insure that we're notified immediately when something comes up. We're down at the site usually within an hour to look at what's going on. We do believe there are adverse effects to this area (inaudible).

Mauna Kea Trask (Po`o): Thank you Mr. Yap and for the record, SHPD is the State Historic Preservation Division, correct?

Keith Yap: Yes.

Mauna Kea Trask (Po`o): Thank you, next person.

James Alalem: My name is James Alalem, I represent Uncle Joe Manini and also myself and the ones that cannot speak, the ones that are in the ground, our ancestors, the ancient ones. Adverse effects have already been done a long time ago, more so today, because we know from the beginning already. Everybody know the history, a lot of heiaus and war burials there and today what you guys are digging up is only the leftovers and they should be left alone. Adverse effects have already been happening, so I don't even know why we talking about this today, it should be just shut down, period. Number 2, all the laws was not followed, that's desecration once you dig up, and who is to tell on the back hoe going dig, the bodies intact until you wipe it with the back hoe, that is desecration because it comes up in pieces. I seen it happen first time I was arrested. The third thing is, Uncle Val, I talked to him on the phone, he called me up, but I got arrested for the second time for desecration down at Wailua because of the illegallness going on with the sacred place. He told me no sense we even talk to this 106 people, nobody listen already anyway, they going do whatever they want to, that's what Uncle Val Ako told me to tell everybody, so that's what I'm doing. Again, adverse effects is already happening, so I don't even know why we even talking about it. Thank you.

Mauna Kea Trask (Po`o): Thank you Mr. Alalem. For the record though, even irrespective to the fact that adverse effects are already happening in according to your testimony, you are stating today that if this project is to go through it would still have an adverse effect, correct? The adverse effect would continue.

James Alalem: More so.

Mauna Kea Trask (Po`o): Alright, thank you very much, next person.

Doug Haigh: Doug Haigh, County of Kaua'i, no comment.

Nancy Nishikawa: Nancy Nishikawa, Kimura International, no comment.

Missy Kamai: Missy Kamai, Cultural Surveys Hawai'i, no comment at this time.

Gerald Ida: Gerald Ida, Cultural Surveys Hawai'i, I have no comment.

Mauna Kea Trask (Po`o): Thank you, Mr. Pereira?

Pat Pereira: Pat Pereira, retired school administrator, I'm here to support my wife and also I would like to say my ethnicity is not Hawaiian, I'm Portuguese, I'm born and raised on this island. My concern is that we listen to the mānā`o of the host culture, that's my concern. I think this is a great process that is going on here today, but we need to listen to host culture and whatever they say, the majority says; I think that should be the ruling. The rest of us, we here at the benefit of the host culture.

Mauna Kea Trask (Po`o): Thank you Uncle Pat. For the record though, I'd just like to say, and a very important part of today's consultation process is getting the mānā`o from the Native Hawaiian Community, both organizations and individuals. But nonetheless, this process is open to members of the public, Sierra Club is here today, they have two representatives. So, ethnicity, whether or not you're Hawaiian, does not prohibit you from participating in the process. You're here today; you've come from the Westside, correct?

Pat Pereira: Right.

Mauna Kea Trask (Po`o): You've traveled as far as you can travel.

Pat Pereira: And I'm here listening because this pathway, we already had many meetings in Waimea and Kekaha districts on the pathway and people trying to figure out where's the best area to put this path in between the two towns. One of the pathways was the beach, but I know living here all my life, when the ancient Hawaiians used to bury, they never go find the hardest ground to dig, they never had back hoes or anything like that, so they buried in the sand. I know that, because there's a little bit of controversy going on in Kekaha too. If you folks know about the Hawaiian Homes, the new section and this hale that they want to build and all that. There's a little bit of controversy going on there and I've worked in construction, I've worked in Wailua constructing the new wing of the, right on the road, Coco Palms. We used to stop work every Friday and get one luau because that place is riddled with bones and the bones are right on the surface. And my guess, and I may be wrong, my guess is that when Kamehameha wanted to conquer the islands and unite the islands, he sent his warriors over here and that's one of the places where his warriors, those that didn't drown with rough seas, met up with the Kaua'i warriors. Whichever Kaua'i warriors died they were taken by their families and buried, but the O'ahu warriors didn't have anybody to come and take them, so they were just left there, that's my take. The bones were all on the surface. Then in Waimea, I worked for this company who were putting in the sewer system, here comes the back hoes

digging the trenches, there goes the Hawaiian body. We have to stop work and call Mr. Kikuchi from KCC to do the archeology and whatever anthropology whatever, but they dug them up. We got to be very careful.

Mauna Kea Trask (Po`o): Thank you uncle, I'd just like to state that again, personally I feel that I'm no one to tell anyone whether or not they're Hawaiian and it's because I think that stuff like blood, issues like the koko, that's stuff best left up for the gods. I don't think that it's really appropriate often times if your heart is in the right place to even delve into that. But for today's purposes, I'd just like to summarize clearly for the record, do you think that this proposed path would have an adverse effect both on the individual sites and the area as a whole, in your own opinion, irrespective if you're Hawaiian or not?

Pat Pereira: I think so.

Mauna Kea Trask (Po`o): Thank you sir.

Pat Pereira: No matter how clean you try to make the thing seem or whatever, there always will be someplace that you going to miss, that probably will house some burial, some significant area or artifacts or whatever. I think so.

Mauna Kea Trask (Po`o): Thank you very much, Auntie?

Leah Pereira: For the record, Leah Pereira. I come from Deborah Kapule Hawaiian Civic Club and I'm a member, but I'm also here because of my lineal descendant from Nahinu. My family is Nahinu, my ancient grandparents were brother and sister, Nahinu and Nohea, and I come from that line. I'm interested in that area because of the heiau, I would not like to see that moved, I would not like that iwi touched. I think there will be adverse effect around that heiau.

Mauna Kea Trask (Po`o): Well, thank you very much everybody. So, I think for the record everyone's made clear, all participants today, both Native Hawaiian individuals, individuals on behalf of Native Hawaiian organizations, as well as individuals, personally, non-Native Hawaiian individuals, as well as individuals on behalf of non-Native Hawaiian organizations, this project will have an adverse effect, it's unanimous. And so the record shall reflect that today, at this time I'm going to call a brief recess, maybe about, its 10:00am right now, about 10 minutes, go bathroom, get some snacks and we can continue on, starting to discuss, brainstorming regarding proposed mitigation efforts if this is to go through. So, at this time I'll call a recess. Mahalo.

BREAK – 10:03 am

START – 10:21 am

Mauna Kea Trask (Po`o): I'm going to convene the meeting again. Thank you everyone, before we begin the meeting, Auntie Cheryl would like to say something for the record, so I'm going to defer to her for now, thank you Auntie Cheryl you're on.

Cheryl Lovell-Obatake: Thank you Mauna Kea, thank you everyone for being there, I'm sorry I could not be there but I'm surely listening to you all. We were on the topic of Assessment of Adverse Effects, I hope that most of you would get a copy of the 36 CFR which will totally describe the criteria and I've heard from many of you that the matters regarding our historical sites and burials. The 800.5 Assessment of Adverse Effects applied criteria of adverse effect in consultations with SHPO. Mauna Kea, is Pua Aiu there or anybody from DLNR there from Honolulu?

Mauna Kea Trask (Po`o): Auntie Cheryl, Pua Aiu is not here. Is anyone here today on behalf of DLNR from Oahu? SHPD, State Historic? For the record, no response, no Auntie Cheryl.

Cheryl Lovell-Obatake: Okay, thank you, let it be noted for the record that SHPO or SHPD, DLNR are not present. The criteria of Adverse Effect as I read it under 36 CFR, an adverse effect is found when an undertaking may alter directly or indirectly any of the characteristics of historic properties that qualify the property for inclusion in the National Register. Mauna Kea do you feel or have you concluded if there is any items that need to be registered with the National Registry?

Mauna Kea Trask (Po`o): At this point, I'll defer to.....I'm sorry, if I may, I've just been pointed to, if you look at the matrix provided, Auntie Cheryl I don't know if you have one.

Cheryl Lovell-Obatake: Yeah, I did look at it.

Mauna Kea Trask (Po`o): On the third box from the right, Evaluation of Historic Significance/National Register of Historic Places, there are notations and it looks like all of them have been designated for inclusion, correct.

Cheryl Lovell-Obatake: Okay, fine. Let it be noted for the record for the National Registry. I don't want to conduct this meeting over the phone, but these are my mānā`o and what I'm reading and my homework and I hope, I'm thanking you very much for noting that. Is there anybody there with the Burial Council?

Mauna Kea Trask (Po`o): Yes, Vice-Chair Mr. Yap is here.

Cheryl Lovell-Obatake: Okay, could you ask Mr. Yap if there is a quorum in the Kaua'i-Ni'ihau Island Burial Council?

Mauna Kea Trask (Po`o): Mr. Yap, for the record, currently is there a quorum, has the Burial Council met?

Keith Yap: No.

Mauna Kea Trask (Po`o): No, Auntie Cheryl and the record will so reflect.

Cheryl Lovell-Obatake: Is there any signs of anticipation that the Burial Council is formulating to make a quorum?

Mauna Kea Trask (Po`o): If I may, Auntie Cheryl if I can for the record, I myself have been trying to get on the Burial Council for about six years now. Recently, October 31st, I was appointed an interim Burial Council member by the Honorable Governor Neil Abercrombie and subsequent to being interim appointed I have conducted on my own time, on weekends, three separate outreach meetings in the Hanalei, Lihu'e and Kōloa areas in order to fill those gaps that currently exist. I myself, after I was interim appointed, I got a State Ethics Commission opinion and they advised me that although under the statute I would not be prohibited from being on the Council because of my affiliation with the County of Kaua'i, nonetheless under Cecil B. Fasi I should avoid any County projects, understanding that I decided to no longer be a regional rep. but take the landowner development slot on behalf of the County which would free up three more Native Hawaiians to take the regional rep. positions. At this time, I have, myself have gotten approximately thirteen applications for which have been completed and filled out, I've turned those over to Pua Aiu personally yesterday on O'ahu, I had to go over there for an unrelated federal hearing. So that would be myself, plus four more would get us to eleven I believe, and of course under the statute membership was between nine to fifteen, so I think if those get processed by the Governor, it's all on his table right now, but we could have quorum at least interim quorum to meet within the next couple months, which I think would be a great benefit. But at this time until that happens, there will be no meeting, but we do anticipate soon.

Cheryl Lovell-Obatake: Let the record reflect that what you have stated beyond the record that there is effort for the Kaua'i-Ni'ihau Island Burial Council to have quorum. Also, the Kaua'i Historic Preservation Review Commission on the County level, will they be reviewing this application or anything that needs to be done there at KHPRC?

Mauna Kea Trask (Po`o): Yes, we had a meeting, Mr. Kimura you want to speak on that for the record?

Glenn Kimura: We attended a meeting at KHPRC, basically we just reported that we are in the process of getting through the Section 106 process regarding the path and we will report back to them when we are ready, when we have some more definitive MOU or something in place.

Mauna Kea Trask (Po`o): And it's my recollection at the time I believe Commission member Wichman had deferred to this 106 consultation group as far as the treatment and they respectfully requested, like Mr. Kimura says, to present the information from this group to them and they felt it was more appropriate the participants today would have the more complete mānā`o about the area.

Cheryl Lovell-Obatake: Excellent, I agree with that wholly. Also, I hope I'm not boring anybody there.

Mauna Kea Trask (Po`o): Not at all.

Cheryl Lovell-Obatake: Also, there are a few things that I wanted to, the examples of adverse effects to the public that's there and who's reviewing, just to give you an example, it's in the 36 CFR people. Adverse effects on historic properties include but are not limited to; one is physical destruction of or damage to all or part of the property, alteration of a property including restoration, rehabilitation, repair/maintenance, stabilization, hazardous material remediation and provision of handicap access that is not consistent with the secretary standards. This is in the 36 CFR, and then also removal of the property from its historic location. Another one, change of the character of the properties use or physical features within the property's setting that contributes to its historic significance and also, introduction of visual, atmospheric or audible elements that can alter the integrity of the property's significant historic features. Those are some of the examples of adverse effects, as I try to clue you so that you'll have thoughts about when you were asked about the adverse effects that you've seen in the reports or you know of the na iwi kupuna that are there. I'm just awakening people that may not be familiar or if their first time at the meeting. Also, Mauna Kea you may want to clarify this, what caught my eye is the transfer, lease or sale of property out of the federal ownership or control with adequate. Is the federal question, clarification, is the Federal Highways Division or ones that are giving money to this project, how long will they be on this project? Are they included in the Memorandum of Agreement should that time come?

Mauna Kea Trask (Po`o): Yes, it is my understanding it will be included in the Memorandum of Agreement and specifically under that citation I believe this is 800.5(a)2-vii. The Area of Potential Effect does not include any federal properties under federal ownership however because this undertaking is utilizing Federal Highway Administration funds it is either directly/indirectly funded by the federal government therefore this 106 process is a prerequisite to this project. That's the angle I guess that's being applied.

Cheryl Lovell-Obatake: Good, let the record reflect of your statement and my question of clarification, thank you very much I appreciate that.

Mauna Kea Trask (Po`o): It shall so reflect.

Cheryl Lovell-Obatake: I was looking at the matrix and the map attached to that matrix, and the area identified, pretty big area of the bike path. Has everybody seen that, where it starts and ends?

Mauna Kea Trask (Po`o): Yes, Auntie.

Cheryl Lovell-Obatake: Okay, well I'm aware of and has testified on two hotels, two beach hotels, and just out of curiosity wondering whether these hotel owners are aware of the bike path that passing in front of them, near the makai side. I am aware of the kuleana, aina further down towards the Bull Shed Restaurant area. I made some efforts before for the Kane family, I don't know whether there was any reply, but Land Commission awards a royal (inaudible) and numbers are important because they are historical properties in my eyes. When our kupunas were living there, we know there are burials, there are artifacts. I really want to see and I don't think it will happen or may happen, Land Commission awards and (inaudible) and the families making sure that they work on that. Those are my thoughts about that. I want to get back to matrix on the map; you see where you started and where you end on the bike path.

Mauna Kea Trask (Po`o): Auntie, sorry to interrupt you but I just want to answer some of your questions to for the record I think at this time. First regarding the developments on the map they're indicated "future development" at approximately the middle. And it's my understanding that the developers as a condition of their development permits were required to provide lateral makai access as a condition precedent and that's to insure that the public could still go in the area along the beach in front of their hotels. That's my recollection of that issue; furthermore I think that.....

Cheryl Lovell-Obatake: How can it be consistency in making some assurance in the planning process with the Planning Department to be noted that what you just said.

Mauna Kea Trask (Po`o): What I can do is I can go check the permits and get the actual information. I know these, I believe these are old permits, I think they're in fact zoning permits.

Cheryl Lovell-Obatake: They very well are old; I was younger then but anyway looking at the radius where the starting point is and all the way to the end of the purple line, right? We're looking at the bike path, is that right? That purple line where it ends right by the canal?

Mauna Kea Trask (Po`o): Yes.

Cheryl Lovell-Obatake: Okay, well I hope everyone will look at the map and look at the radius and I know that some of you that live there and have information it will be so great for your mānā`o because it's a big area. And so that's it and I'll listen more.

Mauna Kea Trask (Po`o): Thank you Auntie and I think that our consultants did attempt to contact the landowners according to known information in that area, correct? The TMK?

Missy Kamai: That is correct, yes.

Mauna Kea Trask (Po`o): That is correct and also specifically regarding your permit question I was thankfully handed by Ms. Regush, this is regarding the Coconut Beach Development, LLC annual status report for the Class 4 zoning permit, this is just for the record, C42006-9, Special Management Area Use Permit, SMAU 2005-1 and Project Development Use Permit PDU-2006-6, III-3i of the 2000 Annual Report Compliance of Project Conditions states that prior to building permit application, the applicant shall *“stake out on the site for department review and approval the shoreline as approved by the State, the location and configuration of the lateral multi-use beach walk, the location of the 100 foot open district, the location and configuration of the cultural site and vertical beach multi-use pathways and the seaward edge of the oceanfront building”*. Its within their permits to take those following steps, they are not here today so I can't really speak more on that issue, but I believe Ms. Regush they are coming before the Planning Commission relatively soon, correct? Okay, but we can find that out, we can follow-up.

Inaudible response.

Cheryl Lovell-Obatake: Well, mahalo Mauna Kea for that statement, because it is very important because we don't live that long and sometimes things are forgotten and new directors, etc., etc. But thank you and be noted for the record.

Mauna Kea Trask (Po`o): Correct, it shall be noted, thank you Auntie. All right everyone, so we're going to move on, now we're at Item 3-B and I'd like to walk you through this, and again, like Auntie Cheryl said, 36 CFR part 800, throughout this and other future Section 106 consultation proceedings, this really is the road map for everything so I encourage you all to read it and research it. Moving on right now, resolution of adverse effects, now I want to be clear again, this agenda was formulated by tracking the statutes so it easy for you to follow, a lot of people like to make legal cites in these proceedings. We don't intend to resolve the adverse effects today and obviously I don't think we can do that all at once. This is a consultation process; we've learned to take our time, slowly in the beginning so as not to prolong it at the back end. So today, I short-sighted the legal citations and the description within the agenda just so the agenda is manageable, but I'd like to read for the record what specifically 36 CFR section 800.6(a) says: and this is continued consultation, *at this point the agency official shall consult with SHPO, State Historic Preservation Office, and other consulting parties including Native Hawaiian organizations to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties*. Now it's been said in the past and it remains true, as far as mitigation, that's the one term, very important term that's not defined in this regulation or any regulation. Mitigation is anything that you today can identify, whether it's financial, money, in-kind

services, treatment plans, burial treatment plans, processes, use of heavy equipment, whatever that is, the doors wide open, the door is wide open to ask. It does not mean you may get it, but today we're going to start a process by which it's your opportunity to shoot for the stars. Ask whatever you want, again resources taken into consideration, funding is taken into consideration by the decision makers, but you have the legal right and duty and cultural responsibility today to begin to discuss that. These consultation laws allow people to be consulted and this is very important because for years Native Hawaiians and members of the environmental community, normal people in the public, they never had input into the decision making process at all. We now have an opportunity to consult and we need to take that opportunity. I would like to note on the record that under 800.7, and this is in no way intended to be a threat, this is strictly a matter of legal information, that if the Council determines that further consultation will not be productive, they may terminate consultation. If SHPO terminates consultation, the agency official and the Council may execute a Memorandum of Agreement without either the SHPO's or any other parties signature. What I want to speak with you about, Mr. Yap and I spoke about this on the break is that discussing mitigation does not mean that you're allowing the project, we're still in the planning stages at this point. Mitigation, discussing possible mitigations is very important to this process, so please put it out on the table. As a matter of illustration you can ask for 10 billion dollars, that doesn't necessarily mean you'll get it, but if that's appropriate mitigation then ask for it. Preservation of ironwood trees, etc., please asks this is your opportunity to make your record, encourage you to do so. I can speak on behalf of the County, we're looking to mitigate, we're looking to how people can come to an agreement for this project, I know the State feels similar, and I know the federal government feels similar. But we do need to have this discussion, so with that what I'd like to do today is begin the discussion of mitigation measures, go around the table, see what you feel would be appropriate. After that is done, I myself on behalf of the Po`o if you look under B. 1. i: I'll request that the agency official at the next meeting prepare proposed mitigation measures, including what's discussed today as well as what they believe would be appropriate. At the next meeting, I'll ask for more comments regarding mitigation for you and your proposed input regarding mitigation measures proposed by the agency official and then will move to resolve adverse effects. So, we're trying to work with this, the requirements of the CFR today, but of course I think it's appropriate that we consult with you first, engage in a discussion back and forth. Does everyone understand? Thank you, so at this point I will begin with my left and ask Ms. Santos on behalf of OHA what if any proposed mitigation measures you might have today and with the understanding that you will be allowed a second opportunity at the next meeting to add more.

Kaliko Santos: I may not be answering as OHA, but as a life-long resident and a Native Hawaiian on Kaua'i, just for the record you mentioned "Council" in the CFR, can you define it for?

Mauna Kea Trask (Po`o): Yes, "Council" is the National Historic Preservation Advisory Council, ACHP and so it's not the County Council. Thank you very much for that important clarification,

actually I want to state for the record, clearly “Council” means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Kaliko Santos: Thank you, since this is a wish list, currently a lot of people who access the beach area, park kind of far. If it can be done in this plan, because you're going to have eventually in the future you're going to have buildings and that kind of thing and I'm hoping that the access part, but also that we can really come to a definitive number of parking that will be closer to the beach because a lot of our people access with the coolers, the kids, the fishing poles, and everything, and sometimes that's not looked upon favorably when you're walking through a hotel property. They'd like you to access their beach thingy and buy stuff. I'd really like to see that parking areas or parking spaces designated right alongside or close to the beach area that's going to be public. We have several generations of families that still traditional, they were taught with kids, I want to continue that, that they access the beach for generational Hawaiians have gone and accessed the beach for fishing or that kind of thing, so I'd like to make sure that this project provides an access. Not just you got an access here, 300 yards or so you got another one, but in the planning process if they can look where people traditionally access these things and make that place more accessible. I'd like to see that. In regards to the map area, closest to trench 5 and cultural area 1801, you notice how heavily impacted that is with historic sites, that sort of thing, and then of course it says 'future development' but you kind of see where possible buildings might go, that sort of thing, whatever is 'future development' that historic sites be protected. If it means a design change that will protect this area, we walked through it; it's kind of a rough area with the trees and that sort of thing. I think it was a little bit heartbreaking that you had to walk between buildings in some parts; I don't want to see that, since there is no building there now, if we can designate that and make sure, let the County know, Planning, whatever, that however in the future since we don't live that long, Auntie Cheryl, that in the future that be designated, before they even design a project, that those places be open and protected and accessible to Native Hawaiians. I would love to see that this area, I know we did some historical background on this area, but mainly a lot of time in reading the history of the area it's so clouded, I'd like to see that somehow this area be memorialized or there be a study that would be part of our island history, a definitive study on this area in terms of cultural and history, I don't know what you call them, ethnographic, something study on the area, that sort of thing. That way this area, if all the building comes to life, this area not be forgotten for the future. That's it for now.

Mauna Kea Trask (Po`o): Thank you. And for the record I just want to clarify in looking at, also feel free, in my earlier description of mitigation, I don't want anyone to think that, how can I say this, you can avoid, minimize, or mitigate the adverse effects. I know Ms. Regush earlier stated she wants to see the path mauka, it is appropriate also to say you don't want to see the path here. I don't want to give anyone the impression that you have to see the path where it is, you can include that, and you can ask to stop the project today, you can say that as well. Its avoidance, minimization or mitigation, so this is your opportunity also if you want to speak against the project, you can do that too with the understanding that it going to be continued discussion but you can make your record today. Thank you, next.

Puanani Rogers: Yes, I want to say that I would like that path to be someplace else. The impact on our shoreline especially is what really concerns me, besides of course all the cultural sites involved. Our people fish there, it's a place where they gather their food, and having a huge hotel or any more development there will certainly keep them away from that area because then it's going to be different. It's not going to be the same esthetic atmosphere that they were used to, when there were no buildings there, we're free to bring our children, put up our tents, fish for the day, and have lunch down there. Fine, the tourists also use that area to walk back and forth, we don't need it to be concrete, and it worked as it was, a dirt path. And I would also like to fight for preserving of those ironwood trees as well. The public park in that area that we're used to having there and it provides shade and it also holds the ground from erosion of the ocean. How you're going to mitigate that? Coming from the cultural sense, that shoreline is, should be preserved and left the way it is. In fact development could cause pollution to the shoreline as well, there will be how many toilets flushing if they do develop three huge developments, that's a lot of toilets flushing down there folks. And where is it going? Where is the waste treatment plant that will handle all of that? And then when you're speaking about parking I also remembered that the development said they are going to have 900 parking spaces. That whole traffic corridor is going to be horrendous when that happens. I'll add some more later, but yes that was my first initial thing, move it someplace else, try to see if you can find an alternative route, please. Keep our shorelines free for our public to use for our subsistence gathering, it is very important to us. That's where we find food. Mahalo, Puanani Rogers for the record.

Mauna Kea Trask (Po`o): Mahalo Auntie. Mr. Lee?

Herb Lee: No comment.

Glenn Kimura: No comment.

Ray McCormick: No comment.

Hannah Reeves: Thank you very much; you said a lot of stuff, all had to do with me. I wanted to tell everybody if I had my way I'd open up the trail from the mountain to the sea. I would build that there so the children can go down and see how we used to live before, how we used to throw our nets, surround our fish, catch vana, opihi, limu, and teach them how to do our culture. They would love that, the schools would love to go down there and catch all that and they pull the net out from the ocean. Everybody would have fun with the parents, grandparents, and great-grandparents, they would be very happy. I hope they let all the Hawaiian people camp, maybe on the weekends we can take our children, our kupuna and everybody go and sit and teach our children. That's one of the wonderful things I would love to see that, even if I have to fly over here to come and look. But that's what we do in Kona, we go far away from town, you cannot camp, you cannot this and you cannot that, but we go far away and that's what we do. We have all the children, grandparents and everybody, even the

teachers from school, they bring their children. So I think that this would be a beautiful place not only for us, but for people from far and away, they always coming in and they love to see old Hawai'i. I think it's fantastic for them and for us to really exercise our culture and I want to say you said so much and I love it. It's a very beautiful place. I hope whoever is developing this place will line up with the Hawaiian culture. Thank you.

Judy Dalton: I'm glad you said we could shoot for the star, that's good. This is development of the beach, why are we doing that? We were told that we can have public access forever if we have this bike path there, we already have access there. There's no need to put a concrete path there, we have access already. I want to walk down to the beach, to a natural beach, the way it was created rather than to be developed with concrete. It's interesting in the process; I have to go back to what's happening right now as we speak, on the ground in Wailua, there was no assessment of what was happening to the beach until Army Corp of Engineers sent an analysis in late November, early December. Actually the Army Corp of Engineers didn't even come here to take a look at the beach, they didn't see any pictures of the beach, and they just saw pictures of the highway. I'm sorry, Mr. Haigh isn't here because he had sent them pictures of the highway, no pictures of the beach, so they made their assessment not seeing it. If they had seen some of the pictures for example here is what the beach looked like in the 2007 Environmental Assessment, here's what it looks like now. It's taken from the same spot, so we have very, very little beach left, it all eroded away. Unfortunately, the Sea Grant people went by some old photographs that were taken...

Keith Yap: Can I ask a question? Can you put that on the map here?

Mauna Kea Trask (Po`o): For the record, I think Ms. Dalton just not to confuse the issues, cause I know Wailua Beach is a very contentious project right now, but again we're here today to address Phases C & D.

Judy Dalton: And the reason why I'm bringing it up right now is because I don't want to see the same thing that happened to Wailua Beach happen to these places. So if you have along the beach like this then the same thing could happen, also in light of sea level rise, we're expected to lose 70% of our beaches in Hawai'i. We're already losing them and development on the beach is foolhardy and not sustainable and the important thing is leave the intact in its natural state, there's room mauka. Thank you.

Mauna Kea Trask (Po`o): Thank you. And again, just for further discussion, I don't want to curtail the discussion today I just want to keep it focused on what's going on. Just please keep it to Phase C & D and refrain from speaking to each other, thank you.

Rayne Regush: Rayne Regush, for the record, looking at the future development towards the north end of the historic properties map and we see a lot of historic sites and areas of cultural deposits, I was just wondering if there was an alternative perhaps between two parcels where the path could go mauka and then join up with where its indicated on the map. I guess that's

just a heavily historic site and perhaps negotiate, I'd like to see a negotiation with the developer to remove the proposed buildings that look like they will be constructed over the identified historic sites and cultural deposits in that area, so if there could be some sort of negotiation to not have the buildings constructed over those sites. Another condition I'd like to have the County secure a State Certified Shoreline and not seek any variances and that furthermore have the path be aligned with the 100 foot open district boundary which would keep the path significantly mauka of that coastal corridor that is so far been undeveloped. I know that this cannot be done with the existing hotel structures along that coastline but where it has yet been undeveloped and the County does have that 100 foot open district boundary, I'd like to see the path aligned mauka of that.

Mauna Kea Trask (Po`o): Thank you Ms. Regush. Mr. Yap?

Keith Yap: Thank you Po`o, for the record Keith Yap, Kaua'i-Ni'ihau Island Burial Council. I'm going to speak first as a Burial Council representative what I would like to see and then personally. As a Burial Council representative I'd like to again reiterate that we want to have burial removal (inaudible) or inadvertent, very important to we have that to make sure that there's an oversight on SHPD to make sure that things are done right. I believe SHPD has been very cooperative with the Burial Councils now, they know that we're reasonable and we come up with some solutions for that so I think that, we would like the construction to be done, we have a new terminology called "gently technique of grading", we want to make sure that when they work the ground, we don't want them looking for that needle in a haystack, we want to go gingerly. We want to try and stay on the existing foot path as much as possible because we believe that foot path already would have the least amount of adverse effects and it already goes through the trees, won't be knocking any tree down because of that. Instead of that straight line we might have a meandering path. So that's the wish list for the Burial Council. For me personally I'd like to state that as a Wailua resident, when these meetings first started, I was very much in moving the path mauka to Aleka Loop because there's a path on there already. But then the more I got to think about it the more I got to think about fishermen and the people that actually use it. Right now, in all due respect to the people that are here, I rarely see guys fishing over there and I think there's a reason for it, the reason is because they don't have access. If we don't put the path on the beach or close to the beach we won't get access because the hotels have a tendency, like Waikiki, to start to border their borders. If that path is not there guess what, it's going to be hard for us to get there. The path is there it's like we're saying we have a doorway to get to the beach and the parking is important. Right now there are stones all along the road, you know how we park in there now, we park illegally inside the hotels and we sneak in. So to say that there's access now is not true. We have to press upon the developments to provide that access for the locals. It's important for me that that is provided, I mean I go down to the beach just south of this and there's a long pathway that goes by the heiau, it goes down there, we're always sneaking to park over there because there's only four parking spaces for public. From a personal stand-point, I want it to feel like its welcoming for the residents and people who are coming from afar to park somewhere so they can get to the beach, so they can go fishing, so we can have more fisherman actually fishing instead of

people just saying they blocking access for the fisherman, cause I think that's happening now. I want somehow to open that up.

