

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

RESOLUTION NO. 2023 - \_\_\_\_

**URGING THE O‘AHU HISTORIC PRESERVATION COMMISSION TO IDENTIFY THE SAND BERM OF KAILUA, O‘AHU, AS A HIGHLY SENSITIVE AREA OF SIGNIFICANT ADVERSE IMPACT TO IWI KŪPUNA AND TO ADOPT ADMINISTRATIVE RULES ENSURING THAT ALL KAILUA SAND BERM PROJECTS SUBMITTED TO THE CITY’S DEPARTMENT OF PLANNING AND PERMITTING BE ROUTED TO THE STATE HISTORIC PRESERVATION DIVISION FOR TIMELY REVIEW AND PROTECTION**

WHEREAS, Hawai‘i Revised Statutes (HRS 6E) and Hawai‘i Administrative Rules (HAR Subtitle 13 Historic Preservation Division) require the City and County of Honolulu’s Department of Planning and Permitting (DPP) to: 1- advise the State Historic Preservation Division (SHPD) of any proposed project that might affect a burial site, 2- provide opportunity for SHPD to review and comment on all such proposed projects, and 3- seek SHPD concurrence as a pre-condition for project permitting; and

WHEREAS, DPP is expected to exercise due diligence that includes “consult[ing] registered burials, historical records and land grants, burials known through previous excavation or archaeological investigations, and SHPD records” in order to notify SHPD of projects that might impact iwi kūpuna;<sup>1</sup> and

WHEREAS, SHPD is mandated by these laws to respond to DPP notification, make a determination regarding a proposed project’s impact on iwi, and stipulate the conditions – an archaeological inventory survey (AIS), for example – under which the project should proceed; and

WHEREAS, soil studies conducted by the U.S. Department of Agriculture (Foote et al., 1972) indicate that all of the town of Kailua, O‘ahu, and its beachside communities extending from Mōkapu in the north to Waimānalo in the south are built on a berm of Jaucus sand; and

WHEREAS, no fewer than 338 iwi kūpuna have been encountered in Kailua’s sand berm since 1933,<sup>2</sup> thereby defining these sands as wahi kanu, a place where the burials of our iwi kūpuna have been and continue to be at great risk of desecration; and

WHEREAS, no fewer than 157 of these 338 iwi kūpuna have been found since the enactment of Hawai‘i State burial laws in 1990; and

WHEREAS, 85 of these 157 kūpuna were inadvertently discovered at DPP permitted home improvement and renovation projects that had not undergone the HRS- and HAR-mandated process of review, consultation, and concurrence despite the fact that their high-risk status as Jaucus sand projects should have been evident from the outset; and

WHEREAS, the majority of these 85 iwi kūpuna were broken and scattered by excavation machinery and subjected to other forms of mistreatment, all without benefit of the surveys and monitoring plans that would have pre-empted or significantly mitigated such abuse; and

WHEREAS, this lack of due diligence on the part of DPP and the absence of effective coordination between DPP and SHPD continues to this day, as is evident in the following report;

Iwi were encountered in June 2023 during the excavation of a Ka‘imi St. swimming pool for which DPP had issued a permit without SHPD consultation. Workers found bones in a pile of excavated sand next to the pit, in a load of sand being trucked to Waimānalo as fill for two horse corrals, and in sand that had already been spread at those paddocks. It took “a couple of days” before the contractor notified SHPD at which time SHPD archaeologists recovered additional bones from the pit, back piles, and excavation machinery. These archaeologists reported that the workers had already collected some of the bones themselves (including a long bone from Waimānalo); the abuse continued when the entire collection of bones was relocated to a temporary burial pit by the same unsupervised crew. An archaeologist was then hired by the homeowner to monitor the remainder of the project and the further recovery of iwi in Waimānalo and onsite backdirt, but not before the construction crew had dug and poured a dozen deck footings and excavated an electrical trench – all without the oversight of the SHPD mandated archaeologist;<sup>3</sup> and