Mauna Kea Trask (Po`o): Thank you Mr. Yap and I'd like to thank you for putting your mānā`o on the record even though it may not agree or may just appear to contradict other peoples opinion. I'd like to thank everybody too for being respectful of everyone else's opinions and what they feel because that is personal to them and their kupuna, again thank you all for accommodating that and being respectful. Next, Mr. Alalem if you have any mānā`o regarding avoidance, minimization or mitigation of adverse effects on the historic properties located here and or the area in general?

James Alalem: For the record, my name is James Alalem, representing Uncle Joseph Manini. I have two things to say, #1 is I know a lot of people think I'm crazy but I'm not. A lot of times the uhanē or the spirit that gave me this knowledge and wisdom come and tell me certain things that I need to say, put it out there. This is one of them, this just happened to me about two nights ago and this is what they told me to say is that Kaua'i is cursed. Why it's cursed is because the sacredness was destroyed. We talking about C & D, well A which is Wailua Beach and C & D is all included, this whole place is sacred. Again, Kaua'i is cursed because the sacredness was destroyed and now it's gone forever. Then they said, let the darkness and the unhappiness begin now because they have destroyed the sacredness. The second thing is that me and Uncle Joe, we talked about it and for the use of the property that he claimed in his paperwork, he said that and could be more, 5 million dollars a year for the property that the people have not listened to him, that the property was his and they taking it anyway. And that 5 million is going to be used for all the things that they destroyed the sacredness, the graves and all those things that were destroyed. That is going to be used to put back the heiaus and things like that. So he asked for 5 million a year for the use of his property. Thank you.

Mauna Kea Trask (Po`o): Thank you and that's 5 million a year in perpetuity, as long as the path is utilized?

James Alalem: As long as the path is utilized and also it might change to because there are going to be more hotels, I leave it up to Uncle Joe, I just repeating what he told me.

Mauna Kea Trask (Po`o): Thank you.

Missy Kamai: For the record, Missy Kamai, Cultural Surveys Hawai'i, but I'm not speaking for CSH right now, just kind of my mānā`o but the northern most point of the project area, the straight shot to Uhelekawawa Canal, I not even talking about the south side, but that's residential and there's really no barrier between the bike path and them. If there's not necessarily privacy but some kind of way to make it more secure for them because the bike path is 24 hours so you're going to have people roaming around. I mean it's not like they're not roaming around now but at least something like a fence line or a wall to just, where people are

living and people are utilizing the path, people on the bike path won't be jumping over to the residential area and cruising around. That's it.

Mauna Kea Trask (Po`o): Thank you Ms. Kamai. Ms. Nishikawa?

Nancy Nishikawa: No comment.

Mauna Kea Trask (Po`o): Mr. Iida?

Gerald Iida: No comment.

Mauna Kea Trask (Po`o): Mr. Pereira?

Patrick Pereira: Me, I would say move it. Don't put it on the beach because I think this State of Hawai'i has access laws, right?

Mauna Kea Trask (Po`o): Generally yes, but beaches are public trust, there needs to be access but it gets kind of, because of western property rights, it gets kind of grey depending on the facts and circumstances, but generally you're correct.

Patrick Pereira: Enforce the law.

Mauna Kea Trask (Po`o): So both enforcement and movement of the path?

Patrick Pereira: Yes.

Mauna Kea Trask (Po`o): Thank you.

Patrick Pereira: In consideration, I know a lot of money was already spent with all these kind of tests and all these stuff that goes on but why does the path have to be along the beach? Why? Was that question ever answered?

Mauna Kea Trask (Po`o): My understanding is that while you're planning the path if you look, the most mauka point you can see the canal. That's the current proposed alignment of the path. There was also proposed along Kūhi'ō Highway, which is about middle, and then recently because those future developments have been identified and they're moving forward with development, that area because of their permit conditions has opened up. What we're doing is we're looking at proposed Phase C & D which would take advantage of those future developments coming online and getting the lateral access under their permit conditions. That wasn't available before so that's why we're doing this now. It's an expiration of the option. You would be either Kūhi'ō Highway or the most mauka canal alignment is what you would prefer.

Patrick Pereira: Me, I think along the canal. The canal was built, was it built or was it always there?

Mauna Kea Trask (Po`o): Built by sugar I believe.

Patrick Pereira: Yeah, built to drain the coastal swamp land, right?

Mauna Kea Trask (Po`o): Yeah, so they could aerate the land mauka of that, used to be all sugar cane.

Patrick Pereira: And that is all private property?

Mauna Kea Trask (Po`o): Yes, private property, Midler.

Patrick Pereira: Well, maybe one deal can be worked out with her. I think private property; the government gives a little more money into the grant, you got to buy one easement through the property.

Mauna Kea Trask (Po`o): We'll get fair market value. Thank you, do you have anything else to add?

Patrick Pereira: I think it ought to be moved.

Mauna Kea Trask (Po`o): Thank you Mr. Pereira. Ms. Pereira, anything?

Leah Pereira: My wish list, for the record, Leah Pereira. I would like to see the fish ponds be put back in order. When it rains up there, everything backs up, I would like to see it cleared up, my wish list. I hope it's not an accident waiting to happen, if they do it this way. That's all I hope. Because Wailua is the most sacred place, we know for a fact that it was our last kingdom at one time where our kings lived, resided, died. We don't have anything else, so really should think about the sacredness of this place, that's all. Wailua and Waimea are very important.

Mauna Kea Trask (Po`o): Thank you. Auntie Cheryl do you have any mānā`o you'd like to share regarding avoidance, minimization?

Cheryl Lovell-Obatake: Oh yes certainly, thank you for asking. I like to hear those things, Judy Dalton brought up the coastal erosion that she is experiencing at Wailua. I'd really like to see from, if you look at the place by the old Kapa'a cannery right by the Pono Kai, Pono Kai yeah? Well that area is eroded right? How long is it taking the County to mend that kakio over there? Because of coastal erosion, it brought me back to where we're at, with the bike path, the cement, if get tidal wave or anything of natural disaster, and the cement will be exposed and possibly go into the water. I'm looking at the worst scenario, but how can one clean that up and put things back into order after a natural storm? That's one part that came to my mind and

making things look all nice here because Pono Kai has been a long time waiting, right erosion. But anyway, also I'd like the Federal Highways access, definitely that kuleana land owners who practice in that area should still have those rights or subsistence and I agree with her with the access to the beach to go fishing. Also, I'm looking at if we're going fishing we got to get clean water and healthy fish. Sorry if I'm wearing my Nāwiliwili Bay Watershed Council hat but I've learned some things, some scientists, of polluted waters and we need to understand what's happening also in the ocean if we're talking about subsistence, kanaka maoli eating manini or ā`hole`hole or whatever reef fish is, or even wana. Outside of this beach in front of Bull Shed side, if I'm not mistaken there is fresh water that comes out, into the ocean. Culturally as we review this plan and access this plan we got to get healthy fish for healthy people and healthy water. I look at the construction that will be happening at the two Coconut Hotels, I've been through the process of the hearings on both of them. I remember there was Belles, he was the attorney that represented the Coconut Beach or that two Coconut Hotels, but in construction coming down here in Hawai'i they don't know our graphics, our land, our water, they have destroyed some things, I've seen it with my own eyes. And therefore, mitigation, small kind, orientation of construction companies, working on our lands and especially with this area with na iwi kupuna and artifacts in the ground. I like Missy Kamai's, Cultural Surveys Hawai'i, private property owners, we need to kōkua the private property owners and I like the idea of giving them that privacy for mitigation because they're putting up, not we but the County is putting up a bike path and I think its common sense to be courteous to the private owners because there's a few there. I look at the dollars, how much money do we need or are we allowed, we really don't know how much we're allowed in mitigation to do whatever, what we choose to do in the area, of course kupuna, and that has to be decided by the Kaua'i-Ni'ihau Island Burial Council or if there are any heirs that will come forward. You want to keep in place, or you want to put all the kupunas together, I say it like it is because I've been on the Burial Council for eight years, from 1992 – 2000. And I don't know it all because every situation, every place is different and people are different and people are sensitive. The passing of their kupunas or know of their genealogy and that is culturally sensitive. I've seen, born and raised here, kanaka maoli, and that feeling of sensitivity for our kupunas is something that, well hopefully we can get over the hill with State Historic Preservation Division and get on the ball. I don't like laws; laws are meant to be broken as you have seen already with what have been happening, bits and pieces of State Historic Preservation Division, and we got to malama our own and so in the MOA or whatever form it could do to is to set a precedent and pound and chisel it on the rocks because we know its forever. I think I talking too much but I hope you would accept my thoughts and I really appreciate the comments, thank you.

Mauna Kea Trask (Po`o): Mahalo Auntie. So at this point, yes Ms. Regush.

Rayne Regush: Rayne Regush, for the record. I apologize because I missed the last meeting and I just wanted to add or request regarding cultural sites and historic sites that we identified whether the foot path through the mature stand of ironwood trees is historic, so if we can determine if that foot path is historic.

Mauna Kea Trask (Po`o): The current foot path, the undeveloped, looks like a trail?

Rayne Regush: Yeah, the trail through the ironwoods, can we determine if that is indeed historic, because I missed the last meeting I couldn't give that input and it's really a pre-mitigation request.

Mauna Kea Trask (Po`o): And again, and we can go look into that but irrespective to you if it's not deemed historic, it's within the APE which itself has been deemed to be historic. And so at this time I'd like to thank you all. That's going to conclude our first round of mitigation reports, at this time per the agenda; I'm going to request that FHWA through Mr. McCormick present/propose mitigation measures at the next meeting that we hold. The next meeting has not yet been scheduled; I believe there's been a lot of information to take into today and a lot to prepare and everyone will be notified when the next meeting is. I'm also going to request everyone today, individuals, Hawaiian and non-Hawaiian and Native Hawaiian organizations and non-Native Hawaiian organizations, during the interim between now and the next meeting, continue to think about ways and measures to be taken that can avoid, minimize or mitigate the impact of the adverse effects of this project and to this site and upon the historic properties contained therein. Be prepared to discuss that at the next meeting and we can continue our discussion at the next meeting with the mindset to looking towards implementing some of these and resolving any adverse effects if this project is, if the appropriate party decides to proceed with this project. So with that, I'd like to thank you all again today for your participation and really for the respectfulness in which you conducted yourselves and each other.

Judy Dalton: I have a question, it seems like we're going to continue looking at this one possibility, are we going to look at other options, rather than being on the beach?

Mauna Kea Trask (Po`o): Well, there has been and if you look at the previous planning documents, there is information contained on the Kūhiō Highway route as well as the canal route, currently we're just looking at this route and the impacts associated with this specific route. We have taken your mānā`o regarding alternative routes and we can include that in looking at ways to avoid, minimize, or mitigate but nonetheless we're still focusing for, the rules require us to look at Phase C & D in the effects.

Judy Dalton: Also, we will be looking more in depth at the other options as well?

Mauna Kea Trask (Po`o): Well, we identified those and pardon me if I'm not understanding you, but we will be looking at ways to avoid, minimize or mitigate the impacts of this, but we're not going to be revisiting and looking again with all those other routes because they've already been explored.

Judy Dalton: So it sounds like this is going to be happening definitely and that there is not really, or suggested that we not have to do this.

Mauna Kea Trask (Po`o): No, currently the point is this; the current alignment is the canal route, correct Mr. Kimura?

Glenn Kimura: There are other options, yes.

Mauna Kea Trask (Po`o): There are other options, so canal and Kūhiō Highway is the main alternate routes that have been explored fully. This opportunity for Phase C & D has come on, but before we can even consider it we have to go through this 106 process.

Judy Dalton: I see, so we could decide not to do this and do the more mauka routes, is that still open as a possibility?

Mauna Kea Trask (Po`o): And I'm going to say, just specify, the agency official and the agency implementing this project can make that decision, when you say "we" that decision ultimately is not going to be made by anyone at this meeting but that decision can still be made by the appropriate party not to proceed with Phase C & D, of course.

Judy Dalton: Who's going to be making that decision then?

Mauna Kea Trask (Po`o): Whether or not to proceed with the project on this route, I believe will be with County, Federal and State agencies. Mr. Yap?

Keith Yap: Yes, if I may interject here, I believe that the alternate routes were vetted out; this is the route that they've come to us with as far as consultation. Now my understanding of how this works is that if the mitigation and the efforts are not satisfactory, then we'll start to go back to the drawing boards and consider a different route. The question is do we have to go through this process first, come up with these mitigation factors and see if we come to a conclusion that the mitigation factors are adequate enough to support the project as it's presented. And if it goes beyond that, where mitigation, we don't feel the mitigation is adequate, then that would be the alternative to start looking at other pathways, but I think that's the process.

Judy Dalton: So if the people here contributed their comments about this feel that it's not appropriate to have developments on the beach, so how much of a possibility would there be to go back to the other options?

Mauna Kea Trask (Po`o): I think at that point it's impossible to discuss all those contingencies at this time and we're still so early in the process, this process is not preordained and the reason why I can't speak on and I won't speak on it is because you can't tell the future. You can't tell what decisions will be made or even if there's an inkling to make these decisions. We are required by Federal and State law to go through this process; we're going through the

process right now and as we go through those issues will pop up at the appropriate time, but now is not the appropriate time. Ms. Regush?

Rayne Regush: With regards to the next meeting, could a concerted effort be made to invite the private landowners to attend, particularly within that undeveloped resort area? Because if we're talking about mitigation measures, the path is sort of boxed into a very narrow corridor and the adjacent landowner will need to be involved in negotiations.

Mauna Kea Trask (Po`o): Have we been sending out notifications to landowners?

Missy Kamai: Are we talking the big development people or the private owners already that have property....

Mauna Kea Trask (Po`o): The big developments. Well under the CFR's, these people may, our public notices have been going out. We've been fulfilling our legal requirements for notice, so they are treated like everyone else in the public, if they want to come they can come. However, this specific process is for consultation with members of the public, Native Hawaiian organizations, etc. So I don't think any specific notices are going out to them, but the general public notices are there and they should be aware of it or their deemed to be statutorily aware of it because we've been complying with the requirements.

Keith Yap: You could certainly invite them but I don't know if they would come.

Rayne Regush: That's why I'd like to ask that they be invited and particularly because I'm hearing concerns about adequate access, parking and of course there's no where along the coastal corridor property to provide that therefore you would have to negotiating with the adjacent landowner.

Mauna Kea Trask (Po`o): And the difficulty about those issues to as far as the landowners and development is again the scope of this project is the proposed bike path project, it is not the development.

Rayne Regush: But they are adjacent to, we share a boundary.

Mauna Kea Trask (Po`o): That's true but....

Keith Yap: I think that would be addressed in their permit.

Mauna Kea Trask (Po`o): That's correct, and the Planning Commission.

Keith Yap: In our dedication, we make sure it's noted, the Planning Commission will be on notice to make sure that something else can be done about the parking and access.

Mauna Kea Trask (Po`o): And that's just like what I was talking about venue and kuleana regarding the burials and the Burial Council's powers and duties. The Planning Commission, it's their powers and duties regarding those specific developments, so we can note those for record. Nancy can we send out invitations to the developers if we get you that information?

Nancy Nishikawa: We can, we have that information.

Mauna Kea Trask (Po`o): Okay, thank you. Anything else? Well thank you again everybody, I'm going to conclude the meeting now but I would like to ask members of the Native Hawaiian community to stay after, not only to have, do we have lunch? No, stay for just five minutes, what we need to do is as you all know Auntie Sharon Pomroy passed away last year. She was the alaka'i that was nominated and confirmed by the Native Hawaiian Protocol Committee originally. We attempted to hold a meeting that Kaliko and Auntie Nani were so kind to show up to but I request that you stay members of the community so we can appoint another alaka'i. I'm happy to conduct these meetings on Auntie Cheryl's (behalf), but it is appropriate we have someone from the community in order to comply with the proposed process to be there and to be here. Thank you all and those of you interested, please stay.

PANI – END MEETING – 11:32 am

how to connect up to what's already built here, so it would either be this route here or the alternative would be to connect on this way.

Mauna Kea Trask (Po`o): And that backwards "L", that's the supplemental that we're studying today, correct?

Nancy Nishikawa: That's right because this alignment here although in the draft EA originally back in 2004, we looked at this area, this specific alignment wasn't studied, and it wasn't part of the Final Build Alternative. So, it would either be this alignment here or this alignment this way.

Mauna Kea Trask (Po`o): Mr. Yap, I think the answer to your question, before the County can make its determination as to specifically which route they would use, we have to go through this process to get anyone's mānā`o about the piece that goes to the canal and then mauka.

Keith Yap: And so that's where the easement is right now, along the canal?

Nancy Nishikawa: No, there's no easement along the canal right now.

Keith Yap: Oh, there isn't?

Nancy Nishikawa: The existing easement is this one here, plus this parking lot, this existing parking lot is County owned, a little parking lot that was intended to provide public beach access.

Keith Yap: I don't remember seeing that. You think if this alternative route is not built, you're still including this, is this the comfort station?

Hal Hammatt: Yes.

Keith Yap: Even if you do this, you just won't have this part here.

Nancy Nishikawa: No, this easement exists so people would still be able to use that, but the way the public would be directed would be to use this side.

Keith Yap: So this is the only part that exists now?

Nancy Nishikawa: Correct.

Keith Yap: Thank you Po`o.

Judy Dalton: Judy Dalton, I have a question for Mr. Hammatt, he made a gesture it shouldn't be any deeper, to avoid cultural levels, is that the depth of the path, he referenced about 4", so my question is how deep would the concrete be for the path?

Mauna Kea Trask (Po`o): Mr. Hammatt, if you can answer or if you feel more comfortable deferring to Nancy or Glenn?

Hal Hammatt: Yes, I think I would as far as the construction.

Mauna Kea Trask (Po`o): Okay, Nancy?

Nancy Nishikawa: In the past we've been told that it would, the actual depth was about a foot deep, but I know Doug's planning to be here later this morning so we can come back and answer your question more accurately I think when Doug is here. He's the expert with other parts of the path system.

Mauna Kea Trask (Po`o): And I think what we can also do is, when we get into the mitigation portion, if some of the consulting parties are concerned about the depth, that maybe an area that we can play as far as making it more shallow or possibly changing the materials, etc.

Ray Catania: Mr. Hammatt, do you have maps like this that people can have as handouts?

Hal Hammatt: Sorry, we don't have any handouts. They can be downloaded off the website.

Mauna Kea Trask (Po`o): Let's avoid any interaction between each other. If you'd like to also Mr. Catania, I'll give you my number 241-4930 and I can get you copies of the maps.

Ray Catania: The other question I got is on these specific developments, what are they, what kind of developments? Have they already been approved?

Mauna Kea Trask (Po`o): To my recollection, they are hotel/time-share type developments.

Ray Catania: How can I find out the specifics of about them?

Mauna Kea Trask (Po`o): Planning, Department, County of Kaua'i.

Ray Catania: The other question I got is, despite the proposed bike path, it's actually going to be running over some of these burial sites, these cultural layers?

Mauna Kea Trask (Po`o): It will be in the vicinity, correct.

James Alalem: You guys know I'm against this bike path, my question is, and you guys have the land owner deeds to these lands? Can I see it? Who do I see to see all these deeds for permission to build all these things there?

Mauna Kea Trask (Po`o): Yes. Regarding any and all claims that contest land title pursuant to the Great Mahele in the 1850's, that subject has been settled by the courts of law and if you'd like to talk about it later, we can get you the deeds that purport to under the current legal system convey land title.

James Alalem: Can I have Uncle Joe there with us?

Mauna Kea Trask (Po`o): That's fine and again you can take my number, 241-4930, we can meet in my office and discuss that.

James Alalem: And are you guys going to use the ordained set-backs from the high water marks supposed to be a 40 foot set-back? Are you guys going to use it or are you just going to ignore it?

Mauna Kea Trask (Po`o): We intend to comply with all legal requirements for this project.

James Alalem: It is the law for the for the 40 foot set-back?

Mauna Kea Trask (Po`o): Whatever the set-back is in that area we would have to comply with it.

James Alalem: In that area? So it's all different all in side this area?

Mauna Kea Trask (Po`o): Correct. I want to avoid making a commitment on the record without having the documents in front of me, but I can tell you we will comply with any and all set-backs County regulated.

James Alalem: Can I have that in writing?

Mauna Kea Trask (Po`o): I don't understand. It's required irrespective if it's in writing, but we can talk about that.

Ray McCormick (SDOT): Ray McCormick, Hawai'i DOT Highways, no questions.

Nancy Nishikawa: Nancy Nishikawa, Kimura International, no questions.

Haven Giannasio: Haven Giannasio, Cultural Surveys Hawai'i, no questions.

Liberta Albao: Liberta Albao, Queen Debra Kupuli Hawaiian Civic Club, I have two questions, I think regarding the burials, there were two burials, is it required to contact the lineal descendants or was there research done in that area as far as lineal descendants?

Hal Hammatt: Under the rules, that is part of the requirement to make a good faith effort to contact lineal cultural descendants and have them identified. It also includes legal advertisement for a period of 30 days for outreach to people that have interest.

Liberta Albao: Did anyone come forward?

Hal Hammatt: That process has not been done; we're still in the phase of Inventory Survey. We have not submitted the Inventory Survey Report to SHPD. That report will need to be submitted and approved before we start the burial, this process through the Kaua'i-Ni'ihau Island Burial Council.

Mauna Kea Trask (Po`o): Mr. Hammatt, correct me if I'm wrong, under HRS 6©-43, 43.5, 43.6 & HAR 13.300, those would be the rules that govern the burial council treatment, correct?

Hal Hammatt: Yes.

Keith Yap: To answer your questions, the burial treatment plan coming from the burial council, the public (inaudible), at that point will have Chapter 13 to state their intent, what they would like the process to include in the burial treatment. That's the process.

Liberta Albao: The only information that I know from my civic club, we've done in depth research because of Queen Debra Kapuli and one of our members I think is a lineal descendant, Janet Hepa, her descendancy is from Simona Kaiu, and Simona Kaiu inherited lots of land and it included that Waipouli area and the family, her parents grew up in that beach front area, so out of courtesy I think lineal descendants are very important if there's any re-internment with the burial council approval, that it's out of respect to the family. From my knowledge that area was sold to the **Brodwicks(?)** in the early 1900's. From there it was sold off into different parcels. When the zoning was changed to hotel zoning, so you see these different parcels, and I believe the two opening takers were supposedly Japanese about 30 years ago, I really think more research needs to be done on lineal descendants, it's very important that we document and I'm sure if I'm not mistaken, there are maps in the Planning Department dating back prior to this commercial building, I'm not sure if it's kuleana land but of course it's sold today, but I really think that should go on record. It's very important historically, and if there's any way I can assist, I would gladly share my mānā`o.

Mauna Kea Trask (Po`o): Mr. Hammatt, out of request as you move forward in preparing the burial treatment plan to be presented to the Burial Council, that you make contact with Ms. Liberta and Ms. Hepa and even if she isn't a lineal descendant, as defined under 13.300 HAR, do check if she is either a cultural descendant as well and what steps you have to take in order to involve her in the process, thank you.

Elsie Godby: I'm kind of confused; this path has already been approved by the County?

Mauna Kea Trask (Po`o): Certain portions of the path have been designated under 2007 Final EA, but what we're doing right now is what was said by Mr. Kimura, that "L" shaped alternative that goes by the canal as well as on the south-side Phase D which would connect, Phase C terminates about right in the middle of those lots, so Phase D would connect it further down south and then mauka to the Papaloa Road extension. So we're looking at two alternatives at this time that weren't decided on before, and so before we make that commitment to go there, we would like to get everyone here and get their mānā`o on that.

Elsie Godby: And also, Judy was saying about a foot and their feeling is that they can build the bike path maybe six inches and wouldn't hit that layer, isn't that kind of, to be building a bike path when you have all that other cultural things beneath the bike path and people move over, to me doesn't sound right.

Mauna Kea Trask (Po`o): And that's a good point, a lot of the mānā`o in the past, the community itself is divided on that issue, my understanding is a lot of people think that, into their own, nothing wrong with it, it's their opinion that if you build something over a burial, that in itself is mistreatment of it. However, also members of the community and historically in the records it appear that other portions of the community thought that the most important thing in order to protect any bones was to hide them. There's is records from Samuel Kamakau Dane from the turn of the century, 1800-1900's, when modern infrastructure like roads, modern houses were being built, that bones were purposely buried underneath home and houses in order to prevent them from ever being found and to protect the bones forever. That is something the community itself can contribute with its mānā`o and that's when we get into assessment of adverse effects and we can address those situations at that time.

Tom Godby: Tom Godby, my question might be not appropriate because she's talking about, but that area Kaua'i Sands I guess, my question is when they're presenting the alternative roads, does it make any sense to be considering putting the bike path on the beach front there, knowing full well that's it's eroding at a tremendous pace and probably the only way to make it secure would be to put down concrete stanches or something to support it. I don't think it seems to me that's questionable. That's my question, is that justified?

Mauna Kea Trask (Po`o): I'd like to ask Ms. Nishikawa specifically, and again we're not talking about the Wailua Beach portion today, we're talking about Phases C & D behind Coconut Marketplace, can you please share with everyone, if you're aware of any current erosion in that area that would affect the bike path?

Nancy Nishikawa: As you know we are preparing the Supplemental Environmental Assessment, so those kinds of issues will be addressed in that document and we're looking to put that information out in the early part of next year. If you could wait for that information to be in that Supplemental EA. But thank you for reminding us of that, we'll be sure to address those important issues.

Mauna Kea Trask (Po`o): And again today everyone, we're here specifically to get information/mānā`o about the Hawaiian cultural resources in this area today, and or any other historic properties, so things like erosion and all that stuff, although important is not necessarily pertinent for today.

Beverly Muraoka: I just had one question Po`o, how wide is this pedestrian path to be?

Nancy Nishikawa: 10-12 feet.

Beverly Muraoka: 10-12 feet with 5" down, the max?

Nancy Nishikawa: Correct.

Randy Blake: Randy Blake, I'm with Kaua'i Path, couple questions, at what depth, first of all on the new burial on the south-side, the one that's not in the alignment if the path currently of the property, what depth that was found and is there any previous record that burial had been recorded, being present during the utility work?

Hal Hammatt: The depth is about 50 centimeters, which is about a foot and a half.

Mauna Kea Trask (Po`o): Was it previously recorded or identified?

Hal Hammatt: No it was not, its location was unknown.

Randy Blake: Did you not describe that it had been disturbed during utility work?

Hal Hammatt: Yes, it was disturbed during the utility work.

Randy Blake: But not recorded?

Hal Hammatt: I don't think it was recorded.

Randy Blake: So, it was at a depth greater than 12"?

Hal Hammatt: Yes.

Randy Blake: And then the second burial, at what depth was it found?

Hal Hammatt: That was about a meter, which is a little over 3.3 feet.

Randy Blake: And the ground penetrating radar, did it suggest that there was a burial there?

Hal Hammatt: There were numerous anomalies identified in the GPR of that trench, none of which could be directly correlated to that burial. And to explain a little bit, GPR (Ground Penetrating Radar) has some challenges too, depending on the kind of soil that it's applied to and fortunately in sandy soil with moisture content and salt deposits, which are typical of these sands, the GPR is a little less reliable than other soil mediums. I hope that helps.

Randy Blake: I guess the question was, based on the Ground Penetrating Radar, would you have been suspicious of there being a burial there and could have avoided disturbing it to begin with?

Hal Hammatt: I think that would have been, that's a good question; there was nothing that identified in the GPR that would give a definite indication of a burial. And that is an inherent distinction between an anomaly that's identified by GPR. Its very nature is unknown, so it could have been anything, it could have been a (inaudible).

Randy Blake: One final question, in the depth of a meter at that location knowing was that because of the point of location of the burial that was well aware of any of the planned sewer work, correct? For the comfort station?

Keith Yap: He's asking why you would go that deep at that location.

Hal Hammatt: Generally to perform inventory survey we go to the depth below which we don't think they'll be any findings. Our job in an inventory survey is to identify historic properties so we go to the depth that we think will make a thorough study and generally it exceeds one meter.

Kaliko Santos: Kaliko Santos with the Office of Hawaiian Affairs, no questions.

Mauna Kea Trask (Po'o): Thank you very much, at this time based upon the PowerPoint presentation by Mr. Kimura as well as the review presented by Mr. Hammatt, what I'd like to do is go around the room and lead the gathering of information from either any Native Hawaiian organization, cultural descendant, lineal descendant, or member of the public or other interested party, specifically to assist in identifying properties which may be religious in cultural significance to them and may be eligible for the National Register. And what I'd like to point out again is that a lot of you have your own opinions about whether or not this bike path should be built, whether or not it should be built in the area that is proposed, etc. I know some of you don't want this project at all and we understand that, but again at this point what the law requires, what Auntie Cheryl specifically wanted me to do today is get your individual mānā`o about the historical properties in that area. For instance, Waipouli is known for the information that I gathered in the 2007 EA, this was area of surfing, this was area where chiefs lived, and this was an area where many people's families came from. Specifically right now, I'm going to ask you questions regarding that, what do you have to bring regarding the historical information of that area. We will get to whether or not it's significant, Mr. Hammatt has

already kind of stated it's significant; we will get into how this will adversely affect those areas and what should be done either to avoid, minimize, or mitigate whatever adverse effects may be. But at this point we're still only gathering information about historical information and identification of properties. That is the first and arguably most important step about this. Mr. Hammatt can only see what's in the ground or what's been written in the libraries. You all hold individual mānā`o that's been passed on to you from generations; we're here today to seek that. If you are reluctant to share that information today in public we can accommodate you and take you in private and gather that information. I will ask you a specific question, I request that you answer specifically, and then we can move on to the next portion. If you have no questions or no answers, no mānā`o to share that's fine, just state as such and if you'd like to speak in private we can do that as well. Does everyone understand? Thank you. Mr. Miyashiro we will begin with you, and I'd like to ask you, can you please identify any and all properties within this area of potential effect as identified by Mr. Hammatt, which according to your knowledge may be religious and may have cultural significance to you and also may be eligible for the National Historical Register, if you would like just to state that you think the entire portion is significant and that the entire portion has religious and cultural significance and should be eligible for the National Register, you can say that as well.

Ken Miyashiro: Yes, I say that.

Mauna Kea Trask (Po`o): So, for the record, Mr. Miyashiro...

Ken Miyashiro: That's along the beach we're talking?

Mauna Kea Trask (Po`o): Correct. And along the canal as well, both the mauka spurs going up. So, Mr. Miyashiro, I'd like you to confirm for the record that according to your knowledge this entire area is religious and this entire area has cultural significance to you and again this entire area may be eligible for the National Register, is that correct?

Ken Miyashiro: Yes.

Mauna Kea Trask (Po`o): Thank you very much sir. Ms. Otani, do you have anything to share?

Meesa Otani: No.

Mauna Kea Trask (Po`o): Mr. Hammatt, do you have anything to share?

Hal Hammatt: No.

Mauna Kea Trask (Po`o): Mr. Yap, do you have anything to share?

Keith Yap: I'd just like to reiterate that I believe also that this area is of significance, I don't know about religious but of cultural significance. I believe this area was highly (inaudible) by

ancient Polynesians, my only comment is that they proceed with kid gloves and I'll talk more about mitigation issues when we do the mitigation. Also, for the record I'd like to, I had a question last time about whether the path, and thank you Mr. Kimura for explaining the process you guys went through, it kind of makes sense to me and I'm more inclined now to agree with the location of the path now for various reasons like access into the beach, the view plane and other things of that nature. The mitigation measures are more important to me by the Burial Council's stand point and I'll discuss that when we get to that.

Mauna Kea Trask (Po`o): Thank you Mr. Yap. Ms. Dalton, again, can you please identify any properties within the Area of Potential Effect which according to your knowledge may be religious or may have cultural significance to you and also may be eligible for the National Register with the understanding that you may make such a blanket statement at this time?

Judy Dalton: I don't know if what I'm saying is appropriate to what he's said right now all I know is that I've gone there many times to see how close it is to the ocean, it's really close and so when you said that you'll be applying the setback rules of 40 feet or at the very minimum of 20 feet, and I don't see that setback happening there, so I just want to say that for the record.

Mauna Kea Trask (Po`o): And that's fine, your setback concerns are noted however at this time just for clarification for the record, you are not making a statement according to your knowledge on whether or not this area may be religious and may have cultural significance to you and also may be eligible for the National Register?

Judy Dalton: I don't have the authority to say one way or the other.

Mauna Kea Trask (Po`o): Thank you very much. Mr. Catania, at this time, may you please identify any and all properties within this Area of Potential Effect which according to your knowledge may be religious and may have cultural significance to you and also may be eligible for the National Register with an understanding that you may say the entire area is.

Ray Catania: I'll say that this entire area is culturally significant to the people of Kaua'i and I don't want to see a bike path in this area. And if it qualifies for the National Historic fine, as far as I'm concerned, I don't like it.

Mauna Kea Trask (Po`o): I understand, and your concerns have been noted for the record, thank you. Mr. Alalem, at this time please identify any and all properties within this Area of Potential Effect which according to your knowledge may be religious and may have cultural significance to you and or Mr. Manini who is not present today and also may be eligible for the National Register. Today you may make a recommendation for yourself and Uncle Joe.

James Alalem: I represent Uncle Joe Manini. The whole island of Kaua'i is religious practices and spiritual. From 1893, when America stole, this is my statement for the record, stole Hawai'i illegally, they destroyed most of it but its still does not destroy the sacredness and religious

practices in this area. Most of you guys know in here, because of the Waipouli Beach Resort was known to have burials in there, was dug up and some was not buried back in there, some people can say that they was, but I know they wasn't. Actually a boulder was broken that is in the museum today, they tried to put it back in pieces is what came out of Waipouli Beach Resort, and this is how we get treated. I think this meeting is also a crock because we're supposed to be speaking truly not being controlled like this; we are being controlled, for the record, we are being controlled how to speak and what we got to be speaking about. But for the record, this whole area of Kaua'i is sacred and there should not be nothing built on it. Thank you.

Mauna Kea Trask (Po`o): Thank you. Mr. McCormick, at this time do you have any information to present under 36 CFR 800.4(a) 3, regarding the religious and cultural significance in the area?

Ray McCormick: No.

Mauna Kea Trask (Po`o): Ms. Nishikawa?

Nancy Nishikawa: No.

Mauna Kea Trask (Po`o): Thank you. Auntie Liberta?

Liberta Albao: To me it's very significant because when Queen Debra Kapuli moved from Waimea to start her mission which was at the Coco Palms area, we talking about 1835, it was the entire area. All the way down to Waipouli where you have this path where you're coming and I think it's a very significant area, because of Malai heiau, all the way up to the mountains. When you mention about National Historic, now the only thing that comes to my mind is Coco Palms fish ponds which was already dedicated to the Historic Registers, through the regular process. I feel that we should be very, very careful in developing this area for the pathway because it's historically significant, the entire area, ahapuaa, that's why you spell *Wailua nui ahu ano*. I think I've had conversations with you, Mauna Kea, as a native Hawaiian I feel very emotional about this pathway and this area, all the way fronting Coco Palms. That's why we need to go through the process, but if there's anything I can do to share my mānā`o and my, our civic club, we have an outstanding historian which is Randy Wichman. Many times when we have questions, I turn to him for information. I just wanted to say that I've done some research for Kamehameha Schools, with the Land Division, and it is a noted area and for the record I want to say it is very significant. To me, if we don't do the right thing on this pathway, I don't think its right, but that's why we have the Burial Council to go through the process and they can see the overview, treating the kupuna iwi with respect.

Mauna Kea Trask (Po`o): Thank you Auntie, pursuant to your mānā`o today the record will reflect that according to your knowledge, both the entire east coast of Kaua'i including the Area of Potential Effect, which is the area which is being discussed and presented today, is religious and does have cultural significance and may be eligible for the National Register correct?

Liberta Albao: I don't think I have the knowledge to make that statement to support what you just said.

Mauna Kea Trask (Po`o): Thank you. Auntie Bev?

Beverly Muraoka: Beverly Muraoka for the record. I'd like to agree with those who are expressing the concerns and that it does have a religious impact, a cultural impact, and economic impact also. The phases we're talking about C & D, as far as I'm concerned need to be addressed when that portion comes forward. Thank you.

Mauna Kea Trask (Po`o): Thank you. Auntie Elsie?

Elsie Godby: I think the entire area has great cultural significance.

Mauna Kea Trask (Po`o): Thank you. Uncle?

Tom Godby: I believe that all of us have a moral responsibility to preserve these areas of cultural and religious significance.

Mauna Kea Trask (Po`o): And then Uncle, just for clarification of the record, your position today is that according to your knowledge this area does have religious and cultural significance and may be eligible for the National Registry?

Tom Godby: Well, I'm not very knowledgeable, but I believe the answer is yes.

Mauna Kea Trask (Po`o): Thank you. Mr. Blake?

Randy Blake: No comment.

Mauna Kea Trask (Po`o): Ms. Santos, on behalf of OHA or yourself, personally?

Kaliko Santos: Personally, I believe the whole Area of Potential Effect has cultural significance.

Mauna Kea Trask (Po`o): Thank you, as well as religious?

Kaliko Santos: I'm not sure about religious.

Mauna Kea Trask (Po`o): Thank you. Regarding eligibility for the National Registry?

Kaliko Santos: Yes.

Mauna Kea Trask (Po`o): Consultants? Thank you very much. So at this time...

Judy Dalton: Is it possible to change my remarks?

Mauna Kea Trask (Po`o): Ms. Dalton, it is possible, Po`o recognizes Judy Dalton.

Judy Dalton: I haven't heard someone speak about the moral choice.

Mauna Kea Trask (Po`o): So your statement will be changed to reflect that according to your knowledge, opinion and moral guidance, that this area may have religious and cultural significance and accordingly may be eligible for the National Register, correct?

Judy Dalton: Yes, I do.

Mauna Kea Trask (Po`o): Thank you very much. At this time, we've been going for about an hour, little over an hour, let's take a fifteen minute break, you guys can get some coffee and bathroom and we'll come back and continue, thank you very much.

10:24 am – BREAK –

10:51 am – START –

Mauna Kea Trask (Po`o): Everyone, let's start up again. Is everyone here? Thank you, we're going to start again. Currently we are on agenda item E at this time, thank you all for your mānā`o regarding this area. All the information that you provided today is extremely important and required under this process. At this time, based on the information gathered from all of you today, and paragraph A of 36 CFR 800.4, I would request under Auntie Cheryl's authority that the agency official, Ms. Otani, take the steps necessary to identify the historic properties within the Area of Potential Effect today. Both the information presented by Mr. Hammatt from Cultural Surveys, as well as the mānā`o of all the participants present. Under E-2, I will request that the agency official take the steps necessary to identify the historic properties as stated above and described in 36 CFR 800.4 (b) 1 & 2. We will be scheduling our next meeting, the date has not been decided yet, what I'm going to do is make a statement pursuant to the request of Auntie Cheryl. The last time we scheduled a meeting before we actually had any documentation, I want to avoid that this time. So what I'm going to do is request that Ms. Otani takes the following steps, prepare the necessary documentation and notify me upon its completion. At that time, what I will do is contact the Office of Hawaiian Affairs and have them take the necessary steps to notify all the participants today who are present as well as people who aren't present that are currently on the mailing list and provide the necessary documentation to them. Two weeks after that is done, we will schedule the necessary meeting and send out the requisite public notification for all of you. So for the next meeting, I will request that the agency official utilize the secretary standards and guidelines for evaluation and

apply the National Register criteria under 36 CFR part 63 to the properties identified within the Area of Potential Effect. Both that had been previously and have not been previously evaluated for the National Register eligibility. I'd request at the next meeting, the agency official determine whether or not the property shall be considered for eligibility for the National Register for Section 106 purposes. I'll follow this up with a letter to you, Ms. Otani. I'd request that pursuant to your determination regarding historical properties and significance, you take the necessary steps, either under 36 CFR 800.4 (d) 1 or 36 CFR part 800.4 (d) 2 and 800.5. So when that documentation is presented it will all be circulated to everyone. At the next meeting, you will have an opportunity to provide your mānā`o on the Federal Highways evaluation of significance and you'll also have an opportunity to comment on adverse effects. So at the next meeting you will all be able to state whether or not you believe that this project will have an adverse effect either to the specific historical properties identified and/or to the APE in general. And that will be the topic of meeting #4, thereafter a meeting #5 will have pursuant to meeting #4, I will have the agency official present the proposed mitigation measures taking in all of your mānā`o and ask you all to provide input on the proposed meeting measures at meeting 5. So we have the next two meetings are going to be very important. I'd ask you all please to attend and also spread the word, because the next two meetings are where it's going to get heavy. You will be presented with FHWA's determination on significance and National Register criteria and that will be your first opportunity for the record to specifically comment on adverse effect and what you believe will be adequate mitigation or you can make your record as far as you think there should be avoidance, whatever necessary minimization there is. Does everyone understand? So I'm going to take this time right now, this is not on the agenda but we have a little while before lunch is delivered today, free lunch for you guys, and I'd just like to give you all an opportunity to generally state, something you'd like to state for today that hasn't specifically come under an agenda item, but nonetheless I'd like to provide you an opportunity. So again starting from Ms. Otani, do you have anything?

Meesa Otani (FHWA): Again, I'd just like to thank everyone on behalf Federal Highways for taking the time out of your schedules to come and attend this meeting and providing all of your input in this process. Thank you.

Hal Hammatt: And likewise, many times when we do these kinds of studies we don't consider the human element here and I'm glad these meetings are able to add that element to our work. I appreciate all the comments you provided about this study, thank you.

Keith Yap: I'd just like to thank everybody for their mānā`o. I know that we cannot always satisfy everybody's concerns 100% but we are seeking a common solution to these issues and hopefully (inaudible).

Judy Dalton: Yes, thank you for the opportunity to bring up something that's not on the agenda; this will actually be on the agenda tomorrow at the County Council and it's the erosion at Wailua Beach and if someone wants some more details about it in the (inaudible), more information for just right now so you can be briefed, I just want to share some photos of the

recent erosion at Wailua Beach. The over-wash of the waves is evidence by the debris and it's also evident by the fact that it's scouring away parts of the embankment there. As everybody knows the highway was built on the sand dunes. So the bike path is planning to be built on the sand dunes. So here are pictures of the erosion, because of the erosion the County Council is looking at this again and will reconsider its placement. This is how it looked back in 2008, it's scouring and scouring the embankment, here there's hardly any place to walk. I saw some fisherman up here one evening, there were out on the beach a few days ago but now it's all gone, so they were fishing from a ledge (sharing pictures). The bike path itself, if it goes according to plans, when they are creating it, constructing it, it will compromise the integrity of the base of it. With the bike path being 18" deep it will act like a seawall as well. On O'ahu, one fourth of the beaches have disappeared as a result of seawalls. The idea is to retreat from the beach, move away from the beach, you don't build there in defiance of the ocean, thank you very much.

Ken Miyashiro: No comment.

James Alalem: There are couple things I'd like to say, one is that the world patent were lands given from King Kamehameha III to the people of Hawai'i and they are patented lands that are owned by these selected people and are passed down to descendants for their heirs forever and ever. Their lands, which cannot be sold or bought from Kamehameha III, and I got this archive record, Queen Lili'uokalani letter and I was reading it and it stated, and they talk about all these lands that Americans supposed to have taken from her but at the very bottom it says, whatever titles to which have always been disputed, the Hawaiian lands and which is legally legitimate in my name at this state. In other words, the land does not belong to the United States because it is stolen land from day one in 1893. So until we can actually see all these documents that Uncle Joe has from Kamehameha III, with that I leave it to your own studies or whatever you can find in the archives but its stated the lands was not given to the United States, it's still in her name and all the lands that were given by Kamehameha to all these people, which one of them is Uncle Joe, with that all I can say is that if you don't believe me you can look at it and research the archives it's all there, the truth is there. So America does not own this land, I don't know how people can build and do whatever they want and say that they have the deeds. With that, thank you.

Ray McCormick (SDOT): On behalf of the Hawai'i Department of Transportation I wanted to welcome you all here to our facility and thank you all for coming and thank you for the valuable information.

Nancy Nishikawa: No further comments.

Doug Haigh: I'd like to apologize for being late today, I had another commitment I had to go to but I would also express my gratitude for everybody's participation here in helping us move forward in this process.

Liberta Albao: Hi, I represent the civic club, we have 25 members and unfortunately no one could come here, most of them are working but I'm glad that we're going through this process; I appreciate it very much, thank you.

Beverly Muraoka: Beverly Muraoka for the record, I'm invited yes because I represent a Native Hawaiian organization and I'm a kumu hula. I just had one comment for Uncle James and that hopefully can help us understand how you feel about how we run the meetings, but I think for our dignity, we decided we as our kanaka lahui should have some means of organization in how we present our remarks because in the past meetings there were too many cross-fires which I thought kind of wasted peoples time and their efforts. With the Po`o, at this experiment as you might say, the way we're conducting meetings I think it's working out so Uncle we ask your forbearance in that when we do have a ninau or question, we do ask the Po`o and its his or her job to then direct it to that person or persons whom may best answer us. Even though we may not have that verbal exchange that we would like to on a real fast way, I think it's working out better for us. Just mahalo nui as everybody has expressed that the Federal government, who has the most money said we could speak up and talk about our feelings, our kino and we thank the Section 106 process to provide this opportunity to say how we feel and as our Po`o today, who is acting on behalf of Auntie Cheryl Lovell-Obatake who I believe is sick. Mauna Kea has his legal background which gives us direction and we appreciate the professionalism for which he does conduct these meetings and so while we are free as Americans to speak up you might say, we appreciate this process where each one of us can listen to one person at a time so if we do want to yell, we can yell but only one at a time. Mahalo nui for having this opportunity.

Elsie Godby: Thank you for having this meeting.

Tom Godby: Thank you, I agree with what the others have said, this is a very good procedure, people have a problem solving attitude. The way I look at it the primary responsibility we have is to preserve the natural resources and also I recall several times the County Council has had Dr. Skip Fletcher come over from the UH and speak about the effects of building along beaches and he said in every case it causes more disaster. If we don't learn something from history we're in big trouble and just look at that, Atlantic City and New York City recently as an example. Thank you.

Randy Blake: I want to thank everyone for allowing my presence here today, I've learned a lot, I appreciate all your views that were expressed and I also complement you on your conducting of the meeting, thank you.

Kaliko Santos: Kaliko Santos, OHA. I am appreciative of the process and this experiment as Auntie has said, is one that Native Hawaiians had decided on and I am appreciative of that. Just a comment on our current project, I am in agreement with the proposed mitigation that the north part goes a little bit mauka so that we can avoid some of those burials and cultural layers.

Herb Lee (Kimura International): Just wanted to say, Mahalo for the Aloha that was here this morning, I think it's really great that we can make Aloha as the focus in this process, thank you.

Glenn Kimura (Kimura International): I'd like to thank everybody for participating in this process, we've been working at it, we did a lot of work on it, hope everybody understands what we've been trying to do, thank you all.

Mauna Kea Trask (Po`o): Thank you all, on behalf of Auntie Cheryl, I'd just like to thank you all for coming today, taking the time out of your busy schedules. Again the Native Hawaiian Caucus and Protocol Committee recognize that the Native Hawaiians themselves and the Kanaka Lahui that Auntie talked about is not recognized. I know none of you are paid to be here today, you're here on your own accord, you're taking time off your schedules just because of your Aloha, you're mānā`o, so we definitely appreciate that and thank you for that. Again, I would like to ask that while we're pending the next meeting, meeting #4, and the results to be provided by FHWA and the other governmental stakeholders; I just ask that you send your aloha to Auntie Cheryl, we all want to see her back sitting here conducting the meeting. She possess the mānā and the authority to preside over these meetings and I just sincerely hope as I know you all do hope she gets better and we see her next time. And with that I'd like to pani right now, say a closing pule and invite you all to enjoy lunch and hopefully leave here with something positive and looking forward to working with you at the next meeting. If we can all stand at this time.

PULE

END MEETING – 11:12 am

Native Hawaiian Caucus

Mauna Kea Trask: We tried to hold a Native Hawaiian Caucus meeting last week, it was postponed and the reason why is to select another alakai to replace Auntie Sharon who is no longer with us. So I would like to ask today would you all be amenable to choosing our alakai at this time.

Beverly Muraoka: With the pleasure of us waiting for more NHO's I'm not sure.

Mauna Kea Trask: Maybe what we'll do, we'll do it at the next meeting and that will be a notice on the agenda. We'll have a specific agenda item to select the alakai, but please all of you let everyone know that, we do need someone in second to command to guide this process.

Liberta Albao: Do we have everyone who's willing to serve? That's my first question.

Mauna Kea Trask: It was done according to the old way which was pretty much just appointment. At this point, Auntie Bev was nominated in her absence. Kaliko and I showed up first and Auntie Nani came in last, so she was going to get out voted, but just keep an open mind. We request that you think about who does have that mānā, who possess the requisite capabilities.

Liberta Albao: I want to bring this up, we also need to have a Po`o for our Ahamoku, and was Sharon. So now we go into that process too. We need somebody out there to serve.

Mauna Kea Trask: So just keep those things in mind, we need leaders in the community again, you guys have been fighting so long it's time for you to be recognized, with that, let's all eat. Thank you.

Appendix F

Public Meeting 4, February 20, 2013

- Legal notice for Section 106 Review and First Public Meeting, published in *The Garden Island*, February 7, 2013
- Agenda
- Handout: Historic and Cultural Sites Matrix with Proposed Effects (Revised Draft)
- Attendance Sheet
- Minutes of Meeting

THE GARDEN ISLAND

NANCY NISHIKAWA
KIMURA INTERNATIONAL
1600 KAPIOLANI BLVD STE 1610
HONOLULU HI 96814

REFERENCE: 111253
752356 FOURTH PUBLIC MEETIN

Sherri Cole, being duly sworn, deposes and says, that she is an employee of "The Garden Island," a newspaper published in Lihue, County of Kauai, State of Hawaii; that the NOTICE in the above entitled matter of which the annexed is a true and correct copy, was published 1 time(s) in "The Garden Island" aforesaid and that this affiant is not a party to or in any way interested in the above entitled matter.

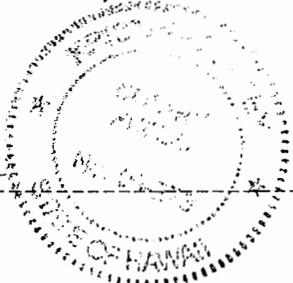
Sherri Cole
Subscribed and sworn to me this 17th day of February, 2013 9C
KK NP

Notary Public, Fifth Judicial Circuit
State of Hawaii
My Commission Expires: 5/26/2015

Document Description: Affidavit of Publication
No. of pages: 1 Document Date: 2/7/13

PUBLISHED ON: 02/07/2013

FILED ON: 02/07/13 *SC*



**Public Notice for Fourth Public Meeting
Section 106 Review of
the proposed Lydgate Park-Kapa'a Bike/Pedestrian Path,
Phases C&D**

The Kaua'i Department of Public Works (DPW) is issuing this public notice for the fourth meeting under 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. This meeting is open to Native Hawaiian Organizations and members of the public.

Phases C & D of the proposed bike/pedestrian path is a largely coastal alignment from Papalooa Road to Uhelekawawa Canal in Waipouli. This section will connect portions of the path that are already built or currently under construction.

The meeting will be held on Wednesday, February 20, 2013 at 9:00 AM in the State Department of Transportation-Highways, Conference Room at 1720 Haleukana Street in Puhi.

Anyone with special needs requiring an American Sign Language interpreter or an auxiliary aid to participate in any of the meetings should contact the Department of Public Works at Ph. 241-4849 at least five days prior to the meeting.

For further information, please contact Nancy Nishikawa at Kimura International, Inc. Ph. (808) 944-8848

(February 7, 2013)

Lydgate Park-Kapa‘a Bike/Pedestrian Path, Phases C&D
Meeting for Section 106 Consultation, National Historic Preservation Act
Wednesday, February 20, 2013, 9:00 AM
State Department of Transportation-Highways Conference Room
1720 Haleukana Street, Puhi

AGENDA

Assessment of Adverse Effects

- I. **Opening Pule**
- II. **Overview of Protocol Committee decided process/ laying of ground rules**
- III. **Mahiki (The “setting to rights” of each successive problem that becomes apparent during the course of ho‘oponopono, even though this might make a series of ho‘oponopono’s necessary.)**
 - A. Assessment of Adverse Effects (36 CFR § 800.5)**
 1. Po‘o directs agency official to apply criteria of adverse effect per (36 CFR § 800.5(a)) and present results to NHOs and other interested parties.
 - i. Criteria of adverse effect (36 CFR § 800.5(a)(1)).
 - ii. Examples of adverse effects (36 CFR § 800.5(a)(2))
 - iii. Phased application of criteria (36 CFR § 800.5(a)(3))
 2. Finding of no adverse effect, Po‘o requests agency official take steps required in (36 CFR § 800.5(b)).
 3. If the agency official proposes a finding of no adverse effect, Po‘o requests agency official to take action of further consulting party review pursuant to (36 CFR § 800.5(c)).
 4. Po‘o shall request that agency official take steps consistent with “Results of assessment section whether or not adverse effect is found” (36 CFR § 800.5(d)).
 - B. Resolution of adverse effects (36 CFR § 800.6)**
 1. Continue Consultation. (36 CFR § 800.6(a))
 - i. Po‘o shall request agency official to present proposed mitigation measures.

- ii. Po'o asks NHOs and other interested parties to provide input on proposed mitigation measures and if they have any mitigation measures to propose.
- 2. Resolve adverse effects (36 CFR § 800.6 (b)).
 - i. Po'o shall request that agency official to take the appropriate steps to resolve any and all adverse effects either with or without the Advisory Council on Historic Preservation as appropriate and required pursuant to (36 CFR § 800.6 (b)(1)&(2)).

IV. Pani

**Lydgate Park-Kapaa Bike/Pedestrian Path
Phases C&D
REVISED DRAFT
Historic and Cultural Sites**

	Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/ National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
1	SIHP 50-30-08-108 Kukui Heiau	Navigational heiau with at least two stone lamps that guided canoes on the ocean	Associated with historic and legendary events and figures	Good condition, well maintained	South Olohena Ahupua'a, Alakukui Point, located about 300 feet southwest of the project area	Placed on Hawaii Register in 1986 and the National Register in 1987	Already listed in NR and HR	To be determined by consultation Proposed determination: Path alignment is approx. 300 feet away from the heiau and will guide path users to Papaloa Road; therefore, no adverse effect is anticipated
2	SIHP 50-30-08-791 Cultural layer and burials	Cultural layer with relatively high concentration of marine midden suggestive of substantial fishing activity; radiocarbon dating to A.D. 1275 to 1645; two burials	Valued by living community for their cultural attachment to <i>īwi kūpuna</i> and historically and culturally significant	Continuous. The cultural layer mainly extant in makai or eastern portion of property (Perzinski et al. 2001:36)	South Olohena Ahupua'a, northeast coast; cultural layer extends into the project area	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Because this historic site is located within developed hotel property, the path alignment is expected to have a limited potential for adverse effect. Mitigation to be included in MOA.

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/ National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
3	SIHP 50-30-08-886 Cultural layer and burials	Cultural layer with hearth remnant, 'auwai, and two sets of previously disturbed disarticulated human remains (SIHP 50-30-08-886A)	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Cultural layer intact, continuous. Burial condition unknown	Waipouli Ahupua'a, along Kuhio Highway near Coconut Market Place; cultural layer is located within the project area	D for NR D and E for HR	Yes To be determined by consultation Proposed determination: Potential adverse effect if Kuhio Hwy alignment option is selected. Mitigation to be included in MOA.
4	SIHP 50-30-08-891 WWII pillbox	Concrete WWII-era military structure, likely a military pillbox or machine gun emplacement	Associated with historic events	Unknown	North Olohena Ahupua'a, southeast corner of Lot 16 on the coast, located within the project area	D for NR D for HR	Yes To be determined by consultation Proposed determination: Pillbox to be retained as a historic feature along the path alignment. Opportunity for historic marker.
5	SIHP 50-30-08-1800 Cultural layer and burials	Two cultural layers in the shoreline sand berm; an upper deposit extends 25-80 feet inland from the shore; a lower deposit extends 40-100 feet inland from the shore; three burials uncovered and left in place; probably	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Cultural layer continuous and intact	North Olohena Ahupua'a, northeast coast, Coconut Plantation; cultural layer extends into the project area	D for NR D and E for HR	Yes To be determined by consultation Proposed determination: Potential adverse effect on subsurface cultural layer. Mitigation to be included in MOA.

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/ National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
6	<p>occupied about A.D. 1500; the extensive nature of deposits and relative lack of artifacts suggests that the area was used for recreation or social gatherings</p> <p>Two cultural layers and five burials are located in the shoreline sand berm; radiocarbon dated to approx. A.D. 1500; numerous indigenous artifacts suggest a development sequence from a limited workshop area to a site of permanent occupation</p>	<p>Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant</p>	<p>Cultural layer continuous and intact. Condition of burials is unknown</p>	<p>Waipouli Ahupua'a, Coconut Plantation, 200 meters makai of Kuhio Highway; cultural layer extends into the project area</p>	D for NR D and E for HR	Yes	<p>To be determined by consultation Proposed determination: Potential adverse effect on subsurface cultural layer. Alignment avoids known burial sites. Mitigation to be included in MOA.</p>

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
7	Cultural layer with numerous features. Data suggest this site was a moderate permanent settlement that may have been a staging area for fishing events and associated feasting and religious activities, a location for canoe construction, repair, and storage, a location for manufacture of shell tools and slingstone, and special place for tattooing	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Cultural layer continuous and intact. Condition of burials is unknown	Waipouli Ahupua'a, from coast to Kuhio Highway, located north of Uhelekawawa Canal (Waipouli Beach Resort)	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Historic site is located within private property (Waipouli Beach Resort) and separated from the path alignment by Uhelekawawa Canal; therefore, no adverse effect is anticipated.
8	Burial 1, SIHP To be determined	Valued by living community for their cultural ties to <i>iwi kāpuna</i> . Historically and culturally significant	Well-maintained, intact	Within County beach access, near Mokihana of Kauai tennis court	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Given the existing easement, adverse effect is unavoidable. Mitigation to be included in MOA.