WHEREAS, this Ka‘imi St. debacle occurred within a seven-block section of the Kailua sand berm that is bordered by Makawao and Ka‘imi where more than 125 iwi kūpuna had already been unearthed since 1933, including three that were encountered in 2006 during pool construction that occurred directly across the street from the most recent Ka‘imi St. disturbance; and

WHEREAS, many of these burials reports are accessible by Google search, thus raising concern as to why DPP – with paid employees and considerably more access than private citizens to these documents – has been unable to identify such obvious sand berm hot spots and abide by long-standing Hawai‘i Statutes and Administrative Rules; and

WHEREAS, on July 17, 2023, Governor Josh M. Green issued an Emergency Proclamation Related to Housing in which various burial laws and regulations were suspended or modified, including HRS 6E, for a 60-day period with an expected extension to total one-year; and

WHEREAS, the Governor’s proclamation does not affect the primary purpose of this resolution, which identifies and seeks to address long-standing and continuing deficiencies in DPP’s permitting process that exist outside of and beyond the parameters of the proclamation; and

WHEREAS, in mid-2023, the O‘ahu Historic Preservation Commission (OHPC) was established and its members appointed and confirmed; and

WHEREAS, the purposes of the OHPC include advising the DPP in carrying out their historic preservation responsibilities and ensuring that development projects do not adversely impact iwi kūpuna; and

WHEREAS, the commission's powers include: 1- establishing a DPP-integrated inventory of historic properties and archaeological sites, and 2- adopting rules and regulations to avoid, minimize, or mitigate potentially adverse impacts to our iwi kūpuna at these sensitive sites.

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 64<sup>th</sup> Annual Convention in Kālia, Waikīkī, O'ahu, in the malama of 'Ikuā and the rising of 'Olekūkolu, this 21<sup>st</sup> day of October 2023, urging the O'ahu Historic Preservation Commission to identify the sand berm of Kailua, O'ahu, as a highly sensitive area of significant adverse impact to iwi kūpuna and to adopt administrative rules ensuring that all Kailua sand berm projects submitted to the City's Department of Planning and Permitting be routed to the State Historic Preservation Division for timely review and protection; and

BE IT FURTHER RESOLVED, that the O'ahu Historic Preservation Commission adopt similar rules for other highly sensitive areas of O'ahu where Jaucus sand burials are found in heavy concentrations and where oversight by the DPP is lacking; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to OHPC chair Kēhau Abad, City Council member Esther Kia'āina, State Representatives Lisa Marten and Natalia Hussey-Burdick, State Senators Jarrett Keohokalole and Chris Lee, Kailua Neighborhood Board chair Bill Hicks, OIBC chair Kamana'o Mills, as well as the Governor of the State of Hawai'i, President of the State Senate, Speaker of the State House of Representatives, Chair of the State Senate subject matter committee on Hawaiian Affairs, Chair of the State House subject matter committee on Hawaiian Affairs, Chair of the Board of Trustees of the Office of Hawaiian Affairs, and all County Mayors.

INTRODUCED BY: Kailua Hawaiian Civic Club

REFERRED TO: Kōmike Ho'okūpa'a

ACTION: \_\_\_\_\_

<sup>1</sup> Baldauf and Akutagawa, "Ho'i Hou i ka Iwi Kuamo'o: a Legal Primer," 2013: 20, 25.

<sup>2</sup> Burial statistics in this resolution have been compiled from the following sources:

- Park and Collins, *Final AMP in Support of the Kailua District Park Softball Field Project*, 2010: 11-12.
- Hammatt et al., *Cultural Resource Evaluation for the Interisland Wind Project*, 2012: B119-134.
- Blahut et al., *AIS Report for the Kawailoa Drainage Improvements*, 2018: 45-59.
- de Silva, *Kailua Bone Diaries, Crying in the Hole*; unpublished MS, 2023.

<sup>3</sup> M. Alvarez, "Full Report on Inadvertent Discovery of Human Remains," HICRIS No. 2023PR00697, June 1, 2023; N. Belluzzo, Director ASM Affiliates, emails to SHPD and Kailua Kau a Ho'oilo, June and July 2023.