Site Name and/or SIHP Number	Brief Description	Cultural Values	Integrity/Condition	Location/Distance from Project Area	Valuation of Significance/National Register of Historic Places (NR) or Hawaii Register of Historic Places (HR) Criteria*	Eligible or Potentially Eligible for Listing in NR or HR	Adverse Effect to: (1) location (2) design (3) setting (4) materials (5) workmanship (6) feeling (7) association
9	Burial 2, SIHP to be determined	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Partially disturbed	Within landscaped area off Papaloa Road and south of Coconut Market Place	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Path alignment will not directly affect this burial site.
10	SIHP # 50-30-08-3938, cultural layer	Valued by living community and historically and culturally significant	Unknown	Beach portion in Waipouli and North Olohena Ahupua'a	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Two trenches were dug in the vicinity of this historic site during the Archaeological Inventory Survey and found no cultural material. Limited potential for adverse effect.
11	SIHP # 50-30-08-3939, two Hawaiian burials	Valued by living community for their cultural attachment to <i>iwi kāpuna</i> and historically and culturally significant	Unknown	Beach portion in Waipouli and North Olohena Ahupua'a	D for NR D and E for HR	Yes	To be determined by consultation Proposed determination: Path alignment will not directly affect this burial site.

National Register Significance Criteria:

- A that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B that are associated with the lives of persons significant in our past; or
- C that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D that have yielded, or may be likely to yield, information important in prehistory or history (from <http://www.achp.gov/nrcriteria.html>).

Hawaii Register Significance Criteria:

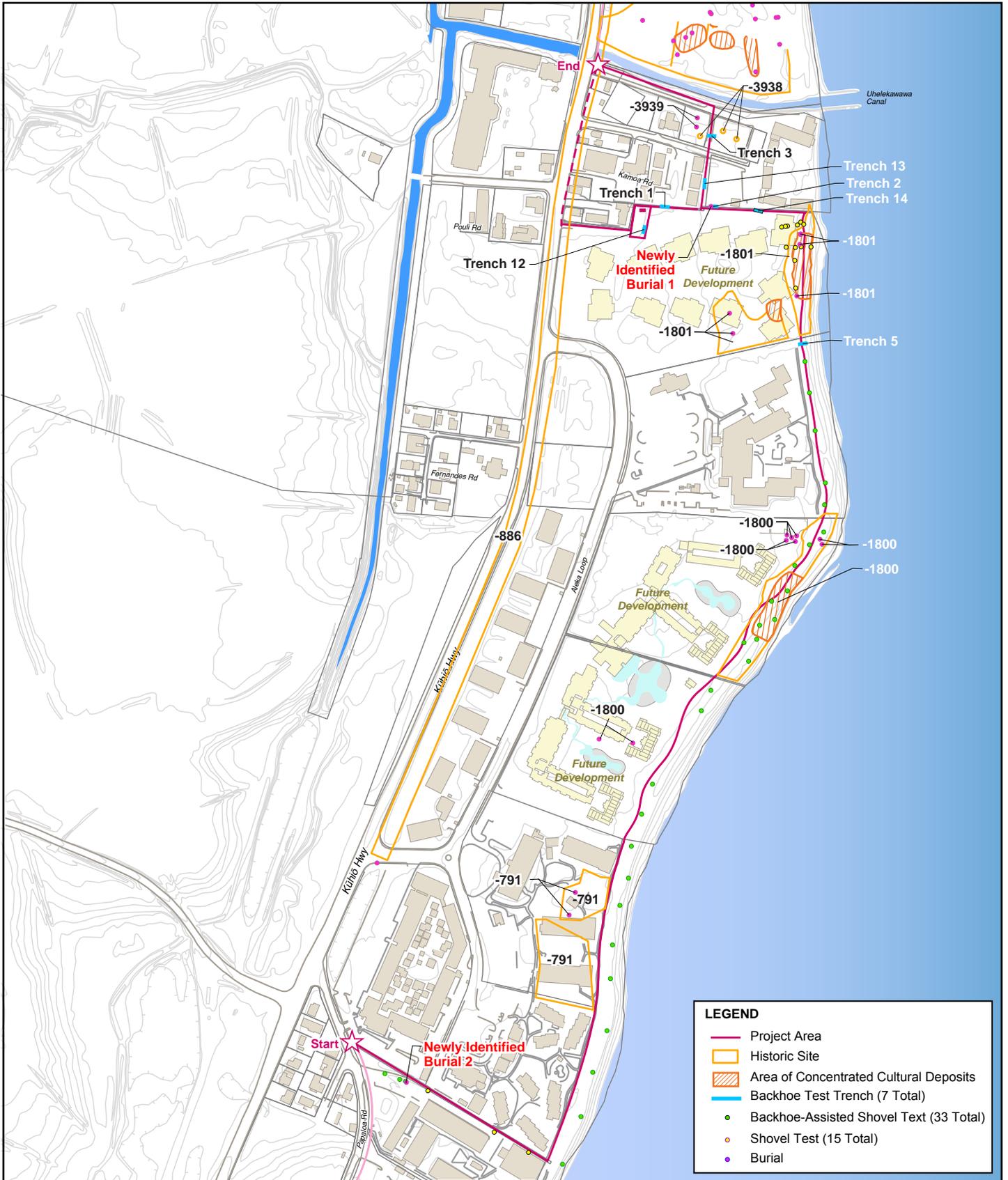
- A reflects major trends or events in the history of the state or nation;
- B is associated with the lives of persons significant in our past;
- C is an excellent example of a site type/work of a master;
- D That have yielded, or may be likely to yield, information important in prehistory or history;
- E has traditional cultural significance to an ethnic group, includes religious structures and/or burials and traditional cultural properties.

(for more information, see http://www.state.hi.us/dlnr/hpd/hphar13_8_198.htm)

Lydgate Park - Kapa'a Bike/Pedestrian Path

Draft Environmental Assessment

031004/032 020713 r1



Future resort development based on preliminary plans, subject to change.

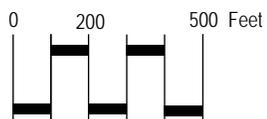


Figure _
HISTORIC PROPERTIES

Lydgate Park - Kapa'a Bike/Pedestrian Path
Waipouli Connection

Attendance Sheet

Meeting: Phases C & D, Lydgate-Kapa'a Bike/Pedestrian Path, Sec 106 Meeting 4

Date/Time: Wednesday, February 20, 2013, 9:00 AM

Location: Hawaii Department of Transportation Conference Room

Name	Contact Information—CONFIDENTIAL, Not for Public Release	
	Mailing Address	E-mail Address
Keith Yap		
Gerald Ika		
D. Kaliko Santos		
HERB LEE, JR.		
^{Patrick Q. DKHCC} Leah Perlin		
Ray McCombs		
Mauna Kea Trust		
James Alam (refused)		
Rayne Regush		
JUDY DALTON		
Pua Nani Rogers		
K. Hannah W. R. Reeves		
Missy Kamai		
Cheryl Lovell-Obatake (by telephone)		
Doug Haigh		
Glenn Kimura		

Nancy Nishikawa

Meeting called to order, 9:10am – February 20th, 2013.

Mauna Kea Trask (Po`o): Everyone, if I could ask you to stand please, we'll start with the pule. Pule. Aloha everybody, for the record my name is Mauna Kea Trask. I'm going to conduct this meeting today on behalf of and per the request of Auntie Cheryl Lovell-Obatake, who is at home; she is today present via speaker phone, so thank you for technology. Pursuant to Auntie Cheryl's authority, I will be acting as the Po`o for today's Section 106 Ho`oponopono based Consultation Process. Now it's been a long time since our last meeting, I believe the last meeting convened was in November of 2012, November 27th I believe. I'm just going to go through an overview of where we've been, to re-orient all our past participants who are here today and also to provide a context for those who are joining us for the first time. Our first 106 Meeting was on August 9th, and at that meeting this Section 106 Ho`oponopono Consultation Process was introduced to the Native Hawaiian community and the public at large. This process was formulated pursuant to the work of the Native Hawaiian Protocol Committee and Auntie Cheryl's findings as Po`o. This culture-based 106 process was developed to make federal 106 consultations more accessible to the Native Hawaiian community and thus makes the process more effective. After the process was introduced, the agency official, Mr. Nickelson of the Federal Highways Administration and his consultants described the current undertaking which is today's project, the Lydgate Park to Kapa'a Bike Pedestrian Path Phases C & D. Again, today's meeting is in respect to Phase C & D, not any other phase of this project. The participants in this process were then identified and a site visit was conducted. The second meeting was held August 23rd, 2012, at that time the agency official through their consultants, Kimura International and Cultural Surveys Hawai'i, first they determined the scope of the identification efforts and identified the historic properties within the Area of Potential Effect, also referred to by the acronym 'APE'. During that meeting the agency official presented a review of existing information on historic properties within the APE including any data concerning possible historic properties not yet identified. If I could orient you to the map presented by Kimura International, and on that map are site numbers, and those numbers identify the known historical sites in the area. After the information was presented, the agency official presented their position regarding the proposed significance of each property. After the agency official finished his presentation, all of the participants including Native Hawaiian organizations and individuals, kupuna and people also from the preservation community, presented their mānā`o regarding any and all properties within the APE, which according to their knowledge may be religious and may have cultural significance to them and may also be eligible for the National Register. It was noted for the record that if anyone was reluctant to divulge specific information regarding the location, nature and activities associated with such sites they would be able to speak with our consultants in private, and that information was made known. Consultation was had regarding the historical significance and I believe the record does accurately reflect that everybody consulted stated that it was their position that all those sites were historically significant and the area at large was historically significant itself. Then we moved on to the third meeting which occurred again November 27th, 2012; the Section 106

process was continued and Mr. Hammatt from Cultural Surveys Hawai'i presented the information contained in the Archeological Inventory Survey. At that time, consultation was lead and information was gathered from any and all NHO's present to assist in identifying properties which may be of religious and cultural significance and also may be eligible for National Register. After the information was presented at meeting 2, at meeting 3 everyone consulted and provided their mānā`o regarding historical significance and at that meeting everything was deemed to be historically significant. Today, what we're going to do is go over and breach into the Assessment of Adverse Effects. Now this really is the most, one of the most important steps that we're going to do today, to seek your information, your mānā`o regarding whether or not this project will have an adverse effect according to your own evaluation, whether it's on yours personally, yours on behalf of your kupuna and/or any organizations you may represent. So, that's what we are going to get into today, the Assessment of Adverse Effects. I'd like to remind you just as far as the process goes, this process will be a round-table discussion, with myself on behalf of the Po`o asking all the questions of both NHO's, individuals and government agencies. If participants have questions for each other, they shall ask me to ask the questions to the others. No one shall speak unless allowed to by myself on behalf of the Po`o. During today's process there will be certain definite legal questions that must be asked by myself on behalf of the Po`o per Section 106 and 36 CFR § 800 which again is the federal implementation statute of Section 106 of the National Historic Preservation Act. However, further questions may be asked by myself in order to better understand the answers given if needed either by myself on behalf of the Po`o or the participants and government agencies through myself on behalf of the Po`o, this way the procedure will be orderly. Pursuant to the authority of the Po`o as described in this process, I will have the right to act according to both Hawaiian cultural principles as well as rules of parliamentary procedure, which in fact are very similar. This will ensure again maintenance of order and decorum. Everyone will have an opportunity to speak today and provide their mānā`o for the record and the reason why we need orderly procedure is to ensure that. If a person or party wishes to answer questions in private and/or make disclosures in private, this request can be accommodated. We do have kapu during this process. All participants shall refrain from the following: speaking, yelling, shouting and arguing with each other and/or myself on behalf of the Po`o. Speaking, yelling, shouting and arguing with each other is now declared kapu. All participants must respect and listen to myself on behalf of the Po`o. The Po`o is now declared kapu. These consultation meetings will be open to all interested parties and can cover more than just Native Hawaiian issues. And I'd just like to close briefly, in preparing for today's meeting, I'd just like to share that I've been doing a lot of reading, Native Hawaiian cultural books and treatises mainly by David Malo, Samuel Kamakau, Mary Kawena Pukui. But mostly just looking at a lot of the books I have and one of the books that I looked at recently was entitled, "Ho`i Ho`i Hou", a short book in memoriam of George Helm and Kimo Mitchell, I don't know if any of you are familiar with it, it's a very good book and if you are, please do read it. It just discusses the important parts, in life, are varied to essentially martyrs in the Native Hawaiian cause. And one of the interesting things that was said in that book, I'm just going to site it for the record, it comes from page 14 of Ho`i Ho`i Hou and it states, after it describes George Helm being raised and when he used to perform with and for the Lakes in O'ahu, and Kahohano Lake taught him not only to learn the

chants and the songs but also to delve into them and find out their meaning, the kauna and their ike, etc. And later on George Helm, this is from the book; *George is later known for his meticulousness and for his thorough probing into all aspects of the Hawaiian experience.* Quote: "Do your homework", George would say repeatedly to his friends and acquaintances. Implicit in his way of stating this, was that he had done his. I think that is a very important statement because this is very important work that we're doing, all of us. I think everyone in this room can agree that iwi is one of the most important things you can do, as far as your kuleana as a Native Hawaiian. It does entail a lot of reading and it entails a lot of homework, and I think that it's appropriate that not only agency officials but members of the public, members of the organizations do their homework so that these meetings can be productive. I think that it was very prophetic that George Helm would say that because in order to do our jobs today and in the future, we're going to have to do a lot of homework, with that, I think we can begin today. Everyone have a meeting agenda 4 for today's meeting? And everyone has their matrix that was provided too, if you can look at agenda item 3a; currently we are in the Assessment of Adverse Effects under 36 CFR § 800.5. At this stage in the process, according to the CFR's, in consultation with the State Historic Preservation Officer and any Native Hawaiian organization that attaches religious and cultural significance to identify historic properties, the agency official shall apply the criteria of Adverse Effect to historic properties within the Area of Potential Effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public. Today, Mr. McCormick is here on behalf of the FHWA, Federal Highways, and he will be the person that is charged with complying with 800.5(a). Are you okay with that Mr. McCormick?

Ray McCormick: Yes.

Mauna Kea Trask (Po`o): Thank you. For everyone's edification today, as far as under 800.5(a) 1, Criteria of Adverse Effects: an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register, in the manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of a historic property including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse Effects may also include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

800.5(a) 2, Examples of Adverse Effects: adverse effects on historic properties include but are not limited to physical destruction of or damage to all or part of the property, alteration of a property including restoration, rehabilitation, repair maintenance, stabilization, hazardous material remediation and provision of handicap access that is not consistent with the secretary standards for treatment of historic properties under 36 CFR § 68 and the applicable guidelines. Removal of the property from the location, change in character of the property's use or physical features, introduction of visual atmospheric or audible elements that diminish the integrity of the property's significant historic features, neglect of a property which causes its

deterioration, transfer lease or sale of property out of federal ownership or control. For the record, these properties aren't within federal ownership or control. That's where we are today.

Judy Dalton: Do we have a copy of this anywhere, where is it available?

Mauna Kea Trask (Po`o): This is available, if you type in 36 CFR § 800, it's on the Federal Register, it will come right up. The citations are noted on the agenda, so if any of you have any questions regarding the specific cites, it was decided that the actual quotes, the cites from the CFR will be used so you can follow-up. If you look at items 2, 3, & 4; these were taken straight from the CFR themselves and they really deal with contingencies. So example, if you look at 2: Finding of no adverse effect, currently we're not at that stage, but if there is a finding of no adverse effect, whether this process or any other process, that is the steps that will be taken. Again, 3: If the agency official proposes a finding of no adverse effect, no such proposal has been made at this time, we are going to go through consultation first, but this is the verbatim tracking of the statute itself. The Po`o shall request the agency official; this is 4, take steps consistent with "results assessment section whether or not adverse effect is found". So at this time I'd like to get right into it, you all have been told what adverse effects are including again anything that would change the site's feeling or association, really in any manner. So if you look at this matrix that's provided to you, this is the second of the two documents, on the back is a map that you can look at, eleven historical sites have been identified. At our past meeting, meeting #3, it's my recollection of the record that no one provided any more sites that was known to them. It's generally understood that those are the known sites that people are familiar with, and of course encapsulating everything though, everyone felt that the area itself, the entire area was important. So, there's really an overlay of, if there are no other specific sites known or identified at this point, nonetheless the entire leg of the proposed Phase C & D would itself be recognized as historically significant. So that would mean then if this whole place is a tribute to historical significance, anything that would effect, as described in 800.5, the area maybe considered an adverse effect by the participants today. I just want you all to be clear about that. Included in this area, well the area does not include Kukui Heiau, but Kukui Heiau is close to the southern portion of Phase C & D, close enough that it was deemed to be included, correct, Mr. Kimura?

Glenn Kimura: (inaudible).

Mauna Kea Trask (Po`o): There's also cultural layers and burials, a World War II pill box, but the majority of the sites are cultural layers and Hawaiian burials that have been previously identified in the record. So what I would like to do at this time is go around the room, consult with everybody, Auntie Reeves has just joined us, welcome from Big Island. I'll start with my left, and if any of the agency officials, you'll be asked too for the record, just for completeness, but if any agency official would like, doesn't feel comfortable responding or has nothing to add, just indicate so for the record. Starting from my left, can you please state your name for the record, who you represent and what your position is regarding whether or not this project will have an adverse effect on any specific historic sites or the site in general, the APE in general.

Kaliko Santos: My name is Kaliko Santos and I represent the Office of Hawaiian Affairs.

Mauna Kea Trask (Po`o): What's your feeling on adverse effect?

Kaliko Santos: I agree that the APE will be an adverse effect.

Mauna Kea Trask (Po`o): The project will have an adverse effect?

Kaliko Santos: Yes.

Puanani Rogers: Puanani Rogers, Hookipa Network Kaua'i. I would like to have a discussion on the adverse effects cause there are some, let's talk about it; we can really make up our minds, whether it will affect us spiritually or culturally.

Mauna Kea Trask (Po`o): At this time Auntie Puanani, I'd like you to know that we are here today to hear from you, to be told whether or not there's adverse effect. Even if in your opinion there is and no one else agrees with you, you are entitled to say so, whether or not there is discussion, what you think. So at this time, if I may, I'd like to request that you state your opinion on it, irrespective of anyone's.

Puanani Rogers: Okay, I'll say yes and I'll give you my reason, there are cultural sites there. There are burials and whether it's a hundred feet away or two hundred feet away from the burials, it still affects the burial. It's the spiritual emanation, our thoughts of what spirituality is, does not mean it's just contained in that area, it's also wide. Landscaping is a spiritual thing. You understand, so that's why.

Mauna Kea Trask (Po`o): Thank you very much, next, for the record.

Herb Lee: Herb Lee, Lee Communications, sub-consultant to Kimura International, I don't have anything to add at this time.

Glenn Kimura: Glenn Kimura, Kimura International, we're the planning consultants, I have no comment.

Ray McCormick: Ray McCormick, Hawai'i Department of Transportation, Kaua'i District Engineer, I have no comments at this time.

Hannah Reeves: I agree with you, in preserving the old Hawai'i, from the mountains to the sea. I would like to say my opinion, #1: there are many people here that need the ramp. They need the ramp for many reasons. For me, I am for protect old Hawai'i, from the mountain to the sea. I understand what she saying. One day, in the future we will have to make a plan, even if so many feet going into the grave out and right around. One day we will have to think that the

people that living today and the future, we need to come up with a plan to preserve old Hawai'i the same time open up the ramp for the future. There are many kupunas, much older than I am, but I would like to share with you, my job in Hawai'i the same thing like you have. Like many of you, we sit down and talk, we share our plan and we come up with a plan. Do you have a plan here?

Mauna Kea Trask (Po`o): Currently, we are consulting you in order to formulate that plan and prior to doing that we need to know what adverse effects will be from you and then what if any mitigation measures you would require, if this path is to go through.

Hannah Reeves: Okay, can I say my point of view?

Mauna Kea Trask (Po`o): Please.

Hannah Reeves: It would benefit our people in the future, I hope you guys understand that, because I have the same situation in Kona on the 106. Many things are going on today and I want to say on this round-table and every table that I sit, they are supposed to have a plan that connects to all the sacred sites, the iwi and everything on a big map, the archeologist need to say how the measurement (inaudible) go out, okay. His job is to set-up a plan so everybody look at the plan and see how much we can take that to benefit everyone in the future, okay. What we do, we come up with a plan and we sit and we put it on the table, everybody from each person, put it into a bowl and we draw one plan to benefit everybody. Now, kupuna, kalamai, but mine is to fix to benefit everybody in the island, every island that I travel, I am on the 106 too. My job, and this is something that we should all understand that, my job is if there is something that blocking the ramp, we not going to destroy anything, we going to make a plan so we can be able to have the ramp but move some of the iwi on the same ahapuaa with everybody else and move on. That's what we do in Kona, I carry the iwi, everywhere that I go I carry the iwi for all the different Hawaiian people, all who connected to the area. For me, I don't even think like that (inaudible), so we don't fight each other, I just want to tell you folks that's what I do, to preserve them, the ones that blocking the way, move them with the others. You understand what I talking about?

Puanani Rogers: Auntie, we on the same page, I don't know why you think I'm not agreeing with you.

Hannah Reeves: I carry and I move the iwi on the side, with our iwi that still on the land and open up the way for everybody to use. It will benefit everybody, and I'm talking about me, from the mountain to the sea, I carry the iwi and everything into the water. I don't want to make fight or anything, but I want to show you what we do, so I carry the iwi, in Kona, everywhere that I go, so I am for preserve old Hawai'i, I not destroying them, I moving them on the side. Where Uncle stay?

Mauna Kea Trask (Po`o): He's not here today Auntie, but I think you raised some very good points, but I'd just like to note that currently, and for the record, when you addressing, when you refer to "she", it's Auntie Nani Rogers, and I just want the record to reflect that so it's clear. However, in order to avoid arguments between people, even friendly discussions, we have to refrain from them, and I please ask that in respect to the process that when you speak, you speak to me, because I'm sitting here on behalf of Auntie Cheryl who is the Po`o today. I really appreciate your mānā`o and if I can I'd like to stop you now, I think you're getting into mitigation which is the proposed mitigation measures which is we're going to talk about today. I just want to be clear, it is your opinion that even though the path or the ramp as you described it, will be there and there's ways to mitigate its effect, nonetheless, you do think that it will have an adverse effect on the area and on the bones, correct?

Hannah Reeves: Well, I want to let you know that Uncle is my family, we direct from Kamehameha I and the kahuna line, and I just want to say that we not destroying, either mauka or makai, they can move them on the side and make ceremony and everything before we move them, okay, if everybody agree. If you have a better idea, there's one place that everybody never come to an agreement, okay, no joking Auntie, we are going to make a ramp over the iwi because nobody agreed to move them in Kona. I want you to know that there is two ways we can make a ramp over them and don't touch them or you can move them. It's not destroying, its preserving old Hawai'i, make it easier for everybody to come in agreement, we must come in agreement to fix the problem, how many times I come fly over here and I bet the 106 getting tired of me taking their money. I just want to tell you I hope that we agree, okay.

Mauna Kea Trask (Po`o): Thank you Auntie. I'd just like to note for the record everybody, Auntie Hannah Reeves brings up some very important issues regarding the treatment of na iwi kupuna that can be found both in this area, any area. But just for clarity, the Federal Highways, State DOT, County of Kaua'i, Kimura International, Cultural Surveys, none of these organizations have the authority to make that call. The power under HRS 6E-43.5(f), the Burial Council specifically, the Kaua'i-Ni'ihau Island Burial Council shall 1) determine the preservation and relocation of previously identified Native Hawaiian burial sites, assist the DLNR in inventory and identification of Native Hawaiian burial sites, make recommendations regarding the appropriate treatment, management and protection of Native Hawaiian burial sites, etc. So all these mitigation statements that you may have, please put them on the record, this is your opportunity, however you have to understand, we don't make that call, it would be Mr. Yap who I believe is here today, both personally and on behalf of the Burial Council. Just so you know as far as jurisdiction and venue, please let it be known today but understand we are not going to be making those calls because it is not within our legal rights. We'll move on now, next person please for the record, your name and the organization you may represent.

Judy Dalton: Judy Dalton, Sierra Club, what you had mention adverse effects that would alter any of the properties of the area which for me would be physical would be my focus. I am regretful that this process wasn't used to consider the physical alteration of Wailua Beach and the effects that you mentioned that could happen later on time, we see the possibility because

the compromising and undermining of the land where the bike path is being constructed right now is very fragile. Because it undermines the integrity that there's a very real possibility in the future that it will compromise not only the bike path but the existence of the highway and that we can see clearly that a seawall could very well be happening to preserve both path and the highway which would mean the destruction of the beach. It would be a total loss of one of the most significant culturally and historically areas throughout all of Hawai'i. Very regretful and sad to see that this process wasn't carried out more carefully for the 106 process. Residents of that area, direct descendants of Wailua area were not consulted during the 106 process of Wailua Beach. As a result we see the possibility of losing that beach. And yes I do see adverse effects to answer your question.

Mauna Kea Trask (Po`o): Definitely, and that's not only potential shoreline hardening and erosion issues, but just environment in general in that area, is that correct?

Judy Dalton: That's correct.

Mauna Kea Trask (Po`o): Thank you very much, next please.

Rayne Regush: Good Morning, my name is Rayne Regush, I'm also with the Sierra Club, Kaua'i Group. I'm also in agreement, there will be an adverse effect in this area and diminish the integrity of this coastline. The coastal corridor is both environmentally sensitive and culturally sensitive; there are water resources there, traditional cultural practices along the coastline. Cultural Surveys Hawai'i noted that Waipouli was also known as the travel district, so with regards to traditional access and access in this time, we'd look to see that the bike path is unencumbered, and that the bike path should be as mauka as possible so that the width of the beach remains as natural as possible, as a natural environment. Looking at the historic properties map and I'm most concerned with the undeveloped portion where it shows for future development. The historic properties map, where it shows the shovel tests and the trenching tests, appear to be on the makai side of the path delineation. But when we look at other identified sites, I'm wondering whether the likelihood of finds would be on the mauka side of that path, so that would also increase our overall knowledge of the historic significance of that corridor, but we don't have that information. One last reference, historic reference that might, maybe it doesn't raise the level of the cultural sites listed on this inventory, but I'd like to see it be considered that the stand of ironwoods that do go through these two parcels that are designated for future development, that being fifty years old or more, that they should also be considered perhaps to be added to the list and reference that Cultural Surveys Hawai'i notes, and they quote Clark 1990 about the long rows of tall ironwood trees where the shoreline pedestrian trail. I hope Hal Hammatt can clarify and I think he's been on the site visit, that pedestrian trail weaves through the historic ironwoods, so that's an additional historic resource that can be added to the list, that might be appropriate.

Mauna Kea Trask (Po`o): Thank you and just for clarification, regarding the trees first off, although they're not delineated on this map that's attached to the matrix today, those are the

same trees that I believe you mentioned in the past for the record, correct? They're noted in photographs, etc.

Rayne Regush: Yes, and I'm sorry not to see more detail given in the CIA and such.

Mauna Kea Trask (Po`o): And also, for everyone's information, when the Native Hawaiian Protocol Committee was consulted regarding the scope of identification efforts and what would be done in the APE, it was discussed, what was currently known in the record and of course there's a lot of unknowns throughout Hawai'i, especially in this area. We can all assume that there's a lot that's there that hasn't been touched, that's not yet discovered, may or may not be discovered if this project goes through but most likely in the future if there's any disturbance to the ground. The Native Hawaiian Protocol Committee decided that it would be best not to look for, actively look for and dig willy-nilly to try to find places that haven't been identified yet, because they don't want them to be disturbed. In identifying that, I just want you all to know that for the record there was some thought put into this and we deferred to, isn't that correct Mr. Kimura? We deferred to, but nonetheless, thank you for letting it be known, please let whatever opinions you have or assertions you want to make today.

Rayne Regush: In fact, one final concern that the map does not indicate the 100 foot open district.

Mauna Kea Trask (Po`o): Is that the zoning district?

Rayne Regush: Yeah, cause I understand that there are agreements that the path would be within that 100 foot open district and I don't know if that can actually be calculated until a current certified shoreline has been done. So again not understanding how far mauka this proposed path is, I don't have an idea if it's going to, I don't have an idea of its alignment from here and if somebody could just clarify where it is in relationship to that, perhaps at least along the corridor there that's been undeveloped by the ironwood trees. How far mauka of the trees it might be?

Mauna Kea Trask (Po`o): Does anyone have that information today? Okay, Mr. Kimura if you can note that and get that information for the next meeting, please. Thank you.

Rayne Regush: And the trees certainly have a scenic and cultural quality for that area that I'd like to see preserved.

Mauna Kea Trask (Po`o): Thank you, next person please.

Keith Yap: My name is Keith Yap; I'm the Vice-Chair for the Kaua'i-Ni'ihau Burial Council. My kuleana today is to make sure that we are going to be treating the burials with respect. They are identified, assuming there will be a burial treatment plan that will be put together but we're also concerned with the unknown and the inadvertent stuff also. We believe that this area is

ripe and rich with possible burials that may come up. It's the Burial Council's wish that we don't go looking for that needle in the haystack. We don't go disturbing something we don't have to. We want to make sure that it's done right; so we would like to have a protocol, possibly with the MOA indicating how those burials will be consulted with us in order to insure, in order to take care of it. SHPD has been very good about calling us when things have come up around the island so we feel that we're working closely with them now to insure that we're notified immediately when something comes up. We're down at the site usually within an hour to look at what's going on. We do believe there are adverse effects to this area (inaudible).

Mauna Kea Trask (Po`o): Thank you Mr. Yap and for the record, SHPD is the State Historic Preservation Division, correct?

Keith Yap: Yes.

Mauna Kea Trask (Po`o): Thank you, next person.

James Alalem: My name is James Alalem, I represent Uncle Joe Manini and also myself and the ones that cannot speak, the ones that are in the ground, our ancestors, the ancient ones. Adverse effects have already been done a long time ago, more so today, because we know from the beginning already. Everybody know the history, a lot of heiaus and war burials there and today what you guys are digging up is only the leftovers and they should be left alone. Adverse effects have already been happening, so I don't even know why we talking about this today, it should be just shut down, period. Number 2, all the laws was not followed, that's desecration once you dig up, and who is to tell on the back hoe going dig, the bodies intact until you wipe it with the back hoe, that is desecration because it comes up in pieces. I seen it happen first time I was arrested. The third thing is, Uncle Val, I talked to him on the phone, he called me up, but I got arrested for the second time for desecration down at Wailua because of the illegallness going on with the sacred place. He told me no sense we even talk to this 106 people, nobody listen already anyway, they going do whatever they want to, that's what Uncle Val Ako told me to tell everybody, so that's what I'm doing. Again, adverse effects is already happening, so I don't even know why we even talking about it. Thank you.

Mauna Kea Trask (Po`o): Thank you Mr. Alalem. For the record though, even irrespective to the fact that adverse effects are already happening in according to your testimony, you are stating today that if this project is to go through it would still have an adverse effect, correct? The adverse effect would continue.

James Alalem: More so.

Mauna Kea Trask (Po`o): Alright, thank you very much, next person.

Doug Haigh: Doug Haigh, County of Kaua'i, no comment.

Nancy Nishikawa: Nancy Nishikawa, Kimura International, no comment.

Missy Kamai: Missy Kamai, Cultural Surveys Hawai'i, no comment at this time.

Gerald Ida: Gerald Ida, Cultural Surveys Hawai'i, I have no comment.

Mauna Kea Trask (Po`o): Thank you, Mr. Pereira?

Pat Pereira: Pat Pereira, retired school administrator, I'm here to support my wife and also I would like to say my ethnicity is not Hawaiian, I'm Portuguese, I'm born and raised on this island. My concern is that we listen to the mānā`o of the host culture, that's my concern. I think this is a great process that is going on here today, but we need to listen to host culture and whatever they say, the majority says; I think that should be the ruling. The rest of us, we here at the benefit of the host culture.

Mauna Kea Trask (Po`o): Thank you Uncle Pat. For the record though, I'd just like to say, and a very important part of today's consultation process is getting the mānā`o from the Native Hawaiian Community, both organizations and individuals. But nonetheless, this process is open to members of the public, Sierra Club is here today, they have two representatives. So, ethnicity, whether or not you're Hawaiian, does not prohibit you from participating in the process. You're here today; you've come from the Westside, correct?

Pat Pereira: Right.

Mauna Kea Trask (Po`o): You've traveled as far as you can travel.

Pat Pereira: And I'm here listening because this pathway, we already had many meetings in Waimea and Kekaha districts on the pathway and people trying to figure out where's the best area to put this path in between the two towns. One of the pathways was the beach, but I know living here all my life, when the ancient Hawaiians used to bury, they never go find the hardest ground to dig, they never had back hoes or anything like that, so they buried in the sand. I know that, because there's a little bit of controversy going on in Kekaha too. If you folks know about the Hawaiian Homes, the new section and this hale that they want to build and all that. There's a little bit of controversy going on there and I've worked in construction, I've worked in Wailua constructing the new wing of the, right on the road, Coco Palms. We used to stop work every Friday and get one luau because that place is riddled with bones and the bones are right on the surface. And my guess, and I may be wrong, my guess is that when Kamehameha wanted to conquer the islands and unite the islands, he sent his warriors over here and that's one of the places where his warriors, those that didn't drown with rough seas, met up with the Kaua'i warriors. Whichever Kaua'i warriors died they were taken by their families and buried, but the O'ahu warriors didn't have anybody to come and take them, so they were just left there, that's my take. The bones were all on the surface. Then in Waimea, I worked for this company who were putting in the sewer system, here comes the back hoes

digging the trenches, there goes the Hawaiian body. We have to stop work and call Mr. Kikuchi from KCC to do the archeology and whatever anthropology whatever, but they dug them up. We got to be very careful.

Mauna Kea Trask (Po`o): Thank you uncle, I'd just like to state that again, personally I feel that I'm no one to tell anyone whether or not they're Hawaiian and it's because I think that stuff like blood, issues like the koko, that's stuff best left up for the gods. I don't think that it's really appropriate often times if your heart is in the right place to even delve into that. But for today's purposes, I'd just like to summarize clearly for the record, do you think that this proposed path would have an adverse effect both on the individual sites and the area as a whole, in your own opinion, irrespective if you're Hawaiian or not?

Pat Pereira: I think so.

Mauna Kea Trask (Po`o): Thank you sir.

Pat Pereira: No matter how clean you try to make the thing seem or whatever, there always will be someplace that you going to miss, that probably will house some burial, some significant area or artifacts or whatever. I think so.

Mauna Kea Trask (Po`o): Thank you very much, Auntie?

Leah Pereira: For the record, Leah Pereira. I come from Deborah Kapule Hawaiian Civic Club and I'm a member, but I'm also here because of my lineal descendant from Nahinu. My family is Nahinu, my ancient grandparents were brother and sister, Nahinu and Nohea, and I come from that line. I'm interested in that area because of the heiau, I would not like to see that moved, I would not like that iwi touched. I think there will be adverse effect around that heiau.

Mauna Kea Trask (Po`o): Well, thank you very much everybody. So, I think for the record everyone's made clear, all participants today, both Native Hawaiian individuals, individuals on behalf of Native Hawaiian organizations, as well as individuals, personally, non-Native Hawaiian individuals, as well as individuals on behalf of non-Native Hawaiian organizations, this project will have an adverse effect, it's unanimous. And so the record shall reflect that today, at this time I'm going to call a brief recess, maybe about, its 10:00am right now, about 10 minutes, go bathroom, get some snacks and we can continue on, starting to discuss, brainstorming regarding proposed mitigation efforts if this is to go through. So, at this time I'll call a recess. Mahalo.

BREAK – 10:03 am

START – 10:21 am

Mauna Kea Trask (Po`o): I'm going to convene the meeting again. Thank you everyone, before we begin the meeting, Auntie Cheryl would like to say something for the record, so I'm going to defer to her for now, thank you Auntie Cheryl you're on.

Cheryl Lovell-Obatake: Thank you Mauna Kea, thank you everyone for being there, I'm sorry I could not be there but I'm surely listening to you all. We were on the topic of Assessment of Adverse Effects, I hope that most of you would get a copy of the 36 CFR which will totally describe the criteria and I've heard from many of you that the matters regarding our historical sites and burials. The 800.5 Assessment of Adverse Effects applied criteria of adverse effect in consultations with SHPO. Mauna Kea, is Pua Aiu there or anybody from DLNR there from Honolulu?

Mauna Kea Trask (Po`o): Auntie Cheryl, Pua Aiu is not here. Is anyone here today on behalf of DLNR from Oahu? SHPD, State Historic? For the record, no response, no Auntie Cheryl.

Cheryl Lovell-Obatake: Okay, thank you, let it be noted for the record that SHPO or SHPD, DLNR are not present. The criteria of Adverse Effect as I read it under 36 CFR, an adverse effect is found when an undertaking may alter directly or indirectly any of the characteristics of historic properties that qualify the property for inclusion in the National Register. Mauna Kea do you feel or have you concluded if there is any items that need to be registered with the National Registry?

Mauna Kea Trask (Po`o): At this point, I'll defer to.....I'm sorry, if I may, I've just been pointed to, if you look at the matrix provided, Auntie Cheryl I don't know if you have one.

Cheryl Lovell-Obatake: Yeah, I did look at it.

Mauna Kea Trask (Po`o): On the third box from the right, Evaluation of Historic Significance/National Register of Historic Places, there are notations and it looks like all of them have been designated for inclusion, correct.

Cheryl Lovell-Obatake: Okay, fine. Let it be noted for the record for the National Registry. I don't want to conduct this meeting over the phone, but these are my mānā`o and what I'm reading and my homework and I hope, I'm thanking you very much for noting that. Is there anybody there with the Burial Council?

Mauna Kea Trask (Po`o): Yes, Vice-Chair Mr. Yap is here.

Cheryl Lovell-Obatake: Okay, could you ask Mr. Yap if there is a quorum in the Kaua'i-Ni'ihau Island Burial Council?

Mauna Kea Trask (Po`o): Mr. Yap, for the record, currently is there a quorum, has the Burial Council met?

Keith Yap: No.

Mauna Kea Trask (Po`o): No, Auntie Cheryl and the record will so reflect.

Cheryl Lovell-Obatake: Is there any signs of anticipation that the Burial Council is formulating to make a quorum?

Mauna Kea Trask (Po`o): If I may, Auntie Cheryl if I can for the record, I myself have been trying to get on the Burial Council for about six years now. Recently, October 31st, I was appointed an interim Burial Council member by the Honorable Governor Neil Abercrombie and subsequent to being interim appointed I have conducted on my own time, on weekends, three separate outreach meetings in the Hanalei, Lihu'e and Kōloa areas in order to fill those gaps that currently exist. I myself, after I was interim appointed, I got a State Ethics Commission opinion and they advised me that although under the statute I would not be prohibited from being on the Council because of my affiliation with the County of Kaua'i, nonetheless under Cecil B. Fasi I should avoid any County projects, understanding that I decided to no longer be a regional rep. but take the landowner development slot on behalf of the County which would free up three more Native Hawaiians to take the regional rep. positions. At this time, I have, myself have gotten approximately thirteen applications for which have been completed and filled out, I've turned those over to Pua Aiu personally yesterday on O'ahu, I had to go over there for an unrelated federal hearing. So that would be myself, plus four more would get us to eleven I believe, and of course under the statute membership was between nine to fifteen, so I think if those get processed by the Governor, it's all on his table right now, but we could have quorum at least interim quorum to meet within the next couple months, which I think would be a great benefit. But at this time until that happens, there will be no meeting, but we do anticipate soon.

Cheryl Lovell-Obatake: Let the record reflect that what you have stated beyond the record that there is effort for the Kaua'i-Ni'ihau Island Burial Council to have quorum. Also, the Kaua'i Historic Preservation Review Commission on the County level, will they be reviewing this application or anything that needs to be done there at KHPRC?

Mauna Kea Trask (Po`o): Yes, we had a meeting, Mr. Kimura you want to speak on that for the record?

Glenn Kimura: We attended a meeting at KHPRC, basically we just reported that we are in the process of getting through the Section 106 process regarding the path and we will report back to them when we are ready, when we have some more definitive MOU or something in place.

Mauna Kea Trask (Po`o): And it's my recollection at the time I believe Commission member Wichman had deferred to this 106 consultation group as far as the treatment and they respectfully requested, like Mr. Kimura says, to present the information from this group to them and they felt it was more appropriate the participants today would have the more complete mānā`o about the area.

Cheryl Lovell-Obatake: Excellent, I agree with that wholly. Also, I hope I'm not boring anybody there.

Mauna Kea Trask (Po`o): Not at all.

Cheryl Lovell-Obatake: Also, there are a few things that I wanted to, the examples of adverse effects to the public that's there and who's reviewing, just to give you an example, it's in the 36 CFR people. Adverse effects on historic properties include but are not limited to; one is physical destruction of or damage to all or part of the property, alteration of a property including restoration, rehabilitation, repair/maintenance, stabilization, hazardous material remediation and provision of handicap access that is not consistent with the secretary standards. This is in the 36 CFR, and then also removal of the property from its historic location. Another one, change of the character of the properties use or physical features within the property's setting that contributes to its historic significance and also, introduction of visual, atmospheric or audible elements that can alter the integrity of the property's significant historic features. Those are some of the examples of adverse effects, as I try to clue you so that you'll have thoughts about when you were asked about the adverse effects that you've seen in the reports or you know of the na iwi kupuna that are there. I'm just awakening people that may not be familiar or if their first time at the meeting. Also, Mauna Kea you may want to clarify this, what caught my eye is the transfer, lease or sale of property out of the federal ownership or control with adequate. Is the federal question, clarification, is the Federal Highways Division or ones that are giving money to this project, how long will they be on this project? Are they included in the Memorandum of Agreement should that time come?

Mauna Kea Trask (Po`o): Yes, it is my understanding it will be included in the Memorandum of Agreement and specifically under that citation I believe this is 800.5(a)2-vii. The Area of Potential Effect does not include any federal properties under federal ownership however because this undertaking is utilizing Federal Highway Administration funds it is either directly/indirectly funded by the federal government therefore this 106 process is a prerequisite to this project. That's the angle I guess that's being applied.

Cheryl Lovell-Obatake: Good, let the record reflect of your statement and my question of clarification, thank you very much I appreciate that.

Mauna Kea Trask (Po`o): It shall so reflect.

Cheryl Lovell-Obatake: I was looking at the matrix and the map attached to that matrix, and the area identified, pretty big area of the bike path. Has everybody seen that, where it starts and ends?

Mauna Kea Trask (Po`o): Yes, Auntie.

Cheryl Lovell-Obatake: Okay, well I'm aware of and has testified on two hotels, two beach hotels, and just out of curiosity wondering whether these hotel owners are aware of the bike path that passing in front of them, near the makai side. I am aware of the kuleana, aina further down towards the Bull Shed Restaurant area. I made some efforts before for the Kane family, I don't know whether there was any reply, but Land Commission awards a royal (inaudible) and numbers are important because they are historical properties in my eyes. When our kupunas were living there, we know there are burials, there are artifacts. I really want to see and I don't think it will happen or may happen, Land Commission awards and (inaudible) and the families making sure that they work on that. Those are my thoughts about that. I want to get back to matrix on the map; you see where you started and where you end on the bike path.

Mauna Kea Trask (Po`o): Auntie, sorry to interrupt you but I just want to answer some of your questions to for the record I think at this time. First regarding the developments on the map they're indicated "future development" at approximately the middle. And it's my understanding that the developers as a condition of their development permits were required to provide lateral makai access as a condition precedent and that's to insure that the public could still go in the area along the beach in front of their hotels. That's my recollection of that issue; furthermore I think that.....

Cheryl Lovell-Obatake: How can it be consistency in making some assurance in the planning process with the Planning Department to be noted that what you just said.

Mauna Kea Trask (Po`o): What I can do is I can go check the permits and get the actual information. I know these, I believe these are old permits, I think they're in fact zoning permits.

Cheryl Lovell-Obatake: They very well are old; I was younger then but anyway looking at the radius where the starting point is and all the way to the end of the purple line, right? We're looking at the bike path, is that right? That purple line where it ends right by the canal?

Mauna Kea Trask (Po`o): Yes.

Cheryl Lovell-Obatake: Okay, well I hope everyone will look at the map and look at the radius and I know that some of you that live there and have information it will be so great for your mānā`o because it's a big area. And so that's it and I'll listen more.

Mauna Kea Trask (Po`o): Thank you Auntie and I think that our consultants did attempt to contact the landowners according to known information in that area, correct? The TMK?

Missy Kamai: That is correct, yes.

Mauna Kea Trask (Po`o): That is correct and also specifically regarding your permit question I was thankfully handed by Ms. Regush, this is regarding the Coconut Beach Development, LLC annual status report for the Class 4 zoning permit, this is just for the record, C42006-9, Special Management Area Use Permit, SMAU 2005-1 and Project Development Use Permit PDU-2006-6, III-3i of the 2000 Annual Report Compliance of Project Conditions states that prior to building permit application, the applicant shall *“stake out on the site for department review and approval the shoreline as approved by the State, the location and configuration of the lateral multi-use beach walk, the location of the 100 foot open district, the location and configuration of the cultural site and vertical beach multi-use pathways and the seaward edge of the oceanfront building”*. Its within their permits to take those following steps, they are not here today so I can't really speak more on that issue, but I believe Ms. Regush they are coming before the Planning Commission relatively soon, correct? Okay, but we can find that out, we can follow-up.

Inaudible response.

Cheryl Lovell-Obatake: Well, mahalo Mauna Kea for that statement, because it is very important because we don't live that long and sometimes things are forgotten and new directors, etc., etc. But thank you and be noted for the record.

Mauna Kea Trask (Po`o): Correct, it shall be noted, thank you Auntie. All right everyone, so we're going to move on, now we're at Item 3-B and I'd like to walk you through this, and again, like Auntie Cheryl said, 36 CFR part 800, throughout this and other future Section 106 consultation proceedings, this really is the road map for everything so I encourage you all to read it and research it. Moving on right now, resolution of adverse effects, now I want to be clear again, this agenda was formulated by tracking the statutes so it easy for you to follow, a lot of people like to make legal cites in these proceedings. We don't intend to resolve the adverse effects today and obviously I don't think we can do that all at once. This is a consultation process; we've learned to take our time, slowly in the beginning so as not to prolong it at the back end. So today, I short-sighted the legal citations and the description within the agenda just so the agenda is manageable, but I'd like to read for the record what specifically 36 CFR section 800.6(a) says: and this is continued consultation, *at this point the agency official shall consult with SHPO, State Historic Preservation Office, and other consulting parties including Native Hawaiian organizations to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties*. Now it's been said in the past and it remains true, as far as mitigation, that's the one term, very important term that's not defined in this regulation or any regulation. Mitigation is anything that you today can identify, whether it's financial, money, in-kind

services, treatment plans, burial treatment plans, processes, use of heavy equipment, whatever that is, the doors wide open, the door is wide open to ask. It does not mean you may get it, but today we're going to start a process by which it's your opportunity to shoot for the stars. Ask whatever you want, again resources taken into consideration, funding is taken into consideration by the decision makers, but you have the legal right and duty and cultural responsibility today to begin to discuss that. These consultation laws allow people to be consulted and this is very important because for years Native Hawaiians and members of the environmental community, normal people in the public, they never had input into the decision making process at all. We now have an opportunity to consult and we need to take that opportunity. I would like to note on the record that under 800.7, and this is in no way intended to be a threat, this is strictly a matter of legal information, that if the Council determines that further consultation will not be productive, they may terminate consultation. If SHPO terminates consultation, the agency official and the Council may execute a Memorandum of Agreement without either the SHPO's or any other parties signature. What I want to speak with you about, Mr. Yap and I spoke about this on the break is that discussing mitigation does not mean that you're allowing the project, we're still in the planning stages at this point. Mitigation, discussing possible mitigations is very important to this process, so please put it out on the table. As a matter of illustration you can ask for 10 billion dollars, that doesn't necessarily mean you'll get it, but if that's appropriate mitigation then ask for it. Preservation of ironwood trees, etc., please asks this is your opportunity to make your record, encourage you to do so. I can speak on behalf of the County, we're looking to mitigate, we're looking to how people can come to an agreement for this project, I know the State feels similar, and I know the federal government feels similar. But we do need to have this discussion, so with that what I'd like to do today is begin the discussion of mitigation measures, go around the table, see what you feel would be appropriate. After that is done, I myself on behalf of the Po`o if you look under B. 1. i: I'll request that the agency official at the next meeting prepare proposed mitigation measures, including what's discussed today as well as what they believe would be appropriate. At the next meeting, I'll ask for more comments regarding mitigation for you and your proposed input regarding mitigation measures proposed by the agency official and then will move to resolve adverse effects. So, we're trying to work with this, the requirements of the CFR today, but of course I think it's appropriate that we consult with you first, engage in a discussion back and forth. Does everyone understand? Thank you, so at this point I will begin with my left and ask Ms. Santos on behalf of OHA what if any proposed mitigation measures you might have today and with the understanding that you will be allowed a second opportunity at the next meeting to add more.

Kaliko Santos: I may not be answering as OHA, but as a life-long resident and a Native Hawaiian on Kaua'i, just for the record you mentioned "Council" in the CFR, can you define it for?

Mauna Kea Trask (Po`o): Yes, "Council" is the National Historic Preservation Advisory Council, ACHP and so it's not the County Council. Thank you very much for that important clarification,

actually I want to state for the record, clearly “Council” means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Kaliko Santos: Thank you, since this is a wish list, currently a lot of people who access the beach area, park kind of far. If it can be done in this plan, because you're going to have eventually in the future you're going to have buildings and that kind of thing and I'm hoping that the access part, but also that we can really come to a definitive number of parking that will be closer to the beach because a lot of our people access with the coolers, the kids, the fishing poles, and everything, and sometimes that's not looked upon favorably when you're walking through a hotel property. They'd like you to access their beach thingy and buy stuff. I'd really like to see that parking areas or parking spaces designated right alongside or close to the beach area that's going to be public. We have several generations of families that still traditional, they were taught with kids, I want to continue that, that they access the beach for generational Hawaiians have gone and accessed the beach for fishing or that kind of thing, so I'd like to make sure that this project provides an access. Not just you got an access here, 300 yards or so you got another one, but in the planning process if they can look where people traditionally access these things and make that place more accessible. I'd like to see that. In regards to the map area, closest to trench 5 and cultural area 1801, you notice how heavily impacted that is with historic sites, that sort of thing, and then of course it says 'future development' but you kind of see where possible buildings might go, that sort of thing, whatever is 'future development' that historic sites be protected. If it means a design change that will protect this area, we walked through it; it's kind of a rough area with the trees and that sort of thing. I think it was a little bit heartbreaking that you had to walk between buildings in some parts; I don't want to see that, since there is no building there now, if we can designate that and make sure, let the County know, Planning, whatever, that however in the future since we don't live that long, Auntie Cheryl, that in the future that be designated, before they even design a project, that those places be open and protected and accessible to Native Hawaiians. I would love to see that this area, I know we did some historical background on this area, but mainly a lot of time in reading the history of the area it's so clouded, I'd like to see that somehow this area be memorialized or there be a study that would be part of our island history, a definitive study on this area in terms of cultural and history, I don't know what you call them, ethnographic, something study on the area, that sort of thing. That way this area, if all the building comes to life, this area not be forgotten for the future. That's it for now.

Mauna Kea Trask (Po`o): Thank you. And for the record I just want to clarify in looking at, also feel free, in my earlier description of mitigation, I don't want anyone to think that, how can I say this, you can avoid, minimize, or mitigate the adverse effects. I know Ms. Regush earlier stated she wants to see the path mauka, it is appropriate also to say you don't want to see the path here. I don't want to give anyone the impression that you have to see the path where it is, you can include that, and you can ask to stop the project today, you can say that as well. Its avoidance, minimization or mitigation, so this is your opportunity also if you want to speak against the project, you can do that too with the understanding that it going to be continued discussion but you can make your record today. Thank you, next.

Puanani Rogers: Yes, I want to say that I would like that path to be someplace else. The impact on our shoreline especially is what really concerns me, besides of course all the cultural sites involved. Our people fish there, it's a place where they gather their food, and having a huge hotel or any more development there will certainly keep them away from that area because then it's going to be different. It's not going to be the same esthetic atmosphere that they were used to, when there were no buildings there, we're free to bring our children, put up our tents, fish for the day, and have lunch down there. Fine, the tourists also use that area to walk back and forth, we don't need it to be concrete, and it worked as it was, a dirt path. And I would also like to fight for preserving of those ironwood trees as well. The public park in that area that we're used to having there and it provides shade and it also holds the ground from erosion of the ocean. How you're going to mitigate that? Coming from the cultural sense, that shoreline is, should be preserved and left the way it is. In fact development could cause pollution to the shoreline as well, there will be how many toilets flushing if they do develop three huge developments, that's a lot of toilets flushing down there folks. And where is it going? Where is the waste treatment plant that will handle all of that? And then when you're speaking about parking I also remembered that the development said they are going to have 900 parking spaces. That whole traffic corridor is going to be horrendous when that happens. I'll add some more later, but yes that was my first initial thing, move it someplace else, try to see if you can find an alternative route, please. Keep our shorelines free for our public to use for our subsistence gathering, it is very important to us. That's where we find food. Mahalo, Puanani Rogers for the record.

Mauna Kea Trask (Po`o): Mahalo Auntie. Mr. Lee?

Herb Lee: No comment.

Glenn Kimura: No comment.

Ray McCormick: No comment.

Hannah Reeves: Thank you very much; you said a lot of stuff, all had to do with me. I wanted to tell everybody if I had my way I'd open up the trail from the mountain to the sea. I would build that there so the children can go down and see how we used to live before, how we used to throw our nets, surround our fish, catch vana, opihi, limu, and teach them how to do our culture. They would love that, the schools would love to go down there and catch all that and they pull the net out from the ocean. Everybody would have fun with the parents, grandparents, and great-grandparents, they would be very happy. I hope they let all the Hawaiian people camp, maybe on the weekends we can take our children, our kupuna and everybody go and sit and teach our children. That's one of the wonderful things I would love to see that, even if I have to fly over here to come and look. But that's what we do in Kona, we go far away from town, you cannot camp, you cannot this and you cannot that, but we go far away and that's what we do. We have all the children, grandparents and everybody, even the

teachers from school, they bring their children. So I think that this would be a beautiful place not only for us, but for people from far and away, they always coming in and they love to see old Hawai'i. I think it's fantastic for them and for us to really exercise our culture and I want to say you said so much and I love it. It's a very beautiful place. I hope whoever is developing this place will line up with the Hawaiian culture. Thank you.

Judy Dalton: I'm glad you said we could shoot for the star, that's good. This is development of the beach, why are we doing that? We were told that we can have public access forever if we have this bike path there, we already have access there. There's no need to put a concrete path there, we have access already. I want to walk down to the beach, to a natural beach, the way it was created rather than to be developed with concrete. It's interesting in the process; I have to go back to what's happening right now as we speak, on the ground in Wailua, there was no assessment of what was happening to the beach until Army Corp of Engineers sent an analysis in late November, early December. Actually the Army Corp of Engineers didn't even come here to take a look at the beach, they didn't see any pictures of the beach, and they just saw pictures of the highway. I'm sorry, Mr. Haigh isn't here because he had sent them pictures of the highway, no pictures of the beach, so they made their assessment not seeing it. If they had seen some of the pictures for example here is what the beach looked like in the 2007 Environmental Assessment, here's what it looks like now. It's taken from the same spot, so we have very, very little beach left, it all eroded away. Unfortunately, the Sea Grant people went by some old photographs that were taken...

Keith Yap: Can I ask a question? Can you put that on the map here?

Mauna Kea Trask (Po`o): For the record, I think Ms. Dalton just not to confuse the issues, cause I know Wailua Beach is a very contentious project right now, but again we're here today to address Phases C & D.

Judy Dalton: And the reason why I'm bringing it up right now is because I don't want to see the same thing that happened to Wailua Beach happen to these places. So if you have along the beach like this then the same thing could happen, also in light of sea level rise, we're expected to lose 70% of our beaches in Hawai'i. We're already losing them and development on the beach is foolhardy and not sustainable and the important thing is leave the intact in its natural state, there's room mauka. Thank you.

Mauna Kea Trask (Po`o): Thank you. And again, just for further discussion, I don't want to curtail the discussion today I just want to keep it focused on what's going on. Just please keep it to Phase C & D and refrain from speaking to each other, thank you.

Rayne Regush: Rayne Regush, for the record, looking at the future development towards the north end of the historic properties map and we see a lot of historic sites and areas of cultural deposits, I was just wondering if there was an alternative perhaps between two parcels where the path could go mauka and then join up with where its indicated on the map. I guess that's

just a heavily historic site and perhaps negotiate, I'd like to see a negotiation with the developer to remove the proposed buildings that look like they will be constructed over the identified historic sites and cultural deposits in that area, so if there could be some sort of negotiation to not have the buildings constructed over those sites. Another condition I'd like to have the County secure a State Certified Shoreline and not seek any variances and that furthermore have the path be aligned with the 100 foot open district boundary which would keep the path significantly mauka of that coastal corridor that is so far been undeveloped. I know that this cannot be done with the existing hotel structures along that coastline but where it has yet been undeveloped and the County does have that 100 foot open district boundary, I'd like to see the path aligned mauka of that.

Mauna Kea Trask (Po`o): Thank you Ms. Regush. Mr. Yap?

Keith Yap: Thank you Po`o, for the record Keith Yap, Kaua'i-Ni'ihau Island Burial Council. I'm going to speak first as a Burial Council representative what I would like to see and then personally. As a Burial Council representative I'd like to again reiterate that we want to have burial removal (inaudible) or inadvertent, very important to we have that to make sure that there's an oversight on SHPD to make sure that things are done right. I believe SHPD has been very cooperative with the Burial Councils now, they know that we're reasonable and we come up with some solutions for that so I think that, we would like the construction to be done, we have a new terminology called "gently technique of grading", we want to make sure that when they work the ground, we don't want them looking for that needle in a haystack, we want to go gingerly. We want to try and stay on the existing foot path as much as possible because we believe that foot path already would have the least amount of adverse effects and it already goes through the trees, won't be knocking any tree down because of that. Instead of that straight line we might have a meandering path. So that's the wish list for the Burial Council. For me personally I'd like to state that as a Wailua resident, when these meetings first started, I was very much in moving the path mauka to Aleka Loop because there's a path on there already. But then the more I got to think about it the more I got to think about fishermen and the people that actually use it. Right now, in all due respect to the people that are here, I rarely see guys fishing over there and I think there's a reason for it, the reason is because they don't have access. If we don't put the path on the beach or close to the beach we won't get access because the hotels have a tendency, like Waikiki, to start to border their borders. If that path is not there guess what, it's going to be hard for us to get there. The path is there it's like we're saying we have a doorway to get to the beach and the parking is important. Right now there are stones all along the road, you know how we park in there now, we park illegally inside the hotels and we sneak in. So to say that there's access now is not true. We have to press upon the developments to provide that access for the locals. It's important for me that that is provided, I mean I go down to the beach just south of this and there's a long pathway that goes by the heiau, it goes down there, we're always sneaking to park over there because there's only four parking spaces for public. From a personal stand-point, I want it to feel like its welcoming for the residents and people who are coming from afar to park somewhere so they can get to the beach, so they can go fishing, so we can have more fisherman actually fishing instead of

people just saying they blocking access for the fisherman, cause I think that's happening now. I want somehow to open that up.

Mauna Kea Trask (Po`o): Thank you Mr. Yap and I'd like to thank you for putting your mānā`o on the record even though it may not agree or may just appear to contradict other peoples opinion. I'd like to thank everybody too for being respectful of everyone else's opinions and what they feel because that is personal to them and their kupuna, again thank you all for accommodating that and being respectful. Next, Mr. Alalem if you have any mānā`o regarding avoidance, minimization or mitigation of adverse effects on the historic properties located here and or the area in general?

James Alalem: For the record, my name is James Alalem, representing Uncle Joseph Manini. I have two things to say, #1 is I know a lot of people think I'm crazy but I'm not. A lot of times the uhanē or the spirit that gave me this knowledge and wisdom come and tell me certain things that I need to say, put it out there. This is one of them, this just happened to me about two nights ago and this is what they told me to say is that Kaua'i is cursed. Why it's cursed is because the sacredness was destroyed. We talking about C & D, well A which is Wailua Beach and C & D is all included, this whole place is sacred. Again, Kaua'i is cursed because the sacredness was destroyed and now it's gone forever. Then they said, let the darkness and the unhappiness begin now because they have destroyed the sacredness. The second thing is that me and Uncle Joe, we talked about it and for the use of the property that he claimed in his paperwork, he said that and could be more, 5 million dollars a year for the property that the people have not listened to him, that the property was his and they taking it anyway. And that 5 million is going to be used for all the things that they destroyed the sacredness, the graves and all those things that were destroyed. That is going to be used to put back the heiaus and things like that. So he asked for 5 million a year for the use of his property. Thank you.

Mauna Kea Trask (Po`o): Thank you and that's 5 million a year in perpetuity, as long as the path is utilized?

James Alalem: As long as the path is utilized and also it might change to because there are going to be more hotels, I leave it up to Uncle Joe, I just repeating what he told me.

Mauna Kea Trask (Po`o): Thank you.

Missy Kamai: For the record, Missy Kamai, Cultural Surveys Hawai'i, but I'm not speaking for CSH right now, just kind of my mānā`o but the northern most point of the project area, the straight shot to Uhelekawawa Canal, I not even talking about the south side, but that's residential and there's really no barrier between the bike path and them. If there's not necessarily privacy but some kind of way to make it more secure for them because the bike path is 24 hours so you're going to have people roaming around. I mean it's not like they're not roaming around now but at least something like a fence line or a wall to just, where people are

living and people are utilizing the path, people on the bike path won't be jumping over to the residential area and cruising around. That's it.

Mauna Kea Trask (Po`o): Thank you Ms. Kamai. Ms. Nishikawa?

Nancy Nishikawa: No comment.

Mauna Kea Trask (Po`o): Mr. Iida?

Gerald Iida: No comment.

Mauna Kea Trask (Po`o): Mr. Pereira?

Patrick Pereira: Me, I would say move it. Don't put it on the beach because I think this State of Hawai'i has access laws, right?

Mauna Kea Trask (Po`o): Generally yes, but beaches are public trust, there needs to be access but it gets kind of, because of western property rights, it gets kind of grey depending on the facts and circumstances, but generally you're correct.

Patrick Pereira: Enforce the law.

Mauna Kea Trask (Po`o): So both enforcement and movement of the path?

Patrick Pereira: Yes.

Mauna Kea Trask (Po`o): Thank you.

Patrick Pereira: In consideration, I know a lot of money was already spent with all these kind of tests and all these stuff that goes on but why does the path have to be along the beach? Why? Was that question ever answered?

Mauna Kea Trask (Po`o): My understanding is that while you're planning the path if you look, the most mauka point you can see the canal. That's the current proposed alignment of the path. There was also proposed along Kūhi'ō Highway, which is about middle, and then recently because those future developments have been identified and they're moving forward with development, that area because of their permit conditions has opened up. What we're doing is we're looking at proposed Phase C & D which would take advantage of those future developments coming online and getting the lateral access under their permit conditions. That wasn't available before so that's why we're doing this now. It's an expiration of the option. You would be either Kūhi'ō Highway or the most mauka canal alignment is what you would prefer.

Patrick Pereira: Me, I think along the canal. The canal was built, was it built or was it always there?

Mauna Kea Trask (Po`o): Built by sugar I believe.

Patrick Pereira: Yeah, built to drain the coastal swamp land, right?

Mauna Kea Trask (Po`o): Yeah, so they could aerate the land mauka of that, used to be all sugar cane.

Patrick Pereira: And that is all private property?

Mauna Kea Trask (Po`o): Yes, private property, Midler.

Patrick Pereira: Well, maybe one deal can be worked out with her. I think private property; the government gives a little more money into the grant, you got to buy one easement through the property.

Mauna Kea Trask (Po`o): We'll get fair market value. Thank you, do you have anything else to add?

Patrick Pereira: I think it ought to be moved.

Mauna Kea Trask (Po`o): Thank you Mr. Pereira. Ms. Pereira, anything?

Leah Pereira: My wish list, for the record, Leah Pereira. I would like to see the fish ponds be put back in order. When it rains up there, everything backs up, I would like to see it cleared up, my wish list. I hope it's not an accident waiting to happen, if they do it this way. That's all I hope. Because Wailua is the most sacred place, we know for a fact that it was our last kingdom at one time where our kings lived, resided, died. We don't have anything else, so really should think about the sacredness of this place, that's all. Wailua and Waimea are very important.

Mauna Kea Trask (Po`o): Thank you. Auntie Cheryl do you have any mānā`o you'd like to share regarding avoidance, minimization?

Cheryl Lovell-Obatake: Oh yes certainly, thank you for asking. I like to hear those things, Judy Dalton brought up the coastal erosion that she is experiencing at Wailua. I'd really like to see from, if you look at the place by the old Kapa'a cannery right by the Pono Kai, Pono Kai yeah? Well that area is eroded right? How long is it taking the County to mend that kakio over there? Because of coastal erosion, it brought me back to where we're at, with the bike path, the cement, if get tidal wave or anything of natural disaster, and the cement will be exposed and possibly go into the water. I'm looking at the worst scenario, but how can one clean that up and put things back into order after a natural storm? That's one part that came to my mind and

making things look all nice here because Pono Kai has been a long time waiting, right erosion. But anyway, also I'd like the Federal Highways access, definitely that kuleana land owners who practice in that area should still have those rights or subsistence and I agree with her with the access to the beach to go fishing. Also, I'm looking at if we're going fishing we got to get clean water and healthy fish. Sorry if I'm wearing my Nāwiliwili Bay Watershed Council hat but I've learned some things, some scientists, of polluted waters and we need to understand what's happening also in the ocean if we're talking about subsistence, kanaka maoli eating manini or ā`hole`hole or whatever reef fish is, or even wana. Outside of this beach in front of Bull Shed side, if I'm not mistaken there is fresh water that comes out, into the ocean. Culturally as we review this plan and access this plan we got to get healthy fish for healthy people and healthy water. I look at the construction that will be happening at the two Coconut Hotels, I've been through the process of the hearings on both of them. I remember there was Belles, he was the attorney that represented the Coconut Beach or that two Coconut Hotels, but in construction coming down here in Hawai'i they don't know our graphics, our land, our water, they have destroyed some things, I've seen it with my own eyes. And therefore, mitigation, small kind, orientation of construction companies, working on our lands and especially with this area with na iwi kupuna and artifacts in the ground. I like Missy Kamai's, Cultural Surveys Hawai'i, private property owners, we need to kōkua the private property owners and I like the idea of giving them that privacy for mitigation because they're putting up, not we but the County is putting up a bike path and I think its common sense to be courteous to the private owners because there's a few there. I look at the dollars, how much money do we need or are we allowed, we really don't know how much we're allowed in mitigation to do whatever, what we choose to do in the area, of course kupuna, and that has to be decided by the Kaua'i-Ni'ihau Island Burial Council or if there are any heirs that will come forward. You want to keep in place, or you want to put all the kupunas together, I say it like it is because I've been on the Burial Council for eight years, from 1992 – 2000. And I don't know it all because every situation, every place is different and people are different and people are sensitive. The passing of their kupunas or know of their genealogy and that is culturally sensitive. I've seen, born and raised here, kanaka maoli, and that feeling of sensitivity for our kupunas is something that, well hopefully we can get over the hill with State Historic Preservation Division and get on the ball. I don't like laws; laws are meant to be broken as you have seen already with what have been happening, bits and pieces of State Historic Preservation Division, and we got to malama our own and so in the MOA or whatever form it could do to is to set a precedent and pound and chisel it on the rocks because we know its forever. I think I talking too much but I hope you would accept my thoughts and I really appreciate the comments, thank you.

Mauna Kea Trask (Po`o): Mahalo Auntie. So at this point, yes Ms. Regush.

Rayne Regush: Rayne Regush, for the record. I apologize because I missed the last meeting and I just wanted to add or request regarding cultural sites and historic sites that we identified whether the foot path through the mature stand of ironwood trees is historic, so if we can determine if that foot path is historic.

Mauna Kea Trask (Po`o): The current foot path, the undeveloped, looks like a trail?

Rayne Regush: Yeah, the trail through the ironwoods, can we determine if that is indeed historic, because I missed the last meeting I couldn't give that input and it's really a pre-mitigation request.

Mauna Kea Trask (Po`o): And again, and we can go look into that but irrespective to you if it's not deemed historic, it's within the APE which itself has been deemed to be historic. And so at this time I'd like to thank you all. That's going to conclude our first round of mitigation reports, at this time per the agenda; I'm going to request that FHWA through Mr. McCormick present/propose mitigation measures at the next meeting that we hold. The next meeting has not yet been scheduled; I believe there's been a lot of information to take into today and a lot to prepare and everyone will be notified when the next meeting is. I'm also going to request everyone today, individuals, Hawaiian and non-Hawaiian and Native Hawaiian organizations and non-Native Hawaiian organizations, during the interim between now and the next meeting, continue to think about ways and measures to be taken that can avoid, minimize or mitigate the impact of the adverse effects of this project and to this site and upon the historic properties contained therein. Be prepared to discuss that at the next meeting and we can continue our discussion at the next meeting with the mindset to looking towards implementing some of these and resolving any adverse effects if this project is, if the appropriate party decides to proceed with this project. So with that, I'd like to thank you all again today for your participation and really for the respectfulness in which you conducted yourselves and each other.

Judy Dalton: I have a question, it seems like we're going to continue looking at this one possibility, are we going to look at other options, rather than being on the beach?

Mauna Kea Trask (Po`o): Well, there has been and if you look at the previous planning documents, there is information contained on the Kūhiō Highway route as well as the canal route, currently we're just looking at this route and the impacts associated with this specific route. We have taken your mānā`o regarding alternative routes and we can include that in looking at ways to avoid, minimize, or mitigate but nonetheless we're still focusing for, the rules require us to look at Phase C & D in the effects.

Judy Dalton: Also, we will be looking more in depth at the other options as well?

Mauna Kea Trask (Po`o): Well, we identified those and pardon me if I'm not understanding you, but we will be looking at ways to avoid, minimize or mitigate the impacts of this, but we're not going to be revisiting and looking again with all those other routes because they've already been explored.

Judy Dalton: So it sounds like this is going to be happening definitely and that there is not really, or suggested that we not have to do this.

Mauna Kea Trask (Po`o): No, currently the point is this; the current alignment is the canal route, correct Mr. Kimura?

Glenn Kimura: There are other options, yes.

Mauna Kea Trask (Po`o): There are other options, so canal and Kūhiō Highway is the main alternate routes that have been explored fully. This opportunity for Phase C & D has come on, but before we can even consider it we have to go through this 106 process.

Judy Dalton: I see, so we could decide not to do this and do the more mauka routes, is that still open as a possibility?

Mauna Kea Trask (Po`o): And I'm going to say, just specify, the agency official and the agency implementing this project can make that decision, when you say "we" that decision ultimately is not going to be made by anyone at this meeting but that decision can still be made by the appropriate party not to proceed with Phase C & D, of course.

Judy Dalton: Who's going to be making that decision then?

Mauna Kea Trask (Po`o): Whether or not to proceed with the project on this route, I believe will be with County, Federal and State agencies. Mr. Yap?

Keith Yap: Yes, if I may interject here, I believe that the alternate routes were vetted out; this is the route that they've come to us with as far as consultation. Now my understanding of how this works is that if the mitigation and the efforts are not satisfactory, then we'll start to go back to the drawing boards and consider a different route. The question is do we have to go through this process first, come up with these mitigation factors and see if we come to a conclusion that the mitigation factors are adequate enough to support the project as it's presented. And if it goes beyond that, where mitigation, we don't feel the mitigation is adequate, then that would be the alternative to start looking at other pathways, but I think that's the process.

Judy Dalton: So if the people here contributed their comments about this feel that it's not appropriate to have developments on the beach, so how much of a possibility would there be to go back to the other options?

Mauna Kea Trask (Po`o): I think at that point it's impossible to discuss all those contingencies at this time and we're still so early in the process, this process is not preordained and the reason why I can't speak on and I won't speak on it is because you can't tell the future. You can't tell what decisions will be made or even if there's an inkling to make these decisions. We are required by Federal and State law to go through this process; we're going through the

process right now and as we go through those issues will pop up at the appropriate time, but now is not the appropriate time. Ms. Regush?

Rayne Regush: With regards to the next meeting, could a concerted effort be made to invite the private landowners to attend, particularly within that undeveloped resort area? Because if we're talking about mitigation measures, the path is sort of boxed into a very narrow corridor and the adjacent landowner will need to be involved in negotiations.

Mauna Kea Trask (Po`o): Have we been sending out notifications to landowners?

Missy Kamai: Are we talking the big development people or the private owners already that have property....

Mauna Kea Trask (Po`o): The big developments. Well under the CFR's, these people may, our public notices have been going out. We've been fulfilling our legal requirements for notice, so they are treated like everyone else in the public, if they want to come they can come. However, this specific process is for consultation with members of the public, Native Hawaiian organizations, etc. So I don't think any specific notices are going out to them, but the general public notices are there and they should be aware of it or their deemed to be statutorily aware of it because we've been complying with the requirements.

Keith Yap: You could certainly invite them but I don't know if they would come.

Rayne Regush: That's why I'd like to ask that they be invited and particularly because I'm hearing concerns about adequate access, parking and of course there's no where along the coastal corridor property to provide that therefore you would have to negotiating with the adjacent landowner.

Mauna Kea Trask (Po`o): And the difficulty about those issues to as far as the landowners and development is again the scope of this project is the proposed bike path project, it is not the development.

Rayne Regush: But they are adjacent to, we share a boundary.

Mauna Kea Trask (Po`o): That's true but....

Keith Yap: I think that would be addressed in their permit.

Mauna Kea Trask (Po`o): That's correct, and the Planning Commission.

Keith Yap: In our dedication, we make sure it's noted, the Planning Commission will be on notice to make sure that something else can be done about the parking and access.

Mauna Kea Trask (Po`o): And that's just like what I was talking about venue and kuleana regarding the burials and the Burial Council's powers and duties. The Planning Commission, it's their powers and duties regarding those specific developments, so we can note those for record. Nancy can we send out invitations to the developers if we get you that information?

Nancy Nishikawa: We can, we have that information.

Mauna Kea Trask (Po`o): Okay, thank you. Anything else? Well thank you again everybody, I'm going to conclude the meeting now but I would like to ask members of the Native Hawaiian community to stay after, not only to have, do we have lunch? No, stay for just five minutes, what we need to do is as you all know Auntie Sharon Pomroy passed away last year. She was the alaka'i that was nominated and confirmed by the Native Hawaiian Protocol Committee originally. We attempted to hold a meeting that Kaliko and Auntie Nani were so kind to show up to but I request that you stay members of the community so we can appoint another alaka'i. I'm happy to conduct these meetings on Auntie Cheryl's (behalf), but it is appropriate we have someone from the community in order to comply with the proposed process to be there and to be here. Thank you all and those of you interested, please stay.

PANI – END MEETING – 11:32 am

Appendix G

Public Meeting 5, May 20, 2013

- Legal notice for Section 106 Review and First Public Meeting, published in *The Garden Island*, May 13, 2013
- Agenda
- Handout: Matrix with Mitigations
- Attendance Sheet
- Minutes of Meeting

AFFIDAVIT OF PUBLICATION

IN THE MATTER OF
Legal Notice

STATE OF HAWAII
City and County of Honolulu

Doc. Date: MAY 13 2013 # Pages: 1
Notary Name: Patricia K. Reese First Judicial Circuit
Doc. Description: Affidavit of Publication
Notary Signature: [Signature] Date: MAY 13 2013
Notary Seal: PATRICIA K. REESE NOTARY PUBLIC Comm. No. 86-467 STATE OF HAWAII

Rose Rosales being duly sworn, deposes and says that she is a clerk, duly authorized to execute this affidavit of Oahu Publications, Inc. publisher of The Honolulu Star-Advertiser and MidWeek, that said newspapers are newspapers of general circulation in the State of Hawaii, and that the attached notice is true notice as was published in the aforementioned newspapers as follows:

Honolulu Star-Advertiser 0 times on:

Midweek Wed. 0 times on:

The Garden Island times on: 05/13/13

And that affiant is not a party to or in any way interested in the above entitled matter.

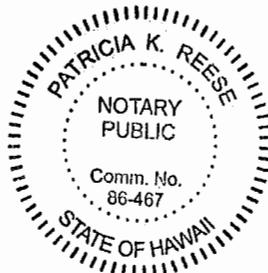
Rose Rosales [Signature]

Subscribed to and sworn before me this 13th day of May A.D. 20 13

Patricia K. Reese, Notary Public of the First Judicial Circuit, State of Hawaii
My commission expires: Oct 07 2014

Ad# 0000519244

Public Notice for Fifth Public Meeting
Section 106 Review of the proposed Lydgate Park-Kapa'a Bike/Pedestrian Path, Phases C&D
The Kaua'i Department of Public Works (DPW) is issuing this public notice for the fifth meeting under 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. This meeting is open to Native Hawaiian Organizations and members of the public.
Phases C & D of the proposed bike/pedestrian path is a largely coastal alignment from Papaloa Road to Uhelekawawa Canal in Waipouli. This section will connect portions of the path that are already built or currently under construction.
The meeting will be held on Monday, May 20, 2013 at 9:00 AM in the State Department of Transportation-Highways Division, Conference Room at 1720 Haleukana Street in Puhl.
Anyone with special needs requiring an American Sign Language interpreter or an auxiliary aid to participate in any of the meetings should contact the Department of Public Works at Ph. 241-4849 at least five days prior to the meeting.
For further information, please contact Nancy Nishikawa at Kimura International, Inc. Ph. (808) 944-8848, ext 2212.
(TGI519244 5/13/13)



LN: _____

Lydgate Park-Kapa‘a Bike/Pedestrian Path, Phases C&D
Meeting for Section 106 Consultation, National Historic Preservation Act
Wednesday, May 20, 2013, 9:00 AM
State Department of Transportation-Highways Conference Room
1720 Haleukana Street, Puhi

AGENDA

Assessment of Adverse Effects

- I. Opening Pule**
- II. Overview of Protocol Committee decided process/ laying of ground rules**
- III. Mahiki (The “setting to rights” of each successive problem that becomes apparent during the course of ho‘oponopono, even though this might make a series of ho‘oponopono’s necessary.)**
 - A. Review of Sec 106 and integration with the NEPA process**
 - B. Assessment of Adverse Effects (36 CFR § 800.5)**
 1. Po‘o directs agency official to apply criteria of adverse effect per (36 CFR § 800.5(a)) and present results to NHOs and other interested parties.
 - i. Criteria of adverse effect (36 CFR § 800.5(a)(1)).
 - ii. Examples of adverse effects (36 CFR § 800.5(a)(2))
 - iii. Phased application of criteria (36 CFR § 800.5(a)(3))
 2. Finding of no adverse effect, Po‘o requests agency official take steps required in (36 CFR § 800.5(b)).
 3. If the agency official proposes a finding of no adverse effect, Po‘o requests agency official to take action of further consulting party review pursuant to (36 CFR § 800.5(c)).
 4. Po‘o shall request that agency official take steps consistent with “Results of assessment section whether or not adverse effect is found” (36 CFR § 800.5(d)).
 - C. Resolution of adverse effects (36 CFR § 800.6)**
 1. Continue Consultation. (36 CFR § 800.6(a))
 - i. Po‘o shall request agency official to present proposed mitigation measures.

- ii. Po'o asks NHOs and other interested parties to provide input on proposed mitigation measures and if they have any mitigation measures to propose.
- 2. Resolve adverse effects (36 CFR § 800.6 (b)).
 - i. Po'o shall request that agency official to take the appropriate steps to resolve any and all adverse effects either with or without the Advisory Council on Historic Preservation as appropriate and required pursuant to (36 CFR § 800.6 (b)(1)&(2)).

IV. Pani

**Lydgate Park-Kapaa Bike/Pedestrian Path
Phases C&D
Historic Properties with Proposed Mitigations**

	Site Name and/or SIHP Number	Brief Description	Effect	Proposed Mitigations
1	SIHP 50-30-08-108 Kukui Heiau	Navigational heiau with at least two stone lamps that guided canoes on the ocean	No effect	1. Directional sign for path users
2	SIHP 50-30-08-791 Cultural layer and burials	Cultural layer with relatively high concentration of marine midden suggestive of substantial fishing activity; radiocarbon dating to A.D. 1275 to 1645; two burials	Potential adverse effect Mitigation commitments proposed No adverse effect with mitigations	1. Cultural monitoring 2. Stipulation regarding discovery of inadvertent burials 3. Stipulation regarding cultural layer and unearthened artifacts
3	SIHP 50-30-08-886 Cultural layer and burials	Cultural layer with hearth remnant, 'auwai, and two sets of previously disturbed disarticulated human remains (SIHP 50-30-08-886A)	Potential adverse effect Mitigation commitments proposed No adverse effect with mitigations	1. Cultural monitoring 2. Stipulation regarding discovery of inadvertent burials 3. Stipulation regarding cultural layer and unearthened artifacts
4	SIHP 50-30-08-891 WWII pillbox	Concrete WWII-era military structure, likely a military pillbox or machine gun emplacement	No effect	1. Interpretive sign
5	SIHP 50-30-08-1800 Cultural layer and burials	Two cultural layers in the shoreline sand berm; an upper deposit extends 25-80 feet inland from the shore; a lower deposit extends 40-100 feet inland from the shore; three burials uncovered and left in place; probably occupied about A.D. 1500; the extensive nature of deposits and relative lack of artifacts suggests that the area was used for recreation or social gatherings	Potential adverse effect Mitigation commitments proposed No adverse effect with mitigations	1. Cultural monitoring 2. Stipulation regarding discovery of inadvertent burials 3. Stipulation regarding cultural layer and unearthened artifacts 4. Construct path on berm or fill
6	SIHP 50-30-08-1801 Cultural layer and burials	Two cultural layers and five burials are located in the shoreline sand berm; radiocarbon dated to approx. A.D. 1500; numerous indigenous artifacts suggest a development sequence from a limited workshop area to a site of permanent occupation	Potential adverse effect Mitigation commitments proposed No adverse effect with mitigations	1. Cultural monitoring 2. Stipulation regarding discovery of inadvertent burials 3. Stipulation regarding cultural layer and unearthened artifacts 4. Construct path on berm or fill 5. Use existing footpath alignment; keep ironwoods to the extent feasible and subject to the shoreline setback 6. Interpretive sign

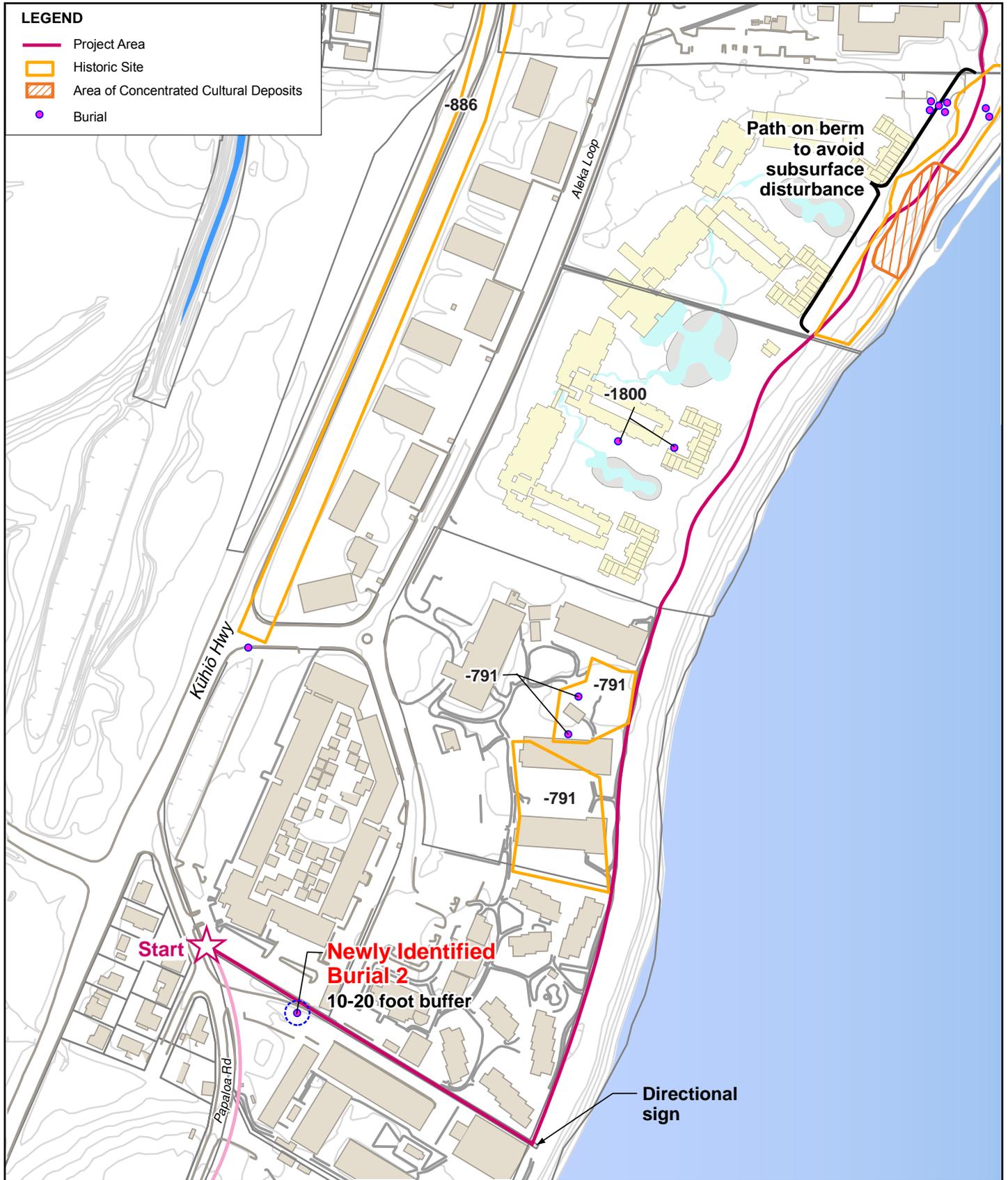
	Site Name and/or SIHP Number	Brief Description	Effect	Proposed Mitigations
7	SIHP 50-30-08-1836 Cultural layer and burials	Cultural layer with numerous features. Data suggest this site was a moderate permanent settlement that may have been a staging area for fishing events and associated feasting and religious activities, a location for canoe construction, repair, and storage, a location for manufacture of shell tools and slingstone, and special place for tattooing	No effect	
8	SIHP 50-30-08-3938 Cultural layer	A pit feature with charcoal and fire-cracked rocks was recorded. The radiocarbon dating result for this feature, dated to AD 1690-1775, was first reported in a subsequent monitoring report for the property	Potential adverse effect Mitigation commitments proposed No adverse effect with mitigations	1. Cultural monitoring 2. Stipulation regarding discovery of inadvertent burials 3. Stipulation regarding cultural layer and unearthed artifacts
9	SIHP 50-30-08-3939 Two Hawaiian burials	Two pre-Contact/early historic Hawaiian burials	No effect	
10	Burial 1, SIHP To be determined	Likely pre-Contact to early post-Contact in age	Potential adverse effect Mitigation commitments proposed Final effect determination pending status of realignment	1. Burial treatment plan to be submitted for review by KNIBC, SHPD, and OHA, and approval by KNIBC 2. Realign path to avoid burial. May require approval by private landowner and acquisition of additional right-of-way
11	Burial 2, SIHP to be determined	A previously disturbed human burial located adjacent to an old utility line. A partial, disturbed burial pit was also observed. This burial is likely pre-Contact to early post-Contact. Burial is located on Kauai Sands property and outside the proposed path alignment.	No effect	1. Burial treatment plan to be submitted for review by KNIBC, SHPD, and OHA, and approval by KNIBC 2. Maintain buffer

**Lydgate Park-Kapa‘a Bike/Pedestrian Path
Phases C&D
Historic Properties with Mitigations**

Proposals for site-specific mitigations are shown on the attached figure.

Other Mitigation Proposals Under Consideration

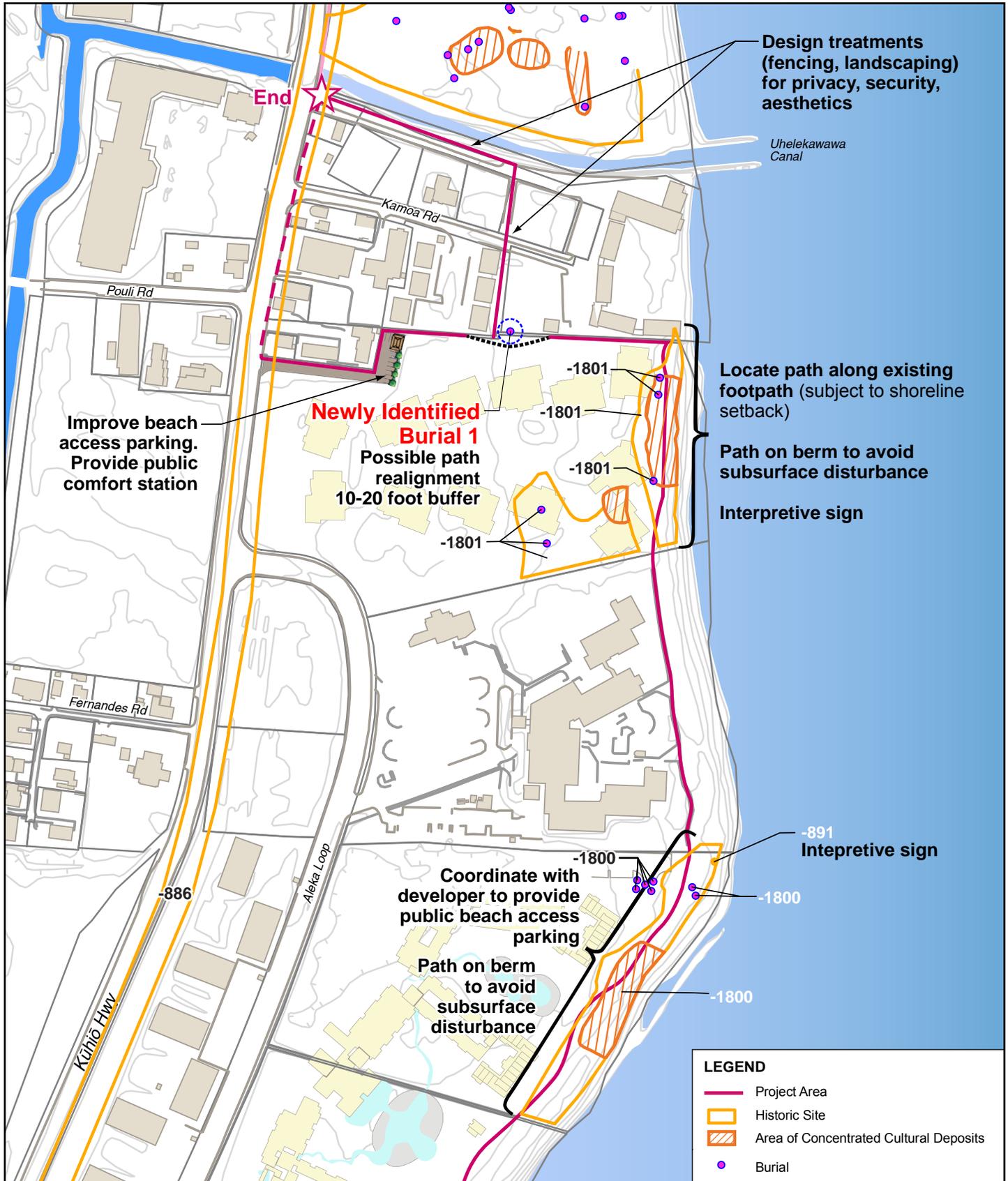
- Burial treatment program
- Archaeological monitoring program
- Construction using “gentle grading” technique
Is there documentation for this technique that can be included as construction specification?
- Ethnographic study of the Waipouli coast—information to be used for interpretive signs
- Fencing or other barrier between path and adjacent residences
- Parking for beach access at three locations (1) improvements to the existing County parking area behind Kapa‘a Missionary Church, (2) 12 parking stalls at the future Coconut Plantation Resort per SMA(U)-2006-5, and (3) 12 parking stalls at the future Coconut Beach Resort per SMA (U)-2006-4
- Encourage programs for the transmission of cultural knowledge related to coastal traditions and practices, and that promote stewardship of the Waipouli coast



Future resort development based on preliminary plans, subject to change.



Figure 1a
PROPOSED MITIGATION MEASURES
Lydgate Park - Kapa'a Bike/Pedestrian Path
Phases C & D



Future resort development based on preliminary plans, subject to change.

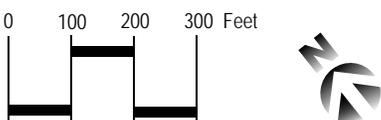


Figure 1b
PROPOSED MITIGATION MEASURES

Lydgate Park – Kapa'a Bike/Pedestrian Path
Phases C & D



Aerial view



Mokihana of Kauai tennis court to be relocated makai. Path aligned between Village Manor and relocated court.



Simulation of proposed path makai of Village Manor complex. Concept drawing for planning purpose only.



Path along Uhelekawawa Canal—visual simulation of curb and landscaping (concept only)



Path along Uhelekawawa Canal—visual simulation of low fencing (concept only)

Attendance Sheet

Meeting: Phases C & D, Lydgate-Kapa'a Bike/Pedestrian Path, Sec 106 Meeting 5

Date/Time: Monday, May 20, 2013, 9:00 AM

Location: Hawaii Department of Transportation Conference Room

Name	Contact Information—CONFIDENTIAL, Not for Public Release	
	Mailing Address	E-mail Address
D. Kaliko Santos		
Liberto Albao		
Rayne Regush		
NANCY McMAHON		
MISSY KAMAII		
Raymond M. Cormier		
Glenn T. Kimura		
Cheryl Lovell-Obatake		
JUDY DALTON		
Beverly Muraoka		
Doug Haigh		
Nancy Nishikawa		
Mauna Kea Trask		
Meesa Otania (via telephone)		

Meeting called to order, 9:09am – May 20th, 2013.

Cheryl Lovell-Obatake (Po`o): Meeting is called to order. Everybody has an agenda; everybody has all the paperwork that is there at the door? Good morning, ACHP are you there? Federal Highways are you there? State your name please, my name is Cheryl, but I don't know who you are.

Meesa Otani (FHWA): This is Meesa at Federal Highway Administration.

Cheryl Lovell-Obatake (Po`o): Oh, Meesa, thank you very much, glad that you are on call. This is the Lydgate Park – Kapa'a Bike/Pedestrian Path, Phases C&D. Meeting for Section 106 Consultation, National Historic Preservation Act and today is Wednesday, May 20th and the time is now 9:10am. State Department of Transportation – Highways Conference Room here, at 1720 Haleukana Street, Puhi. I need to, Auntie Beverly would you do the pule?

Beverly Muraoka: Good morning, but today is Monday.

Cheryl Lovell-Obatake (Po`o): Right, today is Monday; someone made a type-o.

Nancy Nishikawa: I'm sorry, that was me.

Cheryl Lovell-Obatake (Po`o): It is Monday, not Wednesday. Thank you.

Beverly Muraoka: Pule.

Cheryl Lovell-Obatake (Po`o): Thank you so much. I'd like to go around the table, for the record as to who is present here, if you could state your name, and if you're with a group, if you can state that to? We'll start with Kaliko.

Kaliko Santos: My name is Kaliko Santos; I am here with the Office of Hawaiian Affairs.

Nancy McMahan: My name is Nancy McMahan, I was asked here to represent one of the Native Hawaiian groups.

Glenn Kimura: Glenn Kimura, Kimura International, consultant for this project.

Ray McCormick: Hawai'i Department of Transportation Highways, Kaua'i.

Judy Dalton: Judy Dalton, here as an individual and I also have an affiliation with the Sierra Club.

Rayne Regush: Rayne Regush, Sierra Club Kaua'i, Executive Committee and Chair of the Wailua – Kapa'a Neighborhood Association.

Liberta Albao: Liberta Albao, Queen Debra Kapule Hawaiian Civic Club.

Doug Haigh: Doug Haigh, County of Kaua'i.

Nancy Nishikawa: Nancy Nishikawa, Kimura International.

Beverly Muraoka: Beverly Muraoka, resident of Kaua'i and retired kumu hula.

Missy Kamai: Missy Kamai, Cultural Surveys Hawai'i.

Soncy Tamashiro: Soncy Tamashiro, County of Kaua'i.

Mauna Kea Trask: Mauna Kea Trask, County of Kaua'i.

Cheryl Lovell-Obatake (Po`o): Cheryl Lovell-Obatake, I am the Po`o and I'm also a Cultural Monitor for this project and the Kūhiō Highway and Kuamoo Road. I'm going to have an overview of the protocol and the decided process, laying of ground rules.

I am Cheryl Lovell-Obatake and I am the Po`o for this Section 106 Ho'oponopono based consultation process. Pursuant to the work of the Native Hawaiian Protocol Committee and my findings as Po`o, this culturally based 106 process was developed to make the Federal 106 Consultation Process more accessible to the Native Hawaiian Community and thus it makes the process more effective. After the process was introduced, the agency official, Mr. Nickelson, of the Federal Highway Administration and his consultants described the current undertaking, which is the Lydgate Park – Kapa'a Bike/Pedestrian Path, Phases C&D. Participants in this process were then identified and we conducted a site visit. After that, a series of meetings were had, we had a total of 4 meetings. These meetings were conducted in order to follow the requirements of the Section 106 as described in 36 CFR §800. I thank you all for participating in this very important matter and I ask you all to continue working together and to follow the rules and kapu contained in this process. At this time, I'm going to ask the Alaka'i to help me read the following numbers of the process.

Kaliko Santos: Aloha, this process will be a round-table discussion with the Po`o asking all the questions of NHO's, individuals and government agencies. If participants have questions for each other they shall ask the Po`o to ask the question to the other. No one shall speak unless allowed to by the Po`o. There will be certain definite legal questions that must be asked by the Po`o for Section 106 and 36 CFR §800, but further questions may be asked in order to better understand the answers given if needed, either by the Po`o, the participants or the government agencies through the Po`o. This way the procedures will be orderly. The Po`o will have the right to act according to both Hawaiian cultural principles as well as the rules of parliamentary procedure which are in fact very similar. To insure maintenance of order and decorum, if a

person or a party wishes to answer questions and/or make disclosures privately, this request can be accommodated. All participants shall refrain from speaking, yelling, shouting and arguing with each other and/or the Po`o. Speaking, yelling, shouting and arguing with each other and/or the Po`o is now declared kapu. All participants must respect and listen to the Po`o. The Po`o is now declared kapu. These consultation meetings will be open to all interested parties and can cover more than just Native Hawaiian issues.

Cheryl Lovell-Obatake (Po`o): Okay, I'm going to ask Mauna Kea on the Mahiki, the "setting to rights" of each successive problem that becomes apparent during the course of ho`oponopono, even though this might make a series of ho`oponopono's necessary.

Mauna Kea Trask: Thank you Auntie Cheryl. We're currently doing this process and the County has availed itself to this process because it had learned from its mistakes in past 106 reviews, specifically what occurred during the Wailua Beach portion. So in order for the County and my client to make the best decisions that it possibly can and also to afford the community, especially the Native Hawaiian community an opportunity to provide its input in a culturally sensitive and organized manner. We have listened to this process that was developed by the Hawaiian Protocol Committee and well as the findings of Auntie Cheryl. At this point, according to the ho`oponopono process as laid out by Mary Kawena Pukui in *Nana i ke kumu*, the County has identified that this is an issue that has a lot of potential problems and pursuant to the ho`oponopono practice in Native Hawaiian culture, it is best to deal with it in this way and be out and open, seeking to work in good faith together to resolve any problems. We would like to set, and my client would like to set things right and do the best they can in evaluating and ultimately deciding whether or not to pursue this project in this area according to the options that are on the table. This process has been open, my client has listened to everything that has been said thus far and has made a commitment to continue to listen to everything that you will say, you have said and you will say in the future regarding this project. We appreciate everyone's participation in this matter and the good faith in which you participated in it. We rely heavily on the expertise of our consultants, Kimura International, and I believe they will present next on the item 3A, which is review of the 106 and integration with the NEPA process. Although the Section 106 itself may end today or may end soon thereafter, it is part of a larger regulatory process and review process under the National Environment Protection Act. So this is one portion of a larger process that's going on. Even for myself, I am a trained attorney and I've worked with this issue, it's difficult for me to follow along. I thank you all for your patience and understanding and open-mindedness in working through this because really we want to find a process the community, especially the Native Hawaiian community, feels comfortable with. Thank you very much.

Cheryl Lovell-Obatake (Po`o): Okay, I will now ask the agency official to present their results regarding application of criteria to determine adverse effects per the 36 CFR §800.5(a). Nancy?

Nancy Nishikawa: Actually, Glenn is going to go through the handout, so everybody has the handout that reviews the historic properties.

Doug Haigh: Po`o, one question, item A: Review of the 106 and integration with the NEPA process, Glenn were you going to include that? Thank you.

Glenn Kimura: #3A – which is Section 106 reviews and I will integrate with the NEPA process. We are currently trying to complete a Draft Environmental Assessment under the NEPA process, but we had to go through the Section 106 process first because we felt that it was important to do that. What we'll do is after this Section 106 process is complete, we'll put it aside and then complete the EA under NEPA at which time there will also be another opportunity for everyone, including NHO's and those here and the general public to comment on the EA for this segment of the Bike Path. So that's where we are right now, and then when we go through the review process then we'll go through mitigation and include all of the mitigation that we're talking about today.

Doug Haigh: Po`o, can I ask a question?

Cheryl Lovell-Obatake (Po`o): Yes, Doug. Sure.

Doug Haigh: My understanding, we're not completing the 106 at this time, we're suspending it, because what we're going to do is now move further environmental research concerning the project and see how that might affect our 106 preliminary review and then once we get the full picture then we'll come back and try to close the 106 process.

Cheryl Lovell-Obatake (Po`o): So, you're suspending for now?

Doug Haigh: Suspending, not completing.

Glenn Kimura: Putting it aside for now.

Rayne Regush: Can I ask a clarification?

Cheryl Lovell-Obatake (Po`o): Sure.

Rayne Regush: Is there a deadline for us to submit comments for the Draft EA that's underway under the legal process?

Glenn Kimura: That's always the case with every EA that you do, we have not completed the Draft EA at this time. When we do it will be published in the Office of Environmental Quality Control Bulletin and then this is an EA, so you have 30 day comment period from that time that it's published.

Cheryl Lovell-Obatake (Po`o): Rayne, will you state your name because you're asking good questions.

Rayne Regush: Rayne Regush. Thank you for the information that you shared but I'm just wondering at this point in time, for the Draft EA, if we'd like to submit information so that it is incorporated when you prepare your draft, for the draft.

Glen Kimura: Po'o, can I answer this question?

Cheryl Lovell-Obatake (Po`o): Sure.

Glen Kimura: I don't really have an answer for that because it is a little bit out of sync with the normal process that we use. When we do an EA, we send out a letter at the very beginning, it's called a pre-assessment consultation letter, that letter goes to interested parties as well as all the other agencies, and we ask for comments on the proposed project. So that happened a long time ago. Those comments come in and help us focus the EA on those kinds of issues. What Rayne is asking for now is to submit comments to us about the EA which is not a part of this Section 106 process, but other general comments. It's unusual to take those comments now, only because we would like to do an EA draft, which contains all the information that we can gather, which we thought would be focusing on the issues at hand. And then, she can review that entire document to make sure that her questions were answered, if not, she can submit questions at that point in time. That's the normal process, a 30 day review period.

Cheryl Lovell-Obatake (Po`o): Do you concur with that Mauna Kea?

Mauna Kea Trask: Yes, Po'o. The EA process, both Federal and the EIS process on the State level, as we all know it's very process oriented, it's very specific as to what procedures follow. Any legal review that occurs on these kinds of documents really focuses not on the end decision but actually whether or not the process was followed. It's not the most intuitive process to the lay person, even to the practitioners, but it does follow a specific course. In order for people to make or in order for them to make intelligent comments and questions, although they may have some mānā`o they want to share going into it, it is the normal legal codified process to prepare the EA first and then go publication and comment period, like as described by Mr. Kimura versus putting comments in first. Specifically, because you want an orderly procedure so everyone can comment at the same time so that the people preparing the documents can receive all the comments at the same time. So as they're not missing anything essentially, it more orderly that way.

Cheryl Lovell-Obatake (Po`o): Do you have any more questions?

Rayne Regush: The reason why I brought up my questions was because I wasn't sure if the Sierra Club, Kapa'i Group, had received the pre-assessment consultation letter. So if not, I was hoping this would be the opportunity we could send more information in writing.

Cheryl Lovell-Obatake (Po`o): Well, good, I'm glad you came and things are on the record and there's clarification here right now. Any more questions? Nancy Nishikawa.

Nancy Nishikawa: During the public review period for the Draft Environmental Assessment, we are planning to hold a public information meeting. So when that happens we'll let you know, we'll also let the Section 106 consultant parties know when that's coming up.

Cheryl Lovell-Obatake (Po`o): Okay, you got any questions?

Beverly Muraoka: Po`o excuse me, what the acronym "NEPA" stands for, please?

Cheryl Lovell-Obatake (Po`o): National Environmental Protection Act. Any more questions?

Nancy McMahon: When we discuss this, I want to make a comment about sites, because I think there are a couple sites that you didn't have on here.

Cheryl Lovell-Obatake (Po`o): I will now ask the agency official to present their results regarding application of criteria to determine adverse effects 36 CFR.

Glenn Kimura: Po`o, on behalf of the agency, I will go through this entire list, that you all have a handout, it's entitled "Lydgate Park – Kapa'a Bike/Pedestrian Path Phases C&D, Historic Properties with Proposed Mitigations". I'll go through it one by one, and Nancy will be up here. There are also maps in this handout for you and it shows you each one, they're all numbered, there are a total of, I believe eleven sites. They're all numbered, if they have a site name and/or SIHP number, a brief description of each, the effect and the proposed mitigations. So, I'll go through this if I may one by one? Okay, #1: SIHP 50-30-08-108 Kukui Heiau, it is a navigational heiau with at least two stone lamps that guided canoes on the ocean. The effect determination is that it has "no effect". We proposed directional signs for path users. That site is really not impacted by our project. #2: SIHP 50-30-08-791 Cultural layer and burials. It's a cultural layer with relatively high concentration of marine midden suggestive of substantial fishing activity; radiocarbon dating to A.D. 1275 to 1645; and there are two known burials.

Nancy Nishikawa: That's the site that's under Kaua'i Coast Resort, so it's this property here (indicated on map).

Glenn Kimura: If you see it, it's really not anywhere near the bike path and that is already built, the resort is built, and the buildings are there. The potential adverse effect, the mitigation commitment proposed and no adverse effect with mitigations. The proposed mitigation would be cultural monitoring, stipulation regarding discovery of inadvertent burials and stipulation regarding cultural layer and unearthed artifacts.

Cheryl Lovell-Obatake (Po`o): Glenn, can I stop you for a while? Can we do this on every, each number that we go down if there is any comments, like we have Nancy McMahon over here and I'm certain that she has some comments and you can probably discuss that. What number was it that you had comments on?

Nancy McMahon: Number 2, we're on it right now.

Cheryl Lovell-Obatake (Po`o): Can you allow comments after each site number?

Glenn Kimura: Can be done.

Mauna Kea Trask: If I could just suggest something for the record, I just want to say that we can do whatever you want on how to go through this process, but I'd just like to know for the record then, if we're going to proceed with each site name and/or via SIHP number, we're going to address all the agenda items as they apply under both Sections B (1-4) & C (1-2) per site. Just so everyone can follow along on the agenda, Po`o wants to do it via site, so if we're going to do that we'll cover the agenda but it's going to be just a little reformulated so as to accommodate her request. If we're going to via site and do proposed mitigation, I just want to avoid any redundancies or confusion later on, if that's okay with you then that's what we'll do.

Cheryl Lovell-Obatake (Po`o): Okay? You okay Doug? Everybody okay?

Glenn Kimura: Po`o, does Nancy want to say something else?

Nancy McMahon: So, Site 791, it is a burial and cultural deposit in the two locations, I can't remember when they were, but that deposit now is sporadic throughout that project area and actually still does go into the coastline there. I walk that coast every day and I see it, so just to let you know, besides monitoring I don't know if it would be appropriate. As the parcels get developed that are adjacent next door, but there are homeless people that live along that shoreline and maybe there should be some interpretive information or some mitigation proposal about the history and burials that have not yet been proposed. I just wanted to clarify that that deposit and the burials are set, but obviously there are additional burials on that property, that maybe there be a proposed mitigation sign there. I do think people pay attention to read the signs and if they knew that they were walking on certain culturally sensitive areas, maybe they wouldn't be living out there either.

Glenn Kimura: Po`o, we can add that to the proposed mitigation, interpretive signs.

Cheryl Lovell-Obatake (Po`o): Thank you.

Nancy McMahon: Also, that property, just to add a comment to you, has lights along the path. The other property does not, I'm not sure if the bike path is proposing to put some kind of low-lighting?

Doug Haigh: We've made the decision, all along the shared path not to put any lighting. Now if there's adjacent lighting from the hotels, that's their kuleana.

Nancy McMahon: But it's not going to be in your pathway now, the lights that they have there?

Doug Haigh: They will be and of course they are regulated by their SMA permit which should address lighting issues as far as, but for us we are very sensitive to Section 7, Federal....

Nancy McMahon: Right, the shearwater, I agree they're out there too.

Doug Haigh: We have made the decision not to put any lighting along the path.

Glenn Kimura: Okay, Po`o if we continue, number 3, SIHP 50-30-08-886: Cultural layers and burials.

Nancy Nishikawa: That's this property that's along the highway right of way (indicated on map).

Glenn Kimura: The description: it's a cultural layer with hearth remnant, `auwai, and two sets of previously disturbed disarticulated human remains (SIHP 50-30-08-886A). It has a potential of adverse effects, there are mitigation commitments proposed and no adverse effect with mitigations. The proposed mitigations are: 1) cultural monitoring; 2) stipulation regarding discovery of inadvertent burials; and 3) stipulation regarding cultural layer and unearthed artifacts.

Cheryl Lovell-Obatake (Po`o): Any questions on number 3? None, 4 please.

Glenn Kimura: Po`o, number 4, SIHP 50-30-08-891: it's a WWII pillbox. Concrete WWII-era military structure, likely a military pillbox or machine gun emplacement. There's no effect. The proposed mitigation is to have interpretive signage there.

Nancy Nishikawa: So that property is right here (indicated on map).

Cheryl Lovell-Obatake (Po`o): Any questions? Number 4? None, 5 please.

Glenn Kimura: Number 5, SIHP 50-30-08-1800: Cultural layer and burials. There are two cultural layers in the shoreline sand berm; an upper deposit extends 25-80 feet inland from the shoreline; a lower deposit extends 40-100 feet inland from the shore; three burials uncovered and left in place; probably occupied about A.D. 1500; extensive nature of deposits and relative lack of artifacts suggests that the area was used for recreation or social gatherings. It has a potential adverse effect, mitigation commitments proposed and there will be no adverse

effects with mitigations. Proposed mitigations: 1) cultural monitoring; 2) stipulation regarding discovery of inadvertent burials; 3) stipulation regarding cultural layer and unearthed artifacts; 4) and the proposal is to construct the path on a berm or fill.

Nancy Nishikawa: The reason for that being so that you don't have to excavate or minimize sub-surface disturbance. And that site is here (indicated on map). So of the two vacant parcels proposed for the Coconut Beach Resort, it's along the shoreline.

Beverly Muraoka: Po`o, excuse me, is this path with the dark red line? Is that what you folks are saying? So your proposal, the one with the lines is the berm to avoid this sub-surface disturbance?

Cheryl Lovell-Obatake (Po`o): She has a map up there.

Nancy Nishikawa: And also, there's a map attached to the handout. So this area that's marked in orange is generally the area of the cultural layer. The violet line is the proposed path alignment, and in this section here (indicated on map), the proposal is to raise the path, to put it on a berm so that you don't have to go there.

Beverly Muraoka: Okay, I'd like for the record, in my upbringing, we do not put anything on any kino, which is underneath. If all possible, like to be on the record, is there any way we can make the path around it, beside it, but not on it.

Cheryl Lovell-Obatake (Po`o): It is noted for the record. Thank you.

Nancy McMahon: Just to let people know that cluster of burials that Nancy pointed out, there was actually a burial preserve. Burials have been reinterred from that project area into that preserve.

Beverly Muraoka: So, all the iwi have been removed, is that what you're saying? So now it's just a site?

Nancy McMahon: It's a reinternment of the burial preserve.

Beverly Muraoka: Okay, thank you.

Cheryl Lovell-Obatake (Po`o): Rayne Regush?

Rayne Regush: For proposed mitigation, was the historic, because the coastal ironwood trees which run along those properties are over fifty years old and could be considered historic, I'd like to insure that those trees are preserved.

Cheryl Lovell-Obatake (Po`o): So noted for the record. Number 6. Any more questions on number 5?

Rayne Regush: People who go on, it's been challenging for me, the lack of detail in our maps because we don't have the 100 foot open district defined, and that's the area in which the proposed hotel/resort developments cannot build. But yet we're building the bike path in that open district and without seeing how far mauka that open district boundary is, it's hard to determine how much leeway we have to push the path mauka and away from the sands and away from the burials.

Cheryl Lovell-Obatake (Po`o): Thank you, so noted for the record. Any more questions? Nancy?

Nancy Nishikawa: To clarify, the path wasn't excluded from that.

Rayne Regush: Correct, we just need to align it in the best place; we have 100 feet in which to align it along the coastline.

Nancy Nishikawa: Right, so the path goes within that 100 foot open district.

Rayne Regush: And I'm just advocating to keep it as far mauka to that as possible.

Cheryl Lovell-Obatake (Po`o): Are we ready for number 6?

Glenn Kimura: Okay Po`o, number 6, SIHP 50-30-08-1801: Cultural layer and burials. There are two cultural layers and five burials located in the shoreline sand berm; radio-carbon dated to approximately A.D. 1500; there are numerous indigenous artifacts suggesting a development sequence from a limited workshop area to a site of permanent occupation. There is a potential adverse effect, mitigation commitments proposed and there will be no adverse effect with mitigations. The proposed mitigations: 1) cultural monitoring; 2) stipulation regarding discovery of inadvertent burials; 3) stipulation regarding cultural layer and unearthed artifacts; 4) construct path on berm or fill as in #5; 5) use existing footpath alignment; to try to keep ironwoods to the extent feasible and subject to the shoreline setback; and post 6) interpretive sign.

Nancy Nishikawa: So this site is further north in this other vacant parcel, close to the Coconut Plantation Resort.

Cheryl Lovell-Obatake (Po`o): Thank you, any questions? Nancy McMahon.

Nancy McMahon: The 1801 burials and the cultural deposits and prior to approval of the Burial Council, there were three burials outside a preserve area which is the hash-mark area, they were to be reinterred and relocated into that preserve. I know they had trouble, SCS wasn't

hired yet, and Paul Roosevelt's company did the initial survey work and found the three near the preserve area and they were to be relocated years later because the property was never developed and another potential owner was coming in and they needed more battery covering and then to relocate those burials, I don't recall we were able to, getting someone out there to help them relocate it, either they found one or they found all of them, I can't remember, but there are burials that need to be relocated in the preserve area.

Cheryl Lovell-Obatake (Po`o): It is noted for the record. Anyone has questions? Yes.

Beverly Muraoka: My ninau is, I see one, two, three, four, five, where have they been reinterred?

Nancy McMahan: There's a cluster of coconut trees here (indicated on map), these are the three that are supposed to be relocated. There's already a cluster of burials here, a relic deposit here, these are the preserve deposits and then I can't recall but one or two burials are free, these tried to be relocated by SCS and we couldn't find them. The proposal was to come back and to reinter them in here (indicated on map), I believe they are still in this location somewhere down here, but have not reinterred. I have to double check, I think there was a third cluster here (indicated on map), that was the agreement, the Burial Council said we had a preserve area here and here (indicated on map), this preserve area does not have burials, it's just a cultural deposit, as far as we know not all of it has been excavated. This had been excavated (indicated on map), found some other burials and these were to be reinterred with those burials.

Cheryl Lovell-Obatake (Po`o): Thanks Nancy. Rayne Regush.

Rayne Regush: I have the archeology report that was prepared for Coconut Plantation Village when they were applying with the County for the SMA permits for this proposed development and the recommendation is quote/unquote from Hal Hammatt 1999: "That it is proposed that all cultural material and human remains within the 100 foot shoreline zone be preserved in place, with simple measures taken to prevent damage to the site."

Cheryl Lovell-Obatake (Po`o): That was 1999?

Rayne Regush: But it was quoted in the 2005 archeological report submitted with the SMA permit. It also reads regarding cultural layers and probable finds, indications for development of the project area that Kaua'i County requires that 100 foot shoreline setback with open zoning within the setback, and as such the shoreline deposits within the 100 foot shoreline zone have been designated as a preserve. Here we're looking at this coastal area as a preserve and yet we're still proposing the bike path through that zone area.

Cheryl Lovell-Obatake (Po`o): Well, thank you for the information and all of that, I remember that application very well. Mauna Kea would you verify, found out about that area, the 2005

application with Coconut and making sure that we're identifying the burials that are mentioned.

Mauna Kea Trask: I will and I believe that, and Mr. Kimura can correct me if I'm wrong, this is the type of information, the information we get from this process will be brought into the NEPA document and that NEPA document itself will look at the other records, as far as the open district and everything like that, that applies from other non-106 applicants, like other permits and everything else in the area. And that document, which will be published in the comment period, is required, that will be enfolded into the loop as well.

Cheryl Lovell-Obatake (Po`o): Thank you. That's why I was concerned about that two hotels and I mentioned it too. You're right, I'm glad you recalled all of that. Do you have any more questions?

Rayne Regush: Just another comment, we had another map and it had a bit more detail and because of the quantity of significant sites, there is (and I'm sorry I don't have a visual to show you) an opportunity to weave through the property to avoid the sites designated.

Cheryl Lovell-Obatake (Po`o): Oh good, thank you Rayne, I appreciate that, good memory and records. Anybody have any more questions on this number?

Beverly Muraoka: Po`o, kalamai, we were whispering because I asked what hotel was this and Missy informed me it hasn't been built yet.

Cheryl Lovell-Obatake (Po`o): That's the two Coconuts, Alton Hong was for one and Belles was for the other.

Mauna Kea Trask: The Coconut Beach Villas and something else.

Doug Haigh: It's a Coconut Plantation project and I did recently meet with two representatives, Michael Belles represented the current owner and Avery Youn was the representative of the buyer. They are moving forward and expecting to build in late 2014, so we were talking about, because they have an SMA permit for this project and they're required to provide the lateral and the vertical access for the shared use path. So it has been being incorporated into the path and then we're going to move on and talk about the identified burial #1, that was part of the discussion, ideally to avoid.

Cheryl Lovell-Obatake (Po`o): Okay, any more and it is so noted for the record what you have indicated. Are we on number 7? Please continue.

Glenn Kimura: Number 7: SIHP 50-30-08-1836 – Cultural layer and burials. Cultural layer with numerous features, data suggest this site was a moderate permanent settlement that may have been a staging area for fishing events and associated feasting and religious activities, a location

for canoe construction, repair, and storage, and a location for manufacture of shell tools and sling stone, and special place for tattooing. Very interesting, but no effect.

Nancy Nishikawa: That property is on Waipouli Beach Resort.

Cheryl Lovell-Obatake (Po`o): Well, we won't even go there about that. Any questions or comments? Okay, next.

Glenn Kimura: Number 8: SIHP 50-30-08-3938 – Cultural layer. A pit feature with charcoal and fire-cracked rocks was recorded. The radiocarbon dating result for this feature, dated to AD 1690-1775, this was first reported in a subsequent monitoring report for the property. Has a potential adverse effect, mitigation commitments are proposed and no adverse effect with mitigations. Proposed mitigations are: 1) cultural monitoring; 2) stipulation regarding discovery of inadvertent burials; and 3) stipulation regarding cultural layer and unearthed artifacts.

Nancy Nishikawa: Property is just mauka of Bull Shed.

Beverly Muraoka: Is that where it says Kamao Road?

Nancy Nishikawa: Just north of Kamao Road.

Doug Haigh: It's not shown on the map.

Nancy Nishikawa: This is Kamao Road, and it's right there (indicated on map).

Cheryl Lovell-Obatake (Po`o): Any comments?

Nancy McMahon: Is that project owned by Mokihana, the owners of Mokihana, the Bull Shed, tennis courts and all that? (Inaudible).

Glenn Kimura: The alignment goes right through it.

Nancy McMahon: I noticed some new owners there, just so you know, and I've asked them to give proposals to our County because they're going to tear down the tennis courts and build a building there and I don't know if there doing renovations. Have they talked to you guys yet?

Doug Haigh: We have a long standing conversation with the owners of the Mokihana facility and have been talking to them about resizing, changing the tennis court to a smaller footprint, a modified tennis court, so we have been in conversations with them and you'll see some of the pictures that we've done showing the proposed path that goes through that property. I'm not aware that they sold that property; I know they sold the apartments on the north side of Waipouli Beach Resort. They bought the entire Mokihana property?

Nancy McMahon: Same people bought this, and they told me they're taking the tennis courts down.

Doug Haigh: If you can give me a contact Nancy that would be helpful.

Cheryl Lovell-Obatake (Po`o): Any more comments? Okay, number 9.

Glenn Kimura: Number 9: SIHP 50-30-08-3939 – Two Hawaiian burials. There are two pre-contact/early historic Hawaiian burials that have no effect.

Nancy Nishikawa: So, it's these two burials (indicated on map).

Cheryl Lovell-Obatake (Po`o): Comments?

Beverly Muraoka: Excuse me, that still a portion of the Kamao Road Village Manor property?

Nancy Nishikawa: It's actually Alicia Kaauwai's property, it's just makai of her, there's another single residential block. It sold to Lloyd Nishikawa, no relation.

Cheryl Lovell-Obatake (Po`o): For the record, no relation to Nancy Nishikawa. Any more comments?

Beverly Muraoka: Po`o, I see newly identified burial is right outside of Alicia's property?

Nancy Nishikawa: That's the one that's next to the tennis court.

Glenn Kimura: We're going to talk about that one now. Number 10: Burial #1 – SIHP to be determined. It's likely a pre-contact to early post-contact in age. Has a potential adverse effect, mitigation commitments proposed, final effect determination pending status of realignment. Proposed mitigations: 1) burial treatment plan to be submitted for review by KNIBC, that's the Kaua'i-Ni'ihau Island Burial Council, SHPD, and OHA and approval by KNIBC; 2) realign the path to avoid burial, we may require approval by private landowner and/or acquisition of additional right-of-way.

Cheryl Lovell-Obatake (Po`o): Po`o has a question for the County Attorney regarding the Kaua'i – Ni'ihau Island Burial Council, are they?

Mauna Kea Trask: Currently the Kaua'i – Ni'ihau Island Burial Council has not met since approximately since March 2011. Recently, actually they set an informational meeting this Wednesday, May 22nd from 9:00am – 12:00pm at Lihu'e library. There's still no quorum in the Burial Council, however pursuant to HRS 92-2.5, irrespective of the lack of quorum, presentations and testimony can still be taken on agenda items as long as there's no discussion, deliberation, decision making on those topics. And so a determination was made that even

though no decision will be made, if there's no quorum, there's a lot of work to be done in Kaua'i and Ni'ihau, so that work should be done now and the community should have a legal avenue to voice their concerns, so when there is quorum, the body can hit the ground running and start approving or denying. I invite all of you to attend those meetings. Any comments that are made will be kept for the record and taken up at a later day.

Liberta Albao: Po`o, is that the library?

Mauna Kea Trask: Yes, the library, the side room, the front room where they do the book sale.

Liberta Albao: Do you know if it's occupied, because it's under renovation?

Mauna Kea Trask: I'll go check.

Liberta Albao: Is there any other place within the County, like the Piikoi building that we could move the meeting?

Mauna Kea Trask: Could be, I'll definitely check.

Liberta Albao: It's very, very important in moving it along. Thank you.

Mauna Kea Trask: Definitely, I'll follow-up.

Cheryl Lovell-Obatake (Po`o): Any questions, comments for number 10? We're on number 11.

Glenn Kimura: Okay, Po`o, number 11 and the last one: Burial 2, SIHP to be determined. This is a previously disturbed human burial located adjacent to an old utility line. A partial, disturbed burial pit was also observed. This burial is likely pre-contact to early post-contact. The burial is located on Kaua'i Sands property and outside the proposed path alignment. We have no effect. The proposed mitigation would be to have: 1) burial treatment plan to be submitted for review by KNIBC, SHPD and OHA and approval by KNIBC; and also 2) maintain buffer.

Nancy Nishikawa: So that one is on the south end of the proposed alignment (indicated on map).

Beverly Muraoka: Po`o, could we also include maybe as they mentioned a consideration to realign the path because of this burial, I don't see a consideration, I see it on the newly identified burial 1, but I don't see it on burial 2.

Glenn Kimura: Po`o, there's no need to realign because it's outside of the alignment. That one was on Kaua'i Sands property, not on the easement. So, it's not our problem.

Beverly Muraoka: But, how many was that away that you discovered it from the proposed path, this burial #2?

Glenn Kimura: I'm sorry, I missed the question.

Beverly Muraoka: How many feet away that you considered it not part of this adverse effect?

Glenn Kimura: Legally, it is on Kaua'i Sands property.

Beverly Muraoka: And the path is away from...

Glenn Kimura: And the path has an easement from Kaua'i Sands property that goes north, so we actually had that burial surveyed, so we know exactly where it is. The idea is to make sure that we have that buffer around it.

Beverly Muraoka: I see, maintain the buffer that's the proposed mitigation. Who discovered this human burial?

Glenn Kimura: Missy guys (Cultural Surveyors Hawai'i).

Beverly Muraoka: Go around the island, find some more.

Cheryl Lovell-Obatake (Po`o): Any more comments/questions on number 11? Okay, at this time I will now suspend this 106 process to allow for the agency officials, representatives to take the appropriate actions to coordinate this 106 consultation with the pending NEPA review process. Yes Doug?

Doug Haigh: Po`o, shall we review some other mitigation proposals under consideration, because there is some general mitigations that are a result of this 106 process.

Cheryl Lovell-Obatake (Po`o): I'm going to call a recess, its 10:04 am, everybody can take a break.

BREAK – 10:04 am

START – 10:12 am

Cheryl Lovell-Obatake (Po`o): Meeting called back to order, Doug where were you?

Doug Haigh: Po`o, I was informing you that our consultants were still going to report on other mitigation proposals under consideration which I hope they would report on.

Glenn Kimura: I would if I could find it, okay I got it. These are proposals for site specific mitigations and they are actually shown on the attached sheet here. Other mitigation proposals under consideration would be a burial treatment program, archeological monitoring program, construction using “gentle grading technique”; this is in respect to Keith Yap’s request and is there documentation for this technique that can be included as construction specifications. We’re asking that question, if anyone knows how we can write it into the specifications that would help us. Another thing is ethnographic study of the Waipouli Coast; this information is to be used for interpretation signage. This is a request from Kaliko Santos, right Kaliko? Kaliko you want to clarify?

Kaliko Santos: The reason I asked for an ethnographic study of the coast for this process, everybody was in total agreement that the whole entire coastline was culturally sensitive, had some cultural traditions, and or sacred. Because of that fact alone, we needed to get that kind of information. Being Hawaiians, being such an oral society, and we’re not anymore, we’re more social media. So that kind of information, cultural traditions needs to be passed on to the next generation and hopefully an ethnographic study would gather all that kinds of information so that we can all benefit, whether we’re Hawaiian or not because that would be part of our history.

Cheryl Lovell-Obatake (Po`o): So noted. Yes Liberta.

Liberta Albao: I got this important idea, very much and this is probably what you were telling us as part of the civic clubs, I think the point is well taken. Thank you.

Cheryl Lovell-Obatake (Po`o): Thank you; it was seconded by Mrs. Albao. Okay, fencing.

Glenn Kimura: Okay, Po`o, fencing or other barrier between path and adjacent residences. This is a proposal from Missy Kamai and Cheryl Lovell-Obatake. And the last one would be parking for beach access at three locations, the first one would be improvements to the existing County parking area behind the Kapa'a Missionary Church. There is a, actually the County owns that piece of property and there's an easement to get to it. So what we did was to conceptually layout the parking lot with the comfort station and...

Nancy Nishikawa: Its figure 1b.

Glenn Kimura: Kind of small to see. Po`o, Doug has a question.

Cheryl Lovell-Obatake (Po`o): Doug?

Doug Haigh: Po`o, just some additional information, we're looking at adding another additional twelve stalls to enlarge that parking area by acquiring land from the adjacent property. In their SMA permit, they have a requirement to provide public parking and their current plan shows that on the opposite side of their property but we're thinking it may be better to go ahead and

consolidate it in this one where we have the comfort station so that would kind of serve as a trail-head. That would respond to some of the feedback we had in earlier meetings trying to create improved access to the area.

Cheryl Lovell-Obatake (Po`o): Ms. Liberta?

Liberta Albao: Who's the property owner?

Doug Haigh: As I mentioned earlier, it's in the process of being, possibly sold and I don't remember the name of the current property owner and I don't remember the name of the potential, future property owner but it is in the process of being sold and there are SMA permits.

Cheryl Lovell-Obatake (Po`o): You have any information Liberta?

Liberta Albao: No, but I know right in that area there's constant real estate changing of hands, many times we're unaware, you're working with this, and then somebody else. I find it very difficult. They're not knowledgeable as to the historical impact it will have, interesting comment from Doug.

Cheryl Lovell-Obatake (Po`o): You bring up something that comes to my mind is that, when a person is purchasing a property and it was labeled to have historical properties, I don't know where the County comes into all of this, but proper disclosures of historical properties that their purchasing, I don't know how that is worked out with the County or with the State.

Doug Haigh: Po`o, right now the main County control of that property is through the SMA permit process and so the SMA permit is existing, so it passes regardless of who the owner is. When I met with the current owner and the future owner, we were focusing on the SMA permits and commitments in those SMA permits and there are definitely references to the archeological properties in the SMA permits and they need to coordinate with SHPD and protect. That's really the main County control of assuring that when properties change owners, the permits go with the property, they run with the land. The new owner is fully obligated and I would assume and I know in this case there is full disclosure of the SMA permit and I would assume with any real estate agent would make sure that happens.

Cheryl Lovell-Obatake (Po`o): I kind of knew that but I just wanted to put it for the record.

Mauna Kea Trask: And I think too, to answer for the record, Deputy County Attorney Mauna Kea Trask, as far as the bigger picture about historical land in Hawai'i, land containing native Hawaiian burials, land containing important place names, that is going to be, that's an issue that's beyond the County's control. It will be an ongoing issue forever as far as the Hawaiian cultural view of things versus the Western, American/English property ownership system.

Those are the kind of issues that I anticipate will be brought forth at the Burial Council and the authority rests with the State legislature to address those things and so on.

Cheryl Lovell-Obatake (Po`o): The reason why I kind of looked at all of that too, was on the ahamoku process, those matters are important to have perpetual or security, access or whatever it may be and historical sites too, so that's why I wanted to bring that up.

Liberta Albao: For the record, Liberta Albao, the reason I speak about this is because I was an advisor to Liza Pigao for Coco Palms and I was concerned about friends in the Seashell Restaurant and I always said, don't leave it to the County, don't leave it to the County. That's such a pinnacle place where traffic, when my voice wasn't heard that's why I'm very concerned now that we're going forth in this critical Wailua area, we should share our mānā`o on what's happening. I worked really hard, and I was amazed at all these parcels that were sold individually, it really concerns me the many times we're not aware what's on the market. I really feel that as we approach it, we have a process where we're more akamai. I think if we look at it from a historical Native Hawaiian view point that we don't have to go through this pilikia. There's an easier way by sharing our mānā`o and that entire area was previously owned by Grandpa Kaio, all the way down to Waipouli, so now that it's sold off, I'm glad that we went through this process, very, very educational for me.

Cheryl Lovell-Obatake (Po`o): Thank you. I think we're getting to the close, so again I'll repeat myself, I will now suspend this 106 process.

Glenn Kimura: Po`o, I'm sorry; I'm not pau with the parking. There are two more areas that connect the parking, twelve parking stalls at the future Coconut Plantation Resort and that's according to their SMA permit that they got to provide twelve parking stalls. Another twelve parking stalls at the future Coconut Beach Resort and that's according to SMA requirements. There's also another late breaking one, the last one is to encourage programs for the transmission of cultural knowledge related to the coastal tradition and practices and that would promote stewardship of the entire Waipouli Coast.

Beverly Muraoka: Who's paying?

Glenn Kimura: That would be a mitigation proposal, we'll find out whom.

Cheryl Lovell-Obatake (Po`o): Nancy McMahan?

Nancy McMahan: Are you entertaining a couple other avenues? Po`o, are we adding?

Cheryl Lovell-Obatake (Po`o): You have anything to add?

Nancy McMahan: A cultural monitor. There was actually a bill in legislation two years ago to work on cultural monitoring. I don't know what happened to it, I attended several workshops

on O'ahu for it. It really started through Kaleo Patterson who used to live here, because we did it right after. Cultural monitoring really started with Kaleo and Uncle Les being a cultural monitor and then we had our first woman and that was Makanani. Cheryl's been a cultural monitor on several projects, so we've had a few of them, so as a thought you'd might want to have that. Although again the bill sort of to define the perimeters of what cultural monitoring does and a program of training includes oversight and/or the function of some other entities functions responsible for. That was my comment about that, if we could add that in and then your gentle technique. You suggested that one, but are these like an archeological process, were we going to take ten centimeters apart or was that increments and sort of scrape it off slowly? And you can do it, it's a very time consuming process and I'm not sure the archeological monitor or the cultural monitor will watch, but it's a sort of gentle approach, it's a slower process, is that what you're looking at?

Glenn Kimura: Po`o, if I can answer that?

Cheryl Lovell-Obatake (Po`o): Yes.

Glenn Kimura: At an earlier meeting, Section 106 meeting, we had one of the constituents from the Big Island I believe, but anyway the issue was bringing in heavy equipment to do the work, so to be more respectful, we're looking at a technique that will be gentle.

Nancy McMahon: Does that mean smaller equipment, I don't know. But there are some other techniques that you can find. Actually I put down penetrating radar first, and then doing the slow incremental grading, but I don't know if Missy has much experience here, they've done it a lot on O'ahu, Cultural Surveys has, and I've done it a lot. The closer you are to the shoreline, the harder it is because of the salt continuation, so really it's going to maybe pick up the coconut trees roots and the ironwood trees, especially since that coast has lots of ironwood trees and it will hardly pick up a burial, definitely the cultural deposits which are sporadic throughout that area that I know of. We can't fix that equipment yet enough that we can use it for our purposes in sand. Works really well in other places and it works really well for soil and where people walk, water tables and obviously it works best finding porous metal objects, metal that's actually what its purpose was.

Cheryl Lovell-Obatake (Po`o): Any more comments?

Beverly Muraoka: Yes Po`o, how did they come up with twelve parking stalls, why not thirty-six?

Cheryl Lovell-Obatake (Po`o): Doug?

Doug Haigh: These were SMA permit requirements so; this is what came through that public process at the SMA permitting in the final summation by the Planning Department. A couple of these properties also went through a court process; I don't know how it progressed to the final

but that is the commitment that the property owner is making to comply with their SMA permit.

Cheryl Lovell-Obatake (Po`o): Yes Rayne?

Rayne Regush: Just for more clarification, Rayne Regush, that bullet point concerning the parking is just stating the condition, permit approval for that, so that number of parking stalls in other words has not changed?

Doug Haigh: Po`o, that is correct and as I mentioned at the Coconut Plantation Resort, we're looking at consolidating that commitment with our existing parking. Have an improved larger parking area with a comfort station. So we're consolidating the existing County parking with committed public parking permitted as part of the committed with the SMA permit.

Rayne Regush: So, question, in that consolidation we're losing, two sites are being combined to one?

Doug Haigh: We currently have an existing parcel that's the County, fee simple, we own it that had been an informal parking area for many, many years, and it is paved with a small beach access that sometimes gets totally overgrown. In the SMA process, they were required to provide twelve stalls, parking stalls, so what we're proposing is to enlarge our parking area to add twelve more parking stalls from what we currently have.

Glenn Kimura: Po`o, if I may? It's on this map right over here (indicated on map). This site here needs to provide twelve stalls. Originally they were going to provide it in a different location from ours, so what Doug is suggesting is that they put the twelve with our parking stalls so it's one consolidated area. Because it's the same parcel, so put them together which is better cause then everybody can use the bathroom at that point.

Cheryl Lovell-Obatake (Po`o): Okay, noted for the record. Any more comments?

Beverly Muraoka: That's a far parking lot to the beach. I wouldn't want to walk there, I'm kupuna going down to the kahakai, I don't know how many yards that is, that's far, very far, we couldn't go down to go fishing. It's simply not even feasible for us, not even a motorized wheelchair.

Cheryl Lovell-Obatake (Po`o): Okay, we're coming to the closing of this meeting, anything else before, okay. I will know suspend this 106 process to allow for the agency officials....stop.

Rayne Regush: This is Rayne Regush and I just wanted to add a comment that it would have be immensely helpful, as least to myself, to have had these materials in advance of the meeting. I noticed the commission date was the 15th, and it would have given me, all of us an opportunity for more careful consideration.

Cheryl Lovell-Obatake (Po`o): It is noted for the records, thank you Rayne. I will now suspend this 106 process to allow for the agency officials/representatives to take the appropriate actions to coordinate this 106 consultation with the pending NEPA review process. Thank you for coming and we'll see you next time when things are put together with the agencies.

Judy Dalton: Po`o, are we going to have a pass around the table if we're going to comment fully?

Mauna Kea Trask: That's what we did; she wanted to take it site by site.

Judy Dalton: Because before we've gone around the table, one by one.

Cheryl Lovell-Obatake (Po`o): At this time, I'm only suspending this right now, until we come back with the recommendation. So don't think it's all over. Meeting is adjourned.

PANI – END MEETING – 10:33 am

Appendix H

Written Comments from Section 106 Consulted Parties

- Letter from Rayne Regush, Sierra Club, Kaua'i Group of the Hawai'i Chapter, dated April 4, 2012
- Email from Alicia Kaauwai, dated July 26, 2012
- Letter from Waldeen Palmeira, dated August 23, 2012



SIERRA CLUB Kaua'i Group of the Hawai'i Chapter
Post Office Box 3412, Lihu'e, Kauai, Hawai'i, 96766

April 6, 2012

VIA EMAIL: Glenn.Okimoto@hawaii.gov

Mr. Glenn M. Okimoto
Director of Transportation
Hawai'i Department of Transportation
869 Punchbowl Street
Honolulu, HI 96813

RE: National Historic Preservation Act, Section 106 Consultation - Lydgate Park to Kapa'a
Bike/Pedestrian Path Phases C&D - Federal Aid Project CMAQ-0700(49)

Aloha Director Okimoto,

The Kaua'i Group of the Sierra Club Hawai'i Chapter thanks you for contacting us as a consulting party. We appreciate the opportunity to provide comments.

The Club has always supported public access and believes that a multi-use path along the Waipouli coast of East Kaua'i would further such access. However, it is important that in creating such a path, the currently undeveloped portions of the coastal environment be left unchanged to the greatest degree possible in order to preserve the natural landscape, views, shoreline and natural beach processes, and subsistence and recreational activities that take place in the coastal area.

The maps that were provided to the Sierra Club in your packet of materials indicated only the general alignment of the proposed path. This made it difficult to adequately ascertain the potential adverse environmental, cultural and historic impacts that could occur along the coastal portion of the proposed path. We therefore request the following additional information and the opportunity to provide comments based on that information:

- 1) Detailed identification of the path's proposed location, including information as to whether the path would be sited mauka of, or would displace, the stands of coastal ironwood trees that currently exist along the undeveloped properties owned by Coconut Beach Development LLC and Coconut Plantation LLC;
- 2) Identification on the maps of the existing footpaths; and
- 3) Identification on the maps of the locations of the current certified shoreline and all previous certified shorelines.

At this time, we are troubled by the statement (in the section headed "Proposed Area of Potential Effect" on page 4 of your February 24, 2012 letter) that reads: "the exact placement

of the path will not be determined until the final design phase.” The determination of the path’s location should occur long before the final design phase, to enable potential location-based impacts to be taken into account in determining the routing of the path.

This coastal corridor is both environmentally and culturally sensitive. Therefore, every effort should be made to place the path sufficiently mauka of the certified shoreline:

- a) There has been public access along this coastal route for generations, and historically, people have long been drawn here to fish and interact with nature.
- b) The stands of mature ironwood trees along the coast are an important historic characteristic of the area and need to be retained in order to preserve the historic, scenic and cultural qualities of the area. The trees also support the integrity of the shoreline berm.
- c) Along the undeveloped Coconut Beach Resort property, for example, recent evidence indicates that the high water mark is as much as 15 feet or more mauka of the 2005 certified shoreline. In fact, the high wash of the waves has reached the mauka side of the existing footpath that weaves through the ironwood trees along that coastline (see photos below). In light of both this historical shoreline retreat and the expected rise in sea level during the coming century, the prudent expenditure of federal funds mandates that the proposed multi-access path be located as far mauka of the existing footpath as possible.



High wash of waves is evidenced by the debris line mauka of coastal ironwoods footpath

The continued viability of traditional activities, the scenic qualities of the coastal area, the preservation of any cultural sites, the health of shoreline processes, and the preservation of the mature ironwood trees and the beach habitat that provides a resting place for endangered Hawaiian monk seals and threatened sea turtles are tightly and inextricably

linked. For these reasons, we recommend that the planning of the proposed multi-use path locate the path as far mauka of the shoreline setback area as possible.

Finally, the proposed delegation of the administration of aspects of the Section 106 process for this sensitive stretch of coastline from the Federal Highway Administration to the State DOT to the County of Kaua'i raises concerns due to the County's inexperience in this area. We therefore strongly urge that the state provide strong guidance and oversight in this area, to ensure compliance with both the spirit and the letter of the Section 106 process.

Sincerely,

A handwritten signature in black ink, appearing to read "Rayne Regush". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rayne Regush

On behalf of the Executive Committee of the Kaua'i Group of the Sierra Club

cc: Doug Haigh, County of Kaua'i, Building Division
Ray McCormick, HDOT, Kaua'i District Engineer

From: Alicia Kaauwai

Sent: Thursday, July 26, 2012 7:39 PM

To: mmagat@culturalsurveys.com

Subject: Re: Section 106 for Lydgate-Kapaa Bike/Ped Path, Phases C&D, Aug 9 Invitation Letter (WAIPOULI 6)

MAHALO NUI LOA! FOR SENDING ME THE INFORMATION ON THE LYDGATE-KAPAA BIKE AND PEDESTRIAN PATH. I HAVE NO OBJECTION TO THE PLAN(S), AS LONG AS THE HAWAIIAN IWI AND CULTURE ARE NOT COMPROMISED.

I, TOO, LOOK FORWARD TO MEETING YOU ON AUGUST 9TH. I ENJOYED MEETING SHIRLEY, A VERY HELPFUL AND COURTEOUS PERSON.

I MET MISSY KAMAI AND HER TEAM DIGGING AWAY AT THE BEACHFRONT HERE IN WAIPOULI! I WALK MY DOG ALONG THAT SHORELINE AND KEEP UP WITH WHAT IS OCCURRING IN MY NEIGHBORHOOD. I MET THE GENTLEMAN WHO IS THE TEAM LEADER, HE ANSWERED SOME OF MY QUESTIONS.

I DO HAVE SOME CONCERNS - AND HOPEFULLY THEY WILL BE ADDRESSED AT THE UPCOMING MEETING.

I LOOK FORWARD TO MEETING YOU! THANK YOU ONCE AGAIN, FOR SENDING ME THE INFORMATION AND FOR YOUR NICE E-MAIL. BEST REGARDS!

Hui Na Makaiwa
o Waiuaniaho'ano
290 Kaulana Rd.
Wailua, HI 96746

VIA Personal delivery, 8/23/2012

Abraham Wong, Administrator
Federal Highways Administration
Hawaii Division
Glen Kimura
Kimura International

Re: Lydgate to Kapaa Bike & Pedestrian Path
CMAQ-0700(49)

Dear Mr. Wong and Mr. Kimura,

I, and our group, Hui Na Makaiwa o
Waiuaniaho'ano, would like to be a consulting
party in the 106 consultation process because we
have information on significant historic properties
that may be adversely affected within the area
of effect (and APE) of the proposed Project

This is the second letter requesting Section 106
from our organization of native Inhabitants. We
request Section 106 Native Hawaiian Consultation
pursuant to 800 C.F.R.

Mabelo,
Madduk. Palms